

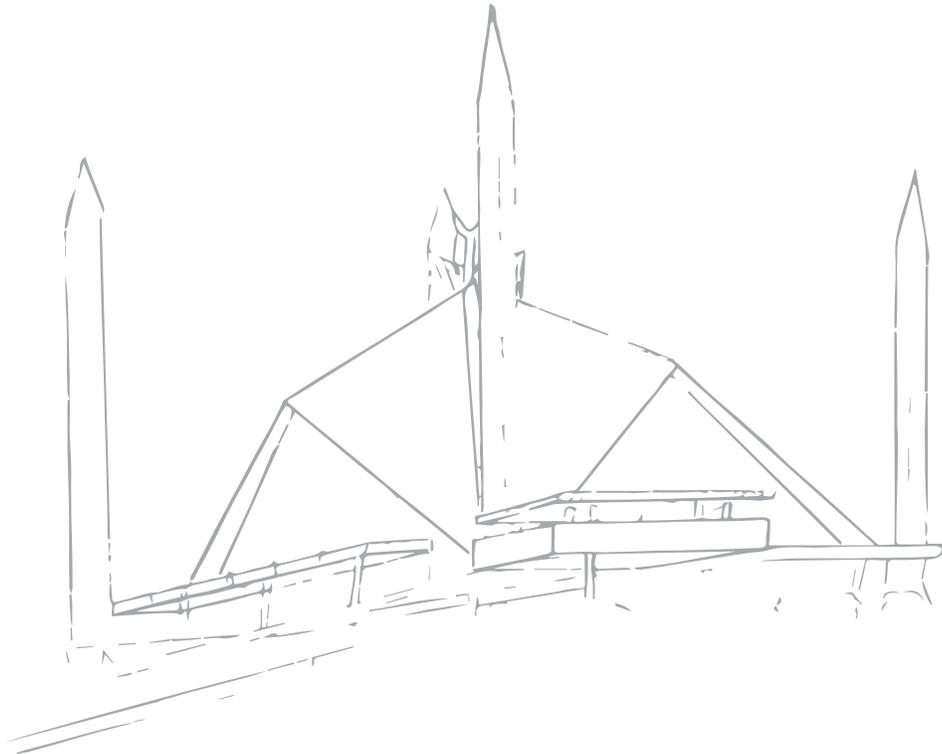


ISSN 1992-5018

ISLAMABAD LAW REVIEW

*Quarterly Research Journal of Faculty of Shariah & Law,
International Islamic University, Islamabad*

Volume 4, Number 1&2, Spring/Summer 2020



Administration of Mosques and Appointment of Imams in Nigeria: Between Islamic Law, Customs, and State Law

Ismael Saka Ismael^{*}

Abdulmumini A. Oba^{**}

Abstract

Mosques are pivotal to the practice of Islam. Imams are important to the administration of mosques. In Nigeria, the administration of mosques and the appointment of imams of these mosques are governed generally by a combination of Shari'ah, local customs ('urf) and statutory law. The actual mix of this combination in any particular mosque depends on those that established the mosque. There are central mosques established by the emirates and communities and there are mosques established by individuals or groups of persons or organisations. In the northern emirates, central mosques established by the emirates are under the control of the emirs. In other parts of the country, the congregation or officials of the congregation administrate central mosques. Among the Yoruba peoples in the southwest, traditional rulers also play a nominal role in the recognition of a newly appointed Chief Imam of their town's central mosque. In central mosques established by individuals or groups of persons or organisations, the control lies in the hands of those that established them and in the case of incorporated organisations, the relevant administrative rules are spelt out in the organisations' constitutive documents. There is no central governmental or Islamic authority regulating the establishment and administration of mosques in the country, which means that there is little or no control over the sermons preached in central mosques. In addition, disputes relating to administration of mosques and the appointment of Imams often end in litigation in civil courts. There is the need to create an official or a quasi-official Islamic authority to regulate the affairs of central mosques in the country.

Key words: *Imams, Mosques, Administration, Islamic Law, Appointment, Nigeria.*

^{*} Reader and formerly Ag. Head, Department of Islamic Law, Faculty of Law, University of Ilorin, Ilorin, Nigeria and can be accessed at: ismael@unilorin.edu.ng; lawyerismael@yahoo.com.

^{**}Professor and formerly Dean, Faculty of Law, University of Ilorin, Ilorin, Nigeria and can be accessed at: obaadebayo@unilorin.edu.ng; obailorin@yahoo.com.

1. Introduction

Mosques are pivotal to the practice of Islam. Muslims are required to offer the obligatory (*fard*) five daily prayers (*salat*, Pl. *ṣalawāt*) and some supererogatory (*sunna*) prayers¹ in congregation. Prayers in congregations are the preferred form for the performance of the obligatory prayers.² Mosques are the prescribed place for these congregational prayers. “Mosque” is the English rendition of the Arabic word “*masjid*” (Pl. *Masājid*).³ Various English dictionaries define mosque as “a building used for public worship by Muslims”, “a Muslim place of worship” and “a building in which Muslims worship”.⁴ Mosques are primarily houses of worship established by Muslims exclusively for worshipping Allah (SWT) through performance of *salat* in congregations.⁵ Mosques also serve other functions such as being centres of education and even social activities.⁶

Imams are important in the administration of mosques. In Islamic literature, *Imam* which literally means, ‘leader’ could refer variously to the *Amīr/Emir*, *Sultan*, Caliph (the Head of the

¹ The *sunna* prayers include the Friday (*jumaʿa*) prayer, the two *id* prayers, prayers during lunar and solar eclipses, and the prayer for rain: Abū al-Ḥasan Al-Māwardī, *The Ordinances of Government: A Translation of al-Aḥkām al-Sultāniyya wa al-wilāyah al-Dīniyya*, (tr. Wafaa H. Wahba), (London: Garnet Publishing Ltd., 1996), p. 117.

² There are many prophetic traditions that are emphatic on the performance of *salat* in congregation, see Imam Ibn Hajar, *Bulugh al-Maram min Adillat al-Aḥkam* (trans. Nancy Eweiss and ed. Selma Cook) (El-Mansoura, Egypt: Dar al-Manarah, 2003), Hadith Nos. 425-429 at pp. 149-150. The prophetic traditions say that *salat* performed in congregation has twenty seven times reward more than *salat* performed individually, *ibid.*, Hadith Nos. 422-424 at p. 148.

³ *Ibid.*

⁴ Muzaffar Iqbal, “English as an Islamic Language”, *Islam & Science*, vol. 10, no. 1, (2012), p. 3 citing Merriam Webster, *Oxford English Dictionary* and Macmillan respectively. [https://www.academia.edu/16835382/English_as_an_Islamic_Language/, accessed 9 June 2019].

⁵ “The mosques of Allah shall be maintained only by those who believe in Allah and the Last Day: perform *As-salat* (the prayers), and give *Zakat* (obligatory charity) and fear none but Allah. It is they who are on true guidance”, Quran 9:18.

⁶ See Khalid Alavi, *The Mosque within a Muslim Community* (ed. Fiaz Hussain) (Birmingham: UK Islamic Mission Dawah Centre, 3rd edition, 2004), pp. 10-9.

Muslim community). In this paper, we have used the term '*Imam*' exclusively for 'prayer leader' while we have used the terms '*Caliph*' for the leader of the Muslim community in the classical sense, '*Sultan*' for the head of the Sokoto caliphate and '*Emirs*' for Emirs appointed under the Sokoto Caliphate. Again, *imam* in the context of *salaṭ* has two meanings. It means the person leading a group of persons in performing *salaṭ*. It could also mean a person so specifically appointed as the *Imam* of a town or a particular mosque. This paper is concerned with the latter meaning. The paper discusses the law and practice relating to administration of mosques, appointment of Imams of central mosques and control of mosques under Islamic law and Nigerian law. The paper concludes with proposed solutions to the problems identified in the study.

