



### A HISTORICAL STUDY OF THE ALKALI COURT AND *SHARIA* LAW IN THE BAMENDA GRASSFIELDS

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#### ABSTRACT

The genesis for the use of Muslim or *Sharia* Law can be found in the British Political Institutions that were created in the British Southern Cameroons during the Mandate period. The British with a view to reducing the cost of administration and solving the problem of lack of personnel decided to make use of the existing administrative institutions. There was also the problem of judging Muslim cases. In so

doing, however, several modifications were made which affected such institutions. The Alkali Court in the Bamenda Grassfields during the colonial rule was a typical example. The use of Muslim or *Sharia* Law in determining cases would seem to have begun with the creation of the Ngemba Native Authorities in the Bamenda Division. Thereafter, Muslim Law covered was widened through the establishment of Alkali Courts in different part of the region. The Alkali Court in this paper refers to 'Native Court' presided over by Alkali Court Judges (Muslim Court Judges). Such courts were expected to dispense justice according to Muslim Law. This paper examines the growth, position and status of the Alkali Court and the impact of the court on the Muslims of the Bamenda Grassfields during the colonial rule.

**KEYWORDS:** *Sharia* Law, British Southern Cameroons, Alkali Court, Bamenda Grassfields, Ngemba Native Authorities.

#### INTRODUCTION

The Alkali Court and *Sharia* Law were introduced in the Bamenda Grassfields thanks to the advent and spread of Islam in the region. Islam should be noted was founded by Prophet

Mohammed in 622 AD in Mecca, Arabia. From there, it started spreading to other parts of the world, including Africa. The Fulani and Hausa were among the first people to embrace Islam in black Africa through the Jihads of Muslim clerics, among whom were Sehu Ahmadou (Massina area), Al-Hajj Umar (Futa Toro), and finally Uthman Dan Fodio (Northern Nigeria). Those launched in Northern Nigeria were organised by Uthman Dan Fodio and had far reaching consequences for Muslims and non-Muslims peoples.

The South of Bornu called Foubina that was inhabited by non-Muslims also became involved in the Jihads when one of Fodio's warriors, Modibo Adama who had fought with his army during the encounter with Yunfa, was sent to organise the Muslims in Adamawa and continue the Jihads there. From their Banyo base in Northern Cameroon, the Muslim clerics waged war on the Wawa and the Munchi and expanded as far as Igbo land. Other southward raids were directed against villages in the Bamenda Grassfields.

The Islamic faith was introduced into the Bamenda Grassfields by Fulani and Hausa clerics from Northern Nigeria and Adamawa Region of Cameroon. From then, it expanded into all the divisions and villages of the region. So many indigenous population accepted and converted into Islam to become true practicing Muslims. Worth noting is the fact that Islam from the beginning entered the Bamenda Grassfields through the Jihad movement. It was only when the Jihadists faced stiff resistances from the locals that they adopted peaceful method. With the advent and spread of Islam in the Bamenda Grassfields, the next important issue for the Muslims was the acceptance and implementation of the Muslim Traditional Judicial Administration.

The Muslim Traditional Judicial Administration was based on the Alkali Court system run by the Mallams who tried matters according to Islamic ethics. The Alkali Court is an Islamic court of law. It is considered indigenous to every Muslim. It is based on Islamic customs and tradition and or Quranic laws. Since the time of the West African Jihads, Muslims felt that an Islamic law court was a proper court for them. There was, therefore, a constant demand for the establishment of such a court in the Bamenda Grassfields. Before the 1940s, there was no Alkali court anywhere in the Bamenda Grassfields. Muslim cases were tried in native courts. The Muslims were not happy about that state of affairs because the native courts did not take the Muslim culture into consideration. More to that, the Muslims had no representatives in the indigenous courts. In fact the Muslims believed that all judgements carried out in the native courts were always against them. It was for this reason that they started calling for the

creation of an Alkali Court that would better take care of their cases.<sup>[1]</sup> The Alkali Court was finally created in 1945 in the Bamenda Grassfields. The main objective of this paper is to examine the origin, evolution and impact of the Alkali Court in the Bamenda Grassfields. Before then, let us briefly locate our area of study which is the Bamenda Grassfields.

