

**IN THE UPPER CUSTOMARY COURT OF KADUNA STATE
IN THE KAFANCHAN JUDICIAL DIVISION
HOLDEN AT KAFANCHAN**

UCCK/CV/37/2025

25TH JUNE, 2025

BEFORE:

HIS WORSHIP EMMANUEL J. SAMAILA, ESQ.	-	JUDGE
MR JAMES K. KAJANG	-	MEMBER

BETWEEN

1. DANIEL PETER	
2. DANIEL WAZIRI	
3. PAUL BULUS KOZAH	-
AND	PLAINTIFFS/RESPONDENTS
1. SALEH KURAH DAHIRU	
2. BELLO AHMED	
3. BAYERO SALEH	
4. ISAH KURA	-
	DEFENDANTS/OBJECTORS

RULING

[1] The matter was for mention. The Plaintiff's Counsel is M.J. Jatau, Esq. The Defendants' Counsel are Nuhu Ibrahim, Esq. and T. Apine, Esq. The dispute is over a piece of land located at Bakin Kogi under Kaninkon custom. Ibrahim raised a Preliminary Objection challenging the jurisdiction of the Court over the Defendants pursuant to *Section 20 of the Customary Courts Law 2001*. The premises of his objection are as follows:

1. That the Defendants have not agreed to be tried by this Honourable Court.
2. That the Defendants are of the Fulani extraction and not subject to the Kaninkon custom.
3. That the Defendants cannot be presumed to have consented to be tried by this Court.

Ibrahim urged the Court to decline jurisdiction so that the Plaintiffs can approach the appropriate Court.

[2] In his reply to the Preliminary Objection, Jatau submitted that *Section 20* of this Court's Law alone cannot determine the jurisdiction of the Court over the Defendants who are Fulanis and Muslims. He relied on *Sections 21, 24 & 25(1) & (2)* and the *First Schedule* to this Courts' Law to drive home his point

that the parties and the disputed land are within the territorial jurisdiction of the Court, hence the Court has jurisdiction over the Defendants.

[3] Jatau also submitted that the Objectors' Counsel's submission that this Court lacks jurisdiction over the Defendants because they are Fulanis and Muslims is erroneous because the Customary Courts in Kaduna State were not established for the adherents of any particular religion as everyone can seek redress before the Courts depending on the nature of one's claim or the obligation between parties. He referred the Court to the following cases: *Abdullahi Magaji v Yayi Zaria (2014) KCCLR-8 (CCA)* and *Manasseh Dosa v Ayuba Barde (2014) KCCLR-151 (CCA)*; *Mallam Rabi Ashara v Customary Judge, Makarfi in Suit No. KDH/Z/152/2022 delivered on 18th October, 2022 (unreported)* and urged the Court to discountenance the Preliminary Objection with punitive costs and hold that the Court has the jurisdiction to determine the matter on merit.

[4] Replying on point of law, Apine submitted that Jatau misconstrued their Preliminary Objection. He stated that their objection is over the parties as covered by *Section 20*, not the subject matter as provided for in *Sections 24 and 25* of this Court's Law. He referred the Court to *Madukolu v Nkemdilim (1962) SCNLR* on the need for a Court to have the jurisdiction to entertain a matter otherwise its proceedings will be a nullity. Apine further submitted that the Defendants are non-natives, hence the custom prevailing in the locality cannot apply to them without their consent first sought and obtained. Finally, Apine urged the Court to discountenance Jatau's submission and uphold their Preliminary Objection.

[5] Considering the submissions of the parties' Counsel, we distil three questions for determination as follows:

1. Do Customary Courts in Kaduna State have jurisdiction over persons who are non-natives?
2. Are Customary Courts in Kaduna State the exclusive preserve of any particular tribe or adherents of any particular religion?
3. Is the consent of persons who are Muslims required to be first sought and obtained before the Customary Courts in Kaduna State can assume jurisdiction over them?

Question 1

[6] Do Customary Courts in Kaduna State have jurisdiction over persons who are non-natives?

