

ISLAMICS, SCHOLARSHIP AND SERVICE TO SOCIETY:

A FESTSCHRIFT FOR IS-HAQ OLANREWAJU OLOYEDE



Editors
Mahfouz A. Adedimeji
AbdulGafar O. Fahm

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CHAPTER TWENTY-THREE

THE LEGAL THEORY OF RELIGIOUS EDUCATION IN NIGERIA: AN ANALYSIS OF THE JUDGEMENTS OF THE NIGERIAN SUPREME COURT AND COURT OF APPEAL (1963–2021)

Azizat O. Amoloye-Adebayo, M. K. Imam-Tamim, T.A. Abdulraheem and A. H. Folorunsho

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Abstract

Although the chapter takes a legal perspective, the twin themes of 'education' as broadly defined as possible, and 'religion' understood in its widest sense from 'Islamics' which is rightly described as 'an all-encapsulating text that addresses the most infinitesimal aspects of life' to all forms of spiritual and liturgical expressions that not only define but also give depth and purpose to material existence have been part and parcel of Prof. Oloyede's academic and professional contributions and mentorship of the younger generation of Nigerians directly as his students and indirectly through observation of his commitment to prudence and excellence in public service.

Introduction

This chapter is an examination of the impact of the jurisprudence of the Supreme Court and the Court of Appeal as the apex courts in the Nigerian court structure on the form and content of religious education in Nigeria. The term 'religious education' as envisaged in this chapter is taken to refer to all components of the relationship between religion and education in Nigeria. These are, policy and content of religious education (Orebanjo 1974, Fabunmi 2005, Ajah 2015), constitutional recognition of the relationship between religion and education (Nwauche 2008), the extent of accommodation of religious dress and symbols in educational institutions (Efobi 2011) and, government regulation, control, and funding of faith-based schools (Ajidagba 1996, Efobi 2011, Ajah 2015).

The Nigerian legal system has a complex history in terms of application of religious laws and local customs, the effect of British colonialism and continued influence, as well as Nigeria's obligations under international human rights documents (Fafowora 2017, Obilade 1996). As a result of this complexity, the Supreme Court and the Court of Appeal continue to play significant roles to determine relevant cases in ways that are responsive to this complexity and Nigeria's great diversity. Nigeria is the 7th largest country in the world with about 500 identifiable ethno-lingual groups and various religious beliefs (World Development Indicators 2019, Nigeria Demographic and Health Survey 1999). In addition to ethnic affiliation, the multiplicity of religious beliefs makes religion a core constituent of the Nigerian identity (Nwauche 2008, Amoloye-Adebayo, 2020). This fact introduces remarkable and complex interactions, as well as contestations amongst the different groups of people in Nigeria (Adesina, 2017). A notable area in this regard is the relationship between religion and education. In fact, as shall later be examined, there is historical connection between religion and education in Nigeria.

As earlier stated, the role of the Supreme Court and the Court of Appeal is ineluctable to ensure legal coherence and certainty to reduce or obliterate contestations amongst citizens. However, this chapter found no categorical position in the jurisprudence of the Supreme Court as the highest court since its establishment in 1963 till date on what

the theory of religious education as broadly defined should be in Nigeria. This is because even though there has never been a direct request for the court's jurisdiction as existing potential opportunities, as discussed below, have not progressed beyond the Court of Appeal. In the Nigerian court structure, the Supreme Court, as the apex court, has original jurisdiction only in cases involving the interpretation of the constitution and on disputes between the federal government and a federating unit or between two federating units. Its appellate jurisdiction is in respect of appeals against the decision of the Court of Appeal which exist as one court with 16 judicial divisions across the states in Nigeria. All divisions have coordinate jurisdiction subject only to the unifying and final jurisdiction of the Supreme Court (Constitution of the Federal Republic of Nigeria, 1999, as amended).

Additionally, it was also found that indirect opportunities for chance remarks or *obiter dictum* by the Supreme Court on matters tangentially connected to education and religion or matters of religion generally have been too open-ended and general to gauge the actual pulse of the court if such matters were to come before the court in the future. On account of this, the decisions from the Court of Appeal on religious education appear to be honoured more in the breach due to the absence of a final determination by the Supreme Court continue. Doctrinal analysis on this is deepened by an ethnographic case study of a federating unit in Nigeria, Kwara state, to illustrate the negative effect of the absence of a definitive stance on religion and education typified by a final determination by the apex court, the Supreme Court. Thus, the significance of this chapter lies in its enquiry into the possible stance of the Supreme Court if invited in the future to make a final pronouncement on what the theory of religious education should be in Nigeria.