### **Geographical Location of the Bamenda Grassfields**

The Bamenda Grassfields covers the present North West Region of Cameroon. It lies between Latitudes 5° 40 and 7° to the North of the Equator, and between Longitudes 9° 45 and 11° to the East of the Meridian. It is bordered to the South West by the South West Region, to the South by West Region, to the east by the Adamawa Region and to the North by the Federal Republic of Nigeria.<sup>[2]</sup> The Bamenda Grassfields which is today the North West Region is one of the most populated Regions in Cameroon. It has one major metropolitan city: Bamenda. The Region saw an increase in population from about 1.2 million in 1987, to an estimated 1.8 million people in 2001. The population density, at 99.12 people per square Kilometres is higher than the national average of 22.6 people per square kilometre. The region urban growth rate is 7.95%, while the rural growth rate at 1.16%. The North West Region is made up of administrative divisions; the region formally known as province was created in 1972 with five divisions. These were Mezam, Momo, Bui, Menchum and Donga and Mantung Divisions. Today it has seven divisions, Boyo carved out of Donga-Mantung and Menchum and Ngo ketunjia carved out of Mezam. There are thirty one Sub-division in the North West Region.<sup>[3]</sup>

### **Body**

The first time the request was made for an Alkali Court in the Bamenda Grassfields was in 1921. At the time, the Bamenda Grassfields was divided into twenty-three Native Authority areas, each having a native court, a central village court or village group courts. The Muslims were subjected to these local judicial organs. This subjection was anomalous to them because the native “pagans” courts had no knowledge of the Muslim customs and traditions or the Quranic laws.<sup>[4]</sup> The Muslims also desired an Islamic court because they believed that there was little transparency in the native courts especially in cases involving a native and a Muslims. The native courts could not deal with the numerous Muslims cases concerning marriages, divorce, inheritance and debt payments, be settled in accordance with the tenets of Islamic law.<sup>[5]</sup> The Muslims also argued that it was improper for Muslims to join court with those who were not Muslims.<sup>[6]</sup> Alkali Court would remove the mal-practices like illegal

sexual behaviour, theft and gossiping that often led to disagreement and conflicts in Muslim communities. The *Sharia* would be the appropriate law to judge and condemn recalcitrant Muslims.<sup>[7]</sup>

In June and December 1942, F.M. Woodhouse, the D.O. for Bamenda Division, organized two important meetings with the representatives of the Muslims. At both meetings the Muslims expressed a strong desire for the establishment of an Alkali Court.<sup>[8]</sup> But owing to the contingencies of the World War, the establishment of such a court could not immediately be pursued in spite of the pressure. This notwithstanding, the Muslims continued to reiterate their desire for an Alkali Court.

In response to one of their applications, the Lieutenant Governor of the Eastern Region of Nigeria wrote "I cannot agree that the Fulani are entitled to their own Native Court purely on religious grounds".<sup>[9]</sup> Judging from this statement, it is evident that the Muslims needed a better reason than religion to convince the administration of the necessity for an Alkali court.<sup>[10]</sup> As indicated earlier, the administration had very little knowledge of the numbers and social organization of the Muslims and was not in a haste to establish a suitable Alkali Court in Bamenda.<sup>[11]</sup>

A vital reason came in mind in 1943 for an Alkali court. There were 7000 Muslims in the Bamenda region. The Native Authority Treasuries in Bamenda Division relied very much on Jangali and the Head Tax paid by the Muslims. The main argument here was that if the administration continued to refuse the Muslims an Alkali Court, they would migrate to areas where their cases would be determined according to Islamic system of administration. Bamenda would lose much Jangali revenue as a result.<sup>[12]</sup>

When Sir Arthur Richards the Governor-General of Nigeria, paid a flying visit to Bamenda Division in 1944, it was an occasion for finding some solutions to the Alkali Court problem. During a working session with the administrative authorities, the problems of the Muslims featured prominently on the agenda.<sup>[13]</sup> Although Sir Richards assured the Muslims in the Division that their court would be set up, approval for its establishment was not immediately given. Somehow apprehensive of further delay in its establishment, the High Commissioner of the Cameroons, A.E.F. Murray, dispatched Memorandum No. 3599/50 of January 2<sup>nd</sup>, 1945, to the Lieutenant-Governor of Eastern Nigeria recommending that an Alkali Court with Grade "C" powers be established for Muslims in Bamenda Division.<sup>[14]</sup> The outcome was

positive. The Governor-General, Sir Arthur Richards, gave his approval in April, 1945, for the establishment of an Alkali Court with Grade “C” powers for the Muslim community in Bamenda Division. It had jurisdiction in civil actions in which the debt, demands or damages would not exceed fifty pounds (sterling).<sup>[15]</sup>