As rightly demonstrated by the parties' Counsel, *Sections 20, 21, 24 and 25 and the First Schedule* of the *Kaduna State the Customary Courts Law 2001* are the provisions central to the resolution of the jurisdictional issue raised.

Section 20 provides:

A Customary Court shall have jurisdiction over **all persons** who agreed or may be presumed to have agreed **that their obligation shall be regulated wholly or partly by custom** prevailing within the area of jurisdiction of a Customary Court. (Emphasis supplied)

[7] There are at least two takeaways from *Section 20*. Firstly, the phrase "all persons" literally means what it says. All aggrieved persons are at liberty to sue anyone they have a cause of action against. The only condition precedent to be satisfied is that in civil cases, the claim must be "under customary law". See *Section 21* and the *First Schedule* to this Court's Law. A claim may also be in accordance with any of the causes over which jurisdiction has been vested on a Customary Court. See *Section 24(b)* of this Court's Law and the definition of "Court" in *Section 3* of the *Landlord and Tenant Law 2018*. *Section 25* of this Court's Law expressly provides that in land matters, the applicable law is the customary law of the place where the land lies.

[8] Secondly, the agreement or presumption referred to is in relation to the custom which "shall regulate the parties' obligation, not a discretionary power of choice of forum granted to a Defendant." See *Jonathan Nuwam v Y.I. Dadai (2024) KCCLR-261 (UCC)*. In *Abdullahi Magaji v Yayi Zaria* (above), the Customary Court of Appeal considered the provision of *Section 20* of this Court's Law and held that "[b]y the provision of *Section 20* of the Law, even if the appellant is not a native, still, the trial Court could invoke the provisions of *Sections 20 & 25* to entertain the claim against the appellant."

[9] Without further ado, we answer Question 1 in the affirmative. We hold that the Customary Courts in Kaduna State have jurisdiction over all persons including non-natives.

Question 2

[10] Are Customary Courts in Kaduna State the exclusive preserve of any particular tribe or adherents of any particular religion?

[11] Apine contended that the Defendants who are Fulanis do not submit to the jurisdiction of the Court. Jatau deduced that the Objectors Counsel is by implication saying the Court has no jurisdiction over the Defendants because they are Muslims. As earlier established, *Section 20* vests the Customary Courts in Kaduna State with jurisdiction over “all persons”. This expression includes parties who are Muslims even in criminal cases as the offences triable by the Customary Courts in Kaduna State are statutory offences, not customary crimes in the equivalence of the crimes triable under Sharia Law in the Sharia Courts in Kaduna State. In *Maishaga Bafulatani v Sunday Aliyu (2014) KCCLR-283 (CCA)*, the Customary Court of Appeal, Kaduna considered the provision of *Section 20* of this Court’s Law in determining the appellant’s contention that Customary Court, Sabon Tasha has no jurisdiction over him because he is a Muslim. The Court held thus:

The contention of the appellant Counsel that the appellant is a Fulani man and a Muslim, the Court has no jurisdiction over him. With due respect to Learned Counsel, that argument is misconceived. It is worthy of note that, the Customary Courts in Kaduna State are not meant for a particular religion. Be a Christian, Muslim, Pagans can seek redress in the Court, depending on the nature of the claim or the obligation between the parties. Hence, a Fulani man or any tribe is not excluded from the jurisdiction of a Customary Court.

See also *Abdullahi Magaji v Yayi Zaria* (above).

[12] The Customary Courts in Kaduna State will have jurisdiction over persons who are Muslims:

1. When the subject matter of the transaction they are involved in is regulated by the other party’s custom. An example is where a Muslim man marries a woman who is a non-Muslim in accordance with her family’s custom.

2. When they are involved in a commercial transaction with a non-Muslim whose life is governed by customary law. For example, if a Muslim purchases an item such as a piece of land from a person whose life and properties are regulated by customary law, customary law will apply in the determination any ensuing dispute.
3. When they are parties in a criminal case before a Customary Court. Under the Kaduna State penal Laws (with exception to the Sharia penal Laws), a person's faith is not a determinant of the jurisdiction of the Court where a criminal trial is to be conducted. Notably, the term "Muslim" appears only once in *Section 31(2) PCL* where the additional punishment of Haddi lashing is restricted to Muslims only. The term also appears only once in *Section 444(1) & (2) of the ACJL* which provides for the mode of executing a sentence of Haddi lashing. The terms "Christian", "traditionalist" and "atheist" do not appear in the Laws.