Constitutional Analysis of the Jurisdiction of the Supreme Court and Court of Appeal

Section 6 (1) of the 1999 Constitution of the Federal Republic of Nigeria (hereinafter 'the 1999 Constitution' or 'the Constitution') vests the judicial powers in Nigeria in the courts listed according to their hierarchy in subsection 5 as the only superior courts of record. In this hierarchy, the Supreme Court of Nigeria ranks highest as the apex court with the Court of Appeal next in line. According to section 233 (1) of the Constitution, the Supreme Court has jurisdiction 'to the exclusion of any other court of law in Nigeria, to hear and determine appeals from the Court of Appeal.' Additionally, Section 235 provides that subject to the powers of the President or of the Governor of a state as regards to prerogative of mercy, 'no appeal shall lie to anybody or person from any determination of the Supreme Court.' This provision, amongst others, confers on the Supreme Court the status of the 'forum for final resolution of disputes' in Nigeria. Conversely, where an issue on which the Supreme Court has jurisdiction has not been determined one way or the other for reason of non-invitation of the jurisdiction of the court, then the dispute is considered as not having been laid to rest. In terms of history, the Supreme Court was first constitutionally established in Nigeria prior to independence from colonial administration in 1954 as Federal Supreme Court (Payne 1893, Elias 1954, Fawehinmi 1986) Under this arrangement, it was not the court of final determination because its decisions were subject to review by the Judicial Committee of the Privy Council. It emerged as the court of final appeal in the Republican Constitution of 1963 which severed all political ties to British colonial administration of Nigeria.

By the provision of Section 237 of the 1999 Constitution, the Court of Appeal is established as next in hierarchy to the Supreme Court. According to section 240 of the 1999 Constitution, the Court of Appeal has jurisdiction 'to the exclusion of any other court of law in Nigeria' from all other superior courts of record. These are the Federal High Court, High Court of the Federal Capital Territory (Abuja), High Court of a state, Sharia Court of Appeal of the Federal Capital Territory (Abuja), Sharia Court of Appeal of a state, Customary Court of Appeal of the Federal Capital Territory (Abuja), Customary Court of Appeal of a state 'and from decisions of a court martial or other tribunals as may be prescribed by an Act of the National Assembly.' Unlike the Supreme Court which is just

one court located in the Federal Capital Territory, Abuja, there are 16 divisions of the Court of Appeal with coordinate jurisdiction. Conflicting decisions from divisions of the Court of Appeal on similar issues of law and fact are subject to the unifying final determination of the Supreme Court. One area where the importance of this unifying jurisdiction is exigent but has been elusive is in the intersection of religion and education. This is especially regarding the definition of the precise theory to guide that intersectional relationship.

Religion and Education in Nigeria: Analysis of the Past to Understand the Present

As earlier noted, , a major defining index of its citizens' identity is religion (Nwauche 2008). The idea of a common religion enables a form of socialisation across various ethnic groups and tribal affiliations even if in theoretical terms (Amoloye-Adebayo 2020). Unfortunately, that there is a plurality of religious beliefs often aggravates existing ethno-tribal tensions and divisions (Amoloye-Adebayo 2020). This has continued to make the discussion of the precise manner to handle the issue of religion in the public space in Nigeria very problematic. Arguably, the most illustrious example of this tension is in relation to education. However, formal education and religion have a long history that predated the emergence of Nigeria as a composite geographical entity and body politic (Gbadamosi 1967). Before colonialism, Muslim communities in the northern and southern regions that later came to be amalgamated as Nigeria had their own system of Islamic education (Gbadamosi 1967)..

According to Barth in his *Travels in Central Africa 1858* – 'We find Mahomedan learning engrafted on the ignorance and simplicity of the black races' (Orr 1965). It was a system of literacy in Arabic language and Islamic knowledge in the then northern region. According to historical records, by 1914 the Islamic schools were estimated to be around 25000 spreading across what was later called Northern Nigeria (Ajah 2015). It was in contradistinction with the Islamic education in Arabic language that the system of education in English language that was introduced into Nigeria through the activities of the Christian missionaries came to be described as 'Western education' (Ajah 2015).

The educational activities of the missionaries continued right to the time of the advent of British colonial rule in Nigeria (Lugard 1919). At that time, the schools established by the missionaries were the only avenues for western education (Gbadamosi 1967). Hence, the connection of the origin of formal educational instruction with the religion of Islam and Christianity in Nigeria clearly has a long history, but with varied implications. Regarding Islamic education, only Muslims would at any rate venture into the Islamic schools, so its mode of delivery has been and continues to be less problematic for the religious rights of students. On the contrary, the underpinning ideology for western education was and continues to be that adherents of various faiths could seek instruction in the schools established initially only by the missionaries and thereafter the government. Herein lies the problem that has survived till present times. Johnson (1921) and Kukah (1993) note that the schools established by missionaries were avenues for the inculcation of values of the Christian faith in all students, especially non-adherents, while they receive their western education.

