SC. 910/2016

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON FRIDAY 17TH JUNE, 2022
BEFORE THEIR LORDSHIPS

OLUKAYODE ARIWOOLA	JUSTICE, SUPREME COURT
KUDIRAT MOTONMORE OLATOKUMBO KEKERE-EKUN	JUSTICE, SUPREME COURT
JOHN INYANG OKORO	JUSTICE, SUPREME COURT
UWANI MUSA ABBA AJI	JUSTICE, SUPREME COURT
MOHAMMED LAWAL GARBA	JUSTICE, SUPREME COURT
TIJJANI ABUBAKAR	JUSTICE, SUPREME COURT
EMMANUEL AKOMAYE AGIM	JUSTICE, SUPREME COURT

SC. 910/2016

BETWEEN:

1. LAGOS STATE GOVERNMENT
2. HON. ATTORNEY & COM MISSIONER FOR JUSTICE, LAGOS STATE
3. HON. COMMISSIONER FOR EDUCATION. LAGOS STATE
4. HON. COMMISSIONER FOR HOME AFFAIRS, LAGOS STATE

APPELLANTS

AND

1. MISS ASIYAT ABDUL KAREEM (MINOR) (Suing through her next frind Alhaji Abdulkareem Owolabi)
2. MISS MARYAM OYENIYI (Suing through her next Friend Mr. Suleman Oyeniyi)
3. THE REGISTRAR TRUSTEES OF MUSLIM STUDENTS' SOCIETY OF NIGERIA (MSSN)

RESPONDENTS

6/7/2022

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Date.....
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Supreme Court of Nigeria

JUDGMENT
(Delivered by MOHAMMED LAWAL GARBA, JSC)

I have read the draft of the Lead Judgment written by my Learned Brother, Hon. Justice, K. M. O. Kekere-Ekun, JSC in this appeal and found that, as is usual of His Lordship, the three (3) issues submitted by the Appellants for decision by the court, have been comprehensively considered and proficiently resolved. The views expressed and the conclusions on the issues are the same with mine and so agree, completely, that the appeal is wanting in merit for the pungent reasons set out in the Lead Judgment.

Just for emphasis, I would say on issue 2, that the doctrine or principle of stare decisis or judicial precedence, is of considerable antiquity as embedded in the borrowed English law from which our laws; both substantive and procedural, evolved and has become firmly established in our judicial jurisprudence to now be common knowledge in the appellate courts.

Put simply, the doctrine or principle was evolved in order to have and maintain consistency and certainty in principles of law on the same or similar issues/points adjudicated upon, specifically determined and decided by the courts of co-ordinate or appellate jurisdiction in cases/matters/causes where the facts are the same or identical. The doctrine/principle stipulates that a court is bound in a later case, by its own decision, the decision of a court of co-ordinate jurisdiction and decision of a higher court in the judicial hierarchy on the same issues/points arising from the same. Judicial precedent means application of the decision in an earlier case by a competent court of law as the basis for determining later cases involving the same or similar issues and/or facts in order for the law to be consistent and certain.

Ogundare, JSC, in N.A.B. Ltd. v. Barri Engr. Nig. Ltd. (1995) 1 NWLR (pt. 413) 257, put the position succinctly thus:-

> ***"the doctrine of judicial precedent (otherwise called stare decisis) requires all subordinate courts to follow decisions of superior courts even where these decisions are obviously wrong having been based***

> ***upon a false premise; this is the foundation on which the consistency of our judicial decision is base."***

See also Abacha v. Fawehinmi (2000) 4 SC (pt. II) 1, (2000) 6 NWLR (pt. 660) 228, Global Trans. Oceanica S.A. v. Free Ent. Nig. Ltd. (2001) 2 SC, 154, (2001) 5 NWLR (pt. 706) 426, Mohammed v. Olawunmi ((1993) 5 SCNJ, 126, (1993) 4 NWLR (pt. 288) 384.

Then in the earlier case of Usman v. Umaru (1992) 7 SCNJ, 388, (1992) 7 NWLR (pt. 254) 377, the Learned LawLord had held that:-

> ***"It is now well settled under the doctrine of stare decisis, that the court below, as an intermediate Court of Appeal between the court below it and this Court as the final appellate court, is bound by its own decisions except in circumstances specified in Young v. Bristol Aeroplane Co. Ltd. (1994) 2 All E.R. 293, 300, that is-***
>
> ***(a) The Court of Appeal is entitled to decide which of two conflicting decisions of its own it will follow;***
>
> ***(b) It will refuse to follow its own decision which, though not expressly over-ruled, cannot, in its opinion, stand with a decision of this Court; and***
>
> ***(c) It is not bound to follow a decision of its own if it is satisfied that the decision was given per incuriam."***

See also Fatola v. Mustafa (1985) 2 NWLR (pt. 7) 438, Akinade v. Non-Academic S. U. E. & Associa. Inst. (1999) 1 NWL (pt. 600) 524, Peters v. David (1999) 4 NWLR ((pt.603) 436, Olutola v. Univ. of Ilọrin (2004) 11 – 12 SC, 214 at 228, Suleman v. C. O. P., Plateau State (2008) 8 NWLR (pt. 1089) 298, (2008) 34 NSCRQ (pt. 1) 226, Global Transport Oceanico S. A. v. Free Ent. Nig. Ltd. (supra).

In the Appellants' case, the material issue/s arising from facts which are identical; i.e whether the prohibition of the wearing of a "Hijab" over the school Uniform constituted and amounted to an infringement of the right provided for in the provisions of Section 38 of the 1999 Nigerian Constitution, was/were specifically determined and decided upon by the court below in the earlier decision in the case of the Provost, Kwara State College of Education, Ilorin v. Bashirat Saliu; Appel No: CA/1L/49/2006. The relevant and material facts and issue/s decided by the court below in that appeal are the same with the facts and the primary issue in the Appellants' case. The attempt by the Learned Counsel for the Appellants to distinguish the facts of the two (2) cases

was one which tried to show a distinction without a difference in the substance of the facts, as very ably demonstrated in the Lead Judgment.

In the above premises, the court was clearly on firm terrain of the law to have applied the doctrine/principle of judicial precedence/stare decisis and be bound by its earlier decision given on substantially the same issue/s arising from identical facts with the Appellants' case.

This position, makes and ensures consistency and certainty in the law in order to avoid confusion and the eventual anarchy it may portend.

On issue 3, the law is trite that where and whenever a court of law, which is also a court of justice, in the course of judicial proceedings, at all stages, raises an issue/point, on its own motion, not raised or canvassed by any of the parties to the case before it, which is crucial and vital for the determination of the parties' rights and/or obligations in the case, as a general rule, to which there are exceptions, the parties must be afforded an opportunity of a hearing on the said issue/point before the court can properly use and rely on same to decided the case one way or the other. Failure to invite parties and afford them an opportunity of a

hearing on such issue/part raised suo motu by the court and reliance on same to decide a case may violate the right to fair hearing guaranteed by the constitution in Section 36 (1) and thereby occasion a miscarriage of justice. This Court per Onnoghen, JSC, in Dalek Nig. Ltd. v. Oil Mineral Prod. Areas Dev. Comm. (OMPADEC) (2007) 2 SC, 305, (2007) 7 NWLR (pt. 1033) 402, had restated the law, that:-

> ***"It is settled law that where a court raised an issue, suo motu; it must afford the parties or their counsel the opportunity of addressing the court on the issue so as to ensure that the rules of fair hearing are adhered to for the purpose of doing justice to the parties."***

See also Okere v. Amadi (2005) 5 SC (pt. II) 1, (2005) 14 NWLR (pt. 945) 545, The State v. Oladimeji (2003) 7 SC, 108, (2003) 14 NWLR (pt. 839) 57, Adeniran v. Alao (2001) 12 SC (pt. II) 59, (2001) 18 NWLR (pt. 745) 361.

In the Appellants' case, the trial High Court at judgment stage, not only refereed to, but relied and based its decision not to abide by the established and recognised doctrine and principle of judicial precedent in respect of the decision of the court below in Provost, Kwara State

College of Education, Ilorin, on the provisions of Section 10 of the Constitution on secularism of Nigeria to justify reliance on the foreign decision in Leyla Shahin v. Turkey, reported in European Constitutional Law Review. Undoubted, the issue of Section 10 of the Constitution was not raised nor canvassed by any of the parties, but particularly the Appellants in support of their case, but was raised suo motu by the trial High Court and it formed the basis and reason for its decision that the prohibition of the 1st and 2nd Respondents from the wearing the Hijab over the school uniform did not amount to the infringement of the provisions of Section 38 and 42 (1) of the Constitution. Reference to and reliance on Section 10 and on the foreign decision is Shahin v. Turkey was the ratio decidendi in the decision by that court and it was a relevant and material issue/point in the determination of the case by the trial High Court, on which the Respondents ought to have been afforded an opportunity of a hearing in compliance with the constitutional right to fair hearing at trial.

The court below was therefore right to have found and held that the Respondents were entitled to the right to be heard on the said issue by that court before it was used and relied on to decide the case and that the failure to afford them the opportunity of a hearing, constituted a breach and violation of the provisions of Section 36 (1) of the Constitution and occasioned them a miscarriage of justice.

On the whole, I dismiss the appeal in the terms set out in the Lead Judgment.

MOHAMMED LAWAL GARBA
JUSTICE, SUPREME COURT

APPEARANCES:

O. Osunsanya Esq., Asst. Chief State Counsel, Ministry of Justice, Lagos State for the Appellants.

Hassan T. Fajemite, Esq. with Nasir Runmonkun, Esq. and Ahmed Adetola-Kareem, Esq. for the 1st Respondent.

Udochi Iheanacho, Esq. for the Respondents.

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Date 6/7/2022
Sign
Supreme Court of Nigeria

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON FRIDAY, THE 17TH DAY OF JUNE, 2022
BEFORE THEIR LORDSHIPS

OLUKAYODE ARIWOOLA	JUSTICE, SUPREME COURT
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SC. 910/2016

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3. HON. COMMISSIONER FOR EDUCATION, LAGOS STATE.
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--- --- APPELLANTS

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AND

1. MISS ASIYAT ABDULKAREEM (MINOR)
   (suing through her next friend, Alhaji Abdulkareem Owolabi)
2. MISS MARYAM OYENIYI
   (suing through her next friend, Mr Suleman Oyeniyi)
3. THE REGISTERED TRUSTEES OF MUSLIM STUDENTS' SOCIETY OF NIGERIA (MSSN)

--- --- RESPONDENTS

JUDGMENT
(DELIVERED BY TIJJANI ABUBAKAR, JSC)

This appeal is against the judgment of the Court of Appeal, Lagos Division delivered on the 21st day of July 2016 setting aside the judgment of the High Court of Lagos State delivered on the 17th day of October, 2014.

The brief facts grounding this appeal are that, Asiyat and Maryam the 1st and 2nd Respondents in this appeal who sued through their next friend were on their way to School in a commercial Bus, when their Vice Principal sighted them wearing Hijab, he confiscated the hijab on the ground that it was not an integral part of their approved School uniform, the passengers on board the same commercial bus intervened, and the Vice Principal retuned their Hijab to them however on reaching their School, the Vice Principal directed that all Hijab wearing students be identified and the hijab be confiscated.

The Vice Principal identified the 1st and 2nd Respondents in this appeal, confiscated their Hijab and exposed them to some form of embarrassing indignities. The School did not allow them wear their Hijab to School despite series of representations. The 3rd Respondent became aware of the situation and reported to the 1st Appellant who remained unperturbed. The Respondents ultimately resolved to challenge the action in Court.