2. Islamic Legal Framework for Administration of Mosques

Mosques can be classified in several ways. First, there are mosques established by the emirates, communities and individuals or groups of persons or organisations. Secondly, in some mosques, the five daily prayers and Friday congregational prayers are held there while some *masjid* only the five daily prayers are held. Nowadays, any mosque where the Friday congregational prayers are held is referred to as a "Central Mosque" and its Imam is described as a "Chief Imam". Mosques where only the five daily prayers are held are called *ratibi* mosques. Each town with the requisite number of residents is required to have a central mosque.⁷ Thirdly, there are mosques that are open to the public and there are private 'mosques' accesses to which are restricted to a select few, although such private mosques are not mosques in the technical sense but are rather private place of prayer (*muṣalla*). Mosques opened to the public are considered *habs* and are as such inalienably dedicated to Allah (SWT).⁸ There is no need for any special consecration ceremony, as the very opening of a mosque to members of the public suffices.⁹ Lastly,

⁷ The Maliki School put this at twelve including the Imam: al-Jazīrī, *Islamic Jurisprudence*, (Trans. Nancy Roberts) (Louisville: Fons Vitae, 2009), p. 509.

⁸ *Onibudo v. Akibu* (1982) 2 F.N.R. 224, at pp. 226-227.

⁹ *Amore v. Adegbami* (2018) LPELR-CA/L/646/2015.

there are mosques established without any form of legal formalities and mosques that are formally incorporated under statutory law based on English common law. Most mosques in the country belong to the former category.

Affairs of mosques as with other Islamic affairs are to be under the general supervision of the Muslim leader. Some scholars have argued that Friday congregational prayer is not compulsory on Muslims where there is no constituted authority to establish the prayer.¹⁰ Generally, the appointment of the *imam* of a town's official Central mosque who is by virtue of office is the Chief Imam of the town, is governed by Islamic law. The methods of appointing imams (prayer leaders) in *masjids* depend on whether the mosque is an official mosque established by the State or whether private persons and organisations establish it.¹¹ In the official *masjids* established by the state where the Friday congregational prayers takes place, the *caliph* or emir leads prayer personally or may appoint others as prayer leaders.¹² Al-Kashnawī says no one should lead the *hakim* (governor/ruler) in prayers except with the ruler's consent or when the ruler is prevented by a *Shari'ah* reason from leading prayers.¹³ This is because the ruler is the leader of Muslims in both temporal and religious affairs and in any case, the imams are only the caliph's delegates.¹⁴ In mosques established by individuals or groups of persons, the congregation or the organization that established the mosque determine the manner of appointing the prayer leader.¹⁵ The state authorities do not interfere unless there is a deadlock in the election, in which cases, the state authorities choose between the competing parties.¹⁶ It is not anybody that can lead prayers. Thus, Islamic scholars have carefully identified the characteristics an Imam should possess and who has priority when it comes to

¹⁰ This is the view of Imam Abu Hanifa and not that of Imam Malik: Nyazee, *The Distinguished Jurist's Primer*, I: 177-8.

¹¹ Al-Mawardi, p. 112.

¹² *Ibid.*, p. 112.

¹³ Abū Bakr b. Ḥassan al-Kashnawī, *Ashal al-Madārik Sharh Irshād al-Masālik fī Fiqh Imām al-A'immat Mālik*, vol. I, (Beirut: Dār al-Fikr, n.d.), p. 245.

¹⁴ *Ibid.*

¹⁵ *Ibid.*, pp. 114-5.

¹⁶ Al-Mawardi, p. 115.

being an imam.¹⁷ From the Islamic law perspective, the issue of who deputizes for the Emir as imam of a mosque is entirely within the discretion of the Emir subject only to appointing a person who is qualified to perform the functions of the office. It is clear then that the appointment of *imams* of central mosques is a political and administrative (*siyāsa*) matter, which is completely outside the jurisdiction of the *Qāḍī*.¹⁸ However, if the matter is one concerning administration of a mosque which is subject of *waqf*, the *Qāḍī* could assume jurisdiction.¹⁹

Islamic scholars make a distinction between leading *salaṭ* and formal appointment as an *imam* as they prescribe more strict qualifications for the latter. They have carefully identified the characteristics an *Imam* should possess and who has priority when it comes to being an *imam*.²⁰ To qualify as an *imam*, a person must be a male adult who is upright and has knowledge of what invalidates *salaṭ* in terms of the recitation of the Qur'an and understanding of the relevant *fiqh*. It is disapproved to appoint a slave and a person born out of wedlock even though they could lead prayers. It is desirable to appoint as *imam* a person who has good looks and good character and it is disapproved to appoint the physically disabled.

Imams are responsible for the conduct of prayers. On Fridays, the *Imam* gives the sermon (*khutbah*) and leads the congregational *salaṭ*. The *Imam* conducts other prayers at important functions such as funeral prayers (*janāzah*), marriages

¹⁷ See 'Abd al-Raḥmān al-Jazīrī, pp. 563-5 (Maliki School, pp. 564-5). See further from the Maliki perspective: Al-ʿAbī al-Azhari, *Jawāhir al-ʿiklīl: sharh mukhtaṣar al-allāmah shaykh khalīl fī madhḥab al-imaʾm malik*, vol. I, (Cairo Dar al-Fikr, n.d), p. 83 and Al-Kashnawī, I:246.

¹⁸ See Al-Mawardi, p. 81.

¹⁹ *Ibid.*, p. 79 and Abdullahi Bin Foduye [Fudi], *Guide to Administrator: Ḍiyaʿ al-Ḥukkaʾm* (Tran. S. Yamusa) (Sokoto: The Islamic Academy, 2000), p. 17.

²⁰ See al-Jazīrī, pp. 563-565 (Maliki School, pp. 564-5). See further from the Maliki perspective: 'Abd al-Bari al-ʿAshmawi, *Matn al-ʿAshmawiyyah* (trans. Abu Zahrah 'Abd al-Qāḍīr Mandla Nkosi ([Pretoria?]: Khethu Press, 2014), pp. 25-6, *Muwatta.Com*, (22 April 2014) http://www.muwatta.com/ebooks/english/matn_al-ashmawiyah_en.pdf/, accessed 3 June 2018, and Al-Kashnawī, I: 240-246 and Al-ʿAbī al-Azhari, *Jawāhir al-ʿiklīl*, I: 83

(*nikāh*), naming ceremonies (*‘aqīqah*), housewarming and other occasions of ‘special’ prayers. While any capable Muslim who has the required Islamic knowledge can lead these prayers, *Imams* perform the prayers when they are present at the occasion. Other officials of a mosque include the Muezzin, that is, the person who makes the call to prayer and those responsible for the physical maintenance of the mosque.

3. Legal Framework For Administration Of Mosques In Nigeria

Nigeria is a federation consisting of 36 states and a Federal Capital Territory (FCT).²¹ The country is a multi-religious state with Islam, Christianity and African Traditional religion as the main religious groups.²² The attitude of the Nigerian state to religion is premised on the principles of non-adoption of any religion as state religion and freedom of religion.²³ The state does not interfere in internal affairs of religious groups or in sectarian matters. Thus, there is a complete absence of an official central control of Islamic affairs in Nigeria.

The preeminent Muslim authority in the country is the Nigerian Supreme Council for Islamic Affairs (NSCIA).²⁴ Although, the NSCIA often speak and act formally and informally for Muslims and is meant to be the umbrella body for all Muslims in the country,²⁵ it is not an official organ of the government as

²¹ See: sections 2(1) and 3(1), Constitution of the Federal Republic of Nigeria, 1999 as amended.

²² There are no census figures for these adherents of religions in the country, however, America’s Central Intelligence Agency’s 2018 estimates puts it as follows: Muslim, 53.5%, Roman Catholic 10.6%, other Christian 35.3%, other .6%. Central Intelligence Agency (CIA), *The World Factbook: Nigeria The World Factbook*, <http://www.cia.gov/cia/publications/factbook/geos/ni.html#people/>, accessed 28 September 2020.

