

THE RIGHT TO FREEDOM OF RELIGION AND THE QUESTION OF ISLAMIC DRESSING CODES IN PUBLIC PLACES

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ABSTRACT

The right to Freedom of thought, conscience and religion as enshrined in section 38 of the 1999 constitution of the Federal Republic of Nigeria is, and has been one of the crucial rights as long as Nigeria is concerned. This is as a result of the muliti-diverse ethnic groups in Nigeria, of which some, after the colonial era, adopted and accepted other religions (e.g Christianity) as their own, these various religions share different views about their deities, and how they ought to live their lives in accordance with the will of their deities. The mode of life adopted by each religion which is in accordance with the will of their God(s), has greatly affected their day-to-day activities such as, the food they eat, their social activities, educational activities, the way they go about their health treatment, and even their mode of dressing and grooming. This paper seeks to analyse the right to freedom of thought, conscience and religion as encapsulated in section 38 of the 1999 constitution of the Federal Republic of Nigeria vis-a-vis Islamic dressing codes in public places.

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1.0 Introduction

Religious freedom, and struggles has been a major part of the world's history, The early immigrants to North America were generally victims of religious persecution who sought for a place where they could practice their religion freely and without fetters or obstruction. Virginia Declaration of Rights of 12th June, 1776 was the first formal public statement and recognition of the right to religion. The early developments in international recognition of human rights have some bearing on the right to freedom of religion, as it is seen in the establishment of treaties which banned slave trade, and saved the lives of Christian minorities in some countries like Turkey. The international laws also recognises the right to freedom of religion, Article 18 of the Universal Declaration of Human Rights, Article 18 of the International Covenant on Civil and Political Rights, Article 8 of the African Charter on Human and People's Rights, and Article 6 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief are examples of international laws which provides the right to freedom of religion, and some of these international laws has been ractified and domesticated into our municipal laws. Coming down to the Nigerian legal firmament, section 38 of the 1999 constitution as already mentioned provides for the said right, the implications and purports of the said section which embodies this right vis-a-vis the diverse religions and ethnic groups in Nigeria are hereby marshalled out below.

1.1 The Implications and Purport of the Provisions of the Constitution Vis-à-Vis the Right to Freedom of Thought, Conscience, and Religion

For a better appreciation and overview of the right in question, section 38 is hereby reproduced:

38.(1) Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) No person attending any place education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction, ceremony or observance relates to a religion other than his own, or religion not approved by his parent or guardian.

(3) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.

(4) Nothing in this section shall entitle any person to form, take part in the activity or be a member of a secret society.

From the above section, it is clear that the right to thought, conscience and religion is guaranteed in Nigeria, and is a fundamental right. Section 10 of the same constitution provides that the government of the Federation or State shall not adopt any religion as State religion, this further reveals the secular nature of Nigeria government towards religion, though some scholars like Justice Bashir Sambo and S.H.A Maliki fronts the line of argument that through the provisions of sections 17(3), 18, 262, and 277 of the constitution, that Nigeria is not a secular state when it comes to religion but, from the community reading of the aforementioned provisions, it is vivid that Nigeria is a secular state and does not actually promote, propagate, and support a particular religion. It is also pertinent to note that some states in Nigeria, especially the Northern region has gone against the provision of section 10, as they've gone ahead to fully adopt and make the entire corpus of the Islamic law as part of the law of the state, this connotes or purports to show that such states has made Islam their state religion and thus the legal prescriptions, injunctions, and punishment under the Quran becomes enforceable and binding in such states; by doing this the religious freedom of other minority tribes and non-muslims who resides in such states are jeopardised and trampled upon for it is not the religion of their choice that they're been compelled by such state law to obey, for the sake of clarity section 10 is reproduced with emphasis:

10. The Government of the Federation ***or of a State shall not adopt any religion as State Religion.***

The above emphasis of section 10 definitely shows that no state within the shores of Nigeria shall adopt a particular religion as a state religion of which the states in the Northern region violated this particular law; *it is the humble submission of this writer that the National Assembly should abolish such state laws, and even if it is to be part of the corpus juris of such state, such laws should not be made binding on minority tribes and non-muslims whom definitely do not align their thoughts and conscience to the said religion, for allowing such laws to exist in some states in Nigeria will definitely deter some citizens who are non-muslims from moving or migrating to such states to reside, therefore violating their right to freedom of movement*⁵⁶.