The Respondents therefore commenced an action by originating summons at the trial Court pursuant to the Provisions of sections 38, 42 (1) (a) and (b) 46 (1) and (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), Articles 2,5,8,10,17 and 19 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap A9 Laws of the Federation of Nigeria 2004, Order 11 Rules (1) (2) and (3) of the Fundamental Rights Enforcement

Procedure Rules 2009, and the inherent jurisdiction of the Court. In the originating summons the Applicants as Respondents sought for the following reliefs:

1. *A Declaration that the continuous denial of the 1st and 2nd Applicants, female members of the 3rd Applicant and other female Muslim students who resolve or are obliged to use or are using Hijab (female Muslim head covering) as shown in Exhibits A and B within or outside the premises of any educational institution in Lagos State at any time is wrongful and unconstitutional as same constitutes a violation of their rights to freedom of thought, conscience and religion, freedom from discrimination and right to the dignity of the human persons and right to education as guaranteed by Section 38 1 (a) & (b) and 42 (1) (a) & (b) of the Constitution of the Federal Republic of Nigeria, 1999 (As amended) and Articles 2, 5, 8, 10, 17 and 19 of the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act Cap A9, Laws of the Federation, 2004.*

2. *A Declaration that the punishment or humiliation of the 1st and 2nd Applicants, female members of the 3rd Applicant and any other female Muslim Students in any institution in Lagos State as a result of the use of Hijab by the students or pupils is a violation of the Applicants' Fundamental Human*

Rights to freedom of thought, conscience and religion, freedom from discrimination and right to the dignity of the human person, right to education, and right to free association as guaranteed under Section 38 and 42 of the Constitution of the Federal Republic of Nigeria 1999 (as Amended) and Articles 2,5,8,10,17, and 19 of the African Charter on Peoples and Human Rights (Ratification and Enforcement) Act CAP A9, Laws of the Federation 2004.

3. *An Order of perpetual injunction restraining the respondents either by themselves, their officers, agents, privies or servants from further interfering or infringing in any manner on the fundamental rights of the 1st and 2nd Applicants, female members of the 3rd Applicant and any other female Muslim Students who have resolved or are obliged to use or are using Hijab (female Muslim head covering) on their school uniforms, if any, of any educational institution in Lagos State as shown in Exhibits A and B within or outside the premises of any educational institution in Lagos state at any time in the exercise of their rights to freedom of thought, conscience and religion, freedom from discrimination and right to the dignity of human person, right to education, and right to free association as guaranteed under Section 38 and 42 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) and Articles 2, 5, 8, 10, 17 and 19 of the African Charter on Human and*

Peoples' Right (Ratification and Enforcement) Act Cap. A9, Laws of the Federation, 2004).

4. *A Declaration that any directive, instruction or order by the 1st - 5th Respondents whether by themselves, their officers, agents privies or servants premised on the purported minutes of meeting held on Thursday the 16th day of February, 2012 and issued by or at the instruction of 1st, 2nd, and 3rd/or 4th Respondents preventing or restricting the 1st and 2nd Applicants, the female Muslim members of the 3rd applicant and/or any other female Muslim students who is using or have resolved or are obliged to use Hijab (female Muslim head covering) on their school uniforms as shown on Exhibits "A" and "B" within or outside the premises of any educational institution in Lagos State at any time from doing so is a violation of their rights to freedom of thought, conscience and religion, freedom from discrimination and right to freedom of thought, conscience and religion, freedom from discrimination and right to the dignity of the human persons and right to education as guaranteed by Sections 38 1 (a) & (b) and 42 1(a) & (b) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) and Articles 2 ,5 ,8, 1017 and 19 of the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act CAP A9, Laws of the Federation, 2004.*

5. *AND for such order or further order as the Honourable Court may deem fit to make in the circumstance.*

The matter eventually went to trial, and the trial Court dismissed the claim and found in favour of the Appellants thereby approving the decision of the Appellants to ban the wearing of Hijab in School. The trial Court therefore held as follows:

> *"...The logical conclusion therefore also is that such refusal is not discriminatory against the applicants. Indeed, to the contrary, were they to be allowed to wear the hijab (headscarf) over the school's uniform, the uniformity sought to be achieved by State will be destroyed, and the non hijab wearing students will rightly feel inferior and discriminated against because they will no longer be equals - see S.45(1) of the 1999 Constitution. There is an obligation for every student enrolled in the school system to obey the regulations laid down by constituted authority- I therefore cannot agree with learned Senior Advocate Chief Kazeem's submission that the applicants have a right to ignore such school regulations because of their belief stated above, the values of pluralism, respect for rights of other*

(who have subscribed to a non faith based educational system) and equality before the law dictate that no deviation from the regulation should be allowed.

In conclusion, I find that the refusal of the respondents to allow the applicants wear the hijab (Islamic Scarf) on their prescribed uniforms is not a breach of their constitutional rights as guaranteed by Section 38 and 42 of the 1999 Constitution. I so hold...."

The Respondents became nettled by the decision of the trial Court and therefore appealed to the lower Court. The lower Court allowed the appeal and set aside the Judgment of the trial Court, the Appellants therefore made for this Court and lodged their appeal against the decision of the lower Court.

The Appellant through Counsel nominated and argued three issues for determination. The Respondent on the other hand crafted and argued four issues for determination.

The issue central to the determination of this appeal is whether the refusal by the Appellants to allow the 1st and 2nd Respondents wear head covering (Hijab) to School constitutes a violation of the 1st and 2nd Respondents fundamental Human Right as enshrined in our Constitution. Fundamental right is a right that stands above the ordinary laws of the land; it also includes any rights stipulated in the African Charter. See, **CHIEF DR. (MRS. OLUFUNMILAYO RANSOME-KUTI & ORS V. ATTORNEY GENERAL OF THE FEDERATION & ORS,** and **FAJEMIROKUN V. COMMERCIAL BANK NIG LIMITED & ANOR (2009) LPELR-1231 (SC)**

The 1st and 2nd Respondents in this appeal said the decision of the Appellants to stop them from wearing their head covering Hijab offends their right to practice their

religion (Islam) as provided in the Constitution of the Federal Republic of Nigeria 1999 (as amended).

The lower Court found and stated explicitly that the 1st and 2nd Respondents being Muslims are commanded by their religion to accept the Quran and Sunnah as the most important sources of law, they must obey the command of Allah in the Qur'an and Sunnah.

In surah Al –Nur (24:31) the Qur'an signifies the Hijab as a mark of modest and elegant women who are recognised from a far as discreet and unapproachable by undesirable elements. Muslim women wear the Hijab as part of their religious obligations. Again in Surah AL-AHZAB Chapter 33, Verse 59 Allah the Exalted said:

> *"O Prophet! Tell your wives and your daughters and the women of the believers to draw their cloaks (veils) all over their bodies (i.e. screen themselves completely except the eyes or one eye to see the way). That will be better, that they*

should be known (as free respectable women) so as not to be annoyed. And Allah is Ever Oft-Forgiving, Most Merciful."

The 1st and 2nd Respondents fall within the category of persons commanded to wear Hijab (Head covering) by the Holy Quran, they fall within daughters as ordained by Allah in the Holy Qur'an. What is obligatory upon the woman is to cover herself as her Lord the Mighty and Majestic is more knowledgeable of her well being. **Umm 'Abdillah al-Waadi'iyyah,** in her book, my sincere advice to women page 161 said: *That is why He has enjoined the wearing of Hijab on her. Such contains protection for you from corruption and evil. It also contains chastity for you....".* Wearing of Hijab is a religious obligation, Government has responsibility to ensure that the rights of citizens are protected; any policy designed in flagrant violation of the right of a citizen is a clear violation of the Constitution and must be held to be so. Competent

authorities or Government must justify derogation from the fundamental rights of citizens by showing facts suggesting that the act or policy complained of is reasonably justifiable in a democratic society. It must be shown that the derogation is in the interest of public safety, public order, public morality or public health, or that the policy or action is for the purpose of protecting the rights and freedom of other persons as required by section 45 (1) (a) and (b) of the constitution of the Federal Republic of Nigeria 1999 (as amended). In the instant appeal the Appellants failed to show any good cause.

From all I said therefore, Islam is the religion of the Respondents and it is within their fundamental rights to wear Hijab and so doing does not in any way constitute danger to the safety or security of other persons. The right of the Respondents is guaranteed and protected by section 38 of the

Constitution of the Federal Republic of Nigeria 1999 (as amended). Section 38 of the Constitution provides as follows:

> *"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 of 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 a 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."*

Apart from the above express provision of the Constitution, section 42(1) (a) and (b) also clearly provides that a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall

not, by reason only that he is such a person be subjected either expressly by or in the application of any law in force in Nigeria, or any executive or administrative action of government to disabilities or restrictions to which citizens of Nigeria or other communities, ethnic groups, places of origin, circumstances of birth, sex, religious or political opinions are not made subject, or be accorded either expressly by, or in the practical application of any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions.

From the provisions of sections 38 and 42 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), it is very clear to me that the policy of the Appellants preventing the 1st and 2nd Respondents from

wearing head scarf (Hijab) is a flagrant violation of their right to freedom of thought, conscience and religion. It is a clear misconception of the law by the trial Court as rightly found by the lower Court that ". *There is an obligation for every student enrolled in the school system to obey the regulations laid down by constituted authority..*" the regulations are in conflict with the provisions of the Constitution, and the Constitution of the Federal Republic of Nigeria 1999 (as amended) being the fundamental legal order of State is supreme, and shall prevail over any other law to the extent of the inconsistency. See; **FIRST BANK OF NIGERIA PLC V. T.S.A. INDUSTRIES LIMITED (2010) LPELR-1283 (SC)** where this Court held as follows:

> *"By virtue of the provision of section 1(3) of the 1999 Constitution, the doctrine of supremacy of the Constitution demands that if any law is inconsistent with the provision of the 1999 Constitution, the Constitution shall prevail and*

the other law shall to the extent of the inconsistency be void"

For this short reason, and the more detailed, elaborate and illuminating reasons marshalled in the leading Judgment prepared and rendered in this appeal by my learned brother KEKERE-EKUN, JSC, I also hold that the Appellants appeal is devoid of a jot of merit and therefore deserves to be and is hereby dismissed. I join my Lord in affirming the decision of the lower Court delivered on the 21st day of July 2016, I also abide by all consequential orders set out in the leading Judgment including the order on costs.

TIJJANI ABUBAKAR,
JUSTICE, SUPREME COURT

APPEARANCES:

O. OSUNSANYA, ESQ, ASSISTANT CHIEF STATE COUNSEL, MINISTRY OF JUSTICE, LAGOS STATE FOR THE APPELLANTS.

HASSAN T. FAJIMITE, ESQ for the Respondents with NASIR RUNMONKUN, ESQ, and AHMED ADETOLA-KAZEEM, ESQ.

IN THE SUPREME COURT OF NIGERIA

HOLDEN AT ABUJA

ON FRIDAY 17TH DAY OF JUNE 2022

BEFORE THEIR LORDSHIPS

OLUKAYODE ARIWOOLA	JUSTICE, SUPREME COURT
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JOHN INYANG OKORO	JUSTICE, SUPREME COURT
UWANI MUSA ABBA- AJI	JUSTICE, SUPREME COURT
MOHAMMED GARBA LAWAL	JUSTICE, SUPREME COURT
TIJJANI ABUBAKAR	JUSTICE, SUPREME COURT
EMMANUEL AKOMAYE AGIM	JUSTICE, SUPREME COURT

SC.910/2016

BETWEEN:

1. LAGOS STATE GOVERNMENT
2. HON. ATTORNEY GENERAL AND COMMISSIONER FOR JUSTICE, LAGOS STATE
3. HON. COOMMISSIONER FOR EDUCATION LAGOS STATE
4. HON. COMMISSIONER FOR HOME AFFAIRS LAGOS STATE

APPELLANTS

AND

1. MISS AYISAT ABDULKAREEM (MINOR) (Suing through her next friend Alhaji Abdulkareem Owolabi
2. MISS MARYAM OYENIYI (Suing through her next friend Mr. Suleman Oyeniyi
3. THE REGISTERED TRUSTEES OF MUSLIM STUDENT'S SOCIETY OF NIGERIA (MSSN)

RESPONDENTS

DISSENTING JUDGMENT

(DELIVERED BY EMMANUEL AKOMAYE AGIM, JSC)

This appeal No. SC/910/16 was commenced on 16-9-2016 when the appellant herein filed a notice of appeal against the judgment of the Court of Appeal delivered on 21-7-2016 in Appeal No. CA/L/135/2015, allowing the appeal to it against the judgment of the High Court of Lagos State delivered on 17-10-2014 in Suit No. ID/151M/2013. It set aside the holding of the trial court that the restriction of the respondents from wearing Hijab in public primary and secondary schools is not a breach of their fundamental rights in sections 38 and 42 of the Constitution of the Federal Republic of Nigeria 1999 and dismissed the claim by the respondents herein.