In reaction to this development, non-Christians and most especially some Muslims in all regions of pre- and post-colonial Nigeria viewed mission schools as being hostile to their faith and sought other alternatives (Clarke 1982). The alternatives started with the decision by the colonial government to participate in the provision of western education in Muslim areas. The colonial government financed the schools in terms of classroom and official buildings, educational materials and teachers' salaries (Clarke 1982). This situation continued until around 1926 when the Director of Education of the colonial government, S.M. Grier instructed that –

[D]enominational Government schools should cease to be free and undenominational as from January 1927. Muslim children could attend Christian mission schools since all of them which accept Government assistance were forbidden by the regulation to refuse to accept Mohammedan children or to give them any religious instruction to which their parents object.

This move arguably constitutes the first attempt in the areas that later came to be known as Nigeria to protect religious rights of non-adherent students attending Christian mission schools and governmental control of faith-based schools. However, as the government withdrew financial assistance from the established Muslim schools, the task was taken up by the Muslim community in the affected areas (Clarke 1982, Paden 1986). However, the government continued its financial assistance to the Christian mission schools, hence the direction that the schools be open to all children regardless of faith without religious indoctrination (Clarke 1982). Gbadamosi (1967) notes the unfairness of the government in withdrawing all form of financial assistance Muslim schools in the face of continued assistance to the Christian mission schools. While it may be agreed that the situation is skewed in favour of Christian mission schools, it may also be argued that continued governmental support to those schools appear to have ensured the regulation of the religious content of their educational instruction to protect, even if in principle, the religious rights of non-adherent students. The instruction by the Director of Education of the colonial government that the students may not be indoctrinated in religious instructions to which their parents object later became part of the constitutional provisions on religious education in post-colonial Nigeria as shall be examined in the next section.

After Nigerian independence from colonial rule in 1960 and at the close of the ensuing Biafra Civil War between 1967-1970, a desire to foster a common Nigerian identity above all other forms of tribal and religious affiliations resulted in governmental nationalization of all schools including Christian mission schools (Efobi 2011, Imam 2012). Thus, the government took over control of all schools because education was viewed as a huge enterprise for government and not for private entities. Some of the reasons conceived for the need for governmental control were 'to provide stability, satisfy people's basic educational and national needs, combat sectionalism, religious conflict and disloyalty to the cause of a united Nigeria (Fabunmi, 2005 p.1).

The Courts' Jurisprudence on Religious Education (1963 -2021)

The methodology of enquiry into the jurisprudence of the Supreme Court and Court of Appeal consisted of both computer-database and manual library search for judicial cases involving the issues of religion and education whatever the level of connection between 1963 till date. The Law Pavilion database was used for the computer search, while the Index books for leading law reports in Nigeria (such as Nigerian Weekly Law Reports, All Federation Weekly Law Reports, Supreme Court of Nigeria Judgments, Supreme Court of Nigerian Law Reports, and Nigerian Law Reports) were searched in physical law libraries. For the Supreme Court, no case was found either in the reported or unreported segments of the decisions.. It was discovered that none of such matters proceeded beyond the Court of Appeal. Meanwhile, for the Court of Appeal, four relevant cases were found. These cases were therefore textually analysed through content analysis method. What follows is a discussion of the cases at the Court of Appeal from the earliest to the latest.

The earliest case found is *Adamu v Attorney-General of Borno State* (CA/J 57/94 (1996) 8 NWLR (Pt 465) 248). In this case, the appellants as plaintiffs instituted an action in the High Court of Borno state, claiming a declaration that the practice whereby the state government paid the salaries of the Christian Religious Knowledge teachers while the local government (Gwoza Local Government Council) paid Islamic Religious Knowledge teachers was unconstitutional as such practice is discriminatory as the practice engendered disparity in their salaries. They sought a declaration that 'by the law of this country, both Christians and Muslims pupils in primary schools in the Gwoza Local Government Area of

Borno State are entitled to equal treatment in all educational and religious fields.' They equally sought an order directing the local government council to also pay the salaries of teachers of Christian Religious Knowledge. The trial court dismissed the suit based on a preliminary objection raised by the defendant that the suit was not justiciable in the light of section 6(6) (c) and section 15 of Chapter 2 of the 1979 Constitution under fundamental objectives and directive principles of State. upon appeal, the Jos Division of the Court of Appeal held that the suit was justiciable and that if the trial judge had heard the matter on the merits with the facts established, it would have amounted to the appellant's fundamental right of freedom from discrimination based on religion. The Court of Appeal thereafter remitted the case to another High Court for trial. However, there was no further documentary evidence showing that the matter went back to the Court of Appeal.