Religious freedom has been defined as the right of every human being, of every region or culture, to follow the dictates of his conscience in matters of fundamental truth, worship and morality, within the due limits recognized by national and international norms. It embraces the right, either individually or in community with others, and in public or private, to manifest a religion or belief in worship, observance, practice and teaching⁵⁷. The foregoing definition of religious freedom is apt. For one to lay claim to his right to religion, it must be in concordance with the provisions of the Nigerian constitution so long as the person resides within the borders of Nigeria. Speaking of the provisions of the constitution, section 45 of

⁵⁶ Section 41(1) of the 1999 constitution of the Federal Republic of Nigeria.

⁵⁷ Farr, T. "Roots of the International Religious Freedom Report" Issues of Democracy, IIP Electronic Journals, Vol. 6 No. 2, November 2001, p. 9.

the 1999 constitution limits the fundamental rights (right to freedom of thought, conscience and religion) of a citizen; this means that a citizen is free to practice, profess, and propagate his religion so long as he's not at variance with any law justifiably made in the interest of defence, public safety, public order, public morality, public health, and for the purpose of protecting the rights and freedom of other persons.

The Nigerian courts has done its best in interpreting, and bringing clarity to this right in question. In *Adamu v. A.G Bornu State*⁵⁸, the court held void a local government (Gwoza) law which allowed the remuneration of Islamic teachers but did not allow for Christian teachers, it also held that the local government authorities violated the right of the appellant when they actually forced the appellants to attend Islamic classes. As regards to the observance of customs, especially when a person has decided to abandon his custom and follow another religion (such Christianity or Islam), the person is well within his right to religion to do so, this is giving force in the cases of *Onjonye v. Adegbudu*⁵⁹ and *Theresa Nwafor Onwo v. Oke*⁶⁰, in these cases the court held that the appellants' right to religion were violated by the respondents forcing them to observe customs that were against their religion. In the case of *Medical Practitioners Disciplinary Tribunal v. Okonkwo & Ors*⁶¹, the court held that the defendant respecting the right to religion of the deceased vis non transfusion of blood was not a crime, for the deceased acted and made decision not to be transfused based on her religious believes; it is pertinent to note that seven years later, the the Court of Appeal in the case of *Esabunor v. Faweya*⁶², held that the right to religion which allows an adult to refuse the transfusion of blood does not apply when a child's life is at stake, it further held that the Commissioner of Police was well within his right to obtain an order of court for blood to be transfused appellant's child. Again in the foreign cases of *Emmanuel Bijoe v. State of Kerala*⁶³, and *West Virginia State Board of Education v. Barnette*⁶⁴, the different courts in their different jurisdictions, held that the refusal to salute the flag and sing the national anthem is well within the right to religion of the parties who refused to do so. To lend force to the above decision section 24(1)(a) of the 1999 constitution of Nigeria provides for citizens to respect the national flag and the national anthem, it is to be noted that aforementioned section

⁵⁸ (1996) 8 NWLR 203

⁵⁹ (1983) 4 NCLR 492

⁶⁰ (1996) 6 NWLR

⁶¹ (2001) 5 NSCQR 6540

⁶² (2008) 12 NWLR (pt. 1102) 794 at 810

⁶³ AIR 1987 S.C 748; (1988) 14 CLB No. P. 43.

⁶⁴ 319 U.S. 624, 63 S.C

is non-justiciable and cannot be enforced in Nigerian courts, so automatically, the right to religion enshrined in section 38 supersedes section 24(1)(a).

1.2 The Question of Islamic Dressing Code in Public Places

The issue about the Islamic dressing code especially when it comes to the wearing of hijab in schools and places of work, whether or not it is constitutional? There are different views concerning this issue, some views are drawn from religious mindset, some are drawn from personal and rational mindset, whatever it is, it is very crucial to get our answers from the constitution and to understand the mindset of the drafters of the said provision of the constitution. In the foreign case of *Sahin v. Turkey*⁶⁵, in February 1998, Istanbul University informed students and faculty that students wearing headscarves and having long beards would not be permitted to enter lectures and examinations. Leyla Şahin was in her fifth year of medical school at Istanbul University at the time, and she was subsequently denied entrance to lecture halls and prohibited from taking exams because of her headscarf (hijab to be precise), which she wore according to her religious beliefs. Şahin brought a suit against Turkey, claiming it had violated her right to education by denying her the right to religious expression. Ultimately, Istanbul University was found to be within its right to enact a headscarf ban, and Turkey was found not to have violated Şahin's right to education when it upheld the ban.