After the Governor-General’s approval, the next problem was how to obtain a suitable Alkali from Northern Nigeria to begin the court in Bamenda. The search for an Alkali delayed the establishment of the court.<sup>[16]</sup> The D.O for Bamenda Division wrote letters to the Residents of Adamawa and Bauchi Provinces in Northern Nigeria asking them to recruit a suitable Alkali for his Division. Eventually, a positive response came from the Resident of Bauchi who willingly released Mallam Mohamadu Dahiru, a Registrar of the Alkali’s Court at Bauchi. While waiting for the arrival of Mallam Mohamadu Dahiru, the Muslims council recommended that the court be opened in temporary buildings near Bamunka in the Ndop area. It also recommended that the Alkali should travel and hold court sessions at Bamenda, Abakpa, Jakiri in Bansa, Wum and perhaps other towns as the need arose until experience would prove which would be the most suitable and popular seat for a permanent court.<sup>[17]</sup>

The Alkali was given sufficient inducement to travel from Northern Nigeria to Bamenda. He was offered an annual Salary of seventy-two pounds (sterling) and a free house. He also had the Native Administration privileges of an annual leave and transport allowance. The Alkali was assisted in his judicial duties by a scribe who could speak Fulani (*Fulfulde*) and Hausa, read Arabic and keeps his records in English. The scribe was placed on a salary of twenty-four pounds (sterling per annum). There were also three court messengers placed on fifteen pounds each per annum. Except for the fact that one court messenger was provided by each of the Native Treasuries of Bamenda, Bansa and Bafut, the court expenditures were borne by these native Treasuries in the following proportions; 47/63, 1/7, 1/9 respectively.<sup>[18]</sup>

Despite these elaborate arrangements and inducements, Mallam Mohammadu Dahiru declined his appointment for obscure reasons. This was a terrible blow for the administration and the Muslim community in Bamenda Division. However, instead of lamenting this disappointment, alternative arrangements were made and another Alkali recruited from Northern Nigeria. Although available administrative documents are silent as to who this first Alkali was, a Muslims informant in Bamenda is somewhat unanimous that he was Alkali Ahmadu, a graduate of the Kano Muslim law school who hailed from Yola.<sup>[19]</sup> The Alkali’s Court at Ndop held its first session, amidst applause from jubilant Muslims, in March

1947.<sup>[20]</sup> According to our informant, Alkali Ahmadu worked in Bamenda Division only for two years and returned to Nigeria. He was succeeded by Alkali Aba who, after serving the Division for almost ten years, resigned in 1959 ceding his place to Alkali Sherif Umaru Ibrahim.<sup>[21]</sup> But which law was applied in the Alkali court in Ndop?

All judgements in the Alkali Court were based on Muslim law. Principally, the Muslim law is derived from four sources: the *Quran*, which contains the direct injunctions of God; the *Sunna*, which constitutes the facts of the life of the prophet, Mohammed, and his sayings (*Hadith*); *Ijma*, which is the consensus of scholars, and which supplements the words of the *Quran* and the traditions of the prophets and the *Qujas*, made up of analogical reasoning *ex consimili Casu* from the *Quran* and *Sunna*.<sup>[22]</sup> Out of these four sources a civil code developed known as “*Sharia*” that concerns most aspects of human behavior based upon divine sanction.<sup>[23]</sup>

