

***AN APPRAISAL OF THE PRACTICAL APPLICATION OF THE MAXIM
(الأمر بمفاسدها) Al-umuru Bi-Maqasidiha ACTION ARE JUDGED ACCORDING TO
INTENTION, IN SHARI'A COURT, NIGERIA***

BY

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ABSTRACT

The concept of intentionality plays a critical role not just in moral evaluations but also in the interpretation of legislation, contracts and other legal agreements, as individuals tend to assign greater blame or praise depending on their interpretation of the actor's intentions behind an act. The evaluation of actions is not only contingent on their apparent consequences but also heavily influenced by whether the outcomes of those actions align with the intentions of the actors. This paper appraises the practical application of the Islamic legal maxim "Actions are judged according to intention" in Nigerian Sharia Courts. The primary objective is to introduce the topic theoretically and practically. Maxims have been regarded as emblematic of the entire discipline owing to their broad applicability beyond fiqh specifics. However, most lawyers and judges are unfamiliar with maxims and their applications, which delays the administration of justice in court. The discourse focuses on how Shari'a courts applied this maxim from various perspectives and in practice. However, a few scenarios have been included. Second, the Subsidiaries of this legal Maxim were also dealt with comprehensively. In so doing, the work adopts the doctrinal method of research. The work demonstrates the importance of this maxim in assisting judges to expedite the administration of justice without squandering the court's and litigants' valuable time, since, as the adage goes, justice delayed is justice denied. Furthermore, the study found that most of the literature on the topic was written in Arabic, while prospective law students who might sit on the bench were trained in English, and the training institute did not teach Islamic legal maxims. The paper recommends introducing courses/subjects on Islamic maxims at the university level and encouraging law and Islamic studies students to write and research about Islamic maxims, who may serve as judges or court officials in Nigerian Shari'a courts.

Keywords: Al-umuru, Bi-Maqasidiha, Intention, Shari'ah, Nigeria

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1.1 Introduction

Allah, the Most High and exalted, bestowed and showered mankind with the faculty of thinking and in-depth knowledge. In numerous verses of the Qur'an, references are made where mankind is obliged and urged to think from different perspectives. Allah says, '*Afala yatadabaru al Qur'an*' (Do they not then consider Qur'an carefully¹) In yet another verse, Allah (S.W.T) says, referring to mankind '*Afalata'akilun*' (will ye not understand²) In another verse, Allah says '*Faatabiru Ya, ulil absar*' (Reckon o ye who have vision and perception³) In a prophetic tradition, the prophet was reported to have said '*U u ditu jawamiul kalami*'⁴ (I was given concise statements).

The earlier as well as contemporary jurists, in their tremendous effort to apply the injunction content in the above verses, have through extensive, unreserved research and reading, adopted and further developed and formed legal phrases or maxims in all areas of human life, including and not limited to *Ahkam* (adjudications) With the aim of applying same in relevant circumstances.⁵

In other words, legal maxims are theoretical abstractions, usually in the form of short epithetic statements that is expressive of major legal concepts affecting a vast part of law⁶. The rank and eminence of a jurist (judge) is directly proportional to his mastery of the maxim⁷. However, most of the students as well as judges are not conversant with the maxims talkless of their application, this of course, results in causing unnecessary delay in the dispensation of justice in court. It is therefore the aim of this paper to appraise the practical application of Islamic rule/maxim *Al-Umuru Bi-Maqasidiha* (Matters are judged according to intention) *الأمر بمقاصدها* in Shari'a courts and in achieving the aim, the following objectives are pursued;

¹ Al-hilali., M. T and Khan., M.M (1996) Translation of the Noble Qur'an in the English Language, king Fahd complex for the Printing of the Holy Qur'an, Madina Saudi Arabia p..122. Q.4 v 82

² Ali.,Y (1983) The Holy Qur'an Text, Translation and Commentary. Amana Corp. Brentwood, Maryland USA p.27 2 v 44

³ Ibid .59 v 2

⁴Tirmizi., M.I (2007) Sunani Al-tirmizy. Daru bn Kathir, Beirut. V. 5-6 p.204. Hadith 1553

⁵ Siti, B. and Abdulwahab, A., (2012) The Legal maxims of Islamic Law and their Application in Islamic Finance v.2 JKAU Islamic Econ International Islamic University Malaysia. p.140

⁶ Bambale., Y.Y (2017) Introduction to Islamic Law of Tort. Enfab print. Zaria p.35

⁷ Ibid

1. The paper makes an extensive and in-depth study of this rule in English language driving and pulls it from the original source.
2. The paper discusses and analyses the rule theoretically and practically through case laws and juristic hypotheses.