²³ See: sections 10 and 38, Constitution of the Federal Republic of Nigeria, 1999 (the 1999 Constitution).

²⁴ See Abdulazeez B. Shittu, “The Role of the Nigerian Supreme Council for Islamic Affairs in Unifying Muslims in Nigeria: Prospect and Challenges”, *International Journal of Muslim Unity*, vol. 9, no. 1/2, (2011), 35 at pp. 35-6.

²⁵ *Ibid.*, p. 36. See article 4, Constitution of the NSCIA, *Nigerian Supreme Council for Islamic Affairs*, https://www.nscia.com.ng/docs/CONSTITUTION_of_the_Nigerian_S

such it does not have coercive powers on Muslims in the country. While its aims and objectives include “build, manage and support Mosques in Nigeria and elsewhere”,²⁶ it does not exercise control over mosques in the country beyond the National Mosque, Abuja.²⁷ There are other Islamic organizations in the country but these organizations do not come under a single leadership and each control its mosques. The implication of this is that there is no centralized Islamic authority charged with administration of Islam including appointment of *imams* and resolving of disputes connected with such appointments. Thus, the affairs of Islam in the country are left largely to individual, organisational or sectarian choices and preferences.

The laws applicable in Nigeria to administration of mosques derive from Islamic law, customary law (*urf*) and the practice and convention of each mosque. The applicable Islamic law is that of the Maliki School, the country’s official school (*madhhab*).²⁸ Customs and local traditions (*urf*) are relevant because the Maliki School accepts as a source of law, customs that are not contrary to the dictates of Islam.²⁹ Where the parties have not proffered any evidence of the law regulating the affairs of their mosque, the courts will invoke English law as the law applicable. In *Asani v. Adeosun*,³⁰ which concerned a dispute relating to appointment of *Imam* of a central mosque in the southwest, the parties did not proffer proof of the applicable law and custom, hence the court applied English law. Subsequently,

upreme_Council.pdf/, accessed 19 December 2018) states that “all Muslims Communities, Islamic Organizations and individuals in Nigeria form the constituents of the Council” and that “member” or “an Islamic Organisation of Body” shall be any person or group of persons who embrace Islam and accept the finality of the prophet hood of the Holy Prophet Muhammad (P.B.O.H)”.

²⁶ *Ibid.*, article 3(8).

²⁷ In fact, Shittu’s work on the role of the NSCIA did not include supervision of the mosques among its roles; see Shittu, “The Role of the Nigerian Supreme Council for Islamic Affairs”.

²⁸ See discussion of this in Abdulmumini A. Oba, “Judicial Practice in Islamic Family Law and Its Relation to *Urf* (Custom) in Northern Nigeria”, *Islamic Law and Society*, vol. 20, no. 3, (2013), 272, at pp. 275-6.

²⁹ *Ibid.*, pp. 277. See also ‘Abd al-Wahhab Khallaf, *‘Ilm Usul al-Fiqh* (Cairo: Dar al-Hadith, 2003), p. 100.

³⁰ (1966) N.M.L.R. 268 citing *Odebode v. Ashaka* (1944) 17 N.L.R. 84 at p. 90.

the courts have invoked in such cases, principles of English law including the rule in *Foss v Harbottle*,³¹ rules relating to unincorporated associations,³² and arbitration laws.³³ However, in *Opebiyi v. Noibi*³⁴ the Supreme Court distinguished *Asani's* case. Bello, JSC delivering the lead judgement of the court held that:

One may, however, unhesitatingly infer from the *ratio decidendi* of the consolidated case [*Asani*] that the rule of Moslem law or native law and custom prevail over the rules of common law in matters pertaining to the selection, appointment and installation of a Chief Imam.

For avoidance of doubt, we may emphasize that Imamship, being the highest office of a mosque; any question relating to the selection and installation of a person to the office is regulated entirely by Moslem law, and the convention and practice of a particular mosque.³⁵

Justice Bello held further that “the convention and practice of a mosque” in this respect “is a question of fact to be proved by the evidence of an expert”.³⁶ In *Amokomowo v. Andu*,³⁷ the Supreme Court added the clarification that such expert should be “any person learned in Islamic law ... and who is also knowledgeable or conversant with the convention and practice of the mosque”.³⁸

Statutory law applies in the administration of mosques that are incorporated under the law or owned by incorporated associations as they are governed by their registered constitution and other constitutive documents under the general regulation of the Companies and Allied Matters Act, 2020 “CAMA 2020” (which repealed the previous CAMA, 1990³⁹) that now regulates the affairs of incorporated associations in the country. A major

³¹ See *Agbaje v Agboluaje* (Unreported) SC/286/1967 decided by the Supreme Court on 20 February, 1970, and *Abubakri v Smith* (1973) LPELR-SC.195/1971 and (1973) 6 S.C. 24.

³² See *Asani v Adeosun* (1966) N.M.L.R. 268.

³³ See *Opebiyi v Noibi* (1977) N.S.C.C. 464

³⁴ (1977) N.S.C.C. 464.

³⁵ *Ibid.*, p. 470.

³⁶ *Ibid.*, at p. 470.

³⁷ (1985) 1 N.S.C.C. 633.

³⁸ *Ibid.*, p. 636, per Uwais, JSC (as he then was) reviewing the judgment of the trial court.

³⁹ Cap. 20, Laws of the Federation of Nigeria, 2004.

advantage of incorporation is that an incorporated association acquired thereby a legal personality that enables it to sue and be sued in its own name, to hold land and do other things that a legal person can do.⁴⁰ An unincorporated association cannot do all these things. For example, it can only sue or be sued in a representative capacity. In *Shitta v. Ligali*,⁴¹ 12 persons who described themselves variously as the “Executive of the Central Mosque” and “members of the Executive Committee” of Lagos instituted the case in that capacity. The court held that they being nothing more than a collection of individuals had no capacity to sue or be sued.⁴²

4. Administration of Mosques In Nigeria

The *ratibi* mosques are generally smaller mosques under the control of the congregation of the particular mosques while the administration of central mosques is more complex. Central mosques in the country can be classified into official central mosques belonging to towns, privately owned central mosques and special central mosques. Official central mosques are located within the northern emirate system, Yoruba towns and in other Muslim-majority towns in the country. In the northern emirates, official central mosques are those established by the emirate. These are usually the main central *masjid* where the Friday prayers take place and which the Emir attends. In the southern states among the Yoruba and the Auchi peoples, each town has an official central mosque owned by the Muslim community of the town. These *masjids* are usually situated near the Oba’s place in the various towns. The traditional ruler attends this mosque for Friday prayers if he is a Muslim.

Generally, the central mosques in the north and in Yorubaland were established long ago and were not usually incorporated under Nigerian laws. The status and ownership of the Central Mosque of Offa town vis-a-vis purported incorporation of the same mosque was the subject of litigation in

⁴⁰ Sections 823(2) and 830(1), CAMA 2020.

⁴¹ (1941) 16 N.L.R. 23.

⁴² See T. Akinola Aguda, *Practice and Procedure of the Supreme Court, Court of Appeal and High Courts of Nigeria* (London: Sweet and Maxwell, 1980) p. 112.

