



FEDERAL CAPITAL TERRITORY ABUJA AREA COURTS (REPEAL AND ENACTMENT) ACT, 2010

EXPLANATORY MEMORANDUM

This Act repeals the Area Courts Act, Cap. 477, Laws of the Federal Capital Territory Abuja, 2006 and enacts the Federal Capital Territory Area Courts Act, 2010.

FEDERAL CAPITAL TERRITORY ABUJA AREA COURTS (REPEAL AND ENACTMENT) ACT, 2010

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FEDERAL CAPITAL TERRITORY ABUJA AREA COURTS (REPEAL AND ENACTMENT) ACT, 2010

An Act to repeal the Area Courts Act Cap. 477, Laws of the Federal Capital Territory Abuja, 2006 and enact the Federal Capital Territory Area Courts and; for related matters.

ENACTED by the National Assembly of the Federal Republic of Nigeria -

PART I - ESTABLISHMENT AND CONSTITUTION OF AREA COURTS

1. (1) There is established such grade of Area Courts for the Federal Capital Territory, Abuja,

Establishment of Area Courts.

- (2) An Area Court shall exercise the jurisdiction conferred upon it by or under this Act within the area and to the extent specified.

- (3) The Grand Kadi, in consultation with the Chief Judge, shall assign to each Area Court established in pursuance of this section such name as he may deem fit and shall issue a warrant under his hand in respect of such court.
 - (4) Except otherwise stated, a warrant issued under this section shall come to force on the day of publication in the Official Gazette.
 - (5) The Grand Kadi, in consultation with the Chief Judge, may at any time suspend, cancel or vary any warrant establishing an Area Court or specifying the area within which, or the extent to which, the powers of an Area Court may be exercised.
 - (6) The Grand Kadi shall cause the jurisdiction of each Area Court to be published from time to time in the Official Gazette.
2. (1) An Area Court shall consist of an Area Court Judge sitting alone.

Constitution and membership of Area Courts.

- (2) An Area Court shall hear and determine all questions on Islamic Personal Law.
 - (3) Every Judge of an Area Court shall be an officer 111 the Public Service.
3. (1) Subject to the provisions of any written law, the Judicial Service Committee shall appoint and exercise disciplinary power on an Area Court Judge-
- (a) who appears to have abused his power or to be incapable of exercising the same justly; and
 - (b) for other sufficient reason.
- (2) The appointment and discipline of an Area Court Judge shall be in accordance with the rules and regulations applicable to Area Court Judges.
4. (1) Subject to the provisions of any written law, an Area Court shall hold sessions at such times and places as may be necessary for the convenient and speedy dispatch of the business of the court.
- (2) The Grand Kadi may direct that sessions shall be held at times and places he deems fit.

5. An Area Court Judge shall not be personally liable for any act done by him or ordered by him to be done in the discharge of his judicial duty, whether or not within the limits of his jurisdiction:

Provided that he, at the time in good faith, believed himself to have jurisdiction to do or order to be done the act in question.

PART II - STAFF OF AREA COURTS

6. (1) Staff of Area Courts shall be officers in the Public Service of the Federation.

(2) There shall be appointed a Registrar or Clerk and such other staff as may be required by an Area Court.

(3) The duties of the Registrar or Clerk shall include-

(a) prepare warrants and writs;

(b) register orders and judgments;

(c) keep records of moneys received or paid by the court; and

(d) perform such duties in the execution of the powers and authorities of the court as may be assigned to him by the rules or special order of the court.

7. A Registrar or Clerk may, with the consent of the Area Court Judge, Delegation of duties delegate any of the duties assigned to him to any other servant of the court, and in every such case, such servant shall be governed in respect of his duties by the orders and directions of the Registrar or Clerk.

8. (1) Such bailiffs or messengers as may be required shall be appointed to Bailiffs and messengers in every Area Court.

(2) A person appointed under subsection (1) of this section shall-

(a) effect the service and execution of all writs and other process which he may receive from the Area Court to which he is attached;

(b) make all necessary returns in relation to such writs and processes;

(c) carry out other duties as may be prescribed by rules made under this Act; and

- (d) at all times when he is not engaged in duties which necessitate his absence from the Area Court, attend the Area Court and obey all the lawful directions of the Court.
- (3) An Area Court may authorize a police officer to perform all or any of the duties mentioned in subsection (2) of this section in so far as they relate to the criminal jurisdiction of the court and any police officer who is in possession of any criminal process shall be presumed to be authorized to execute such process unless the contrary is proved.
- (4) Subject to the provisions of subsection (3) of this section, no person other than a duly appointed bailiff or messenger shall carry out, purport or attempt to carry out any of the duties mentioned in subsection (2) of this section.
- 9. No member of the staff of any Area Court or other person bound to execute lawful warrants or orders issued or made in the exercise of jurisdiction conferred by this Act is liable to be sued in any court for the execution of any warrant or order which he would be bound to execute if the person issuing the same had been acting in the exercise of lawful authority.