From the above foreign case, it is clear that the abolition of the wearing of hijab is not the position of law in Nigeria, this is brought to light in the interpretation and pronouncement of law by the courts in the following cases; in *Kwara State College of Education Ilorin & Ors v. Basirat Salihu & Ors*⁶⁶, the Court of Appeal held that the lower Court's denial of the use of Hijab by a female Muslim Student of the College under the pretext of protection of public safety, public order and protection of the rights of others violates the free exercise of religion clause in S 38 of the Nigerian Constitution. The Court further held that any such restriction or derogation must be within the confines of the conditions stipulated under S 45 of the Constitution. In the appeal case of *Lagos State Government v. Asiyat Abdulkareem (through her father) & Ors*⁶⁷, before the Supreme Court, heard by a 7 man panel, the Supreme Court has upheld the rights of Students to wear hijab to Public and Secondary schools in Lagos State. The case was an appeal of the judgement of The Court of Appeal, Lagos Division on 21st July, 2016, where the Lagos state government appealed the decision of the Court of Appeal in holding that the Female Muslim Students had the

⁶⁵ [2005] ECHR 819 ³

⁶⁶ CA/IL/49/2009 (Unreported). This was cited with approval in C.C Ani's book, "Understanding Legal Concepts in Nigeria" vol 1 (CIDJAP press Ltd) p. 334.

⁶⁷ SC/910/16.

constitutional right in wearing hijab in Lagos Public and Secondary schools. After consideration of the evidence before the court and the argument of counsels of both sides, 5 Justices of the Supreme Court upheld the Decision of The Court of Appeal while dismissing the appeal, while 2 Justices gave dissenting opinions. Delivering the leading judgement of the Majority, *Hon. Justice Kudirat Kekere-Ekun JSC*, stated that it was the view of the Apex Court that the wearing of hijab was the Constitutional guaranteed rights of the Female Muslim Students in manifesting their beliefs and religion through practice and observed tenets. Thus, according to the Court, enforcing that the student wear their hijab only in specified period of times defeats the purpose of their belief and amounts to a breach of their fundamental rights as provided in Section 38 of the Constitution. On the 2nd issue, the Court held that the trial court was wrong in applying an European precedent on the interpretation of fundamental right when it was bound by the case of *Provost, Kwara College of Education, Illorin v. Bashirat & Ors. (C.A)* where the Court of Appeal decided that non-use of Hijab violated fundamental rights of students. According to the Supreme Court, the European case law was only persuasive and the Court of Appeal binding on the trial Court, and as such it upheld the decision of the Court of Appeal and dismissed the appeal for lack of merit.

The controversies attached to hijab also came up on December 12, 2017 when one Amasa Fidraus Abdusalam, was denied entrance to the International Conference Centre, Abuja for her call to bar ceremony. The Nigerian Law School had alleged that she was breaking its dress code but Amasa who was already wearing her gown insisted on wearing the wig on her hijab. After much tussle, which included public hearing by Nigerian Parliament, Amasa was finally called to the Bar⁶⁸. In light of the above facts, C.C. Ani is of the view that where a person voluntarily decides to become a member of an association or a particular profession, it is expected of such a person to comply and conform with the rules guiding such association or profession which includes the dress code⁶⁹. *With all due respect, it is humbly submitted that mere rules, or codes of conduct guiding a profession cannot be seen to override a fundamental right which is enshrined in the constitution, for the constitution is the fons et origo, the fons et culmen of other laws and professional rules or codes of conduct in Nigeria, therefore it is these other laws that depends on the constitution for its validity and existence; once a law or rules/codes of conduct which are enacted by the National Assembly are not consistent with the provisions of the constitution, especially when it stands to violate the fundamental rights of the people, then such laws or codes will amount to a nullity.* The above cases are the apt interpretation of the apex court of justice in Nigeria concerning the Islamic dressing code, and the

⁶⁸ This historical fact is recorded in C.C Ani's book, "Understanding Legal Concepts in Nigeria" vol 1 (CIDJAP press Ltd) p.336.

⁶⁹ (Supra) p. 336

interpretations are crystal clear as the wearing of hijab is well within the right to freedom of thought, conscience, and religion of the Muslims.

1.3 CONCLUSION

In all we've seen that the right to freedom of thought, conscience and religion is an intrinsic part of a person's fundamental rights which is not to be trifled with and should not be given wrong interpretation by the courts. From the express letters of section 38 of the 1999 constitution of the Federal Republic of Nigeria, it is crystal clear that the Muslims actually have the right to wear Hijab, and this is what the court has so interpreted.