The second case that came up a decade after is *Provost Kwara State College of Education Ilorin & 2 Ors v Bashirat Saliu & 2 Ors* ((Unreported) Appeal No. CA/IL/49/2006 decided on 18 June 2009) hereinafter 'Bashirat's case') determined by the Ilorin Judicial Division. The case emanated from the judgement of the Kwara State High Court delivered on 8 May 2006. A summary of the fact of the case at the High Court was that Bashirat Saliu, Aminat Muritala and Shakirat Olorungebebe were students of the Kwara State College of Education. After the students signed their matriculation oaths in 2003 and 2004, a dress code was promulgated by the college in 2005. Article J of the dress code prohibited the wearing of 'dresses/apparels that cover the entire face of an individual'. The three students are female Muslim students who were denied entry into exam halls on the charge that their dresses were against article J of the college's dress code. They felt aggrieved by this provision and thereafter sought leave at the High Court for the enforcement of their fundamental human rights under section 38 of the 1999 Constitution. The leave was granted, and the judgement ultimately delivered in their favour. The college and its provost appealed to the Courts of Appeal. Their argument amongst others was that the college –

is a secular educational institution where students are treated without discrimination and that faces and eyes of students must be seen for effective communication and identification. . . . Article J of the Dress Code was [thus] necessary to avoid people hiding under veil to commit crime such as cultism, indiscipline or examination malpractices [and further that] two out of the three respondents are science students whose training requires wearing of laboratory coat that cannot be worn together with veil. . . . the learned trial Judge's grant of the [students] prayers amounted to religious extremism.

The appellate courts affirmed the decision of the High Court that the students had a constitutional right to appear in their religious apparel while they receive educational instruction, and that article J of the dress code contravened this right.

The next case is *Abdulkareem v Lagos State Government*(2016) 13 NWLR (Pt 1535) 177)and was decided by the Lagos Division of the Court of Appeal. The facts of the case were that the 1st and 2nd appellants were Muslim students of Afunrashe Junior High School, Lagos State. In January 2012, the school's vice principal singled out the 1st and 2nd appellants on the school assembly, removed their *hijabs* and assaulted them. The vice principal thereafter ordered that thenceforth the appellants and other female Muslim students must not wear religious apparel on their school uniforms both within and outside the school premises. The appellants thus instituted an action at the High Court for the enforcement of their fundamental human rights which failed. Upon appeal to the Court of Appeal, the court in allowing the appeal noted that –

Nigerians are deeply religious and the faithfuls across the religious divides do not fail to assert their religious identities at the slightest opportunity The freedom to manifest one's religion is not only exercisable in community with others, in public and within the circle of those whose faith one shares, but can also be asserted alone or in private. . . . The Nigerian Constitution guarantees the right to freedom of thought, conscience and

religion. . . The limits of this freedom as in all cases are when they impinge on the rights of others or where they put the welfare of the society or public health in jeopardy.

The final case for consideration here is *Incorp. Trustees, CAN v Kwara State Govt* (CA/IL/108/2016 (2020) 13 NWLR (Pt.1740) 99, hereinafter 'CAN's case'). In this case, the appellants instituted an action at the High Court of Kwara state by an originating summons in which they raised the questions regarding the validity and constitutionality of government's continued control and management of around 150 schools previously established by the Christian missionaries across the state under the Education Law of Kwara State, 2006. The appellants sought a declaration that they have and reserve the constitutional rights to establish and own schools for the purpose of educating people in conformity with their religion and Christian faith.

The appellants alleged, *inter alia*, that the take-over of the missionary schools by the government and the subsequent management of those schools as public schools by the government is to their discomfiture, in that policies and practices inimical to the Christian doctrine were introduced by the government. The counsel for the appellants in particular argued that 'the conversion of classrooms into mosques, the flooding of these schools with Islamic Teachers, the wearing of Hijab by female students and pupils among others, are policies or acts which are antithetical to Christian doctrines and values upon which the schools were established by the owners. The appellants further alleged that their attempts to take back control and management of the schools have been rebuffed by the government. On the contrary, counsel for the respondents contended that the appellants have not proven their allegation of the infringement of their rights to establish schools in conformity with their religion having voluntarily surrendered their schools to government for take over as public schools comprising not only adherents of the Christian faith. The respondents alleged that the appellants' construction of the constitutional provision in Section 38 of the 1999 Constitution 'can only lead to imposition of appellants Christian religious belief on any student regardless of the religious divide the students or pupil belong' in schools that already flourish 'as co-educational, co-religious, co-ethnic etc. The Court of Appeal resolved the case against the appellants. In the words of the court-