[13] In 1) and 2), it will be taken that the parties agreed or are presumed to have agreed that their transaction will be regulated by customary law. Of course, the Court will have to determine the custom's validity or otherwise before enforcing it. In 3), an objection to the Court's jurisdiction by a party who is a Muslim or an adherent of any other faith on the ground of lack of consent to be tried by the Court will fail.

[14] Persons who are Muslims may opt to activate the civil jurisdiction of a Customary Court by making their claim under customary law. In such a case, it is open to a Defendant of the same faith object to being tried by the Court on the ground that their dispute is not regulated by customary law. The Court will hear the Defendant's objection and the Plaintiff's reply and rule on whether their dispute is governed by customary law, Islamic law or any other law before proceeding with the matter or declining jurisdiction.

[15] Without further ado, we answer Question 2 in the negative. The Customary Courts in Kaduna State have jurisdiction over all persons irrespective of their religious preference. We so hold.

Question 3

[16] Is the consent of persons who are Muslims required to be first sought and obtained before the Customary Courts in Kaduna State can assume jurisdiction over them?

[17] It is the contention of the Objectors' Counsel that the Defendants neither agreed nor gave their consent, expressly or impliedly, to be tried by this Court. We reason that the Objectors' Counsel could be under the mistaken belief that *Section 20(b) of the Kaduna State Sharia Courts Law 2001* requiring the consent of non-Muslims to be first sought and obtained in writing before the Sharia Courts in Kaduna State can assume jurisdiction over them has a corresponding provision in the Kaduna State Customary Courts Law. It does not.

[18] In the Customary Courts in Kaduna State, the applicable laws are customary laws in civil cases and statutory penal laws in criminal cases. See Section 24 of this Courts Law; *Kaduna State Penal Code Law 2017 (PCL)* and *Kaduna State Administration of Criminal Justice Law 2017 (ACJL)*. Conversely, the civil jurisdiction of the Sharia Courts in Kaduna State is based on Islamic personal law while its criminal jurisdiction is as provided in the Sharia Penal laws and related foundational and secondary sources including the *Sharia Penal Code Law 2002, Sharia Criminal Procedure Code Law 2002, Quran* and *Hadiths, Ijma, Qiyas, Ijtihad* and *Urf* (local custom). It is for this reason that a non-Muslims appearing before the Sharia Courts in Kaduna State must give their consent to show that they submit to the Court's jurisdiction.

[19] *Mallam Rabi'u Ashara v Customary Court Judge Makarfi & 3 Ors* (above) is an application for judicial review over a criminal case at the trial Customary Court, Makarfi. The Applicant contended that the Customary Court does not have jurisdiction to try him as he did not give his consent to that effect in writing. The Court considered *Sections 20 and 22* of this Court's Law and held that the Customary Court does not have jurisdiction over the Applicant because he is a Muslim who did not agree in writing to be subject to the jurisdiction of the trial Customary Court. Apparently, the Applicant was under the impression that the Customary Courts' Law also requires that the consent of a party who is a Muslim must be obtained in writing as practiced in the Kaduna State Sharia Courts for parties who are non-Muslims.

[20] Without further ado, Question 3 is answered in the negative. The consent of persons who are Muslims appearing before the Customary Courts in Kaduna State is not a condition precedent before the Court assumes jurisdiction over them. We so hold.

[21] Considering the foregoing, the Preliminary Objection is hereby overruled as this Court has the requisite jurisdiction to hear and determine the matter involving the parties as presently constituted.

[22] The substantive matter between the parties is still pending and the circumstance of this application does not warrant the award of costs against the Defendants.

Signed 25.06.2025
Signed 25/06/2025