1.1.1 Origin and meaning of the maxim

Al-Umuru Bi-Maqasidiha (Matters are judged according to intention) الأمور بمقاصدها

The Arabic word “ Al- umuru” is a plural of “ AL-amru”, which literally connotes an issue or matter (الحال)⁸ this includes and not limited to deeds and utterances⁹ the word has a lot of linguistic connotations¹⁰. However, the one mentioned herein above is the one which has a direct bearing on our discussion; ipso facto it suffices in this regard.

On the other hand, the word “ Maqasid” is a plural of “Maqсад” which is one of the terms in Arabic to refer to “Niyya” i.e intention¹¹. Therefore, the word Maqasid in this context is used in the linguistic meaning to indicate an intent.

The maxim implies that any action, whether it is done physically or verbally, should be judged in the light of the intention of the doer. This means the effect to be given to any particular action or transaction must be in accordance with the intention underlying such an action or transaction¹².

The Qur’an and Sunnah are the main source or origin of this maxim¹³. It is evident from many Qur’anic verses pointing to this which include and not limited to the following;

لا يؤاخذكم الله باللغو في أيمانكم ولكن يؤاخذكم بما كسبت قلوبكم والله غفور حلِيم

⁸Mustapha., I, Abdul-Qadir, Zayyat., A.H, and Najjari M.A (1982) Al-Muajamul Al-Wasid. Daru adda,awa, Cairo p.56

⁹ Shaban, F. E., (2012) *Al-qawa'id Al-fiqhiyya (Islamic legal maxims) concept, Functions, History, Classifications and Application to Contemporary Medical issues*, p.217

¹⁰ Al-bahisin., Y.A., (1998) Al-qawa'id Al-fiqhiyya. Maktabatul Al-rushdi, Riyad, saudia Arabia. p.161

¹¹ Shaban, F. E., Supra p.217

¹² Ibid

¹³Al-Nadwiy, A. A., (2010) *Qawa'id Al-fiqhiyyati*, Daru Al-qalam, Damascus

‘Allah will not call you to account for that which is unintentional in your oaths, but he will call you to account for that which your hearts have earned and Allah is oft-forgiving, most-forgiving’¹⁴

In yet another verse, Allah says;

و ليس عليكم جناح فيما أخطأتم به و لكن ما تعدت قلوبكم و كان الله غفورا رحيمًا .

‘You will not be taken to task for your mistaken utterances, but you will be taken for what you say deliberately. Allah is most for-giving, most compassionate’¹⁵.

Whereas from the prophetic tradition, the following, among others, serve as an example of the origin of the maxim viz;

انما الأعمال بالنيات و انما لكل امرئ ما نوي

‘The reward of deeds depends upon the intentions and every person will get the reward according to what he has intended’¹⁶

ان الله وضع عن امتي الخطأ و النسيان وما استكروا هوا عليه

‘The Almighty Allah has indeed forgiven my people mistakes, forgetfulness and what they were made under duress’¹⁷.