[W]ith the introduction to schools grant in aid programme by Government, sometime in 1974, there was the clamour from various religious denominations including the appellants to take over the schools established by them in order to enjoy the grant in aid programme . . . Government thus, confronted as it were, with huge requests coming from organizations such as the appellants, must find a way of regulating the affairs of those school, so voluntarily surrendered to government The surrender of those schools by the appellants was not shown to have been made under any condition. Government nonetheless came in to promulgate Kwara State Education Law of 1974. The law has since been reviewed a few times. The extant or existing law on this point is the Kwara State Education Law of 2006. The appellant see the wearing of Hijab by students of the schools under focus as provoking enough and an insult . . . There is no evidence coming from them on record as would suggest that Christian female students were compelled to wear the Hijab [which] practice is also in tune with the Constitution. [F]acts and evidence do indicate that the takeover of the schools in focus were in line with due process, the Kwara State Education Law No.6 of 2006, the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the National Policy on Education.

The cases examined in this section so far appear to illustrate certain important facts. In the first place, the perception of the Nigerian citizens about the appropriate relationship between religion and education in the schools is still highly contested despite the long-time interrelationship between the various religious groups as the historical analysis demonstrates. Secondly, issues about religious education in terms of pedagogical instruction do not often create visible tensions between the religious groups as the lack of any case in the Court of Appeal or Supreme Court on such matters suggests. Thirdly, it is clear that the judicial cases reported, particularly the second, third and fourth cases, are fallouts from other religious value-related issues linked to religious education. This is especially as regards the mode of dressing, which may be taken as the most perceivable indication of

religious observance. In essence, the Nigerian religious groups seemingly perceive religious education more from the 'practical dimensions of religiosity' as posited in Adam, Rothgangel & Lachmann (2014) as against a theoretical and pedagogical perspective.

Finally, and most importantly, the reported cases revealed a consistent jurisprudential perspective of the Court of Appeal on the intersection of religion and education in Nigeria. It is clear from the cases that the court adopts the human right-based approach to religion and education matters. In all the cases discussed above, the court drew mainly from the constitutional provisions on freedom against discrimination based on religion to decide in favour of the affected individuals. For example, in the first case that was returned for retrial, the court nevertheless made a declaration that if the original trial court had heard the matter on the merits, it would have granted the reliefs of the appellants based on a mindset of the right to freedom against discrimination. The decision of the trial court in that case was based on the principle of non-justiciability of matters bordering on both religion and education (1999 Constitution, Section 6 (6) (c)). However, the court reversed this jurisprudence with the application of an overriding human rights approach.

Notwithstanding the unswerving position of the Court of Appeal on religion and education, very little seem to have been achieved in terms of unifying the perceptions of the citizens regarding what legal theory of religious education operates in Nigeria. What is clear is that citizens from the respective divides appear to cherry-pick when to honour in respect of religious others and neighbours the same constitutional provisions under which they seek protection depending on their geographical and numerical strength.

In legal terms, the basis for the unyielding perception of the citizens is linked to the position of the Court of Appeal in relation to the Supreme Court in the Nigerian court structure. As noted in section 2, the Court of Appeal operates from its 16 divisions and each division is semi-autonomous in its judicial function. Incidences and possibilities of conflicting decisions from the different divisions of the court are not uncommon. Consequently, citizens do not always easily acquiesce to the decisions emanating from the Court of Appeal divisions unlike the decisions of the Supreme Court as the court of final determination. The case study that follows in the next section reports events connected to the last case discussed in terms of its reception and self-help enforcement to demonstrate the challenges associated with the absence of a monolithic jurisprudential direction through the unifying power of a decision from the Supreme Court.

A Case Study of Kwara State

The case study method, according to Baxter et al. (2008) supports the "exploration of a real issue within a defined context, using a variety of data sources". Case study method may draw on several methods to gather data, such as observation, experiments, structured interviews, questionnaires, and/or documentary analysis (Jennings, 2005). For this chapter, the unobtrusive moderate observation (Spradley, 1980) and documentary analysis were employed. The need for unobtrusive observation was informed by the volatility attached to the scenarios at the time of collecting data for this chapter.