Although Muslims did not accept customary law as a source of Muslim law, there are instances where the *Sharia* co-existed with customary law, especially when cases on land were heard. This was particularly noticeable in Menchum Division where the Fulani and Hausa professing the Muslim faith had no defined rights to the land. They depended on the goodwill of the indigenous inhabitants for their commerce, farming and grazing lands. Given this fact, it is evident that land disputes between indigenous inhabitants and Muslims had to be settled on the basis of both customary and Muslim law. Questioned on which of the two systems of law applied in his court, Alkali Sherif Umaru revealed that in spite of the apparent co-existence between the two systems, an Alkali, according to the provisions of Muslim law, has the right to refuse jurisdiction in a law-suit between non-Muslims, if he was noted to judge them strictly according to *Sharia* or religious law. But given the fact that the majority of the cases brought before his court were between non-Muslims and Muslims, he adopted both customary and Muslim law.<sup>[24]</sup> However, the degree to which the two systems were applied largely depended on the ability of the Alkali to juxtapose the two types of law in order to satisfy the parties in question. In the case of the inability of the two parties to agree, they would normally prefer to seek redress in a neutral court such as the D.O.’s or the magistrate’s court.<sup>[25]</sup>

Alkali Ahmadu expected to run his court at Ndop on the basis of *Sharia* law, having jurisdiction both in civil and criminal matters. But to his greatest dismay, the administration limited his powers to such an extent that his authority the enforcement of judgment, and the



dignity of the court would have been destroyed if his powers were not increased. In the course of establishing the court, the administration had authorized the Alkali to deal only with debts, divorce, bigamy, damages, inheritance, testamentary dispositions, administration of estates, and Islamic matrimonial cases. Criminal offences, especially common ones such as stealing and assault, were to be dealt with by the Native and Magistrate Courts.<sup>[26]</sup> Alkali Ahmadu certainly recognized that this administrative decision was inconsistent with Muslim law but took the matter lightly probably because he felt that the administration had defined his judicial powers in ignorance. He petitioned the government to increase his powers to handle both civil and criminal matters, surprisingly to no avail.<sup>[27]</sup> Unable to convince the administration to follow his course, he adopted a more persuasive attitude towards the government. He explained to the administrators that if his court was to have any authority at all, it was essential for him to exercise criminal powers for at least the following offences: bigamy or marrying a woman before her divorce had been made absolute, and contempt of court, for example, refusing to obey lawful orders from the Alkali such as directing a woman to return to her husband with the object of effecting reconciliation, or refusal to surrender or disclose details of an Estate for probate.<sup>[28]</sup>

The bigamy offence, the Alkali pointed out, was a criminal matter under Muslim law. Unless he had powers to enforce this law, his authority and ultimately the dignity of the court would be compromised. In spite of all the legal arguments put forward by the Alkali, the administration turned a deaf ear to his request. Probably believing that no untoward incidents would occur in his court Ahmadu temporarily abandoned his demands and summoned the court for an inaugural session. After his undisclosed first “test case” a nineteen-year-old girl flatly refused to obey an order of the court. Greatly angered by this unexpected behavior of a litigant, Alkali Ahmadu had no choice but to tender his resignation,<sup>[29]</sup> hoping that under such conditions the court would become a force. His resignation was, however, not accepted. It would have meant the closure of the court until such a time that another Alkali would be obtained.<sup>[30]</sup> It is obvious that Alkali from any Muslim law school would, in the interest of the profession, ask for similar powers.

In order to keep the Alkali in the Division at least for some time, the Resident of the Cameroons Province, A.F.B. Bridges, devised a temporary solution to the problem. He empowered the Alkali to handle criminal matters, but, subjected him to the control of the Ndop Native Court. According to the Resident, the Alkali was required to obtain a criminal

summons from the Ndop Native Court whenever he had a case in which he wished to impose a fine or imprisonment. After hearing the case in his court the Alkali would appear before the Native Court with the accused and his record books for perusal by the Native Court bench if they so desired. Before the Native court, the Alkali would be called upon to give a summary of the case and state his conclusions and recommendations of the sentence to be imposed according to Muslim law.<sup>[31]</sup> The Native Court would have the powers to prevail on the Alkali to change his judgment if it deemed it necessary, although more often than not the Native Court merely confirmed the recorded evidence of the Alkali and confirmed the recommended sentence. Either party had the usual right of appeal to the D.O. for review, the D.O. sometimes sitting with Muslim assessors for this purpose.<sup>[32]</sup>