Indemnity of staff of Area Courts

PART III- JURISDICTION OF AREA COURT

Institution of proceedings in Area Courts

- 10. (1) Subject to the provisions of this Act and of any other written law, any person may institute and prosecute any cause or matter in an Area Court
- (2) A person who institutes or prosecutes any cause or matter in an Area Court under subsection (1) of this section shall, in that cause or matter be subject to the jurisdiction of that Area Court and of any other court exercising jurisdiction in that cause or matter.
- 11. (1) Subject to the provisions of this Act and of any other written law, the following persons shall be subject to the jurisdiction of Area Court -
 - (a) any person who is a Muslim;
 - (b) any other person in a cause or matter who consents to the exercise of the jurisdiction of the Area Court.

Persons subject to jurisdiction of Area Courts.

12. (1) Where at any stage of the proceedings before final judgment in any cause or matter in an Area Court a person alleges that he is not subject to the jurisdiction of Area Court, the proceedings shall, on the application of that person to the High Court be transferred to the High Court, which shall inquire into and determine the truth of the person's allegation.
- (2) Upon such determination as mentioned in subsection (1), the High Court shall make such order for the trial of the proceedings in the High Court, Magistrate Court, District Court, Area Court or Customary Court as the circumstances of the case may seem just
- (3) The applicant shall give notice to the Area Court of the application made by him under subsection (1) of this section and the application shall operate as a stay of the proceedings in the Area Court until the High Court has made an order under subsection (2) of this section.

Inquiry by High Court whether person is subject to jurisdiction of Area Courts.

13. An Area Court shall have jurisdiction and power to the extent set out in Civil jurisdiction the warrant establishing it, and subject to the provisions of this Act and of the Civil Procedure Code, in all civil causes in which all the parties are subject to the jurisdiction of the Area Court.
14. All civil causes or matters shall be tried and determined by an Area Place of hearing Court which has jurisdiction over the area -
 - (a) in which the defendant is ordinarily resident;
 - (b) in which the defendant was at the time when the cause of action arose; or
 - (c) where the transaction occurred.
15. Subject to the provisions of this Act, an Area Court shall, in civil cases and matters, administer Islamic Law of the Maliki School of jurisprudence.
16. (1) **In** any matter relating to the guardianship of children, the interest and welfare of the child shall be the first and paramount consideration.
- (2) Whenever it appears to an Area Court that an order made by the court, should, in the interest of a child, be reviewed, the court may of

its own motion or upon the application of any interested person, vary or discharge the order.

PART IV- PRACTICE AND PROCEDURE IN AREA COURTS

Appearance and representation of parties

Proceedings to be in open court

Power of transfer by Area Court.

Remission of case to lower grade Area

17. Subject to the provisions of this Act and of any other written law and any **rule** which may be made under section 50 of this Act, the provisions of section 16 of this Act shall apply in the regulation of the practice and procedure of Area Courts in civil cases and matters.
18. (1) All proceedings in the Area Court shall be recorded by the Judge in English Language.
 - (2) An Area Court shall record the reasons for its decisions in every cause or matter.
 - (3) Where an Area Court has jurisdiction in or over any cause or matter or over the parties thereto it shall not be necessary for -
 - (a) such court to state on the face of the record of its proceedings in such cause or matter that the court has jurisdiction in or over such cause or matter or over the parties; and
 - (b) the jurisdiction of such court in or over such cause or matter or over the parties thereto to appear on or from the face of the record of its proceedings in such cause or matter.

Appearance and representation of parties

19. (1) Legal practitioners shall have right of audience before an Area Court.
 - (2) An Area Court may permit-
 - (a) the husband, wife, brother, sister, son, daughter, guardian, servant, master or any inmate of the household of any party, who shall give satisfactory proof that he or she has authority in that behalf; or

- (b) a relative of a person administering the estate of a deceased person who was subject to the jurisdiction of an Area Court, to appear for any party before an Area Court.
- (3) Subject to the provisions of subsections (1) and (2) of this section, in the case of a local authority or in any proceeding pending before an Area Court, a local authority may be represented in court at any stage of the proceedings by any member or officer of the local authority who shall satisfy the court that he is duly authorized in that behalf.