The choice of Kwara state, one of the 36 federating units in Nigeria, as case study is deliberate for two reasons. In the first instance, two out of the three cases examined in the preceding section emanated from the Ilorin Division of the Court of Appeal which is the capital of Kwara state. Secondly, in demographic terms, the state has a good mix of the ethno-cultural and religious diversity that typifies Nigeria itself as a nation. It is such that it roughly comprises the Northern mix (a term popularly understood in its widest terms to include such cultural affiliations as the Hausas, Fulanis, the Nupes and the Baribas) and the South-West mix (generally comprising the various Yoruba tribes) as natives of the state as well as the Eastern mix comprising Igbo tribes as settlers for business and commercial activities. Thus, occurrences in the state regarding the focus of concern may approximately mirror what is likely to occur in other states in terms of citizens' perception with minimal

variation. It is useful to recall at this juncture that in Bashirat's case) the Court of Appeal of the Ilorin Division in Kwara state formulated the human right based approach to the relationship between religion and education. What became problematic thereafter was how to enforce the court's theory of religious education in government schools that were hitherto associated with certain religious bodies, particularly the Christian missions. Aside from the judgment under reference, the state has an Education Law passed in 2007 (Cap E1, Vol.2, Laws of Kwara State of Nigeria.) The law provides in Section 30 (1) and (2) that no school pupil should suffer any discrimination with respect to religion either through specific pedagogical instructions or through exhibition of religious sensitivity, religious behaviour and religiously motivated lifestyle. Other provisions pertaining to religion and education RE are that 'a reasonable period of religious instruction shall be given in every institution'; and that attendance or excuse from any school-organised religious worship or instruction by the pupils should be assented to by the parent or guardian. With these provisions, it would appear therefore, that the Education Law intends to reflect the religious pluralism in existence in Nigeria through a broad understanding of religious education.

However, despite these provisions and the decision of the Court of Appeal in Bashirat's case, most missionary schools consider the pluralistic approach disdainful and, in most situations, refuse to allow on-adherents full enjoyment of all components of religious education. This led to the facts in CAN's case (and the resultant decision. In spite of the Court of Appeal's decision, which the appellant (CAN) did not earlier appeal against to the Supreme Court, many of the Christian-held mission schools continue to refuse the pupils of other faiths access to religious education. Therefore, between 15th and 16th February 2021 some Muslim youths under the aegis of the Muslim Students Society of Nigeria (MSSN) resorted to self-help to enforce the right of their members, particularly the female students (who they claimed were being persecuted on religious grounds) in three schools in Ilorin – St. Anthony's School, St. Barnabas School, and St. Williams School. The action led to unrest in those schools and consequent disruption of the school activities for some parts of the school periods preventing all the pupils from enjoying their pedagogical instructions in other non-RE subjects for that period. As the news of the unrest filtered to the public, the first, second authors of this chapter visited the most explosive location (St. William's School) as unobtrusive moderate participant observers. Security operatives from the counter-terrorism measure of the Nigerian Security Civil Defence Corps (NSCDC); officers from the State's ministry of education, Ilorin South Local Government Bureau of Education and some members of the Nigerian Police Force were found to have been deployed to calm the situation, though it was gathered that the members of the Nigerian Police was summoned by the Principal of the school to arrest the members of the MSSN as intruders but no arrest was made.

At an ensuing meeting (convened by the officers of the ministry of education) which comprised the principal and administrative heads of the school, a Reverend father as representative of the catholic mission (as original owner), members of the MSSN and security operatives with the 1st -3rd authors acting as observers, several inflammatory remarks were made by both sides of the religious blocs depicting deep-seated animosity and mutual distrust from both ends. The school managers and the catholic mission insisted on their right to determine the form, content and nature of operation and access to religious in the school, regardless of whether or not it is being controlled by the government. Thus, they asserted the right to deny the right to use of religious apparel, worship, and even teaching instruction contrary to Christian doctrine. Interestingly, they claimed legal validity for their actions from the provision of section 38 of the 1999 Constitution, which incidentally is the same constitutional provision upon which the Court of Appeal found its jurisprudential legal theory. It is on the jurisprudential legal theory that the members of the MSSN and the students concerned were asserting their rights. This shows an indication that there is a lacuna yet to be unlocked in the provision of section 38 of the Nigerian Constitution for the

jurisprudential position of the court to have a firm acceptance and provide a theoretical direction for RE in the country.

In reaction to the event on the 15th February 2021, a stakeholders' meeting was convened by the Secretary to the State Government of Kwara State on the question of making the judgement of the Court of Appeal in Bashirat's case as a basis for the forming an educational policy regarding access to RE in the state. The 4th author also attended the meeting as an observer which reportedly ended in a deadlock. Subsequently, 10 mission schools within the Ilorin metropolis were declared closed by the state government due to sporadic spread of inflammatory information on the social media from both sides that threatened the breakdown of law and order.⁷³ In some of the schools such as Baptist Secondary School and Bishop Smith Secondary School, church members rallied through the social media for the occupation of the schools to prevent entry of students with Muslim religious apparel. In reply, members of an organization called the 'Muslim Stakeholders' also threatened reprisal actions if the hijab was forcibly removed from any student wishing to appear in same.