Oyawoye v Ijaiya.⁴³ The case decided by the Federal High Court, Ilorin Division centered on the management of Offa Central Mosque. The current mosque was built in 1948 by the Muslim community of the town with the Oloffo, the traditional ruler of the town as their leader. In 1993, the community decided that the mosque needs to be expanded and the defendants being the children of the prominent families that took initiative in the building of the old mosque were constituted into a board of trustees for the project. A plan was drawn up and the fund raising commenced. Over the years, while the fund raising was going on, a crisis engulfed the Muslim community. In 1999, the plaintiffs incorporated the Offa Grand Mosque and Islamic Centre with themselves as members of the board of trustees. The crisis deepened when a new *Imam* for the Offa Central Mosque was to be appointed and this led to litigations in various courts. The present case was filed in 2007 with the plaintiffs claiming inter-alia, a declaration that the Registered Trustees of the Offa Grand Mosque and Islamic Centre are the only competent body to manage the "Offa Grand Mosque and Islamic Centre". In rejecting the Plaintiff's claims, the court noted that the plaintiffs did not produce any authority from the Offa Muslim community that permitted them to change the name of the mosque from "Offa Central Mosque" to "Offa Grand Mosque and Islamic Centre" and to incorporate the latter. The Court held that "what the Plaintiffs registered was a fictional entity called the Offa Grand Mosque and not the physical structure known as the Offa Central Mosque".⁴⁴ The court concluded that, "... the only legally known and centrally controlled mosque in Offa is the Offa Central Mosque" which "is owned by the Offa Muslim Community".⁴⁵

The privately owned central mosques include those established by individuals, groups of individuals, unincorporated and incorporated Islamic associations. For a mosque owned by an incorporated association, the applicable rules are those in the association's registered constitution and other constitutive documents. The National Mosque, Abuja and the Sultan Bello

⁴³ (Unreported) Suit No. FHC/IL/CS/6/2007 decided by the Federal High Court, Ilorin on 23 October 2015, per Faji J.

⁴⁴ *Ibid*, pp. 26-27.

⁴⁵ *Ibid*, pp. 26 and 28.

Mosque, Kaduna deserve a special mention here. Both are incorporated mosques but they are in a class of their own as they commenced in the traditional or quasi-traditional emirate manner. The Sultan Bello Mosque was established by the Saraduna of Sokoto, Sir Ahmadu Bello, the late Premier of Northern Nigeria. Sheikh Abubakar Gumi who was then the Grand Kadi of the defunct Northern Nigeria also played a major role in the establishment of the mosque and the establishment of the Jama'atu Nasril Islam (JNI).⁴⁶ The Sultan Bello Mosque was established in the 1960s but was formally incorporated in around 2014.⁴⁷ The National Mosque at Abuja is registered as a Non-Governmental Organisation. The idea of establishing a National Mosque at Abuja started in 1981 after Alhaji Shehu Shagari the then President of Nigeria ordered that the seat of government be moved from Lagos to Abuja, the newly designated capital of the country.⁴⁸ The Abuja Mosque is now essentially "a faith-based Non-governmental Organization" with a Mosque Management Board.⁴⁹

Normally, a town should have only one central mosque. However, other central mosques can be established if there are valid reasons. As towns grow, there may be need for additional central mosques. Sometimes, conflicts among the people who had hitherto used the same central mosques can result into a faction branching out to establish their own central mosques. This was

⁴⁶ The JNI was established in 1962 as an organisation for Muslims in northern Nigeria. See an account of the establishment of the JNI in Sheikh Abubakar Gumi (with Ismaila A. Tsiga), *Where I Stand* (Ibadan: Spectrum Books, 1992 reprint, 2001) pp. 104-108.

⁴⁷ Sheikh Gumi insisted that the JNI was founded over forty years ago but was registered only three years ago by the present leadership of the JNI and that Sultan Bello Mosque was incorporated along with the JNI despite his formal objection: Maryam Musa, "How Gov El-Rufai, Sultan, Emir Of Zazzau, JNI Approve The Appointment Of Sheikh Gumi's Anointed Candidate As Chief Imam", *Universal Reporters* (5 January 2017), <https://universalreportersng.com/how-gov-el-rufai-sultan-emir-of-zazzau-jni-approves-the-appointment-of-sheikh-gumis-anointed-candidate-as-chief-imam/>, accessed 7 June 2019.

⁴⁸ Abuja National Mosque, "Management", *Abuja National Mosque*, <http://www.abujanationalmosque.org/management/>, accessed 23 February 2019.

⁴⁹ Ibid.

the case in *Okanle v. Okanle*⁵⁰ where a protracted chieftaincy tussle as to who is entitled to be the traditional ruler of the Okanle town divided the Muslim community. The conflict started when two claimed to be the traditional ruler of the town. One claimed to be the Bale of Okanle while the other claimed to be the Olokanle of Okanle. Both nomenclatures conform to the terms used in Yoruba towns to mean the traditional ruler of a town and thus could not exist simultaneously in a town. The chieftaincy dispute became pronounced such that the two factions could no longer observe the Friday congregational prayers in the town's central mosque. In 1972, the Bale filed a case at the Upper Area Court to restrain the Olokanle faction from operating the Ojude Mosque as a central mosque. The court dismissed the suit but upon appeal, the Sharia Court of Appeal ordered that all the Muslims in the town should observe the Friday congregational prayers service at Fayabale mosque only.⁵¹ The Sharia Court of Appeal premised its decision on the ground that the town is too small to have two central mosques.⁵² Meanwhile, the central mosque needed repairs and pending the repairs, a mosque called Fayabale mosque was used as the central Mosque. The Olokanle faction established another central mosque at Ojude Mosque while the Bale group established another central mosque at the Ara-Okanmi mosque. In 1986, the parties went to the High Court to resolve the chieftaincy dispute. In 1987, the court ruled in favour of the Olokanle.⁵³ This decision infuriated the other group who subsequently refused to participate in any settlement to resolve the central mosque dispute. In 1989, the group again applied to the Sharia Court of Appeal for leave to be observing the Friday congregational prayer service at Ojude Oba Mosque. The Sharia Court of Appeal again turned down the application.⁵⁴ In 1993, the Supreme Court affirmed the decision of the High Court in favour of the

⁵⁰ (1994) Annual Report of the Sharia Court of Appeal, Kwara State 119.

⁵¹ (Unreported) Appeal No KWS/SCA/IL/10/73 decided by the Sharia Court of Appeal, Ilorin on 12 February 1975.

⁵² Ibid.

⁵³ (Unreported) Suit No KWS/GH/1/86 decided by the Kwara State High Court on 7 September 1987.

⁵⁴ (Unreported) Motion No KWS/SCA/CV/M/89 decided by the Sharia Court of Appeal, Ilorin on 12 December 1989.

Olokanle.⁵⁵ With this decision, it became impossible for the two parties to agree to any settlement. In 1994, the Olokanle group filed a fresh application before the Sharia Court of Appeal to permit them to use the Ojude mosque for the Friday congregational prayers services. This time, the Kwara State Sharia Court of Appeal granted their request.⁵⁶ The court held that due to the hostilities between the parties, the ancient mosque cannot be rebuilt and the Fayabale mosque is no longer capable of serving as a central mosque for both parties. The court citing Maliki texts held that given the irreconcilable differences between the two factions, in the interest of peace mandates that each be allowed to establish their own central mosques.⁵⁷ The court therefore approved the use of the Ojude and the Ara-Okanmi mosques as central mosques for the town.

There has been a proliferation of central mosques in many towns in the country.⁵⁸ This is due mainly to rapid urbanisation, increasing number of wealthy individuals who establish central mosques to seek Allah's good pleasure, and lastly but more

⁵⁵ *Attorney-General of Kwara State v. Olawale* (1993) 1 SCNJ 208 and (1993) 1 NWLR (Pt. 272) 645.

⁵⁶ (1994) Annual Report of the Sharia Court of Appeal, Kwara State 119.