Proceedings to be in open court

- 20. (1) The room or place in which an Area Court sits to hear and determine any proceedings shall be an open and public court to which the members of the public shall have a right of access while they shall be of good behavior and to that extent to which the capacity of the court shall allow.
- (2) Provision may be made by rules of court under section 50 of this Act for the exclusion of the public from any Area Court in cases -
 - (a) in which persons under the age of 17 years are involved; or
 - (b) where the administration of justice would be rendered impracticable by the presence of the public.

PART V - TRANSFER BY AREA COURTS

Power of transfer by Area Court.

- 21. An Area Court may order the transfer of any cause or matter either before hearing or at any stage of the proceedings before judgment is given to any other Area Court of competent jurisdiction and that other Area Court may take any course with regard to the cause or matter which it considers that justice requires.

Remission of case to lower grade Area

- 22. An Area Court may, of its own motion or upon the application of either party to a cause or matter, remit to a lower grade Area Court of competent jurisdiction which is within the territorial jurisdiction of that other lower grade Area Court, any cause or matter before it which, in its opinion, can, for purposes of convenience or otherwise, be more

appropriately or expeditiously dealt with by such lower grade Area Court and upon such order being made, the lower grade Area Court specified therein shall hear and determine the cause or matter, de novo.

PART VI - ANCILLARY POWERS OF AREA COURTS

23. An Area Court shall have power, subject to any limitation that may be imposed by any law, to summon before it, for the purpose of giving evidence, any person.
24. Any person present at an Area Court, whether a party or not to any cause or matter before the court, may be required by the court to give evidence as if he had been summoned to attend and give evidence.
25. (1) If, in any cause or matter, an Area Court considers that the interest of justice requires that the evidence of a person not within the area of jurisdiction of the Area Court should be obtained before any other court or any officer, the Area Court may make an application to a Sharia Court of Appeal requesting that the evidence of the person be taken before any other court or officer in the place in which that person is.
(2) Upon an application under subsection (1) of this section, the Sharia Court of Appeal to which the application is made, may, in its discretion, make an order in respect of the taking of the evidence of the person as it deems fit.
26. Any judgment or order given or made by an Area Court in a civil cause or matter may be enforced by seizure and sale of the property of the person against whom the judgment or order is made, or by such other methods of enforcing judgments and orders as may be prescribed by rules made under section 50 of this Act.
27. An Area Court shall -
 - (a) carry into execution any decree or order of all courts established by law which may be fully directed to them;
 - (b) execute all warrants and serve all process issued by the courts and directed to the Area Courts for execution or service; and
 - (c) generally give such assistance to any court as may be required.

28. In any cause or matter before an Area Court in which, pending final determination it is shown to the satisfaction of the Area Court that any property which is in dispute in the cause or matter is in danger of being wasted, damaged, alienated or otherwise injuriously dealt with by an the party commanding him to refrain from doing the particular act complained of, or alternatively, may take and keep the property in custody pending the determination of the cause or matter.
29. (1) An Area Court may, whenever it deems it necessary to do so for the preservation, proper custody or management of any property in dispute in a cause or matter, appoint any person as a receiver or manager to receive and take charge of the property and to deal with it in any manner as may be directed by the Area Court.
- (2) Any person appointed as a receiver or manager under subsection (1) of this section shall be responsible to the Area Court for all things done as receiver or manager, and shall account for or pay to the Area Court all moneys received in respect of any property referred to in subsection (1) of this section.
- (3) An Area Court may make an order as it deems fit in regard to the remuneration of any person appointed as receiver and manager and shall pay to the party entitled thereto all moneys in the custody of the Area Court in respect of any property referred to in subsection (1) of this section.

Power to appoint receiver and manager

30. **In** any cause or matter an Area Court, may on the application of either party or on its own motion-
- (a) make such order as the court may deem fit for the inspection by the Area Court, the parties or any witness of any immovable or movable property the inspection of which may be material to the proper determination of the question in dispute; and
- (b) give any direction as the court may deem fit respecting the inspection.

PART VII - CONTROL OF AREA COURTS

General supervision of Area Courts

31. (1) Subject to the provisions of this Act and any other written law, all Area Courts shall be subject to the general supervision of the Sharia Court of Appeal.

- (2) Without prejudice to the generality of subsection (1) of this section, if it appears to the Sharia Court of Appeal that-
- (a) it is necessary for the purpose of securing, as far as possible, a fair and impartial trial; or
 - (b) if the cause or matter appears to be within the jurisdiction of an Area Court other than that referred to in subsection (1) of this section, he may, by the same or another order, direct that the cause or matter be inquired into, tried and determined by the Area Court which has jurisdiction over the same; he may direct in like manner that the cause or matter be inquired into, tried and determined by a Magistrate Court.