1.2 Some subsidiary maxims emanated therefrom

There are quite a few subsidiary maxims which in one way or the other emanated from the original maxim *الأمور بمقاصده* which serves in a way that widens its scope of application¹⁸. Hereunder are some of these maxims;

a. Al aymanu mabniyyatun ala al aghradh la ala al alfaz (oath is based on purposes, not words)

¹⁴ Al-hilali., M. T (supra) p.49 Qur’an 2:225

¹⁵ Maududi., A. A (2006) Towards Understanding the Qur’an. Islamic Foundation. United Kingdom p.862. Qur’an 33 v.5

¹⁶ Khan., M.M (1996) Summarized Sahih AL-Bukhari. Darussalam. Riyadh. Saudia Arabia p.49

¹⁷ Al-kazwiniy M. Z (2006) Sunan Ibn Majah. Maktabatul al-asriyya. Beirut p.354 Hadith 2045

¹⁸ Al-Nadwiyy, A. A., (2010) *Qawa'id Al-fiqhiyyati*, Daru Al-qalam, Damascus. p.101

الأيمان مبنية على الأغراض لا على الألفاظ

Al-aymanu is a plural of Yamin, i.e. Oath¹⁹.it is one of the fundamental means of proof under Islamic law of evidence. The Maxim presupposes that the Oath taking is predicated upon the intendment or wish of the person against whose claim the other person takes it²⁰ According to Ibn Asim, the entire Oaths, despite its known diversity it is to be taken on the intention of the person for whom it is taken²¹

The wording used shall not be an exonerative avenue for the swearer if it goes contrary to the intention of the claimant. For instance, Mr. A claims money against Mr. B, and there are no credible and unimpeachable witnesses to support the claim, despite the existence of a transaction between Mr. A and Mr. B. So in this circumstance, Mr. B would be called upon to swear to an oath of denial that he does not owe Mr. A here the effect of the oath shall be in accord with the intention of Mr. A not the wording used by Mr. B, he is to swear that he is not owing Mr. A and he is not expected to say that ‘I swear by Allah besides whom there is no deity **worthy** of worship, that I’m not holding Mr. A’s money, looking at wording used by Mr. B it may means that as at that material time he is taking the oath A’s money is not with him, this is contrary to A’s intention in the sense that he is not owing him from the time he claims to have given him.

b. Manistaajalal shay’ an qabla awanihi u’qiba bihirmanihi (he who hastens the accomplishment of a thing before its due time is punished by being deprived thereof)

22 . من استعجل الشيء قبل اوانه عوقب بحرمانه

The maxim signifies that whoever hastens the occurrence of something before its appointed time specified in the knowledge of Allah (S.W.T) shall be forbidden from it, this is to bar indulging in an unlawful procedure to get it right before its appointed time²³.

Following and relying on the above maxim, if a person has deliberately taken his testator’s or legator’s life, he will be deprived of inheritance, equally when one in last illness divorces his wife,

¹⁹ Elias., A. (1986) Elias’ Modern Dictionary. Darul Jial. Beirut p.514

²⁰ Al-bahisin., Y. A., (1998) Al-qawa’id Al-fiqhiyya. Maktabatul Al-rushdi, Riyad, Saudia Arabia.

²¹ Ibn Asim., M. (2009) Ihkamul al ahkam. Maktabatul Al-asriyya Beirut p.38

²² Mishkah., (2013) Al-qawa’id al fiqhiyya p.66. Al-bahisin., Y. A., (1998) Al-qawa’id Al-fiqhiyya. Maktabatul Al-rushdi, Riyadh, Saudia Arabia. P..120

²³ uzzami, A.M., (2005) *Qawa’id Al-fiqhiyya, Darul Al-hadith, Cairo p.307*

without her acceptance, to prevent her from inheritance, she will inherit her share of inheritance. Equally, where a marriage is conducted during the waiting period of another person, the marriage should be nullified forever, according to some jurists.²⁴

c. Al ibratu fil uqudi bil maqasidi wal ma'ani la bil alfazi wal -mabani.²⁵ (Effect is given to the intention and meaning not words and form). العبرة في

العقود بالمقاصد و المعاني لا بالألفاظ و المباني

In concluding a contract, the word used by contractors shall not be taken into consideration strictly but their real intention, because the real intention is the meaning and not the form or the word used, for words are no more than mounds of meanings. In other words, contracts are to be understood in relation to their intention and substance, not by the words and phrases used²⁶. Illusive expressions, therefore, do not make a contract binding unless clarified by (Niyya) intention.²⁷ this maxim is akin to the common law rule thus, equity looks to the intent rather than the form. Therefore, the court, in interpreting and giving effect to contracts entered into by litigants, their intention shall be duly considered.