On February 25, 2021, the Secretary to the State Government, Prof. Mamma Sabah Jibril published the state government policy on the use of religious apparel as a manifestation of religious education by any willing pupils. Schools that had since been closed while other students in private schools were receiving normal academic instructions were directed to reopen. But on February 26, 2021, the Kwara State Christian Association of Nigeria (CAN) issued a communique purportedly rejecting the State's policy and called on Christians to occupy all their grant-aided schools when the schools are re-opened.⁷⁴ Consequently, a press statement was released by the Muslim Stakeholders commending the government for honouring the judgement of the Court of Appeal and condemning the communique issued by CAN and responding that 'We are battle ready to face them.'⁷⁴ Thus, again on March 7, 2021 the government directed that 'schoolchildren and teachers in the affected schools to remain at home until the contrary is announced.' The schools remained close for close to two months and reopened in only in April 2021. However, curiously, the appellant in CAN's case did not appeal against the decision of the Court of Appeal until March 1st, 2021 after the controversy had erupted.⁷⁵ This kind of scenario has become a common phenomenon in Nigeria and the plots are strikingly similar in all other places (such as Osun state and Lagos state) where such misunderstanding had broken out.

Although the events are fallouts of legal battles, the outcome imposed negative consequences on the students. On the one hand, the unyielding attitude displayed by the former school owners and the brigandage approach employed by the Muslim youths must have impacted negatively on the psyches of the pupils and ruined their perception of other religions and their adherents. The students were perceivably disorientated towards interreligious dialogue and tolerance thereby portending further danger for a country where religious crises have crippled several steps of economic and developmental progress. On the other hand, the closure of the schools is a denial of the rights of the children to education. The question that begs the answer at this point is why was there almost a breakdown of law and order over the operation of religious education in a state within a country that enshrines in its constitution guarantees for religious freedom? This question form the fulcrum of discussion in the next section.

Towards a Future Theory of Religious Education in Nigeria

From the discussion of the judicial decisions in Section 4 and the case study in Section 5 where references are made to constitutional guarantees for access to religious education in

⁷³ The publication by government on file with the authors.

⁷⁴ On file with the authors.

⁷⁵ On file with the authors.

Nigeria, it is necessary to, therefore, examine the place of religious education in the 1999 Constitution being the *grundnorm* of the Nigerian legal system. The 1999 Constitution contains eleven (11) references to religion generally. The first point of reference is Section 10 wherein it is provided that neither the Federal government nor any of its federating units as States 'shall adopt any religion as State Religion.' This provision has often had significant implication on the conception of religious education in Nigeria. Although, on the surface, the provision aims at the separation of religion from state politics and governance. Nevertheless, the provision has often been referred to whenever discussion arises about the manifestations of religious education (Nwauche 2008, Ajah 2015). Also, the seemingly clear import of the provision has not prevented official preference by some states of certain religions over others to the extent of promoting the teaching of the preferred religion to the detriment of others (Garba, 2020; Garba, 2016). Nwauche (2008) explained the situation lucidly thus:

"...in the northern part of the country, Islamic religious knowledge is taught and promoted as opposed to Christian religious knowledge. The reverse is the case in Southern Nigeria. One key issue is whether there is an obligation by state governments to provide and promote all religious knowledge in their schools."

Therefore, rather than abide by the spirit of the constitution for inclusiveness in the teaching and performance of religious in the schools, entrenched practice is that religious education is usually exclusive to a particular religion in regions where such religion enjoys comparative or absolute advantage. Section 15 (1) describes part of the motto of the Nigerian Federation as 'Unity and Faith'. Similarly, Section 17(3)(b) directs the states in Nigeria to ensure that they provide adequate facilities for religious life, which according to Section 15(3) should be facilitated by encouraging interreligious interactions among the citizens. All these provisions are geared towards promoting active facilitation of national integration pursuant to section 15 (2) of the Constitution. This is to be achieved by prohibiting discrimination on the 'grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties...' Further, under Chapter IV of the Constitution on 'Fundamental Rights', Section 38 expresses the fundamental right of all Nigerians to 'freedom of thought, conscience, and religion. This right includes the freedom to change one's religion or belief as well as the freedom '(either alone or in community with others, and in public or in private) to manifest and propagate' one's religion or belief in matters of 'worship, teaching, practice and observance.' On the one hand, Subsection 2 of this section protects all Nigerians in all avenues of education against religious instructions and observance contrary to those of the individual concerned. Subsection 3 gives the right to religious communities or denominations to give religious instruction to pupils 'in any place of education maintained wholly by that community or denomination.'