This temporary measure had both positive and negative effects. On the positive side the administration made it possible for the Native Court, composed of Native Authorities, to control as well as check the excessive use of powers by the Alkali over non-Muslims as well as over Muslims. The Alkali and consequently the Fulani settlers were also brought closer to the Native Authority. Lastly, the supremacy of the Native Court over the Alkali Court neutralized the possible claims of Muslims autonomy from the Native Authority. On the negative side, the judicial system was very much time consuming. Owing to the fact that the Alkali had to settle a case in his own court and later inform the Native court about the fact of the case as well as his judgement before obtaining the final judgment from there, not only was much time wasting but the number of cases pending trial increased. In addition, as could be expected from any legal system applying two different types of law, customary and Muslim laws were often misinterpreted and generalized. This gave room for corruption and duplication on the part of the court members with the result that justice was delayed and sometimes completely denied. Not least important, in assuming the subordinate role of an assessor in the Native Court the authority of the Alkali and ultimately the dignity of his Court were undermined.<sup>[33]</sup>

These shortcomings of the judicial system resulted in two obvious things. It was evident that the Alkali, in the interest of his authority and his profession, could not resign himself to playing such a subordinate role indefinitely. The administration could not also risk losing him for this him, which would have meant the complete closure of the Alkali Court until a new Alkali was prepared to accept such a subordinate position was found. A permanent solution was, however, soon found. The Governor of the Eastern Provinces decided to empower the



Resident of the Cameroons, to make certain modifications in the warrant which had established the Alkali's court by inserting the following provisions:

Jurisdiction in criminal actions to hear and determine all cases of bigamy such cases being contrary to Mohammedan law provided that any sentence imposed shall not exceed six months' imprisonment with or without hard labour.

Power to inflict a fine not exceeding ten pounds or imprisonment with or without hard labour for a term not exceeding one month for any contempt of court.<sup>[34]</sup>

With these new provisions the Alkali would sit with native assessors in a mixed court in Bamenda to settle cases of non-Muslims, but sit alone when dealing with Muslims. Cases which were beyond the scope of the Alkali's court were often sent to the Sheiks at the Kano Muslim law school for scrutiny and advice.<sup>[35]</sup>

What finally emerged is that though the Alkali was empowered to exercise the criminal powers, which he had asked for, his overall demands for all criminal powers in his court, based on the *Sharia*, had not been met. Thus, it was quite certain that though happy with what he had achieved, the Alkali would continue to press his demands until he was granted full powers in both civil and criminal matters.<sup>[36]</sup> The Alkali at Ndop was the sole judge for all Muslims not only in Bamenda Division but also in the Southern Cameroon as a whole.<sup>[37]</sup>

Following the resignation of Alkali Ahmadu in 1948, Abba A. Namtari who succeeded him was the Alkali of the Bamenda Division from June 1949 to 1960. Alkali Abba Namtari's record of judgment exceeded that of Alkali Ahmadu. Since he was more open and flexible, he dealt with all cases of bigamy, property inheritance after death and debt matters.

Generally speaking, Alkali Abba Namtari was more acceptable to the Muslims in the Bamenda Grassfields than had been his predecessor. He however returned to Yola towards the end of 1960 and Sheriff Umaru Ibrahim an Arab, took his place. Alkali Sheriff Umaru Ibrahim was born in Sudan in 1933 and was a specialist in Islamic jurisprudence. He studied Muslim law at *Omdurman* (Sudan) from 1939 to 1949 and at Cairo (Egypt) from 1946 to 1948. He arrived in the Bamenda Grassfields in the mid-fifties from Nigeria and was appointed Alkali of the Court in Ndop in late 1960.<sup>[38]</sup> Most of the Muslims in the Bamenda Grassfields were unable to go to the Ndop Alkali Court because of distance. They preferred to take their cases to their chiefs.

At the beginning of the 1980s, some Muslims in the Bamenda Grassfields were no more going to the Alkali Court at Ndop. They preferred going to the new Alkali who had been appointed in Mbengwi. The name of the Alkali of Mbengwi was Mohammadou Baba Ajuji. At times the Alkali of Mbengwi even came to hear cases in Bamenda Town. Alkali Mohammadou continued working in Mbengwi and Bamenda Town until his death in the late 1990s. By that time, he was more resident in Bamenda Town. He was succeeded by Alkali Mallam Bello who continues to exercise his function as Alkali up till date. The issue of travelling long distances to hear Cases by the Muslims in the Bamenda Grassfields also affected those in Menchum Division.