The circumstances where this maxim applies is in a situation of conflict between the intention of contracting parties and the express wording used. in this position, consideration shall be given to the intention of the contractors not what the wordings indicate²⁸, for words are no more than mounds of meaning²⁹.

Hypothetically, where for instance Mr. A gifts a House to Mr. B for N10,000,000 and Mr. B accepts same. This transaction shall be an act of sale, albeit the word gift is uttered. in the same vein, where for instance, Mr. C says to Mr. D I have lent you my car for N 15,000 to use it for the whole week and Mr. D accepts same. This contract shall be an act for hire rather than an act of lending despite the fact that the form of wording used is that of lending, as the consideration and effect are given to the intent rather than the form. The intention and purpose of the contracting

²⁴ *ibid p.31*

²⁵ Al-suyudy, A., (1959) *Al-ashbah Wannaza 'ir*, Daru Al-fikr, Beirut, Lebanon 3rd ed. p.183

²⁶ As-safi B. (1974) *Islami jurisprudential Maxims Taha Hussein Iraq* p.71

²⁷ Shaban, F. E. *supra* p.228

²⁸ Al-bahisin., Y. A. *supra* p.191

²⁹ *Ibid*

parties could be understood from the combined or entire wording used or attached to the formula used in the contract or the circumstances, it is the one that explains what it means.³⁰

- d. Maqasidu al lafzi ala niyyati al laafizi illa fil al aymani inda alqadhi (the purposes of wordings are the intent of the utter, except in the oath before a judge)³¹

مقاصد اللفظ على نية اللفظ الا في اليمين عند القاضي

The meaning of words is interpreted in accordance with the intention of the utterer or drafters, because words may carry a lot of interpretation or meaning. The maker or drafter is more knowledgeable with his intention from the wordings³². In the words of Obilade, the primary duty of the courts in interpreting statutes (or agreement of the parties) that to find the intention of the legislature (or parties) But the intention is to be discovered from the wording of the statute. It must be an intention manifested by the words used³³.

This rule, like some other rules goes with its exception. The exception is provided in the second limb of the maxim, where it provides;

الا في اليمين عند القاضي

Meaning: except in oath-taking before a court.

In administering the oath to a swearer, his intention is not the mirror, even though he is the taker but the intention of the Judge or the person whom the oath was taken because of him.

1.3 Application of The Maxim_ الأمور بمقاصدها

Intent is a crucial factor in the validity or invalidity of many transactions and it specifies the proper punishment of many crimes³⁴. Indeed, all or most of the utterances and deeds are considered on the account of the intention of the doer. It differentiates and distinguishes between intentional, quasi-intentional, and accidental homicide³⁵.

³⁰ Al-suyudy, A., (1959) *Al-ashbah Wannaza 'ir*, Daru Al-fikr, Beirut, Lebanon 3rd ed. p.63

³¹ Al-bahisin., Y. A., supra

³² Zaidan., A (2011) *Al-wajiz fis- Shari'atul Al-islamiyyah*. Riala. Damarcus, Syria p.19

³³ Obilade A.K (1979) *The Nigeria Legal System*. spectrum Book limited. Ibadan, Nigeria p.56

³⁴ Al-bahisin., Y. A., (2011) *Al-mufasssal fil qawa'idul fihiyyat*. Darul Tadmoria, saudia p.161

³⁵ Al-suyudy, A., (1959) *Al-ashbah Wannaza 'ir*, Daru Al-fikr, Beirut, Lebanon 3rd ed. p.21

A man may perform an act with a certain intent which accordingly entails a certain judgement likewise, he may perform that very same act with another different intention, which accordingly entails another different judgement³⁶. The criminal liability, for instance, is almost subject to the intention of the perpetrator, this could be seen in the following provision of the law;

Section 15 of the Kano and Jigawa States Sharia Penal Code Law 2000, which are in pari materia, provides;

“A person is said to do a thing dishonestly who does that thing **with the intention** of causing a wrongful gain to himself or to another or causing wrongful loss to another person.”.