⁵⁷ *Ibid.*, pp. 127-9. The court quoted the Maliki texts to the effect that it is permissible to allow another Friday prayer mosque in such circumstance. The court provided only the title of books and pages referred to without providing the citations of the editions used. The quoted texts are from Uthmān b. Ḥasanayn Barī al-Ja'ali al-Mālikī, *Siraġ al-Sālik Sharġ As'hal al-Masālik*, (Beirut: Dar al-Fikr, 1995), 1: 184 (1:152), Aḥmad B. Ghunaym B. Muhanna al-Nafarāwī al-Mālikī, *Al-Fawākih al-Dawānī alā Risala' ibn Abi Zayd al-Qayrawānī*, (Beirut: Dar al-Fikr, 1995), 1: 260 (1:266) Abū Abdallah Muḥammad ibn Aḥmad, *Fath al-Alī al-Mālikī fī al-Fatwā alā Madhab al-Imam Malik*, (Beirut: Dar al-Fikr, n.d.) 1: 143 and Al-Azharī, *Jawāhir al-'Iklīl*, 1: 94. The volumes and pages of the editions cited by the court are herein put in brackets where they are different from the editions cited here.

⁵⁸ For example in Kano City, see Muhammad Wada and Kabiru Haruna Isa, "The Proliferation of *Juma'at* Mosques in Kano Metropolis: A Historical Perspective", *Research Gate* (January 2019), https://www.researchgate.net/publication/330400741_The_Proliferation_of_Juma'at_Mosques_in_Kano_Metropolis_THE_PROLIFERATION_OF_JUMA'AT_MOSQUES_IN_KANO_METROPOLIS_A_HISTORICAL_PERSPECTIVE/, accessed 18 April 2019.

significantly, the interventions by local and international Islamic organisations and sects.⁵⁹

5. Appointment of Imams in Nigeria

The administration of mosques in the Sokoto Caliphate followed the pattern of the classical caliphate. According to him, leading the people in prayers is a branch of rulership.⁶⁰ According to Abdullahi Fudi, Emirs are appointed in the towns and provinces to look after the religious and temporal interests of the people which duties include leading them in prayers and preserving the mosques.⁶¹ Thus, in the Sokoto Caliphate, central mosques were established in towns throughout the emirates. Leading prayers is one of the administrative duties placed by the Sharia on the Sultan.⁶² However, it is permissible to delegate this duty.⁶³ The Sultan can appoint other persons to lead the prayers in his stead. He stated further that the Emirs are appointed in the towns and provinces to look after the religious and temporal interests of the people which duties include leading them in prayers and preserving the mosques.⁶⁴ Thus, in the Sokoto Caliphate, following the classical ways, central mosques were established in the towns in the emirates. In the past and in the contemporary era, there are instances when Emirs who are capable Islamic scholars on their own rights have effectively performed the functions of Chief Imam such as leading the Friday prayers.⁶⁵ However, the

⁵⁹ Ibid., pp. 11-5 (Kano) and Jimoh, *Ilorin: The Journey So Far* (Ilorin: L. A. K. Jimoh, printed by Atoto Press, 1994) p. 467.

⁶⁰ Foduye, pp. 12 and 22.

⁶¹ Ibid., p. 13.

⁶² Abdullahi Bin Foduye, p. 22.

⁶³ Ibid.

⁶⁴ Ibid, p. 13.

⁶⁵ This is generally true of the Emirs of Kano who had led prayers at the Kano central mosque: John N. Paden, *Religion and Political Culture in Kano* (Berkeley and Los Angeles: University of California Press, 1973) pp. 226-227. The deposed Emir of Kano, Muhammad *Sanusi* II performed effectively the role of the Chief Imam. He not only regularly led prayers at the Kano Central Mosque, he also led *janazat* (funereal) prayers, see Oluwatobi Bolashodun, "Emir of Kano leads funeral prayer of Ganduje's mother", NAIJ.COM, 2017 available online at <<https://www.naija.ng/753544-muhammadu-sanusi-leads-funeral-prayer-kano-state-governors-mother-photo.html#753544>> accessed 4 March 2018. There was also the example of the Otaru of Auchi, Chief A.

general practice is that the emir delegates this duty to a prayer leader appointed by him. Thus, central mosques are under the control of the emirs through a Chief Imam appointed by the Emir after due process. The due process depends on the custom followed in the particular Emirate. Generally, important *imams* (and their deputies) in the emirates are appointed from certain lineages and families within the emirates.⁶⁶ In the Ilorin Emirate, this hierarchy consists of the chief imams of the major quarters in the town. These are Imam Fulani, the Imam of the Fulani quarters who is also by office, the Chief Imam of the Emirate, Imam Imale, the Chief Imam of Oke Imale the Yoruba quarters and then Imam Gambari who is the Chief Imam of the 'Hausa' group consisting of Hausa, Nupe and Kanuri settlers.⁶⁷ Also in this hierarchy is the *ajanasi*⁶⁸ who is appointed from the Yoruba quarters.⁶⁹ The emir has the prerogative to appoint any qualified Islamic scholar from the quarters or families that are traditionally entitled to the imamship. With the exception of the Imam Fulani who can be appointed from any Fulani scholar resident in the Fulani quarters of the town, all these imamships are hereditary.⁷⁰ The appointment of a new Imam is formalised by his official "turbaning" by the Emir in the case of the Chief Imam and by the Chief Imam in other cases.

In the southern states among the Yoruba peoples, generally, each town has an official central mosque and a number of *ratibi* mosques. The central mosques are usually situated near the Oba's

K. Momoh, see: Abdulrahman Osioke Arunah, *A History of Auchi Kingdom* (Ilorin: Haytee Press, 2nd. Ed., 2010) p. 173.

⁶⁶ For example, see Paden, *op cit*, p. 227 (Chief Imams of Kano) and L. A. K. Jimoh, pp. 467-75 (Chief Imam and other principal Imams in Ilorin).

⁶⁷ See generally Jimoh, pp. 467-75, Reichmuth, "A Sacred Community", pp. 36-7 and Musa Ali Agetunmobi [Ajetunmobi], "Islamic scholars", pp. 136-7.

⁶⁸ Reichmuth describes the *Ajanasi* as "the official Qur'an reciter": Reichmuth, p. 36. More correctly, an *ajanasi* is an assistant attached to a preacher to ensure that the preacher keeps to the subject matter of the sermon, reminds the preacher or echoes after the preacher of the appropriate verses of the Qur'an or the *hadith* and generally acts as a companion to the preacher while preaching.

⁶⁹ *Ibid.*

⁷⁰ Jimoh, pp. 467-75.

palace while the *ratibi* mosques are located in various quarters in the towns. The administrative structure of these mosques is more elaborate and more culturally inclined, revolving round a hierarchical order of official *alfas* (Islamic scholars) and another hierarchy of 'chiefs' from the members of the congregation.⁷¹ For the *alfas*, there is the Chief Imam, his deputy (*Noibi*)⁷² and the (*Alfa Taosiri*)⁷³. In many mosques, this is also the succession line to the imamship.⁷⁴ There is also the prayer caller (*ladhani*)⁷⁵. The *noibi* is followed by such as *Eketa Adinni* (third in rank), *Ekerin Adinni* (fourth in rank) and the *Olori Omokewu* ('head of the Islamic students') who acts as a personal assistant to the Imam in coordinating the affairs of the *alfas* (Islamic scholars). The *Alfa Taosiri* can also have *Arowasi* (who acts as a "megaphone for the *Alfa Taosiri* in public gathering), *Ajanasi* (who recites the Qur'an in a melodious voice after which the *Alfa Taosiri* does *tasfir* of the verse) as his assistants.⁷⁶ The mosque chiefs are responsible for the administrative aspects of the mosque. The chieftaincies include the *Balogun Musulumi* (Chief Lieutenant of the Congregation), *Seriki* (assistant *Balogun*), *Otun* (third in rank), *Bada* (fourth in rank), *Sarumi* (fifth in rank), *Olori Giwa* (head of the sub-committees of the Mosque), *Akowe* (secretary) and *Akowe Owo* (treasurer).⁷⁷ Some towns and mosques have a similar hierarchy of titles for female members of the congregation.⁷⁸ These and other

⁷¹ For an historical perspective, see G. O. Gbadamasi, "The Imamate Question among Yoruba Muslims", *Journal of the Historical Society of Nigeria*, Vol. 6 No. 2, 1972, 229.