The appellants herein have filed, exchanged and adopted their respective briefs as follows – appellants' brief and respondent's brief.

The appellant's brief raised the following issues for determination –

1. **Whether the court below was right when it held that there was no legislation or Regulation etc. before the lower court to enable it place restriction or disability on female Muslim students to wear Hijab on their uniforms having found that the**

Respondents did not join issue on the existence of the Appellant's policy prescribing the mode of uniform in public primary and secondary schools in Lagos State. Ground 1.

2. Whether the court below was right in relying heavily on the decision in the case of the provost Kwara State College of Education, Ilorin a& 2 OrsVsBashiratSaliu& 2 Ors. Appeal No. CA/IL/49/2006 to the effect that non-use of "Hijab" violates the provisions of Section 38 and 42 (1) and (2) of the Constitution of Federal Republic of Nigeria, 1999 (as amended) when, the facts in the unreported case are distinct with the facts in the instant case. Grounds 2 and 3

3. Whether the raising of the new issue of secularity of this country vis-avis Section 10 of the 1999 Constitution, as amended suo motu by the trial court was done wrongly and out of place. Ground 4.

The respondent's brief raised the following issues for determination –

1. Whether the lower court was right in holding that the mere deposition in the Respondents/Appellants counter affidavit, even when such deposition was not specifically controverted, is not enough to establish the existence and content of state policy prohibiting the wearing of Hijab on school uniforms by female Muslim students in primary and secondary school, in the absence of any legislation or Regulation referred o or exhibited for construction by the court to determine the constitutionality or otherwise of such policy. (Ground 1).

2. Whether the principles laid down by the Court of Appeal in THE PROVOST, KWARA STATE COLLEGE OF EDUCATION, ILORIN & 2ORS V BASHIRAT SALIU & 2ORS (Appeal No. CA/IL/49/2006) are applicable to this case.

3. Whether the learned Justices of the Court of Appeal were right in distilling from and relying on the content of the Holy Quran Chapter 24 v 31

&chapter 33 v 59 on the principles of the wearing of Hijab by Muslim women. (Ground 2 & 3).

4. **Whether the court below was right when it held that the raising of the new issue of secularity of this Country vis-avis Section 10 of the 1999 Constitution, (as amended) soumotu by the trial court without hearing the parties was done wrongly and out of place and amounts to a denial of the Constitutionally guaranteed right of the Respondents to fair hearing. (Ground 4).**

Issues 1,2 and 4 above are the same with the appellants' issues Issue No. 3 in the respondents' brief was not raised for determination in the appellant's brief even though it is one of their complains in ground 3 of the notice of this appeal.

Therefore, I will determine this appeal on the basis of all issues raised for determination in the appellant's brief and issue No. 3 in the respondent's brief.

Let me start with the issue No.1 which asks "**Whether the court below was right when it held that there was no legislation or Regulation etc. before the lower court to enable it place restriction or disability on female Muslim students to wear Hijab on their**

uniforms having found that the Respondents did not **join issue on the existence of the Appellant's policy prescribing the mode of uniform in public primary and secondary schools in Lagos State.....Ground 1."**

I have carefully read and considered the arguments in the respective briefs on this issue.

Learned counsel for the appellants argued that the Court of Appeal having found that paragraphs 4 – 10 of the appellants' counter affidavit on the existence of a uniform dress code without Hijab in each public primary and secondary school before this dispute arose in 2012 and the existence of a state policy and practice on uniform school dress in public primary and secondary schools in Lagos were not contradicted, it should have accepted the facts deposed to therein as established and not hold as it did that the facts were not proven, that the existence of uniform dress in public primary and secondary schools was not in dispute at the trial and therefore did not require proof, that the decision of the Court of Appeal was perverse and against the well settled principles that unchallenged and uncontradicted facts in an affidavit must be accepted by a court as established and that the Court of Appeal was wrong to have held that the appellants ought to have produced

a legislation or circular or guidelines or regulation containing the policy on the uniform dress code.

Learned Counsel for the respondents argued that while agreeing with the contention of the Appellants in paragraphs 4 and 5 of their Brief of Argument that there is no dispute about the existence of a state policy on the wearing of school uniform in Lagos State, it is submitted and that the point of dispute is the form and content of that policy, that surely the deponent to the Appellant's Counter Affidavit at the trial court, an Assistant Director in the Department of Education is not himself the author of the policy, nor did he introduce it, that indeed he deposed in paragraph 4 of the counter-affidavit (p/101 of the Record) that the dressing code by the use of uniform in public (primary and secondary) schools is not a new policy of the State Government, that the statement presupposes that the policy had been in existence for a long time, that this being so, the deponent must have derived his knowledge of the policy from a source, that, government policy, unlike traditional history which is handed down orally from generation to generation is usually contained in a record which is accessible to successive generation of public servants, that the deponent did not disclose or refer to the sources of his information or knowledge nor exhibit a copy of the document containing the alleged policy and merely talked about his awareness, that the

depositions which lack any evidential value cannot aggregate to state policy, that they are in fact hearsay or at best the deponent's opinions which offend against the provisions of section 38 and 67 of the Evidence Act 2011, that they also offend against the provision of Section 125 of the Evidence Act 2011, which provides that "all facts, except the contents of documents, may be proved by oral evidence.", having regard to this provision, the ipse dixit of the deponent is not enough to prove the content of a state policy which is or is expected to be contained in a written document, that it certainly is not sufficient for the purpose of determining whether the alleged state policy offends or violates the Appeliants/Respondents constitutional right to freedom to practice or manifest their religion as enshrined in section 38 or freedom from discrimination as provided in section 42 of the 1999 Constitution (as amended), that in the circumstance, although the court might accept the fact that a certain state policy on the wearing of school uniform existed, the court is not obliged to accept the depositions of the deponent as to the content of the policy in the absence of the document containing the policy being made available to the court, that the Appellants had submitted in paragraph 4.10-4.11 of their brief that the Respondents had not controverted the depositions in their counter affidavit to the effect that certain dress codes exist in Lagos State secondary Schools

because the existence of such dress codes was of common knowledge, that it is submitted on the contrary that the Respondents did not see any reason to specifically controvert the Appellants depositions in this regard not because the differing dress codes of hundreds of public secondary schools in Lagos State are of common knowledge but because as was expected, the Appellants had failed, neglected and /or refused to make available or to refer to any document the authenticity of which cannot be doubted containing the state policy on the subject as provided in sub-section 124(1)(b) of the Evidence Act 2011.

The portion of the Court of Appeal judgment challenged under this issue reads thusly – "**Before going into the resolution of this issue, I wish to point out that it was not only paragraph 4 to 7 of the counter affidavit of the Respondents that caught the attention of the lower court. No. It was paragraph 4 to 10, though specifically focusing or reproducing and making findings only on paragraph 4 to 7. To fully capture the position of the Respondents with respect to their position on wearing of school uniforms in public primary and secondary schools in Lagos State, I wish to reproduce paragraphs 4 to 10 of the counter affidavit.**

4. The dressing code by use of uniforms in public (primary and secondary) schools is not a new policy of the State Government.
5. I know as a fact that the compulsory wearing of uniforms in public) primary and secondary) schools is for identification of students from different school in Lagos State.
6. I am also aware that s standardized set of dress (uniform, cap, beret, cardigan and tie) for students in public schools is meant to encourage a sense of unity, discipline organization and orderliness in public schools in the State.
7. I am also aware that wearing the same uniform in a public school without deviation of any sort encourages objectivity on the part of students and teachers and students are not judged or related to on the basis of appearance or mode of dressing.
8. I know that wearing undiluted uniform in public schools have reduced social anxiety or animosity among students while enhancing each student's confidence and sense of belonging as well as encourages focus on school work.

9. I know as a fact that the State policy and Rules on guide lines on uniformity in mode of dressing of students in public schools does not seek to prevent only Muslim girls students from varying the recognized uniforms in public (primary and secondary) schools, it generally prohibits any student or group of students irrespective of religion from breaching the prescribed dress code of the school.

10. I am aware that the clamor and demand for compulsory use of Hijabs on to of school uniform by Muslim girl students in public schools in Lagos State is recent development from the 3rd Applicants.

It is correct that none of these averments or statements of the Respondents had been specifically denied in the further affidavit of the Applicants/Appellants. The remark of the learned trial judge in that behalf cannot be said to be incorrect or without any basis or being totally unwarranted. The position of the law is that when in a situation in which facts are provable by affidavit, one of the parties exposes to certain

facts, his adversary has a duty to swear to an affidavit to the contrary, if he disputes the facts. Where such a party fails to swear to an affidavit to controvert such facts, they may, in appropriate circumstances, be regarded as duly established. See AGBAJE VS IBRU SEA FOODS (1972) 5 SC 50 at 55; ALAGBE VS ABIMBOLA (1978) 2 SC 39 at 40: AJOMALE VS YADUAT (NO. 1) (1991) 5 NWLR (PT). 191) 266 all considered and applied in THE HONDA PLACE LTD VS. GLOBE MOTOR HOLDING NIG.LTD (2005) 14 NWLR (PT. 945) 273.

Against this well-established state of the law, it is beyond conjecture that an unchallenged and uncontradicted fact in an affidavit remain undisputed and is deemed admitted by the adversary. A court must so hold in appropriate circumstances. However, it could possibly turn out that with respects to the facts standing out as established may not necessarily lead to an ultimate favourable finding in the case of the party who could benefit from the non-disputation of those facts. With respect to the facts and circumstances in this appeal, what

must be taken to have been admitted are the facts that there is an old policy of Lagos State Government which requires the use of uniforms in public primary and secondary schools which includes the wearing of caps, berets, cardigans, neckties etc. The policy objectives as set out to be for identification of students from various categories or stages of schools etc.., orderliness, discipline, objectivity etc. must also be deemed to have been admitted by the Applicants/Appellants. Even if the lower court felt obliged to take judicial notice of these facts, I do not think that it would have been out place for it to do so. However, in-spite of all the foregoing the crucial question in the application of the appellants would still remain begging for an answer.

A policy has variously been defined to mean: -

> "to regulate by laws; to reduce to order a principle of behavior, conduct etc, thought to the desirable or necessary, especially as formerly expressed by a government or other authoritative body."

"a define course of action adopted for the sake of expediency, facility etc."

"a course of action adopted and pursued by government –action or procedure confirming to or considered with reference to prudence or expediency.

This is my sampling from some internet Dictionaries. Some of the synonyms of the word "policy" include; behavior, code, custom, guideline, method, order plan, practice, rule etc. From a more formal perspective the word "policy" has been defined to mean; in its management of public affairs."
See Black law Dictionary 9th Edition, page 1276.

A simple perusal of any of these definitions or synonyms of the word "policy' would in my view definitely bring to the mind some form of documentation. If the lower Court was entitled to take judicial notice of the existence of some old policy with respect to schools uniforms in Lagos State, it must additionally also take judicial notice of the fact that such policy must have been embodied, as is usual with government at all levels to issue Circulars, Rules, Regulations, Orders Guidelines,

Directions etc. with respect to the management, Control, observance etc. of certain subject matters. It is compelling and necessary, my view, for the lower Court to consider and take judicial notice of these collateral circumstances for a proper decision in the matter before it. A Court is not allowed to make findings on documents that have not been laid in evidence before it. I am of the view that it would amount to an undue speculation for the Lower Court to do more than hold that there is in existence an old policy of Lagos State Government on school uniforms in its public schools. This is no more than what can be deemed to have been admitted by the Appellants in the circumstance, or may be even the objectives of that old policy. Whether that old policy is .... and up to date as to ban or restrict the wearing of Hijab by female Muslim students must remain a moot question subject to a proper perusal of its actual contents. Whether that old policy is relevant or could be said to be relevant said to it against the provision of the 1999 Constitution, as amended, and as now ..... to be enforced by the Appellants is also another huge question".

Having held that "with respect to the facts and circumstances in this appeal, what must be taken to have been admitted are the facts that there is an old policy of Lagos State Government which

requires the use of uniforms in public primary and secondary schools and having held that the facts were thereby established, the view of the Court of Appeal that "whether that old policy is relevant and up to date as to ban or restrict the wearing of Hijab by female Muslim students must remain a moot question subject to a proper perusal of its actual contents is wrong having regard to the claim of the respondents and the admitted facts of this case.