Section 16 provides;

“A person is said to do a thing 'fraudulently' or with intent to defraud who does that thing **with intent** to deceive and by means of such deceit to obtain some advantage for himself or another or to cause loss to any other person.”

Section 26 states;

“A person is said to cause an effect 'voluntarily' when he causes it by means of whereby he **intended** to cause it or by means which at the time of employing those means, he knew or had reason to believe to be likely to cause it.”

Section 63(2) says;

“ There shall be no criminal responsibility unless an unlawful act or omission is done **intentionally** or negligently”

All the Sections mentioned above are pivotal and bedrock vis-à-vis the concept of intention. It makes a person not to be held criminally liable save and except where the act was committed intentionally. that means a person should be held liable according to his intention, mens rea, therefore, a Shari'a court shall apply the maxim where the intention is required or same form part of the ingredient of the material and relevant fact in issue.

³⁶ Ibid

1.3.0 Cases in Which the Maxim Applied by Shari'a Courts

1.3.1 Case No. 1.

Zahra'u Auwal Adam VS. Ahmed Sulaiman³⁷

Fact of the case:

The plaintiff instituted an action before Upper Shari'a Court Kofar Kudu, Kano, claiming, among other things, a custody (**Hadhana**) of her two children, who were taken away by her ex-husband after the dissolution of the marriage. The Respondent contended that even though the marriage was dissolved by another court through khul, he had already appealed to the Shari'a Court of Appeal, Kano State and by virtue of the said appeal, the marriage is still subsisting ipso facto, the court lacks the requisite jurisdiction to entertain the matter. The Respondent cited and relied on the provision of Order 6 Rule 5 (3) of the Kano State Shari'a Court of Appeal Rules 2017.

The court, in its considered decision, rules that in interpreting the provision of the Order, effect must be given to the intention of the drafters and or lawmakers based on the Maxim *الأمر بمقاصدها* the provision reads;

'where an appeal is on matrimonial causes, the filing of such appeal shall operate as an automatic stay within 3 months from the date of filing of the appeal''

The court further held that it was not the intention of the lawmakers to make that the existence of an appeal make the marriage to be subsisting. Therefore, the judgment of the other court dissolving the marriage, no matter how bad it is, remains valid until set aside by an appellate court.

1.3.2 Analysis of the Case

The case has to do with the issue of custody of a child, which normally arises when the father of a child dies or there is a separation between the couple. In the above case, the marriage was separated by way of KHUL'I through judicial process and upon the separation of the marriage, the ex-wife sued the ex-husband claiming her right of custody.

The ex-husband, on his part, contended that the ex-wife is not entitled to claim the right of custody because the marriage is still alive, as he appealed against the decision of the court that separated them. And he relied on O.6 R.5(3) of the SCA Rule.

³⁷ (Unreported) CV/1520/23 USC Kofar kudu, kano book 104 p.201

The court therefore has to consider the provision of the Order with a view to interpreting same for or against the situation at hand.

In interpreting the said provision, the court asked itself what is the intention of the drafters of the said provision? Because at all material time effect must be given and or judged according to the intention of the doer *الأمور بمقاصدها* or *انما الأعمال بالنيات*. The court found that in the entire provision, there was no mention or indication that the marriage still subsists because of appeal, the drafters of the provision could have expressly stated same if their intention is in consonance with the contention of the Respondent.

It is evident that the reasoning of the court and the application of the maxim is appropriate, the contention of the respondent could be faulted in considering that the filing of appeal would not give the respondent a right to have intercourse with the woman had it been that the filing of appeal makes the marriage alive so he could also as well have the right of intercourse.

1.3.3 Case NO. 2

Rabi'u Galadima VS. Alawiyya Sa'idu³⁸

The facts of the case

The Respondent, who was the Plaintiff at the trial court, filed an action claiming, among other things, a confirmation of divorce effected by her husband (the Appellant) against her thrice. One in 2001 than in 2002 and the other one occurred in 2019. The Appellant denied the allegation. Consequently, the Respondent was called upon to produce witnesses, if any, to establish her case. In proof of her case the Respondent brought and tendered documentary evidence in respect of one divorce while on the second divorce she alleged that it occurred only in the presence of her father and there was no other person apart from herself, her father and the Appellant whereas there was no evidence to support the assertion in respect of the 3rd divorce. The Appellant, on the other hand, vehemently challenged the documentary evidence on the ground that even though he wrote the document but same was not handed over to the Respondent, in fact, he was not aware on how the Respondent obtained the document.