⁷² *Noibi* (Arabic, *naib*), deputy.

⁷³ *Taosiri* is the Yoruba version of *Tafsir* (exegesis of the Qur'an). Thus, *alfa Taosiri* means the Islamic scholar who does explains the Qur'an, which in Arabic will mean a *Muffasir* (one who does *tafsir*).

⁷⁴ For example, see L. O. Abbas, "Imamate and Peripheral Issues in Oshogbo Central Mosque" in Is-haq Akintola, Badmus O. Yusuf and T. M. Salisu (eds.), *Correlates of Islam* (Zaria: Ahmadu Bello University Press, 2009) 217 at pp. 219-222.

⁷⁵ *Ladhini*, the person who makes the *adhan* (call to prayer). The *ladhini* is known in Arabic as the *mua'dhdhin* (*muezzin*).

⁷⁶ See Doi, *Islam in Nigeria*, pp. 200-201. See also Abbas.

⁷⁷ See Doi, *Islam in Nigeria*, pp. 201-202.

⁷⁸ For example, *Iya Adini* (literally, 'mother of religion') who is the head of the women in the congregation and *Iya Sunna* (literally 'mother in charge of Prophetic practices') who is the head of women in *ratibi* mosques. The *Iya Sunna* duties include organising the ritual bath for deceased female members of the congregation.

'titles' more or less, are found generally in traditional mosques and sometimes in modern mosques across Yoruba land.⁷⁹ These titles are influenced largely by Yoruba customs and practices.⁸⁰ As customary in Yoruba towns, each group must have a leader through whom the state would interact with the group. These titles reflect the hierarchy of Muslim leadership in the town. While the *imam* and other *alfas* provide religious and spiritual leadership, the congregational 'chiefs' provide the social, economic and political leadership for the Muslim community.⁸¹ While the *Imam*, *Noibi*, *ladhani* and probably the *mufassir* are known in the Islamic tradition, the other posts stemmed purely from Yoruba culture. In *Sketch v Ajagbemokeferi*⁸² one of these titles was the focal point of litigation. The Chief Imam of Ibadan had conferred the Plaintiff the honorary title "Otun Balogun Oniwasi (Second in rank to the Commander of Muslim Preachers)" on the Plaintiff. The defendants printed and published an almanac called the Voice of Islam wherein under the Plaintiff's picture and name was a caption as follows: "(Otun Balogun Oniwasi) Oye yi je oye yeye gegebi oye Adadale, ti Islam ko patapata. Egbo bi Anobi ti wi ki ike ati ola Olorun ki o maba. Ina ni ile gbogbo Aladadale" which in essence means that the title *Otun Balogun Oniwasi* is an innovation (*bidah*) which Islam forbids and that the Prophet (SAW) said that the Hellfire is the abode of all those who introduce *bidah* into Islam.⁸³

⁷⁹ These titles have now extended to the communities as a whole within linkage to any mosque, see Saheed Ahmad Rufai, "Rethinking the Proliferation of Muslim Chieftaincy Titles in Contemporary Yorubaland (Southwestern Nigeria) for an Effective Administration of Muslim Affairs", *Jurnal Hadhari* Vol. 3 (1), 2011, pp. 69-77

⁸⁰ Gbadamasi, p. 234.

⁸¹ Matthew Hassan Kukah and Toyin Falola, *Religious Militancy and Self-Assertion: Islam and Politics in Nigeria* (Aldershot: Avebury, 1996) 67-68.

⁸² (1989) 1 N.W.L.R. (Pt. 100) 678.

⁸³ This view is perhaps premised on the following *hadith*: "Beware of newly invented matters, for every invented matter is an innovation and every innovation is going astray and every going astray is in Hell-fire", An-Nawawi's Forty Hadith (trans. By Ezzeddin Ibrahim and Denys Johnson-Davies) (place of publication not stated, Dar al-Manar, 1976) pp. 94-96 and "The most truthful speech is the speech of Allah. The best guidance is the guidance of Muhammad. The worst matters are the newly-invented matters. And every newly-invented matter is an innovation and heresy. And every heresy is a going astray. And every going astray is in the Fire" quoted in Jamaal al-Din M. Zarabozo,

The court said that the real issue in the case “was the religious propriety or otherwise of introducing as an innovation, the Yoruba traditional title of *Otun Balogun*, to purely Islamic affairs”.⁸⁴ The court held that as the parties agree that the title is a traditional Yoruba title not found in Islam, the title is an innovation. However, the court agreed with the submission that not all innovations are forbidden in Islam and that the chieftaincy title is neither forbidden nor goes against Islamic tenets and as such belongs to the category of permitted innovations.⁸⁵ The court held that nonetheless, the words complained of are not defamatory as they are nothing more than an expression of opinion as to the permissibility or otherwise of that chieftaincy title in Islam.⁸⁶ The court held further that even if the words were defamatory, the defence of fair comment would avail the defendants.⁸⁷

In Yoruba towns, the customs relating to the appointment of Imams vary as the selection/election may be by the “*jamat* [*jamaʿa*]” consisting of all the mosque *alfas* and Muslim chiefs in the town;⁸⁸ the congregation of the mosque;⁸⁹ a committee of all the *Imam ratibis* and Muslim Chiefs of the town;⁹⁰ a committee of the

Commentary on the Forty Hadith of al-Nawawi (Denver: Al-Basheer for Publications, 2008) Vol. 2, p. 889.

⁸⁴ (1989) 1 N.W.L.R. (Pt. 100) 678, at p. 693.

⁸⁵ *Ibid*, p. 696. For a contrary view, see the discussions on Al-Nawawi’s Hadith No. 28 in Zarabozo, *op cit.*, pp. 887-891.

⁸⁶ (1989) 1 N.W.L.R. (Pt. 100) 678, at p. 696.

⁸⁷ *Ibid*, p. 697.

⁸⁸ Normally, *jamat* (*jamaʿa*) means “congregation” which ordinarily refers to the congregation of the mosque or all Muslims in a town. In *Opebiyi v. Noibi* (*supra*), at p. 466, the Defendants averred that *jamat* elects the Chief Imam of the Igbogila Central and that the *jamat* “comprises of the Chief *Imam*, the *Noibi*, *Olori Omokewu*, the *Mulandam* [*Muqaddam* ?] all the 21 *Imam Ratibis* ..., *Iya Sunna*, all the *Iya Adinis* [of the *ratibi* mosques] and all Muslim Chiefs (male and female)”.

⁸⁹ “... the election to the post of Chief Imam depends upon the vote either unanimous or of the majority of the whole Community comprised of the local Communities of the Mosques under various *Imam Ratibis* who report to a meeting of themselves and the officers of the Muslim Community.”: *Odebode v. Ashaka* (1944) 17 N.L.R. 84 at p. 90 per Brooke. J. It should be noted that this decision was made under the English law applied by the court when parties failed to prove the applicable law and practice.

⁹⁰ See *Amokomowo v. Andu*, p. 639.

ratibis;⁹¹ or a committee of the Mosque leaders;⁹² depending on the practice in the mosque or town. These bodies have the last say on who becomes the Imam. In *Opebiyi v. Noibi (supra)*, the candidates vying for the Chief Imamship of Igbogila Central mosque submitted the dispute to the Ansar-ud-deen Society. One of the parties was dissatisfied with the result of the election conducted by the arbitrator. The Supreme Court held that the verdict of the arbitrator is not binding on the *jamat* because it was the candidates and not the *jamat* who are entitled to select or elect the Imam that submitted the issue to the arbitrator. The court held that the decision of the arbitrator was of no effect.