Such dichotomic legal approach could on its own have contributed to the 'balance of convenience' attitude of the religious groups to the operation of religious education in their faith-based schools. Thus, religious groups are always quick to approach the courts to demand the right to promote religious education in accordance with their faith as the CAN's case exemplifies. Yet they are unwilling to abide by judicial decisions such as contained in Bashirat's case that grant the same right to non-adherent students in their schools as illustrated by the reported case study. The question that begs its answer at this juncture is what brand of religion-state relationship has Nigeria adopted thus far in view of the above constitutional analysis? This question has a direct impact on what may be taken as the theory of religious education in Nigeria once the role of religion in the public place generally is clarified.

Regarding citizens' perception on the religion-state relationship generally, there are two competing perspectives. The first theory depicts Nigeria as an intrinsically diverse but

secular body-politic under a national constitution. In fact, in Bashirat's case, the counsel for the appellant described the college as a secular public institution. To demonstrate the historicity of this perception of secularity, two further examples are cited. Firstly, after the collapse of the first republic in Nigerian political history on 15 January 1966, one of the foremost nationalist leaders that fought for Nigerian political independence from British colonial authority, Late Chief Obafemi Awolowo, wrote the following words from the Calabar prison where he was incarcerated by the military – 'Nigeria should be a secular state. The existing association between the State and the Church should be completely severed. It is an old British custom which is apish, unreflecting, and discriminatory for us to preserve. . . .' (Awolowo 1966). Secondly, the policy of the First Executive President of Nigeria, Alhaji Shehu Shagari on religion was described by his biographer Ojigbo (1981:387-388) as that which promoted national unity by 'emphasizing the *secular* (sic) nature of the nation . . .'

The other perspective describes Nigeria as a non-secular but multireligious country where the demography of its citizenry does not accommodate favouring any religion over others. An example of this perspective is again contained in the following words by John Olorunfemi Onaiyekan (former Catholic Archbishop of Abuja) that –

The strident call for a separation of politics from religion often becomes a slogan used according to the convenience of the moment. The reality is that both are tied together, by the very nature of things- and this for at least two reasons: First, there is something inherently sacred about political power. History has shown that it can only be properly exercised when handled with sacred attention. In religious jargon, we say, "all powers belong to God." Secondly, it is the same concrete human person who assumes both political and religious identity, and one necessarily affects the other. No wonder, even nations which make much of separation of religion and politics find many ways in practice to act against this principle. It seems to me that this is why our prolonged debate over the "secular" nature of the Nigerian state has remained inconclusive. "Secular state" means different things to different people. It is surely more useful to tackle concrete issues of interaction of politics and religion and from there evolve just and fair solutions to our problems of peaceful co-operation. (Kukah 1993).

Unfortunately, both the secular and multireligious perspectives are asserted and are in fact clearly sustainable on the singular basis of the provisions of Section 10 of the 1999 Constitution quoted above. This anomalous situation is further compounded by the fact that there has not been till date a final judicial pronouncement by the Supreme Court on the issue of which of the two perspectives underpins Nigeria's notion of religion-state relationship generally. This continues to impact the various ways in which religion interacts with the different facets of human existence in Nigeria and more particularly with education as the focus of concern for this chapter.

The conception in this chapter is that it is better to hold to the multireligious perspective rather than the secular in forging a common theory of religion-state relationship and ultimately religious education in Nigeria. The notion of secularism, as the cases examined and reported case study indicate, has been adopted as an instrument to foist alien religious ideologies on non-adherents through craftily constructed and supposedly religiously neutral strategies. It appears that the absence of a uniform conception handed down by the Supreme Court as the apex court allows private individuals to weaponize arbitral and self-serving interpretations of constitutional provisions to alienate non-adherents in public educational institutions where a different religious ideology dominates. One may argue that this situation may continue as there is seemingly a careful avoidance of the Supreme Court in potential opportunities for the court to settle the matter *ad infinitum*. For example, in CAN's case even though the Court of Appeal determined the matter on September 30, 2019, no appeal was lodged at the Supreme Court until March 1, 2021 when students were resorting to self-help so that a constitutional right under religious education already upheld by the Court of Appeal could be respected by private citizens.

Conclusion

As the Supreme Court is as yet to provide a unifying perspective on the theory of religion-state relationship that will percolate all subsystems especially educational institutions unless an opportunity arises where its jurisdiction is invited, there is the need for continued intellectualization of the implication of the constitutional provisions on the role of religion in the Nigerian Policy on education. Put another way, the government must continually engage with the citizenry to foster a common understanding of what constitute religious freedom in Nigeria given its historical and political context as well as the demography of its citizenry. This, it is hoped, will reduce contestations amongst persons of diverse religious faiths and affiliations and ensure an appreciation of the core values of the various religions that cannot be departed from through education.

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