The Muslims in Menchum Division were forced to trek the long distance to Ndop to hear judgment in the Alkali Court. Many of the Muslims in Wum were unable to go to Ndop because of the distance. They preferred to take their cases to Ardo Umaru of Wum or the Hausa Chief for judgement. The increase in the number of Muslims in the Bamenda Grassfields however, led to the establishment of more Alkali courts in the region. In 1966, the Wum Alkali Court was created. Cases beyond the Wum Alkali court were referred to Alkali Sheriff Umaru Ibrahim who was regarded as the most senior Alkali for West Cameroon. The first Alkali of Menchum Division was Alkali Abubakar; the second was Alkali Sale, and the third was Alkali Abdoulaye.<sup>[39]</sup>

The Alkali Court in Menchum was not limited to trying the Muslims cases only. They involved local inhabitants of the Division beginning the 1970s and 1980s. Unsatisfactory judgments from the Courts were appealed to the Court of First Instance.<sup>[40]</sup> Between 1946 and 1970, the Alkali Court was doing very well in reducing problems among the Muslims and even acting like a forum for advice to them. After the 1970s, injustices in its operation started to be noticed and by 1990s, the Alkali Court not only in the division but generally in the North West Region lost its importance.<sup>[41]</sup> Some of the Alkali'en died and were not replaced. That of Ndop became vacant for three years until 1998 when Modibbo Mohamed Bello was appointed to fill the vacancy.<sup>[42]</sup> Beginning in the late 1990s many Muslims lost confidence in and became suspicious of the Alkali Courts. They argued that the Alkali Courts were presided over by judges who were exploiting the Muslims and began to refuse to take their cases to Courts. Of course conflicts among the Muslims had reduced greatly as they gradually settled permanently and were embracing western civilization and education. This time their cases were mostly those involving cattle theft which seemed to defy solution.<sup>[43]</sup>

What should be noted about the Alkali Courts at the time of this research is that they have not ceased to exist. The main problem is that they have not been functioning as they used to when they were first created. The number of cases taken to the Alkali Courts in the North West Region generally would give the false impression that the Courts no longer existed because many Muslims preferred taking their cases to civil courts. Some other Muslims still took their cases to the Alkali Courts, in spite of the negative impressions about some Alkali.<sup>[44]</sup>

## CONCLUSION

The first time the request was made for an Alkali Court to be created in the Bamenda Grassfields was in 1921. The High Commissioner of the Cameroons, A.E.F. Murray, dispatched Memorandum No. 3599/50 of January 2<sup>nd</sup>, 1945, to the Lieutenant-Governor of Eastern Nigeria recommending that an Alkali Court with Grade "C" powers be established for Muslims in Bamenda Division.<sup>[45]</sup> The outcome was positive. The Governor-General, Sir Arthur Richards, gave his approval in April, 1945, for the establishment of an Alkali Court with Grade "C" powers for the Muslim community in the Bamenda Division. Between 1945 and 1960 the Colonial Administration considerably influenced the Alkali Courts in the Bamenda Grassfields and other part of Cameroon. The expansion of the court into different parts of the region coupled with innovations introduced by the colonial authorities, improved in no small measure the dispensation of justice in Alkali Courts in the Bamenda Grassfields.

However, the system changed to a large extent the method by which justice was obtained particularly in the Ngemba Native Authority area before the imposition of the colonial rule. The local Muslim Judges for instance had reduced role in the dispensation of justice as they were limited only to the Fadah's Court. In fact, their role as arbiter of cases in their wards gradually declined. While the Alkali Court was received with mixed feelings by the Muslim Communities in the Bamenda Grassfields because of certain innovations which they did not consider Islamic, the same court was used to spread Islamic influence in the other regions of the Grassfields. Throughout the period of colonial rule, sustained efforts were made by the administration to improve the courts in terms of personnel and procedure. Indeed, the development and importance of the Alkali Court as a dependable arm of the judiciary during the imposition of colonial rule led to the establishment of *Sharia* Courts which served as appellate courts to the Alkali Courts in the Bamenda Grassfields.

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