The selection system for Imamship is often based on heredity and the rotation principle. This was common in the past.⁹³ Here, the Imamship is limited to one or more families who are descendants of the first chief imam who probably introduced Islam into the town and when an Imam dies, a new Imam is selected from a list of candidates from an Imamship family (*Olomo Imam*). Often, the post is rotated among the eligible families. The rotation formula is sometimes invoked to allow different sections of the town or community to produce the Imam. However, the hereditary system is losing popularity in the selection of *imam* with emphasis now on the candidate's personal qualifications especially possession of Islamic knowledge rather than his lineage.⁹⁴ There is a tension between hereditary succession and preference for newly emerging Islamic scholars.⁹⁵ With the growing number of Muslims who have Arabic and Islamic education and with the emergence of new scholars who are distinguished in Islamic learning, many Muslims have little or no patience for *imams* that have no more than a little rudimentary knowledge of Islam. Additional tension is generated where those holding the hereditary rights are non-indigenes as in where

⁹¹ *Hamzat v. Sanni* (2012) LPELR, 8010 (CA) and (2015) 5 N.W.L.R. (Pt. 1453) 486 (SC).

⁹² "33 persons comprising all the Central Mosque Committees and 18 representatives of the *Ratibis* assembled at the Central Mosques": *Ojikutu v. Sarumi* (1981) 4 C.A. 74 at p. 75.

⁹³ Gbadamasi, p. 233-235.

⁹⁴ See Razaq D, Abubakre, *The Interplay of Arabic and Yoruba Cultures in South-Western Nigeria* (Iwo: Darul-'ilm, 2004) 453.

⁹⁵ Gbadamasi, p. 236.

descendants of Hausa, Fulani, Nupe and Ilorin families who brought Islam to the town and established the town's first central mosques lay claim to hereditary imamship rights.⁹⁶ The ethnic parochialism, which pervades the country, incites rebellion against this class of *imams*. In addition, there are tensions and conflicts of approach between the traditional *imams* and the educated elites who formed part of the congregation. The elites often insist on having control of the mosque while the *imams* believe that traditionally in Islam, they should be in control. The elites claim the right to appoint a "suitable" *imam* for their mosques. Suitability in this context may depend on a number of factors other than the Islamic knowledge possessed by a prospective *imam*. This tendency is creating *imams* who are subservient to the elites. The aversion for the hereditary system is so strong that it has divided some congregations.⁹⁷ In some instances, a deserving candidate would be by-passed so as not to give the impression that they are still adhering to the hereditary principle.⁹⁸ In such cases, coming from an imamship family is a clear disadvantage. This operates unfairly in many instances given that knowledge often run within families and members of the family may still out pace other rivals when it comes to knowledge.

After the selection or election of the new Chief *Imam* comes the turbanding and presentation of staff of office ceremonies, which are performed, by the *Balogun Musulumi*⁹⁹ (where the traditional ruler is not a Muslim) and the traditional ruler respectively. It does not matter if the traditional ruler is not a Muslim. In *Hamzat v. Sanni*,¹⁰⁰ the Court of Appeal accepted that

⁹⁶ Kukah and Falola, p. 69.

⁹⁷ This is true of most of the cases discussed in this paper. For example, see the review of the facts of the case concerning the Central Mosque of Isara-Remo, Ogun State in *Hamzat v. Sanni* (2015) 5 N.W.L.R. (Pt. 1453) 486 at p. 501, per Peter-Odili, JSC.

⁹⁸ For an example in relation to the Oshogbo Central Mosque, see Abbas, p. 220.

⁹⁹ See explanations of this post of *Balogun Musulumi* below

¹⁰⁰ *Sanni v. Hamzat* (2012) LPELR, 8010 (CA). In this case, the trial court gave judgment for the plaintiffs but the Court of Appeal set aside the judgement on the ground that the plaintiffs did not call any of the *Imams* of the *Ratibi* mosque as witness to testify as to the position of the *Imams* of the *Ratibi* mosques on the two candidates for the post of Chief Imam. On further appeal to the Supreme Court (*Hamzat v. Sanni* (2015) 5

when the post of the Chief *Imam* of Isara-Remo falls vacant, a new Chief *Imam* is appointed or selected by the *ratibi imams*, who then present their choice to the leaders of the Muslim community who will present the Chief Imam-elect to the *Odemo* of Isara, the traditional ruler. On an appointed day, the Chief Imam elect is “turbaned” by the leader of the Muslim community and presented with a “staff of office” by the *Odemo*. In the instant case, the *Odemo* is a “Christian of the Anglican denomination by birth” but this is of no significance. The Court of Appeal pointed that the only function of the traditional ruler of Remo was to give the staff of office of Chief Imam to the appropriate Chief Imam elect based on information received from the leaders of the Muslim community of Isara. On further appeal to the Supreme Court,¹⁰¹ the court set aside the proceedings at the two lower courts on the ground that the case was premised on a defective statement of claim leaving the plaintiffs to litigate the matter at the trial court if they so wishes.¹⁰² Nonetheless, we respectfully submit that the opinion of the Court of Appeal regarding role of traditional ruler reflects the correct position of the law.

The process of appointing a new Imam normally runs smoothly although friction mostly occurs when there is a division in the congregation or when the candidate selected by the congregation is different from the candidate preferred by the traditional ruler.¹⁰³ Throughout the country, the mode of selection of chief Imams in mosques established by incorporated Islamic associations is based on the procedure and conditions stated in the association’s constitutive document or other official documents. Generally, the appointment process is very competitive with associations aiming to seek the services of well-educated persons

N.W.L.R. (Pt. 1453) 486), the court set aside the proceedings at the two lower courts on the ground that the case was premised on a defective statement of claim leaving the plaintiffs to litigate the matter at the trial court if they so wishes.

¹⁰¹ See *Hamzat v. Sanni* (2015) 5 N.W.L.R. (Pt. 1453) 486 (SC).

¹⁰² See further discussions of this case *infra*.

¹⁰³ For examples of such crisis, see Gbadamasi, “The Imamate Question”, pp. 236-237, Abbas, “Imamate”, pp. 219-22 (Oshogbo Central Mosque) and Kukah and Falola, *Religious Militancy*, 70, 71 and 72 (Lagos Central Mosque).

who are well grounded in both western and Islamic knowledge.¹⁰⁴ Such Imams are employees of the associations and their powers and areas of influence within the association are limited strictly to religious affairs.

Generally, official Chief Imams and other Imams do not receive salaries from the government or the emirates. Their income consists mainly of gifts and charities given to them privately by Muslims or given during ceremonies and in some cases in consideration of 'special' prayers offered for them by the Imam. Many Chief Imams hold regular jobs. However, Chief Imams of the larger towns would be too busy with the official and quasi-official functions to devote their time to any other employment. Imams and other Islamic scholars employed by corporate organisations are on a salary according to their stipulated conditions of service.

Generally, there is little control over what Imams can say in the sermons during the Friday congregational prayers. There is no central Islamic authority, which prepares or supervises sermons delivered by *imams*. Thus, sermons are not subject to any official or quasi-official control. *Imams* in official traditional mosques would generally refrain from saying things that can upset the status quo. *Imams* of mosques established by individuals, groups of individual and organisations have little control provided they stay within the limits of the ideologies of those who established the mosques. Sectarian ideas and ideologies find free expression in such mosques. Many of these mosques, which constitute majority of the central mosques in the country, are specifically established to propagate sectarian perspectives.

6. Regulation of Mosques in Nigeria

As noted earlier, Islamic matters are under the control of the Islamic leadership. The pre-colonial Sokoto Caliphate had such an Islamic leadership but position changed with the advent of colonialism when the Caliphate came under British hegemony. Although the British promised not to interfere with Islam and established a system of indirect rule that used the administrative

¹⁰⁴ Abubakre, op cit, p. 453.

apparatus of the emirates, the emirs had lost substantial control of the people. In the past, within the emirates, congregations that wanted to establish the Friday prayer in their mosques would obtain the permission of the Emir through the Chief Imam of the town. With the rapid growth of central mosques in towns and increasingly acrimonious sectarian differences within the Muslim communities, there is less compliance with this tradition.¹⁰⁵ In the southwest, the official central mosques are established with the permission of the traditional ruler whose council also includes leaders of Muslims in the town. The post-independence era brought a bill of rights, which includes “right to freedom of thought, conscience and religion that made it difficult for the emirs to control the religion of Islam.¹⁰⁶ Islam, become a religion without any central supervision in the country.