It is glaring from the reliefs claimed for by the respondents in their originating summons and depositions in the affidavit in support of the summons that their case is not that the refusal of the school authorities to allow them wear Hijab on top of their school uniform dress is contrary to the said Lagos State Government policy or that the said policy did not restrict their said use of hijab. Their case is that the said refusal to allow them unrestricted use of hijab violates their fundamental right to dignity of the human person, right to education, right to freedom of thought, conscience and religion and freedom from discrimination given to them by Ss.38(1) (a) and(b) and 42(1) (a) and (b) of the Constitution of the Federal Republic of Nigeria 1999 and Articles 2, 5, 8, 10, 17 and 19 of the African Charter on Human and People's Right (Ratification and Enforcement) Act Cap A9, LFN 2004.

The admitted facts of this case from the affidavits of both sides reproduced in the judgment of the Court of Appeal includes

the fact that the clamour and demand to wear hijab on top of the public primary and secondary schools' prescribed uniform dress started from 2012. For several decades before then, there were no such demands and Muslim students in public schools wore only the school's prescribed uniform dress in school without complain. Similar demands to wear hijab on top of the prescribed school uniform dress also arose in other public schools including High Comprehensive Secondary School Itire, Surulere and Alapere Comprehensive High School, Alapere, Ketun, Lagos State. The present case arose from the refusal of the authorities of Atuarase Junior High School, Surulere to allow the 1st and 2nd respondents students to wear hijab on top of their school uniform.

Following the petition of the 3rd respondent to the appellants concerning the refusal to allow the use of hijab by Muslim female students in public schools, a meeting of the appellants with the officials of the 3rd respondents held on 17-2-2012 to resolve the issue. The minutes of that meeting was attached to the affidavit in support of the respondent's originating summons as exhibit F. The resolutions of the meeting read thusly – **"After due deliberation, the parties resolved and agreed on the following;**

i. **That the use of hijab during Zuhri and Jumat prayers in the school compound should not be allowed**

ii. The Hijab no matter how small would not be allowed on School uniforms even after school hour, but students could wear full Islamic dress when going home after school hour.

iii. That Principals should allow Students to change in the School to the Islamic outfit if need be.

Thereafter, the Senior Special Assistant to His Excellency on Islamic Affairs sued for understanding and patience on the part of the MSSN and appealed to the Society to accept the resolutions with in good faith and allow peace to reign in accordance with the tenants of the religion of Islam. He adviced that caution should be taken when treating religious matter because of its sensitivity. He concluded that His Excellency the Governor of Lagos State had due regards for all religion' faithfuls and was distinguished by the latest development, which if not curbed in the bud could lead to religious disharmony amongst the various religions faithfuls.

In his closing remarks, the Honourable Commissioner (Home Affairs) appreciated the presence of the MSSN and other participants. He advocated for understanding on the part of the MSSN especially on the situation in the

country and reiterated the commitment of the state **government to Islam and other religions."**

Upon receipt of the minutes, the 3rd respondent disagreed with the resolutions stated therein and wrote to the appellants herein disputing the said resolutions. The letters are attached to the affidavit in support of the originating summons as exhibit G. In each of the letters it is stated thusly – **"It is the contention of our Clients that whilst purporting to discuss the Hyjab issue, what was done by government was to impose its position on them. The resolutions stated paragraph 5.1 of the aforesaid minutes is ample proof of this. Be advised that our clients do not agree to the terms stated in parafraph 5.1 at page 6 of the said minutes of 16/2/2012. We state for the avoidance of doubt, the position of our clients at the meeting held at your office on 16th day of February, 2012 at the office of the Commissioner for Home Affairs and Culture are as follows –**

i. **That females Muslim students should be allowed to observe whatever obligatory salat (prayer), Zuuhr, Asr and Jumat prayer that meet them in school and use the Hyjab thereat.**

ii. That female Muslim student whilst at school should be **allowed to use their head gear (Hyjab) during Islamic Religious Studies classes and Jumat prayers.**

iii. **That female Muslim students who wish to use the Hyjab on the way home after the school hours should wear the full Hyjab, and ensure that it covers their entire body without sowing their school uniform.**

iv. **That principals should allow students who wish to wear/use their full Hyjab after school hours to do so".**

Paragraphs 15 to 19 of the appellants' counter affidavit in opposition to the respondents originating summons state that there were several meetings and that at the end they yielded to the demands of the respondents that the schools should allow the use of hijab during Islamic obligatory prayers that occur during school hours and during religious studies classes. The respondents did not contradict these depositions in the said paragraphs of the counter-affidavit. The exact text of those paragraphs read thusly –

15. **"The 1st and 2nd Applicants and their parents with the support of the 3rd Applicant protested against the actions of the Vice Principal and the School Authority on the ground that they violated the 1st and 2nd Applicants' right to freedom of religion.**

16. Due to the problem generated by the incident, the Respondents engaged the Applicants and other stake holders in the State in series of meetings to find a solution to the problem.

17. At the end, the Respondents decided to accommodate the use of Hijab in public schools on school uniform in public schools by Muslim girl student who wish to wear it but only during Islamic religious knowledge classes, during afternoon (Salat) prayer and Jumat (Friday) prayers.

18. I verily believe that the new State policy on Hijab as stated above is reasonably justifiable in a multi religious State like Lagos and Nigeria which Constitution prohibits religion.

19. I know as a fact that Government no longer has a monopoly of primary and secondary education in the State. Some public schools have been returned by the State Government to Muslim and Christian Missionaries both of which are fully autonomous in their management including choice of dress code in

line with their religious injunction for their **student".**

It is clear from the totality of the foregoing that both sides acknowledged the power and duty of the appellant's and the authorities of public primary and secondary schools in Lagos State to prescribe the wearing of uniform school dresses in school and the discretion to accommodate special demands such as that of the respondents without destroying the objective of the requirement of uniform dress in school and that both sides amicably resolved that the respondents be allowed to use the hijab during Islamic obligatory prayers that occur during school hours and during religious studies classes and that its use in school be regulated so as not to defeat the objective of uniform school dress. Upon this admitted amicable resolution after a series of meetings there was no basis for the respondents to still proceed to file the suit in the trial court asking for reliefs in disregard of what they had accepted in the meetings. This shows lack of good faith on the part of the respondents.

Let me deal with the issue of the absence of a circular, Order, Rules, Guidelines, Regulations or directives containing the State policy of uniform dressing and the issue of the Judicial notice of same.

Both sides agree that all public primary and secondary schools in Lagos State strictly enforce the wearing of uniform dress in school by students and that it is an old practice. It is worthy of note that the respondent's suit was predicated on the existence of the practice or policy of uniform dress and refusal to allow the use of hijab in schools. Since the existence of the practice of uniform dressing is admitted and copiously acknowledged and conceded to, the need for it to be proven or judicially noticed is obviated. S. 123 of **the Evidence Act provides that "No fact needs be proved in any civil proceeding which the parties to the proceeding or their agents agree to admit at the hearing, or which, before the hearing, or which, before the hearing, they agree to admit by any writing under their hands or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings."** This statutory law is followed by an unending line of judicial decisions. What is admitted by both sides need no further proof. See for example our decision restating the law in **Ndayako & Ors V Dantoro & Ors (2004) 18 NSCQR646, Ehialanwo V Oke (2008) 6-7 SC(P411)123 and Asafa Foods Factory Ltd V Alraine Nig. Ltd &Anor (2002) 5SC (pt1)1.**

In any case, assuming the existence of that practice or policy was not admitted, the trial judge could take judicial notice of its

existence on the basis of his general knowledge, memory and experience because the fact that public primary and secondary schools insist on uniform dress during school by students is common knowledge in Nigeria is not reasonably open question and does not require proof. This is so by virtue of S.124(1)(a) of the Evidence Act 2011 which provides that –"**Proof shall not be required of a fact the knowledge of which is not reasonably open to question and which is –**

(a) **Common knowledge in the locality in which the proceeding is being held, or generally;**

In Osafile V Anor V Odi (1990) 5SC (Pt 11) 1. This court restated the law thusly – **"Our law preserves the distinction between those fats of which the court shall take judicial notice, when called upon by a party to do so, because those fact are notorious to him, on the one hand, and those facts which, in exercise of its powers under subsection (3) of section 73 of the Evidence Act, he may, when called upon to take judicial notice of the fact, refuse to do so unless and until such a person produces the necessary material or he has informed himself properly to enable him to do when the former is the case, the Judge, once called upon to take judicial notice of the fact, proceeds to do so based on his general knowledge, memory and experience. In the elater**

case, a proper foundation must be laid for him to take **notice of the fact. The only difference is that under Section 73(2), even for matters falling within the first category he may resort for his aid to appropriate books or other documents or reference. It follows from what I have been saying that every matter entitled to be judicially noticed. Has its appropriate and necessary foundation without which it cannot be judicially noticed. It must be noted that judicial notice is an anomalous appendage in the law relating to proof."**

So the notion that because a notorious or commonly known practice or policy is not contained in legislation, Rule, Regulation, Circular, Order or some document, it cannot be judicially noticed by a Court is not correct. The trial court correctly judicially noticed "the fact that school uniforms are not a new phenomenon in our public schools. Beyond the purpose of identity, the school uniform suggests discipline and in particular conformity."

In the light of the foregoing, issue No 1 is resolved in favour of the appellant.

Let me now determine issue No. 2 which asks- **"Whether the court below was right in relying heavily on the decision in the case of the provost Kwara State College of Education, Ilorin a& 2 Ors Vs Bashirat Saliu & 2Ors. Appeal**

No. CA/IL/49/2006 to the effect that non-use of "Hijab" **violates the provisions of Section 38 and 42 (1) and (2) of the Constitution of Federal Republic of Nigeria, 1999 (as amended) when, the facts in the unreported case are distinct with the facts in the instant case."**

I have carefully read and considered the arguments in the respective briefs on this issue.

The gist of the arguments of learned counsel for the appellant is that the Court of Appeal in this case should not have relied on its previous decision in The Provost of Kwara State College of Education, Ilorin &Ors V Bashir Salisu & Ors(Appeal No. CA/IL/49/2006) in reversing the decision of the trial court and granting the respondents' claim because the relevant facts of that case are different from those of this case, that in the precedent case it was the use of veil in school that was prohibited, whereas in this case it is the use of hijab, that whereas the students concerned in the precedent case were adults in higher educational institutions, the students concerned in this case are primary and secondary school pupils below age of 12 or minors, and that in the precedent case it was an absolute ban of the use of veil in school, whereas in this case, it is a regulated or restricted use of hijab in school.

Learned counsel for the respondent argued in reply that there is no distinction or difference between veil and hijab, that in Islam, the requirement of wearing hijab as prescribed in the Holy Quran applies equally on all females, adults and minors, irrespective of age, that the hijab must be worn where the female is in a place where she will meet with males that are not her blood relatives or children, and that the facts of the two cases are largely similar and that therefore the Court of Appeal correctly relied on it.

Let me now determine the merits of these arguments.

The decision of the Court of Appeal determining the question of whether its decision in the Provost of Kwara State College of Education Ilorin V Bashir Salisu (Supra) should apply to this case reads thusly –**"In the course of arguing this issue, respective learned counsel had alluded to the unreported decision of this Court in THE PROVOST, KWARA STAE COLLEGE OF EDUCATION, ILORIN& 2 OR. VS. BASHIRAT SALIU & 2 ORS. (Unreported) Appeal No. CA/IL/491/2006, judgment delivered on 18th June, 2009. We were obliged with a Certified True Copy of that decision. The 2nd issue for determination in that appeal was whether the right to use veil in the 3rd Appellant school by the Respondents is a Constitutional right under Section 38 of the Constitution, as amended. With respect to the facts and circumstances in that appeal, after referring to a number of verse of the Qur'an, including Chapter 24 verse 30-31 and some traditions of the Prophet**

Muhammad SAW as well as the ..... of some very well-known Islamic Scholars, this Court at page 15 ... judgment held that:-

"The foregoing verses of the Glorious Qur'an and Hadiths have left no room for doubt on the Islamic Injunction of women's mode of dress, which is clearly in conformity with not only respondents' veiled dress but also the controversial article J of 3rd appellant's dress code. The prescribed veil for Muslim women does not in any way prescribed or even recommend impossibility of identification, which clearly is the evil sought to eliminated article J of the 3rd appellant's dress code. The prescribed veil for the Muslim women does not seem to be in conflict with article J or any other article for that matter in the respondents identify impossible. The respondents have a constitutional right to freedom of thought, conscience and religion. The use of veil by respondents, therefore, qualifies as a fundamental right under section 38 (1) of the Constitution. It is immaterial whether it is compulsory or otherwise. The emphasis is on the respondents' right to manifest and even propagate their religion or belief in worship, teaching, practice and observance. The respondents practice and observance of drawing their veils covering and concealing their bosoms and womanhood finery is a religion injunction, to which they are entitled as a matter of right exdebitojustitie. (Underlining mine for emphasis).