The trial court found against the Appellant and affirmed the existence of two divorces, whereas it neglected the alleged 3rd divorce for want of evidence. The Appellant was unhappy with the

³⁸ (Unreported) SCA/KN/CV/145/2021

decision of the court, he therefore appealed to the Sharia Court of Appeal. After briefs were filed and exchanged the appellate court deliberated on the same and determined the issues involved, which include and not limited to the issue of documentary evidence.

The court opined that since the Appellant at page 3 of the record of proceedings of the trial court, admitted that it was his handwriting, it could simply be deduced that the intention of the Appellant was to divorce the Respondent. So the said Intention must be considered based on the maxim *الأمر بمقاصدها*, actions are judged according to intention. And we so hold.

1.3.4 Analysis of the Case

The Court in this case applied the golden rule of *الأمر بمقاصدها* action are judged according to intention in resolving the issues between the parties, the case has to do with the issue of *الكتاب* document whereby the Appellant wrote a letter with his hand but was denying the implication of the letter on the ground that he has not personally served the said letter on the Respondent. The court simply applied the maxim and deduced that the writer intended to divorce the bearer.

The position and ruling of the court are in line with the provision of the law, where it states thus

39 *و كاتب بخطه ما شاءه و مائة بعد او أبى امضاءه يثبت خطه ويمضي ما اقتضى*

Meaning: he who writes what he wants and thereafter dies or refuses same, the written should be confirmed as his and effect be given to it.

However, it is our humble view that the court has erroneously applied this maxim in relation to this case, because what makes the divorce effective was not the intention but the hand written as shown by the authority cited above .in the circumstances of this case or rather in the issue of express divorce intention is not required for same to be valid and effective⁴⁰

1.3.5 Case N0. 3

Hawawu Ndayaru VS. Muhammed Ndache⁴¹.

The facts of the case

³⁹ Al-kafiy., M. Y. (2009) *Ihkamul Al-ahkam ala tuhftul al- hukkam*. Maktabatul Al-asriyyah. Beirut p.27

⁴⁰ Ibn Nujaim., A. M (1999) *Al-ashbah wal-naza'ir*. Darul-kutbi Al-alamiyah. Beirut, Lebanon p.21

⁴¹ KWS/SCA/CV/M/04/2005

The Applicant filed an application before the Shari'a Court of Appeal, craving the indulgence of the honorable court for an extension of time within which to file an appeal. The counsel for the Respondent challenged the application and contended that the Applicant had not satisfied the requirement of the provision of O.4 R.3 (1) of the S.C.A Rules as her reasons for failure to appeal within time is not substantial and the reason for the delay must be substantial. The section provides;

1. Every application for enlargement of time shall be supported by;

- a) An Affidavit or Affirmation or Declaration having in law the effect of an Oath setting forth good and Substantial reasons for the application.
- b) Grounds of Appeal which prima facie shall give cause for leave to be granted.

The court refused to incline to the submission of the Respondent and relied on the maxim **الأمر بمفاسدها** and upheld that;

“We perceived that liberal construction of 0.4 R.3(1) of the Rule graphically and unequivocally demonstrates a clear indication that the preconditions of good and substantial reasons required by the rules appertain to the application per se and not necessarily predicted solely on the cause for delay or lateness on the part of the Applicant and the procedural method outlined by the rules did not include the words “for the delay” or “failure to appeal within time or the prescribed period” it therefore follows, that nothing should be read into the rules which has not been included therein or read out there from if it has been included therein.