District Court or Customary Court.

- (c) if the cause or matter is one which in his opinion ought for any reason to be transferred from an Area Court to the Sharia Court of Appeal, he may report the case to the Sharia Court of Appeal.
- (3) No cause or matter which has been transferred by the High Court or a Magistrate Court or District Court or Customary Court to an Area Court may be reported to the Sharia Court of Appeal or transferred to the same or any other Magistrate Court, District Court or Customary Court under this section.
- (4) The court to which a cause or matter is transferred under this section shall be informed in writing of the reason for making the order of transfer and may thereafter take any course with regard to the cause or matter which it considers that justice requires.
- (5) Where a cause or matter is reported to the Sharia Court of Appeal under subsection (2)(c) of this section, the Sharia Court of Appeal shall direct in what mode and in what court the cause or matter shall be heard and determined.
- (6) Where a cause or matter is transferred from an Area Court to any other court under this section, no summons fee shall be payable in the court to which the cause or matter is transferred if the appropriate summons fee has been paid in the Area Court from which the cause or matter is transferred.
37. (1) An order of transfer shall operate as a stay of proceedings before the Area Court from which the proceedings are ordered to be

transferred in any cause or matter to which the order extends or is applicable, and the process and proceedings in that cause or matter, and a certified copy of the record shall be transmitted to the court to which the same is transferred and all proceedings in the cause or matter shall be taken in the court as if the cause or matter had been commenced therein.

- (2) A report made under section 36(2)(c) of this Act shall operate to suspend the proceedings, the subject of the report until the directions of the Shari a Court of Appeal have been given under section 36(4) of this Act.
 - (3) The inspector may, if it appears expedient in the first instance, transmit by post the contents of any order made by him under subsection (1) of this section and the post shall, until the receipt of the order, have the same validity and effect as if it were the said order.
38. (1) An inspector, if in his opinion there has been a miscarriage of justice in any case before an Area Court to which he has access under the provisions of section 36 of this Act, may of his own motion or in his discretion on the application of any person concerned, report that case to the court to which an appeal in the case would lie.
- (2) A report under subsection (1) of this section shall be made in writing and shall record the particulars of the judgment, order or case, and the reason for its being reported and shall be accompanied by a copy of the record of the case.
 - (3) The Court to which the case has been reported shall review it, and may-
 - (a) reverse, vary or confirm the decision given;
 - (b) make an order in the proceedings as the lower court could have made;
 - (c) make a further order, as may be necessary or as the justice of the case may require but no order in a civil proceeding to the prejudice of any party shall be made without an opportunity being given to the party of being heard;
 - (d) set aside the judgment or other order of the lower court; and
 - (e) when it considers it desirable, order the case to be reheard either by the same court or any other Area Court of competent jurisdiction or by any Magistrate Court, District Court or Customary Court,

or if the case is one that appears proper to be heard by the High Court, report the case to the Sharia Court of Appeal.

- (4) In the exercise of its powers of review under this section, a court decision shall be given within 14 days from the date of the decision appealed against.
42. Subject to the provisions of the Constitution of the Federal Republic of Nigeria, no appeal shall lie from the lower Court at the instance of any person at whose request a case has been reported to a court under section 38 of this Act.
43. Leave to appeal out of time to any court may be given by the court upon such terms as it may seem just.
44. (1) Any court exercising appellate jurisdiction in civil matters under the provisions of this Act may, in the exercise of that jurisdiction -
 - (a) reverse, vary or confirm the decision of the court from which the appeal is brought and may make any order or exercise any power as the court of first instance could have made or exercised in the case or as the Appeal Court considers that the justice of the case requires;
 - (b) quash any proceeding and, there-upon where it is considered desirable, order such case to be retried before the court of first instance or before any other court of competent jurisdiction.
- (2) In the exercise of his power under subsection (1)(a) of this section, a court may hear additional evidence if it considers the evidence necessary for the just disposal of the case, and the court shall report its reason for exercising its power under this subsection.
45. Where an appeal lies from an order or decision of an Area Court, the court to which the appeal is brought shall have power to inspect the records or books of the Area Court relative to the appeal.
46. No proceedings in an Area Court and no summons, warrants, process, order or decree issued or made thereby shall be varied or declared void upon appeal or revision solely by reason of any defect in procedure or want of form but every court or authority established in and for the Federal Capital Territory, Abuja and exercising powers of appeal or revision under this Act shall decide all matters according to substantial justice without undue regard to technicalities.