Also in that case this Court held further:

Let me further observe that the appellants as mentors and counselors have a duty to give proper attention to the

respondents and other to give proper attention to the respondents and other students by sustaining their rights and welfare especially in respect of their religious, educational and moral conscience. The veiled dress is recommended for Muslim women, which the respondents undeniably are, and which also enhances the preservation of their honour and chastity. It is their fundamental right to practice and observe their religious injunctions in any part of Nigeria including the 3rd appellants' premises. With this analysis, the second issue is resolved against the appellants."(Underlining mine for emphasis).

Also in his constitution to the lead judgment, my learned brother Oredola, was more detailed and explicit. For want of better words, I would wish to very extensively from the support judgment of Oredola JCA thus:-

"Hyjab, niqab or burga is typical and readily identified as an apparel or an ensemnle recognized worldwide for Muslim women. Thus, it cannot be gainsaid that usage of the phase, "dresses/apparels in Article J in the dress code- Exhibit A, made by the appellants, is a direct but veiled reference to either the hyjab, veil or niqab/burga, veil covering the entire face leaving space for the eyes and usually worn by the respondents herein, voluntarily and willingly as female Muslims. According to the ethical doctrine of Islam, dress is not a means of decoration per se, it is meant to cover man's nakedness and covering of the shameful parts is more important than adornment.

The right of the respondent to wear their hijab, veil within the school campus and indeed anyway else is adequately protected under our laws. Human right recognizes and protects religious rights. Section 38 of the 1999 Constitution of the Federal Republic of Nigeria guaranteed freedom of religion to all and sundry. Thus, things that lawfully constitute open manifestation, propagation, worship, teaching, teaching, practice and observance of the said religion are equally and by extension similarly guaranteed and protected by the Constitution. Indeed, the hijab, niqab or burqa, being part and parcel of Islamic mode of dressing and by whatever standard a dignified vividly decent one, cannot be taken away by other law other than the Constitution.

Hyjab, veil in Islamic is a badge of honour and emblem of modest chastity. The Quran emphatically enjoins it and Muslim women are bound to obey. See Q24:31 and Q.33:59. Thus, it is to be noted however, that the position of Islamic law is to the effect that while the wearing of hijab, veil is compulsory for Muslim women, the wearing of the niqab or burqa is highly and or strongly recommended. Nevertheless, both mode of dressing culminate into approved, ideal and recognized mode of dressing for Muslim women all over the world and which said form of dressing constitute an indispensable part of the practice and observance of their religion. Islam requires a high degree of decency of her women and men inclusive."

Against this well established position of the law by this Court, I wish to point out that the 2nd issue in this appeal is substantially the same with the 2nd issue for determination in this appeal. Let me also explain that in the earlier decision of this Court just considered in this appeal, the Dress Code (Exhibit J) made by the Appellants therein precluded the wearing of Hyjab by female students of the 3rd appellant's school. This court upheld the judgment of the lower court that the contents of Exhibit J as it affects female Muslim students, was an infraction of the respondent's right to freedom of thought, conscience and religion as provided in section 38 of the 1999 constitution , as amended.

The facts in that case may not necessarily be fully the same with the facts in this appeal but the principles of Islamic law that were considered and applied against the provisions of Section 38 (supra) are sufficiently well connected as to allow the application of that decision to the facts and circumstances in this appeal.

With all due respect to the learned counsel Mr. Ligali and also the learned trial .....in this appeal their distinguishing of the facts and circumstances in that appeal and those in this appeal is most tenuous and highly unacceptable. The fundamental human right enshrined in Section 38 (supra) does not make any distinction whether the person involved in the enjoyment of the right is a female student of an institution of Higher Education or that of a primary or secondary school. Therefore, the learned trial judge ought not to have accepted such tenuous position as urged on him by learned counsel on behalf of the Respondents because it is not

within the vires of a court of law to read into the provision of our **constitution a meaning that it ordinarily cannot bear in any given circumstance."**

It is glaring from this decision that the Court of Appeal did not approach the determination of this question correctly. Where the reliance on a precedent case is challenged in a proceedings on the basis that the facts are distinguishable from those of the present case, the court must determine if the facts of the two cases are the same or not. It cannot gloss over that issue and proceed to simply rely on the precedent case on the ground only that the law applied in that case is the same law that is sought to be invoked or applied in the precedent case. A law can be applied in various factual situations. So upon a challenge that the factual situation in which a law was applied in a previous case is different from the factual situation in a present case and therefore cannot apply to it, it becomes necessary to determine the factual basis for the application of that law in the precedent case so as to determine if the precedent case applies to the present case. If the factual basis of the application of the law in the precedent case is different from those in the present case, then the precedent is successfully distinguished from the present case and cannot apply to it on the relevant point. The Court of Appeal in this case after stating that the facts of this case may not necessarily be the same with that of

the precedent case, held that the distinguishing of the facts of the two cases by the trial court was tenuous and not acceptable and that the principles of Islamic law applied in the precedent case "against the provisions of S.38 of the 1999 Constitution are sufficiently well connected to allow the application of that decision to the facts and circumstances of this appeal"

The Court of Appeal did not give much thought or attention to the factual circumstances that were peculiar to each case. It simply justified its reliance on its previous decision on the grounds that the Holy Quran requires all females irrespective of age to wear hijab and that S. 38 of the 1999 Constitution did not make any distinction between a female child in a primary or secondary school and an adult female in an institution of tertiary or higher education in the enjoyment of the right created therein.

The relevant facts peculiar to this case which the Court of Appeal did not consider are that in public primary and secondary schools, pupils or students being children are under the legal guardianship of the authorities of the schools while in the school, that in public primary and secondary schools, pupils or students wear uniform dress while in school as prescribed by the authorities of the schools and that the school authorities and the parents of the pupils had agreed that the pupils be allowed to wear the hijab on their uniform during time for Islamic obligatory prayers while in

school and during Islamic religious knowledge classes. In the precedent case, the females were adults in an institution of higher education, namely, a College of Education and in such institutions the students being adults are not under the legal guardianship of the school authorities and are merely under their tutorship, and there is no requirement of uniform dress to be worn by students in school. So while dressing in school is regulated in public primary and secondary schools, dressing in public tertiary institutions are not regulated. These fundamental factual differences make it wrong and unreasonable to apply the prescription of the Holy Quran on the wearing of hijab and S.38 of the 1999 Constitution in the present case in the same manner the precedent case applied it. This is especially so in the light of S.6(2) and (3) of the Child Rights Law of Lagos State 2007 which makes it mandatory for a child's enjoyment of his or her right to freedom of religion to be guided and directed by the parent or legal guardian and S.13 of the Education Law of Lagos State 2015 which requires that the administration of public schools "will have regard to the general principle that, in so far as is compatible with the provision of efficient instruction and training and avoidance of unreasonable public expenditure, pupils will be educated in accordance with parental wishes and in accordance with their ages, abilities and aptitude". These two statutes were heavily relied on by both sides

in their arguments before this court. It is noteworthy that these statutes apply to Lagos State schools, the subject of the present case and do not apply in Kwara State where the Kwara State College of Education the subject of the precedent case is located and the Child Rights Law is not applicable to adults. In the light of the foregoing, I hold that the precedent case of the provost Kwara State College of Education, Ilorin & 2 Ors V Saliu & Ors (Supra) is not applicable in this case. The trial court was right in refusing to be bound by it and that the Court of appeal was wrong in reversing the decision of the trial court on the point and proceeding to rely on its said decision. It is only when the relevant facts and issues in a precedent case and in the present case are the same that the precedent case must be followed in deciding the present case. Similar cases must be decided similarly and different cases decided differently in accordance with the principle of stare decisis to ensure rationality, reasonableness, justice and integrity of the decision.

It is obvious that the fact that the females involved were children in non-faith based public primary and secondary schools that mandatorily require a uniform dress for pupils and students while in school were key facts that influenced the decision of the trial court in refusing to be bound by the precedent case and

supported regulated use of the hijab by pupil and students in such schools.

Let me consider the arguments on who has the primary responsibility to direct and guide a pupil in a public primary or secondary school in the exercise of his or her right to freedom of religion inside the school.

Learned Counsel for the appellant argued in sum that the authority of the school has assumed the role of legal guardian of the child in school and therefore has the primary responsibility to guide and direct the child on the enjoyment of her right to freedom of religion in school. Learned SAN for the respondent argued that the primary party to provide guidance to the child on the practice of his or her religion is the parent while in school, that it is only in the absence of the parent that the legal guardian has any role to play, that in this case, the 1st and 2nd Applicants/Respondents, the affected students, had sued through their biological fathers, that therefore the preference of their parents on the direction to be followed by the children in the practice of their religion is clear, that in the circumstance, the legal guardian (where any) has no role to play, that secondly, by the provision of subsection 6(3), of child rights law, the role of "all persons, bodies, institutions and authorities" who have the care of the child, for the time being, is limited to respecting mandatorily the direction of the parent of the

child with respect to the practice of his/her religion, that the Appellants constitute the authorities in this case, that they cannot assume the role of the legal guardians and the party to respect the direction of the parent and/or guardian all at the same time, that the submission of the Appellants that they assumed the role of legal guardian when they issued the so-called guidelines on the use of hijab is to say the least, fallacious, that finally on the point, it is submitted that when the provision of sub-sections 6(1), (2) and (3) of the Lagos State Child Rights Law 2007 (Supra) and indeed section 13 of the Lagos State Education Law (Supra) are read along with the provision of Sub-section 38(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the irresistible conclusion is that the Appellants have no choice in deciding how the Respondents practice or observe their chosen Islamic religion, other than to respect their choice of Islamic religion and its practice.

Let me determine the merit of these arguments.

It is obviously conceded by all sides that S. 6(1),(2) and (3) of the 2007 Lagos State Child Law permits regulations of a child's enjoyment of the right in S.38(1) of the Constitution. Ordinarily, the power to guide and direct the child's enjoyment of that right rests in the parent or legal guardian as the case may be, by virtue of the clear words of S. 6(2) and (3) of the child's law. But in the

special circumstance where the parent has submitted the child to the charge of a non-faith based school authority to give the child primary or secondary education in the context of the rules and regulations of the school, the authority of the school is handed over the legal guardianship of the child in the school as the institution with the primary responsibility for the custody, education, conduct and wellbeing of the child in school. The responsibility carries with it the legal duty of care in the custody and education of its pupils and students. In view of this nature of the responsibility the school has for the children it is educating, it is both an educational and legal guardian of the children while in school. This specie of legal guardianship is different from the ordinary legal one that comes into being by express appointment by court or other form of legal instrument. It is clear from the express and clear words of S.6(2) and (3) of the Lagos State Child's Law 2007 that it refers to "Legal guardians" generally without any words therein limiting it to any particular class of legal guardian as the one entitled to exercise the power of legal guardians created therein.

S.6(2) of the said Child Rights Law makes it obligatory for parents or legal guardians as the case may be to provide guidance and direction to a child in the enjoyment of his her right to freedom of thought, conscience and protection for the best interest of the child. Subsection (3) of same section 6 of the law places a

mandatory duty on all persons, bodies, institutions and authorities to respect the duty of parents or legal guardians to provide guidance and direction to a child in the enjoyment of his or her said right. In the situation where the parent of a child has handed over the legal guardianship of the child to a school by enrolling him or her in that school for the education of the child, it is the school as legal guardian of the child while in school that must provide guidance and direction to the child in the enjoyment of his her freedom of thought, conscience and religion and all persons including the child's parents must respect that by virtue of S.6(2) and (3) of the Child Rights Law.