1.3.6 Analysis of the Case

The Sharia Court of Appeal of Kwara State rightly applied the maxim **الأمر بمفاسدها** in interpreting Order 4 Rule 3(1) of the S.C.A Rules and opined that it is basic and generally accepted in Islamic Law that, where the words of a legal text are clear and plain, effect should be given to them accordingly. Such words are incapable of being construed otherwise based on the above Maxim

It is pertinent to note that the above stated position of Shari'a in this regard, were similar to what obtains in the other legal system recognized in our plural legal system this is to the effect that it is both elementary and fundamental principle of interpretation that where the words of a statute or

enactment are plain, clear and unambiguous, effect should be given to them in their ordinary and natural meanings, except were doing so will result in obvious absurdity.⁴².

1.3.7 Case No 4

Alhaji Issa Alabi V. Alhaji Salihu Kareem⁴³

The facts of the case

A family gifted or donated a Piece of Land to another family, which consists of 3 people. A dispute arose when the donees intended to share the Land among themselves. Thus, an action was instituted. The Trial Court shared the Land among them unevenly based on the portion occupied by each party during the going concern of the matter. Dissatisfied with the decision of the Trial Court the Appellants appealed to the Sharia Court of Appeal, Kwara which after much argument by the counsel for the parties, the Court held that considering the statement made by the Donor Family the aim of the donor Family initially was for the donee Family to share the Land equally among themselves and that any other later move contrary to that went counter to the express wish of the donor Family and against the law. The Appeal was allowed and the decision of the Trial Court was set aside.

1.3.8 Analysis of the Case

Had it been the Trial Court considered and applied the maxim pertaining to the intention, there could be no ado in reaching the conclusion that the Land be shared among the donees equally, as this was the express intention of the donors.

The trial Court erred in law when it shared the land among the parties unevenly, because the action went not only contrary to the wish of the donor family it also contradicts the position of Shari'a which provides that where the property are jointly owned but there is no fact as to the extent of the specific share of the each co-owner, the property shall be shared among them equally⁴⁴.

1.3.9 Case No 5

Alhaji Adamu Sigal VS. Alhaji karoma.⁴⁵

⁴² Abacha vs. FRN (2014) 6 NWLR (pt.1402) p.43

⁴³ Appeal NO.KWS/SCA/CV/AP/IL/18/95 Reported on Annual report Shari'a Court of Appeal Ilorin 1996

⁴⁴ (Unreported) Danbala Lawan vs. Muktar Gandu cv/271/23 U.S.C Gyadi-Gyadi, Kano State

⁴⁵ M/SCA/

The facts of the case

The Applicant advanced the sum of #4,400 to the Respondent for trading on terms that the proceeds would be shared between them. the capital was used for 2 years by the Defendant and the profits shared but when the Applicant demanded the return of the capital, the Defendant refused. the Applicant commenced action for the recovery of the said sum of #4,400 from the Respondent before the Upper Shari'a Court Ngala, the Respondent answered that since he had paid returns in the sum of #5,400 to the Applicant, he has returned the money the Applicant loaned to him he therefore counter claimed for the return of the #1,000 being an excess over and above the sums loaned to him by the Applicant. the Upper Shari'a Court Ngala, agreed with the Respondent but on appeal to the Shari'a Court of Appeal Maiduguri the court re appressed the fact before it and found that the intention of the parties was not a loan agreement as found by the Upper Shari'a Court but partnership in which a party advanced capital whilst the other partner utilize his skills or knowledge for the purpose of the trading. The court found that the sums given by the Respondent to the Applicant are shared profit and not interest on the loan. Consequently, the claims of the Applicant were granted while the counterclaim claim earlier permitted by the trial court, was set aside.

1.3.10 Analysis of the Case

From the facts above it is very clear that the learned trial court judge fell into grave error when he proceeded to dismiss the Applicant's claims and grant the Respondents counter claims because the judge must apprehend the fact and the evidence before him. had the learned Upper Shari'a Court Judge properly evaluated the fact and evidence before him he would have found that the intention of the parties being one to form partnership where a particular person brings capital whilst the other devote labour then it is only proper that profits be shared between the parties and the initial capital return to the partner who advanced same upon the determination of the agreement. The intention of the parties not being one to create a loan agreement, the Applicant ought to be allowed to recover the principal sums despite having received the sums of #5400, since it is clearly a shared profit between the parties.