Some Muslim majority nations such as Saudi Arabia and Malaysia that have Islam as the official religion have control over the administration of mosques and have maintained a strict control over who can become an Imam of a mosque and what kind of preaching are permissible in the countries.¹⁰⁷ Attempts to control preaching and mosque affairs in Nigeria that does not have a state religion have not been successful.¹⁰⁸ There are many reasons for this. First, there is the paradox of freedom and control that is apparent in the freedom in religious affairs that Islamic scholars traditionally possess (that is, the freedom they enjoyed from state control) from the earliest Islamic era and the authority

¹⁰⁵ See for example, Wada and Isa, “The Proliferation of *Juma'at* Mosques”, pp. 15-6 (Kano).

¹⁰⁶ On freedom of religion, see section 38, 1999 Constitution.

¹⁰⁷ In Malaysia, the administration of Mosques is under the Council of Islamic Religion (Majlis Agama Islam): see sections 72-83, the Administration of Islamic Law (Federal Territories) Act 1993 (Act 505). See further Ahmad Ibrahim and Ahilemah Jones, *The Malaysian Legal System* (Kuala Lumpur: DBP, 2nd ed., 1995) pp. 49-51 and Khairil Azmin Mokhtar, “National Bodies Relating to the Religion of Islam in Malaysia”, (2006) 4 ShLR 17.

¹⁰⁸ There were attempts to control Islam by some states in northern Nigeria in the aftermath of the Maitatsine crisis in the mid 1980s), see Oba, “The Legal Relevance of Religion in Nigeria”, op cit., pp. 38-39. As noted below, recent attempts have not also been successful.

of the state as the leader of the religion.¹⁰⁹ Secondly, there is another kind of freedom that came first with colonialism and later with western individualistic human rights which focuses on individual “agency” where religion is no more than a strictly personal affair.¹¹⁰ The constitution entrenches this perspective of freedom of religion and other rights such as freedom of association, freedom of assembly and freedom of thought that make an internal control of Islamic and mosques affairs impossible.¹¹¹ In 2019, a Kaduna State High Court set aside a law empowering the state to license preachers.¹¹² Again, as noted above, the Constitution also forbids the country or any state thereof from adopting any religion as state religion. The wall of separation between the state and religion makes many meaningful regulation of religion virtually legally impossible. Thirdly, there is distrust between the elites that run the government and the ordinary Muslims that constitute the majority of the Muslims. These corrupt elites who given the opportunity would manipulate control of religion to secure privileges for their sycophants and deny these for upright scholars. Obviously, they are not in a position to entrench a legitimate state regulation of religion, as they do not enjoy the confidence of the Muslims. Fourthly, there is

¹⁰⁹ On the relationship between scholars and Rulers in the classical era, see Liaquat Ali Khan, “Free Markets of Islamic Jurisprudence,” *Michigan State Law Review* (2006): 1487 at pp. 1502-1504.

¹¹⁰ For this perspective, see Michael Ignatieff, “Human Rights as Idolatry”, The Tanner Lectures on Human Values (Delivered at Princeton University, April 4-7, 2000), pp. 322-323.

¹¹¹ See sections 38 (Right to freedom of thought, conscience and religion), 39 (Right to freedom of expression and the press), 40 (Right to peaceful assembly and association), and 41 (Right to freedom of movement). See analysis of the implications of these provisions on state control of religion in Ahmed Salisu Garba, “Freedom of Religion and Its Regulation in Nigeria: Analysis of Preaching Board Laws in Some States of Northern Nigeria”, *Brill Research Perspectives in Law and Religion* Vol. 1, Iss 4, 2018, 1-82 and Inibehe Effiong, “Kaduna State Religious Preaching Bill: Resolving the Constitutional Controversy”, Sahara Reporters retrieved from saharareporters.com/2016/03/30/kaduna-state-religious-preaching-bill-resolving-constitutional-controversy-inibehe accessed 17 November 2019.

¹¹² See T. Ososanya, “Religious bill: You cannot license preachers - Court tells El-Rufai”, Legit.com, 17 November, 2019 retrieved from: <https://www.legit.ng/1244361-religious-bill-you-license-preachers---court-tells-el-rufai.html>, accessed 14 December 2019.

the rivalry between Muslims and Christians that makes them vary of any state regulation of religion especially in states where any of them constitute a minority. The result of the absence of any control or supervision of Islamic affairs has been proliferation of all sorts of sects and Muslims have had to watch helplessly, the growth of deviant and extremist sects that later metamorphosed into violent groups.¹¹³

The Corporate Affairs Commission established under CAMA 2020 plays a supervisory role on the activities and affairs of incorporated associations.¹¹⁴ The CAMA 2020 introduces stringent control on the collection and disbursement of money by incorporated associations, the keeping of accounts and auditing of such accounts.¹¹⁵ In addition, section 839(1), CAMA 2020 provides that:

The [Corporate Affairs] Commission may by order suspend the trustees of an association and appoint an interim manager or managers to manage the affairs of an association where it reasonably believes that –

(a) there is or has been any misconduct or mismanagement in the administration of the association;

(b) it is necessary or desirable for the purpose of –

(i) protecting the property of the association,

(ii) securing a proper application for the property of the association towards achieving the objects of the association, the purposes of the association of that property or of the property coming to the association,

(iii) public interest; or

¹¹³ The absence of control of religion has also affected Christianity and this is reflected in the proliferations of churches with doctrines that do not easily come within the ambit of Christianity as traditionally understood.

¹¹⁴ Section 1, CAMA 2020.

¹¹⁵ Ibid, section 827 (c).

(c) the affairs of the association are being run fraudulently.

Although the Commission could act in the “public interest”, it is submitted that the powers given to the Commission does not extend to doctrinal matters because matters relating strictly to religious tenets and doctrines do not come within the ambit of what government or an agency of government can interfere with or intervene in. The Commission should only be concerned with the ensuring honest and transparent management of the monies and properties of incorporated associations. This is appropriate, as the religious associations once registered and incorporated, are no longer alter egos of individuals no matter how charismatic they may be. It remains to be seen if the Commission can intervene where any religious association is exhibiting extremist ideologies.

7. Conclusion: The Way Forward

According to Islamic law, mosques are to be administered by Muslims exclusively. The non-existence of an official body charged with the legal responsibility for the administration of the religious affairs of Muslims and the inability of Muslims to establish such a body, disputes concerning the administration of Mosques generally and the appointment of Imams of mosques often come before English style courts. The paper concludes that there is the need for reforms that will ensure that official or quasi-official Islamic authorities regulate affairs of mosques including the appointment of *imams*. In Nigeria, a combination of *Shari'ah*, local customs (*'urf*) and statutory law govern the administration of central mosques and the appointment of *imams*. The actual mix of this combination in any particular central mosque depends on those who established the mosque.

The administration of mosques is free from governmental control as the government stirs clear of religious doctrines. However, when there are disputes concerning administration of mosques including the appointment of *Imams* civil courts have jurisdiction. Emirs control traditional mosques in the emirates but no central Islamic authority regulates the establishment and administration of mosques in the country or any part thereof. This situation has allowed free flow of all sorts of ideas, ideologies and

sectarian views that has proved detrimental to the interests of Muslims and the country generally. There is a clear need to create an official or a quasi-official Islamic authority to regulate the affairs of central mosques in the country. Muslims in Nigeria should therefore be alive to this responsibility.