Since the pupils and children are in their custody while in their schools, they are their legal guardians during such moments. As such legal guardians they have the power to guide and direct how the children exercise their rights while in school having regard to the primary objective of the school and the best interest of the child and other children in the school. This power derives from two sources. The first is that it is inherent in their power to manage the schools and for the purpose of efficient instruction and training of the pupils and students, and to control their conduct. The second source is S. 6(1),(2) and (3) of the Child Rights Law of Lagos State 2001 which restated the right to freedom of thought, conscience and religion and provides that parents and where applicable, legal

guardians shall provide guidance and direction in the exercise of a child's right to freedom of thought, conscience and religion having regard to the evolving capacities and best interest of the child. The decision of the authorities to restrict the wearing of hijab in the school to when the pupils or students are in Islamic religious knowledge classes and engaged in Salat and Jumat prayers is in exercise of their powers to control and regulate the conduct and dressing of their pupils or students in school to achieve the primary objective of the school.

The purpose or the objective of uniform dress by pupils or students is not in dispute. It is copiously stated in paragraphs 4-9 of the appellant's counter affidavit in response to the suit at the trial. The Court of Appeal affirmed the decision of the trial court that the respondents admitted these depositions and the fact of these objectives was thereby established thusly – **"Before going into the resolution of this issue, I wish to point out that it was not only paragraph 4 to 7 of the counter affidavit of the Respondents that caught the attention of the lower court. No. It was paragraph 4 to 10, though specifically focusing or reproducing and making findings only on paragraph 4 to 7. To fully capture the position of the Respondents with respect to their position on wearing of school uniforms in public primary and secondary schools in Lagos State, I wish to reproduce paragraphs 4 to 10 of the counter affidavit.**

4. The dressing code by use of uniforms in public (primary and secondary) schools is not a new policy of the State Government.

11. I know as a fact that the compulsory wearing of uniforms in public) primary and secondary) schools is for identification of students from different school in Lagos State.

12. I am also aware that s standardized set of dress (uniform, cap, beret, cardigan and tie) for students in public schools is meant to encourage a sense of unity, discipline organization and orderliness in public schools in the State.

13. I am also aware that wearing the same uniform in a public school without deviation of any sort encourages objectivity on the part of students and teachers and students are not judged or related to on the basis of appearance or mode of dressing.

14. I know that wearing undiluted uniform in public schools have reduced social anxiety or animosity among students while enhancing each student's confidence and sense of belonging as well as encourages focus on school work.

15. I know as a fact that the State policy and Rules on guide lines on uniformity in mode of dressing of students in public schools does not seek to prevent only Muslim girls students from varying the recognized uniforms in public

(primary and secondary) schools, it generally prohibits any student or group of students irrespective of religion from breaching the prescribed dress code of the school.

16. I am aware that the clamor and demand for compulsory use of Hijabs on to of school uniform by Muslim girl students in public schools in Lagos State is recent development from the 3rd Applicants.

It is correct that none of these averments or statements of the Respondents had been specifically denied in the further affidavit of the Applicants/Appellants. The remark of the learned trial judge in that behalf cannot be said to be incorrect or without any basis or being totally unwarranted. The position of the law is that when in a situation in which facts are provable by affidavit, one of the parties exposes to certain facts, his adversary has a duty to swear to an affidavit to the contrary, if he disputes the facts. Where such a party fails to swear to an affidavit to controvert such facts, they may, in appropriate circumstances, be regarded as duly established. See AGBAJE VS IBRU SEA FOODS (1972) 5 SC 50 at 55; ALAGBE VS ABIMBOLA (1978) 2 SC 39 at 40: AJOMALE VS YADUAT (NO. 1) (1991) 5 NWLR (PT). 191) 266 all considered and applied in THE HONDA PLACE LTD VS.GLOBE MOTOR HOLDING NIG. LTD (2005) 14 NWLR (PT. 945) 273"

The authorities of primary or secondary schools have the primary responsibility for the efficient education, and regulation of the behavior of pupils and students in their school and the general well-being of such pupils and students while in school in line with the primary objectives of the school. Parental wishes as to how their children should be educated and guided while in school would be accepted if the school authority considers that it is not incompatible with the efficient training and instruction of the child by the school. This is prescribed in S. 13 of the Lagos State Education Law Cap. E3 Laws of Lagos State 2015 thusly-

"In **the exercise and performance of all functions conferred or imposed on the Commissioner, the Commissioner will have regard to the general principle that, in so far as is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure, pupils will be educated in accordance with parental wishes and in accordance with their ages, abilities and aptitude".**

The reliance on the requirement in S.13 of the Lagos State Education Law 2015 that **"Pupils will be educated in accordance with parental wishes"** by Learned SAN for the appellant to argue that the parental wishes prevail over the schools

regulation of a child's enjoyment of his or her freedom of thought, conscience and religion and general conduct is wrong. Such reading is contrary to the clear words of that provision and their literal meaning. Such reading distorts the provision and would result in absurdity, impracticality, the violation of the rights of other pupils and students as it would destroy and render sterile the environment nurtured by the rules and regulations for the effective and efficient education of all pupils or students. Such a reading would subordinate the schools objectives and rules to the parental wishes of each of the hundreds or thousands of pupils and students and create confusion and anarchy in the school. The provision read literally means that the efficient instruction and training of the children is the paramount consideration and not their parental wishes and that they will be educated in accordance with parental wishes in so far as such wishes are compatible with the efficient instruction and training of the children.

It is obvious that a parental wish that a child should be a traditional African religion adherent, or a Muslim, Christian, hindu, budhist etc cannot be incompatible with the efficient instruction and training of a child because it is a non faith school wholly owned by the Lagos state that is secular in that it is prohibited by S.10 of the I999 Constitution from adopting any religion as State Religion and it set up the public schools not to provide religious

instructions for pupils of a particular religion or denomination of a religion, and therefore in keeping with S.38(2) of the 1999 Constitution cannot give religious instructions to a child or subject the child to religious practices of a religion not approved by his or her parents.

A parent's wish on how the child should practice his or her faith in a public school that is religion neutral, is subject to S.13 of the Education Law(supra) and S. 6 of the Child's Right Law (supra). The school authority can refuse to grant the wish if it considers it not compatible with efficient instruction and training of the children in the school. The regulated use of hijab inside a non-faith-based school is not an instruction or a practice of a religion different from Islam. So that where the parental wish would work against the efficient instruction and training of the child, the school authority would not accept it in educating the child.

The respondents acknowledged in paragraph 6 of the affidavit in support of their originating summons that the 3rd appellant is the Chief Executive Officer of Education Ministry of the 1st respondent appellant and that she is in control of the policy formulation and enforcement applicable to all educational institutions in Lagos State including those owned by the 1st respondent, but excluding those owned by the Federal Government of Nigeria. The 3rd respondent

exercises this power and function through the authority of each of the schools owned by the Lagos State Government.

It is obvious that S.38(1) of the 1999 **Constitution provides that "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"**

It is not in dispute that the wearing of hijab by females is a practice and observance of the 1st and 2nd respondent's religion of Islam prescribed in the Holy Quran in Q24:31 and Q33: 59. The Court of Appeal decided, without giving reasons, that the practice is compulsory and an essential and indispensable part of Islam and therefore qualifies for the protection of S.38 of the 1999 Constitution. There is no ground of this appeal challenging this decision inspite of the preponderance of contrary judicial view on the point from sister jurisdictions. See for example the persuasive precedent in the Indian case of Resham V State of Karnataka & Ors(decision of the Full Court of the High Court of Karnataka delivered on15-3-2022 in Writ Petition No 2347)

S.38 of the 1999 Constitution gives the 1st and 2nd respondents just as every other person the fundamental right to freedom of

religion and freedom in public and private to manifest and propagate their religion, belief, worship, teaching practice and observance. But this right is not absolute by virtue of S.45(1) of the 1999 Constitution which provides that "**Nothing in section 37,38,39,40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society –**

(a) in the interest of defense, public safety, public order, public morality of public health; or

(b) for the purpose of protecting the rights and freedom of other persons".

The Court of Appeal considered the provision and held that there was no Legislation or Regulation Order, Circular, Rule, Regulation permitting such restriction before the trial court to enable it to uphold the schools power to restrict or regulate the wearing of hijab by the 1st and 2nd respondents. Learned counsel for the appellant argued that this holding is wrong because the Court of Appeal was bound to consider his reliance on S. 6(1), (2) and (3) of the Child Rights Law 2007 as enabling that restriction in his argument before it, that the Court of Appeal ought to have pronounced on that issue, that it was bound to take judicial notice of the said law and that if the Court of Appeal had averted its mind to the said law, its decision would have been different.

Learned SAN for the respondents argued in reply that the Lower court in its Judgment on p.329 of the Record made a pronouncement to the effect that only a law enacted by the state legislature or a duly authorized Order, Regulation, Circular and Guidelines duly issued by the relevant authority of the State Government can be within the contemplation of section 45 of the Constitution, that the Appellants in paragraphs 4.25 to 4.30 of their brief had attacked this pronouncement on the basis that the lower court did not take judicial notice of the State Child Right Law, that in making the submission, the Appellants had stated that the Child Right Law confers on the Lagos State Government through the Ministry of Education and the State Universal Basic Education Board the power to act as legal guardian to the students and in exercising that power could and did issue the regulation prohibiting the use of hijab by female Muslim students in public primary and secondary schools, pursuant to the said Child Rights Law, that no regulation has been published by the State Government whether directly or through its Ministry of Education and/or State Universal Basic Education Board on the wearing of hijab by female Muslim students, that the Lagos State Child Rights Law in its section 6(1) & (2) relied upon by the Appellants did not make the State educational authorities the legal guardian of the child as wrongly assumed by the Appellant.

I have already decided herein that while pupils are in school for study, the authorities of the school are their legal guardians in school and therefore by virtue of S.6(1) to (3) of the Child Rights Law have the sole responsibility to guide and direct them on the enjoyment of their right to freedom of religion in school.

S. 6(2) and (3) of the Child's Rights Law 2007 is reasonably justified in a democratic society in the interest of public Order and for the purpose of protecting the rights and freedom of all children in the school as it enables the school to guide and direct a child's enjoyment of his right to freedom of religion to respect the plural nature of the school population and preserve the secularism and religion neutral nature of state owned public schools. S. 13 of the Lagos State is equally reasonably justified in a democratic society as it enables the authorities of state owned public schools to ensure that parental wishes on how the children should observe the tenets of their religion while in school is compatible with efficient instruction, training and education of children in religion neutral public primary and secondary schools.

In the light of the foregoing issue No 2 is resolved in favour of the appellant.

Let me now determine issue No.3 which asks **"Whether the raising of the new issue of secularity of this country vis-a-**

vis Section 10 of the 1999 Constitution, as amended suo motu by the trial court was done wrongly and out of place."

I have carefully read and considered the arguments in the respective briefs on this issue.

The part of the judgment of the Court of Appeal challenged here reads thusly – **".....it was the ultimate finding on the secular status of Nigeria that led it to find sanctuary or refuge in the decision in Leyla Sahin V Turkey and to use it as the main authority to dismiss the case of the appellants.....The raising of the new issue of secularity of this country vis-à-vis section 10 of the 1999 Constitution, as amended suomotu by the trial court was done wrongly and out of place. It was fatal to the proceedings for being a denial of the constitutionally guaranteed right of the appellants to fair hearing."**

Learned counsel for the appellant argued that it is clear from the judgment of the trial court that the issue of secularity of the country was only mentioned in passing and was not the reason for the decision of the trial court, that yet the Court of Appeal made heavy weather out of it.

Learned SAN for the respondents argued that the trial court's pronouncement on the secularity of Nigeria or States was not in passing, that the Court of Appeal correctly held that it was raised

and decided suo motu without hearing the parties on the point thereby violating their right to fair hearing.

Let me determine the merits of these arguments.