P ART IX - OFFENCES

47. (1) Any person who exercises or attempts to exercise judicial powers within the area of the jurisdiction of a duly constituted Area Court, except in accordance with the provisions of any written law, shall be liable on conviction before the High Court or Magistrate Court of competent jurisdiction, to a fine not exceeding N20,000.00 or to imprisonment for a period not exceeding 12 months or to both.
- (2) Nothing contained in this section shall be deemed to prohibit any person from adjudicating as an arbitrator upon any civil matter in dispute where the parties to the matter have agreed to submit the dispute to his decision.
48. Subject to the provisions of this Act, any proceeding arising under this Part may be brought in the High Court or a Magistrate Court of competent jurisdiction.

PART X - RULES OF COURT

49. (1) The Grand Kadi may make rules providing for any or all of the following matters-
- (a) prescribing and providing for -
- (i) the maximum fees which may be charged in Area Courts of first instance and of appeal and for appeals from the Area Courts and generally,
 - (ii) the reduction of the maximum fees in respect of all or any Area Court or in respect of all or any proceeding, and
 - (iii) the remission in whole or in part of any maximum or reduced fee and the manner in which the persons or Area Court by whom or by which the remission may be made.
- (b) the disposal and application of fines and fees received by Area Courts;
- (c) the practice and procedure of Area Courts 111 their original jurisdiction, on review and appeal;
- (d) the time within which any act, matter or thing shall be carried out or performed for the purposes of this Act and the time within which notice of appeal shall be given from the decision of any Area Court;
- (e) providing for the execution of -

- (i) the decrees or orders of Area Court or any class of Area Courts, whether the Area Courts are established under this Act or under any other written law; and
 - (ii) the warrants and the service of the process of the courts or class of courts, where these decrees or orders are made or the warrants or process are issued in respect of persons or property not within the area of the jurisdiction of the Area Court making or issuing the same.
- (f) prescribing the courts or authority by which the decrees, orders, warrants or process mentioned in paragraph (e) (ii) of this subsection shall be carried into execution, executed or served;
 - (g) the exclusion of the public from an Area Court in accordance with section 20(2) of this Act; and
 - (h) the procedure of Area Courts in relation to applications for the interpretation of the Constitution of the Federal Republic of Nigeria.
- (2) Any rule made under this section may apply to all Area Courts or a class of Area Courts or any particular Area Court or those Area Courts or particular Area Courts as may be determined under the rules.

PART XI - MISCELLANEOUS

50. (1) All assets and liabilities of the Area Court established under the Area Court Act Cap 477, Laws of the Federal Capital Territory Abuja, 2006 shall be vested in the Area Court established under this Act.
- (2) All appointments or decisions made by the Area Courts established under the Area Courts Act Cap. 477, Laws of the Federal Capital Territory Abuja, 2006 shall continue to persist or deemed to have been made by the Area Court established under this Act.
- (3) Nothing in this Act shall be deemed to affect the powers or functions of the High Court or Magistrate Court in the exercise of their criminal jurisdiction or any right or power in any officer or person to institute criminal proceedings in those courts.

51. In this Act-

"Area Court" means a court established under this Act for the Federal Capital Territory, Abuja or deemed to have been so established and includes an Upper Area Court;

"cause" includes any action, suit or other original proceeding between a plaintiff and a defendant and also any criminal proceeding;

"Chief Registrar" means the Chief Registrar of the Sharia Court of Appeal of the Federal Capital Territory, Abuja;

"Customary Court" means a Customary Court established under the Customary Court Act, 2007;

"District Court" means a District Court established under the District Court Act 1960;

"Grand Kadi" means the Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja;

"inspector of Area Courts" or "inspector" means an officer appointed under Section 33 to exercise the powers vested in him under this Act and includes the Director of Area Courts, any senior inspector and Assistant Inspector;

"Judicial Service Committee" means the Judicial Service Committee of the Federal Capital Territory, Abuja;

"land cause" means a cause or matter relating to the ownership, occupation or possession of land; "Legal practitioner" has the same meaning as in the Legal Practitioners Act, Cap. L11 LFN,2004.

"local authority" means an Area Councilor or any other body established for the administration of the Federal Capital Territory, Abuja;

"Magistrate Court" means a Magistrate Court established under or pursuant to the Criminal Procedure Code, or deemed to have been so established;

"Islamic personal law" has the same meaning as it has in the Sharia Court of Appeal Act;

"Sharia Court of Appeal" means the Sharia Court of Appeal established for the Federal Capital Territory, Abuja.

52. The Area Court Act Cap. 477, Laws of the Federal Capital Territory Abuja, 2006 is hereby repealed.

53. This Act may be cited as the FCT Abuja Area Courts (Repeal and Enactment) Act, 2010.