It is the writers' opinion that the maxim that says **Al-muslimuna ala shurudihim** المسلمون علي شروطهم would be more suited in the circumstances of this case because the parties agreed from the outset of the transaction, so they are bound by their agreement

1.3.11 Case NO.6

Mustapha Delarambe vs. Aisha Khahallah and Bukar Makita⁴⁶

The facts of the case

in this case the Plaintiff brought an action against the Defendants before the Upper Shari'a Court Benishek Borno State claiming that she paid her husband, the Defendant, his due compensation in the form of two gold pieces, her dowry, some amount of wheat and a he goat to serve as khul'i therefore the defendant cannot approach her claiming that she was still his wife when she was about to be married to her new husband after conclusion of her iddah.

The learned justice of the Upper Shari'a court found for the plaintiff and affirmed the divorce between the parties, particularly as the Defendant admitted to having collected the above-mentioned items from the Plaintiff and she has expressed her desire against returning to the Defendant's house as his wife.

Aggrieved by the decisions the Defendant appealed to the Shari'a Court of Appeal Maiduguri, Borno state where he admitted that his wife returned to her parent's house and she was held for 40 days and upon his going for reconciliation he was asked to hold onto the items he had earlier collected from his wife as compensation (khul'i) and he agreed he equally admitted to have divorced the 1st respondent but declare an intention to return her but that the trial court refused to do so but went ahead to marry her of to the 2nd Respondent.

The Shari'a Court of Appeal, upon review of the facts and evidence, found that the parties had intended that the items given by the 1st Respondent to the Applicant were intended as compensation to take the Applicant for khul'i as agreed between the parties. And it so holds

⁴⁶ (unreported) BOS/SCA/CV/105/2010

1.3.12 Analysis of the Case

Both the trial court and the Shari'a Court of Appeal, even though they have not expressly cited the provision of the Maxim, actions are judged according to intention, however, the Courts considered and relied on the intention of the parties and entered judgment accordingly. It is very clear from the facts and the finding of the court that the intention of parties was divorce at the instance of the 1st Respondent and since she cannot do so unless she compensated her husband she had given him 2 gold pieces, the dowry he paid to her, some amount of wheat and a he goat and obviously the Applicant had received those items from her with the intention of going ahead with the divorce therefore it is crystal that the intention behind their action was to divorce therefore had the court applied the maxim to the fact it would have been easier and faster for the court to resolve the issue before then based on the fact and evidence presented.

1.3.13 Conclusion

This paper provides a thorough analysis of the application of Islamic Maxim (الأمر بمفاسدها), ***ACTIONS ARE JUDGED ACCORDING TO INTENTION***, in the sharia court, indeed, this Maxim is technically the most effective instrument in the hands of judges to fast-track the dispensation of justice in a court of law. The maxim was sourced from the Qur'an and Sunna it is extracted as a result of extensive research, reading and further developed by both contemporary and pioneer jurists.

From the foregoing discussion and cases cited, the paper found that the Maxim is flexible as opposed to rigid in a way that it can be used and applied in all areas of Sharia law.

It was also found that the interpretation of legislation, as well as the agreement of the parties, largely depend on the intention and purpose of the drafters or parties.

It was equally found that improper or disapplication of the maxims might cause a serious delay in the dispensation of justice, which in one way or another causes an infringement on the rights of the parties before the courts, as it was seen in the cases of Alh. Issa Alabi, and Alh. Adamu Sigal (supra), which cases ought to have ended at the trial court but because of disapplication, it went up to the appellate court.

Based on the above findings, the following recommendations are therefore proffered:

The comprehensive Code of Islamic legal maxims pertaining to adjudication in Shari'a courts should be provided, with a view to providing sound, easy and faster resolutions of cases by Sharia courts.

That potential judges of sharia courts in Nigeria must be well trained and equipped with the vast knowledge of these Islamic Maxims for them to be able to adjudicate and dispense justice with some degree of speediness, accuracy and acceptability.

That Courses/subjects on Islamic Maxims should be introduced at the university level, as well as encouraging writing and research pertaining to Islamic maxims by both law and Islamic studies students, who might find themselves serving as judges or court officials in various sharia courts, in and across Nigeria.