It is obvious from the judgment of the trial court that it did not specifically raise and isolate for determination the issue of whether Nigeria was a secular state or not, did not set out to determine that specific question. It was discussing the unchallenged paragraphs 4 to 10 of the appellant's counter affidavit in opposition to the originating summons and in the process stated that ""**These averments make clear that the basis for association in a public school setting does not rest on any religious affiliation but rather that the primary focus of the State is education. And therefore, the policy of the State government on a uniform code enables the state maintain neutrality provided and guaranteed to all by S. 10 of 1999 Constitution. The section provides as follows:**

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

Thus by adopting and regulating the proceedings in a school environment including prescription on dress code or in fact regulation wear, the state provides environment devoid of a mis-apprehension of its intention.

Once there is a deviation from the general regulation, there can be no neutrality. Paragraph 7 of the counter Affidavit

reproduced earlier refers to and states that States policy on uniform

> **"Encourages objectivity on the part of students and teachers, and students are not judged or related to on the basis of appearance or mode of dressing."**

In other words, in my humble view, every stands on an equal footing and non-hyjab wearing student is not intimidated by the hijab wearing group having been allowed to operate on a different rule than that governing everyone else. That is the right guaranteed are not absolute.

And it is trite that the exercise of a person's right stops where another's right begin. Student who enrolls in a State school as distinct from a mission or faith based school has a right to expect the neutrality engendered by the State policy on uniform the secularism intended by the framers of the Constitution."

Further in its judgment it relied on the decision of the European Court of Human Rights that affirmed the decision of the Constitutional Court of Turkey Leyla Sahin V Turkey, upholding the ban on wearing hijab in a Medical School on the ground that allowing the wearing of hijab by students in school was not compatible with the principle that state education must be neutral. The exact text of that part of the trial court's judgment reads thusly – **"This issue has been considered in other jurisdictions in the context of a secular setting. The European Court of Human Rights**

considered it extensively in 2005 in the case of Leyia Sahin Vs Turkey (Appeal No. 44774/98) reported in European Constitutional Law Review Vol. 1/issue 03 pg s 495 -510. See also the Cambridge University Journal.

The Court made the following pronouncement(s), having reviewed earlier decision on the subject. It stated:-

> "116. Having regard to the above background it is the principle of secularism as elucidated by the Constitutional Court(As amended on the man and people's Rights (.....) which is the paramount consideration underlying the ban on the wearing of religious symbols in universities. In such a context, where the values of pluralism, respect for the rights of others and in particular, equality before the law of men and women are being taught and applied in practice, it is understandable that the relevant authorities should wish to preserve the secular nature of the institution concerned and so consider it contrary to such values to allow religious attire, including as in the present case, the Islamic head-scarf, to be worn" underlining supplied.

It was also noted the Turkish Constitution, having guaranteed secularism prohibited the "State from showing a preference for a particular religion or belief and reiterated that country's constitutional court's decision that the "freedom manifest one's religion could be restricted.... to defend the principle of secularism. The European court of Human Rights also quoted the Constitutional court of Turk with approval as follows:-

> ".....students had to be permitted to work and pursue their education together in a calm, tolerant and mutually supportive atmosphere without being deflected from that goal by signs of religious affiliation".

And that "irrespective of whether the Islamic headscarf was a precept of Islam granting legal recognition to a religious symbol of that type in institutions of higher education was not compatible with the principle that state education must be neutral it would be liable to generate conflicts between students with differing religious convictions or belief."

The background facts of the said case are that Muslim female medical students have been banned from lectures when she insisted or wearing the headscarf (hijab). I to be noted that Turkey, though reportedly predominantly Muslim is by constitution, a secular State like Nigeria. The facts therefore were more apt a relevant to the instant case. The European Court on Human Rights, sitting. Strasbourg reiterated that pluralism is in dissociable from a democratic society a that "religious freedom is primarily a matter of individual conscience"

This decision is very relevant to the instant case. S. 10 of the Constitution of 19 makes the country a secular State. The primary and secondary schools in question therefore is the competent authority to make rules and regulations thereto. Which regulation is has made in this case prescribing a uniform for all students.

In such setting, the decision of the European court provides guidance to the effect that the prohibition or denial of the wearing

of the hijab over the school uniform cannot be said to be a breach **of the fundamental rights of the applicants guaranteed by SS. 38 and 42 of the 1999 Constitution by reason of the provision S.10 of the said Constitution."**

I fail to see how the above part of the trial court's judgment raised and decided the issue of secularity of Nigeria or raised and determined it suo motu. The decision determined the merit of the respondents' (appellants herein) argument before the trial court that paragraphs 4-10 of their counter affidavit on the existence of the old practice or policy of uniform dressing in public primary and secondary schools were not controverted by the applicants and that uniform dressing "is a symbol of uniformity just as the term implies." That is why the trial court dwelt on the unchallenged depositions in the said counter affidavit, making inferences from them and stating the implication, significance and importance of uniform dressing in public primary and secondary schools owned by the state and stating that it helps the state maintain the neutrality provided in S.10 of the 1999 Constitution.

In any case genuine discussions involving the right to freedom of religion cannot disregard S.10 of the 1999 Constitution. S.38 1999 Constitution which gives every person the right to freedom of religion is clearly in furtherance of S.10 of the 1999 Constitution that provides that the Government of the Federation or of a State

shall not adopt any religion as State religion. It is obvious that if the state adopts any religion as a State Religion, the right to freedom of worship is destroyed. That is why no government should in the operation of state institutions allow anything or practice that suggests or creates impression of preference for or adoption of a religion by government. This was the reason for the decision by the Constitutional Court of Turkey upholding the ban on wearing hijab even in universities by adult females, which decision was affirmed by the European Court of Human Rights in Leyla **Sahin Vs Turkey (Appeal No. 44774/98).** It is noteworthy that the decision was based on a provision of the Turkey Constitution exactly the same with Sections 10 and 38 of the 1999 Constitution of Nigeria to protect the religion neutral nature of state-owned schools in keeping with the secular status of that country established by a provision exactly the same with S.10 of our Constitution. It is instructive that 99% of Turkey's population of over 85 million people are Muslims who are mostly sunni. The remaining 1% are Christians (Oriental Orthodox, Greek Orthodox and Armenian Apostolic) and Judaism (see www.yfu-turkey.org). The trial court felt persuaded by the decision in the case from Turkey because of the similarity in the relevant provisions of the Constitution of Turkey and that of Nigeria and because both countries are multi-cultural and multi-religious.

The decision of the Court of Appeal that the trial court suo motu raised and decided the issue of the secular status of this country is perverse as it is not supported by the judgment of the trial court. In the light of the foregoing, I resolve issue No.3 in favour of the appellants.

On the whole this appeal succeeds as it has merit. It is hereby allowed. The judgment of the Court of Appeal delivered on 21-7-2016 in Appeal No. CA/L/135/2015 is hereby set aside. Equally the reliefs granted in said judgment are hereby set aside. The judgment of the High Court of Lagos State delivered on 17-10-2014 in Suit No. ID/151M/2013 is hereby restored.

No order as to costs.

EMMANUEL AKOMAYE AGIM
JUSTICE, SUPREME COURT

APPEARANCES:

Q. Osunsanya ACSC, MOJ Lagos State for the Appellants

Hassan T. Fajimite Esq; with **Nasir Rumokemi Esq, Ahmed Adetola Kazeem Esq.** for the Respondents

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON FRIDAY, THE 17TH DAY OF JUNE, 2022
BEFORE THEIR LORDSHIPS

OLUKAYODE ARIWOOLA	JUSTICE, SUPREME COURT
KUDIRAT M. O. KEKERE-EKUN	JUSTICE, SUPREME COURT
JOHN INYANG OKORO	JUSTICE, SUPREME COURT
UWANI MUSA ABBA-AJI	JUSTICE, SUPREME COURT
MOHAMMED GARBA LAWAL	JUSTICE, SUPREME COURT
TIJJANI ABUBAKAR	JUSTICE, SUPREME COURT
EMMANUEL AKOMAYE AGIM	JUSTICE, SUPREME COURT

SC. 910/2016

BETWEEN:-

1. LAGOS STATE GOVERNMENT
2. HON. ATTORNEY GENERAL AND COMMISSIONER FOR JUSTICE, LAGOS STATE
3. HON. COMMISSIONER FOR EDUCATION LAGOS STATE
4. HON. COMMISSIONER FOR HOME AFFAIRS LAGOS STATE

} APPELLANTS

AND

1. MISS AYISAT ABDULKAREEM (MINOR) (Suing through her next friend Alhaji Abdulkareem Owolabi)
2. MISS MARYAM OYENIYI (Suing through Her next friend Mr. Suleman Oyeniyi)
3. THE REGISTERED TRUSTEES OF MUSLIM STUDENT'S SOCIETY OF NIGERIA (MSSN)

} RESPONDENTS

6/7/2022

CERTIFIED TRUE COPY
Date.....
Sign.....
Supreme Court of Nigeria

DISSENTING JUDGMENT
(Delivered by JOHN INYANG OKORO, JSC)

I have had the privilege of reading in draft the lead majority judgment of my learned brother, **Kudirat Motonmori Olatokunbo Kekere-Ekun**, JSC just delivered and I agree with his reasons at large. Howbeit I disagree with the conclusion reached therein for the reasons hereunder stated.

The facts of the case, as gleanable from the record of appeal are that sometime in January, 2012 while the 1st and 2nd Respondents were both 12 years old and students of Atunrase Junior High School, Surulere, Lagos State, the vice principal of the school seized their Islamic headscarf (hijab) which they wore on top of their school uniform while on their way to school. Their said vice principal seized the

hijabs on the ground that they were not part of the school uniform but later returned the materials to them on the intervention of other passengers in the bus. Upon getting to school, the vice principal summoned a school assembly whereat he warned female muslim students not to wear hijab on their school uniforms, the school being a public school and not an Islamic school, as such would not promote religious inclination. The teachers were therefore directed to seize every hijab worn by female students while reprimanding the 1st and 2nd Respondents.

The matter was thereafter reported to the 3rd Respondent by the next friends of the 1st and 2nd Respondents. The 3rd Respondent took out a petition to the Appellants complaining about the refusal to allow the use of hijab by muslim female students in public schools. In

response to the petition, the Appellants held a meeting with officials of the 3rd Respondent on 17/2/2012 whereat the following resolutions were made:-

i. ***That the use of hijab during zuhri and jumat prayers in the school compound should not be allowed.***

ii. ***That hijab no matter how small would not be allowed on school uniforms even after school hour, but students could full Islamic dress when going home after school hour.***

iii. ***That principals should allow students to change in the school to the Islamic outfit if need be.***

Upon receipt of the minutes of the meeting together with the above resolutions reached thereat, the 3rd Respondent wrote to the Appellants to express its disagreement and dispute to the said resolutions.

The 1st and 2nd Respondents suing through their next friend together with the 3rd Respondent initiated this action vide an originating summons filed on 8th March, 2013

wherein they sought the following reliefs against the Appellants, as Respondents:-

> ***(A) – A Declaration that the continuous denial of the 1st and 2nd Appellants, female members of the 3rd Applicant and other female muslim students who resolve or are obliged to use or are using hijab (female muslim head covering) as shown in exhibits A and B within or outside the premises of any educational institution in Lagos State at any time is wrongful and unconstitutional as same constitutes a violation of their rights to freedom of thought, conscience and religion, freedom from discrimination and right to the dignity of the human persons and right to education as guaranteed by section 38(1)(a) and (b) and 42(1)(a) and (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Article 2, 5, 8. 10, 17 and 19 of the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act Cap A9, Laws of the Federation, 2004.***

> ***(B) – A Declaration that the punishment or humiliation of the 1st and 2nd Applicants, female members of the 3rd Applicant and any other female muslim students in any institution in Lagos State as a result of the use of hijab by the students or pupils, is a violation of the applicants Fundamental***

Human Rights to freedom of thought, conscience and religion, freedom from discrimination and right to the dignity of the human person, right to education, and right to free association as guaranteed under section 38 and 42 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Articles 2, 5. 8, 10, 17 and 19 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, Laws of the Federation, 2004.

(C) – An order of perpetual injunction restraining the respondents either by themselves, their officers, agents, privies or servants from further interfering or infringing in any manner on the fundamental rights of the 1st and 2nd Applicants, female members of the 3rd Applicant and any other female members of the 3rd Applicant and any other muslim student who have resolved or are obliged to use or are using hijab (female muslim head covering) on their school uniforms, if any, of any educational institution in Lagos State as shown in exhibits A and B within or outside the premises of any educational institution in Lagos State at any time in the exercise of their rights to freedom of thought, conscience and religion, freedom from discrimination and right to the dignity of human person, right to education and right to free association as guaranteed under section 38 and 42 of the Constitution of the Federal Republic of

Nigeria, 1999 (as amended) and Articles 2, 5, 8, 10, 17 and 19 of the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act Cap A9, Laws of the Federation, 2004.

(D) – A Declaration that any directive, instruction Order by the 1st – 5th Respondents whether by themselves, their officers, agents, privies or servants premised on the purported minutes of meeting held on Thursday the 16th day of February, 2012 and issued by or at the instruction of 1st, 2nd, 3rd, and 4th Respondents preventing or restraining the 1st and 2nd Applicants, the female muslim members of the 3rd Applicant and/or any other female muslim students who is using or have resolved or are obliged to use hijab (female muslim head covering) on their school uniforms as shown on exhibits "A" and "B" within or outside the premises of any educational institution in Lagos State at any time from doing so is a violation of their rights to freedom of thought, conscience and religion, freedom from discrimination and right to the dignity of the human persons and right to education as guaranteed by section 38(1)(a) and (b) and 42(1)(a) and (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Articles 2, 5, 8, 10, 17 and 19 of the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act, Cap A9, Laws of the federation, 2004.

And for such order or further orders as the Honourable court may deem fit to make in the circumstances.

Both parties filed and exchanged affidavits and counter affidavit in support of their respective positions and on 17/10/2014 the learned trial Judge dismissed the Applicants suit on the ground that the refusal to allow the hijab to be worn over the prescribed school uniform was not in breach of the freedom of religion guaranteed by the 1999 Constitution.

The Applicants being aggrieved with that decision appealed to the Court of Appeal which allowed the appeal and set aside the judgment of the trial court. Expectedly, the Respondents at the court below having lost has now appealed to this court vide a notice of appeal filed on 16/9/2016 raising 4 grounds of appeal.

Learned counsel for the Appellant filed the Appellants' brief of argument on 7/7/2017 and same was deemed properly filed on 21/3/2022 while the Respondent's brief filed on 21/11/2017 was deemed as properly filed on 21/3/2022. In the said Appellants' brief, learned counsel distilled 3 issues for determination as follows:-

(1) ***Whether the court below was right when it held that there was no legislation or regulation etc before the lower court to enable it place restriction or disability on female muslim students to wear hijab on their uniforms having found that the Respondents did not join issue on the existence of the Appellants' policy prescribing the mode of uniform in public primary and secondary schools in Lagos State. (Ground 1)***

(2) ***Whether the court below was right in relying heavily on the decision in the case of the Provost Kwara State College of Education, Illorin & ors v Bashirat Saliu & 2 ors, Appeal No. CA/IL/49/2006 to effect that non-use of "Hijab" violates the provisions of section 38 and 42 (1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) when, the facts in the unreported cases are distinct with the facts in the instant case. (Grounds 2 and 3)***

(3) *Whether the raising of the new issue of security of this country vis – a – vis section 10 of the 1999 Constitution (as amended) suo motu by the court was done wrongly and out of place? (Ground 4)*

On the other part, the Respondents nominated 4 issues for determination as follows:-

ISSUE 1

Whether the lower court was right in holding that the mere deposition in the Respondents/Appellants counter affidavit, even when such deposition was not specifically controverted, is not enough to establish the existence and content of state policy prohibiting the wearing of hijab on school uniform by female muslim students in primary and secondary schools, in the absence of any legislation or regulation referred to or exhibited for construction by the court to determine the constitutionality or otherwise of such policy? (Ground 1)

ISSUE 2

Whether the principles laid down by the Court of Appeal in the Provost Kwara State college of Education, Ilorin & ors v Bashirat Saliu & 2 ors (Appeal No. CA/IL/49/2006) are applicable to this case?

ISSUE 3

Whether the learned Justices of the Court of Appeal were right in distilling from and relying on the content of the Holy Quran Chapter 24 v 31 and Chapter 33 v 59 on the principles of the wearing of hijab by muslim women (Grounds 2 and 3).

ISSUE 4

Whether the court below was right when it held that the raising of the new issue of secularity of this country vis – a – vis section 10 of the 1999 Constitution (as amended) suo motu by the trial court without hearing the parties was done wrongly and out of place and amounts to a denial of the Constitutionality guaranteed right of the Respondents to fair hearing (Ground 4).

Without wasting time, I shall adopt the issues canvassed by the Appellants for the determination of this appeal.

The issue in controversy in the main in this appeal, is issue No. 1 canvassed by the Appellants to wit:-

(1) ***"Whether the court below was right when it held that there was no legislation or regulation etc before the lower court to enable it place restriction or disability on female muslim students to wear hijab on their uniforms having found that the Respondents did not join issue on the existence of the Appellants policy prescribing the mode of uniform in public and secondary schools in Lagos State."***
and I intend to determine this appeal based on this issue.

Arguing this issue, learned counsel for the Appellants submitted that their argument at the court below on the existence of a policy prescribing the mode of uniform which must be worn in public primary and secondary schools in Lagos State was not challenged. Having therefore not controverted that argument, the court was duty bound to

deem those facts established and admitted. Learned counsel placed reliance on the cases of *Honda place v Globe Motor Holding Nig. Ltd (2005) 14 NWLR (pt. 945) 273 at 293 – 294 F – A; Buhari v Obasanjo (2003) 17 NWLR (pt. 850) 587* amongst others.

Learned counsel further submitted that the trial court was right when it held that hijab is not part of the school uniform. He contended that the court below erred when it held that the State Government cannot regulate the use of hijab by muslim girls in secondary schools because it is in breach of section 38 of the 1999 Constitution.

Learned counsel argued that restriction of the use of hijab in secondary school could not be in violation of section 38 of the 1999 Constitution because muslim girls are allowed to practice their religion during salat and jumat

prayers and are allowed to undertake Islamic studies within the school premises.

Learned counsel further submitted with reference to section 42 of the 1999 Constitution that permitting the use of hijab by muslim female students without granting similar privilege to other female students of other faiths would amount to discrimination against them. He submitted that by virtue of section 18 (2) of the 1999 Constitution, the State shall ensure that every citizen shall have equality of right, obligation and opportunity before the law.

Learned counsel on this plank argued that if, on the basis of equality, all students in public schools are allowed to wear their religious insignias on top of their school uniforms, it would constitute a breach of the Government's policy on uniformity in dressing of students in public schools

which would result in anxiety, animosity, unrest and lack of sense of unity amongst students in the same school.

In their reaction, learned counsel for the Respondents submitted that while the finding of the lower court is correct that the Appellants averments particularly at pages 4 – 10 of their counter affidavit, regarding Government's policy on school uniform were not controverted, the court went further to hold that if the court is to take judicial notice of the existence of a policy on school uniforms, it should also take judicial notice of the fact that the said policy on school uniform must have been documented. He contended that what is in issue is not whether there is a Government policy on school uniforms in Lagos State, but the form and content of the said policy.

Learned counsel relied on the case of ***Okafor v Okafor (2015) 4 NWLR (pt. 1449) 335 at 359 F – G*** to submit that Appellants' averments in paragraphs 4 – 10 of their counter affidavit at the trial court, respect to Government policy on school uniforms are in violation of section 38, 67 and 125 of the Evidence Act. Counsel called to aid the provisions of sections 85 and 86 of the Evidence Act, which provide that the contents of documents may be proved either by primary or by secondary evidence.

Learned counsel further submitted that the argument is speculative to say that allowing female muslim student to wear hijab without according similar religious privileges to girl students of other faiths is discriminatory, particularly in the absence of any averment by the Appellants that a female student of any other faith has asserted such a right. On this

point he cited the case of *Douglas v Peterside (1994) 3 NWLR (pt. 330) 37.*

On the Appellants contention that in the light of the provision of the Lagos State Child Right Law, the state educational authorities have become the legal guardians of the child. Learned counsel for the Respondents, in rejecting the argument, submitted that section 6(1),(2) and (3) of that law did not make the state education authorities legal guardians of the child with regard to their religious practices. That the school or state education authorities can only assume the role where the parents of the child are absent. He therefore contended that in this case, since the 1st and 2nd Respondents sued through their next friends, who are their biological fathers, their parent's choices as per their religious practices is ascertained. On this score, learned

counsel also referred to section 13 of the Lagos State Education Law Cap E3 Laws of Lagos State 2015 to emphasize that the Commissioner for Education shall, as far as practicable have regard to and act in accordance with parental wishes in the provision of instruction and training to children.

My Lords, after a careful analysis of the arguments and submissions of both parties in support of their respective positions, it is obvious that the main issue in contention in this appeal is whether the Appellants were right to prohibit the wearing of hijab by muslim female students on top of their school uniforms or at best restrict the wearing of hijab to only during Islamic religious knowledge classes and Islamic prayers, within the school premises.

Firstly, the Blacks' Law Dictionary, 11th Edition at page 1840 defines "uniform" as "characterized by lack of variation; identical or consistent." Similarly, the Oxford Advanced Learner's Dictionary 8th Edition at page 1629 defines "uniform" as "the special set of clothes worn by all members of an organization or a group at work, or by children at school: a military/police/nurse's uniform, soldiers in uniform.

..... the type of clothes that a person or group usually wears."

Clearly, there is no statutory provision which prescribes the wearing of uniform in public schools. Howbeit, parties are *ad idem* that the Government of Lagos State has a policy on dress code by use of uniforms in public primary and secondary schools. In fact the Appellants' averments on this set of facts were uncontroverted and deemed admitted. See

The Honda Place Ltd v Globe Motors Holding Nig. Ltd (2005) 14 NWLR (pt. 945) 773; Ndayako v Dantoro (2004) 18 NSCQR 646; Central Bank of Nigeria v Interstella Communications Ltd (2017) LPELR – 43940.

I must say that the use of uniforms in public primary and secondary schools and indeed every organized institution, whether regimented or not, is an age long custom traceable to the advent of civilization itself. It is a fact of common knowledge which require no prove. See section *124(1) of the Evidence Act; Osafile v Odi (1990) 5 SC (pt. 11)1*. In otherwords, it is common knowledge that every public primary or secondary school student is identified by his/her school uniform which differs from school to school and it is unthinkable and indeed an anomaly for a public

primary or secondary school to be in operation without a clear policy on dress code or uniform.

I hold the opinion and firmly so that the use of uniforms in any organized institution such as school is to foster unity, discipline and orderliness amongst students or members of the institution, as the case may be. It distinguishes students of one school from those of another, hence the name "school uniform."

Now, the Respondent's contention in this case is that the Appellants prohibition of the use of hijab on top the school uniform by female students of Islamic faith amounts to a violation of the 1st and 2nd Respondents' fundamental rights as enshrined in sections 38 and 42(1)(a) and (b) and also section 18 of the 1999 Constitution of the Federal republic of Nigeria (as amended).

For avoidance of doubt, the provisions of the stated sections of the constitution are hereunder reproduced as follows:-

"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 of 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 a 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.

42 (1) – A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person
(a) – be subjected either expressly by, or in the practical application of any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizen of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject; or

(b) – be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizen of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinion.

18 – (1) Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels.
(2) – Government shall promote science and technology.

(3) – Government shall strive to eradicate illiteracy; and to this end government shall as and when practicable provide –

(a) free, compulsory and universal primary education.

(b) free university education; and

(c) free adult literacy programme.

My Lords, I had earlier mentioned in this judgment that the thrust of this appeal is whether the Appellants were right to prohibit the use of hijab by female students of Islamic faith in their school. I have scrupulously examined that issue viz – a – viz the 1st and 2nd Respondents' contention that such prohibition is in breach of their rights as enshrined in the above sections of the constitution. I am unable to see the correlation between the Appellants maintaining a standard as per school dress code and complaint of denial of fundamental human right.

What we are talking about here is called "school uniform" and before a child is admitted into school I believe there would be some form of agreement to abide by or comply with the rules and regulations of the school. Having gone through the evidence as gleanable from the record of appeal, I am unable to find where the Appellants attempted to deny the 1st and 2nd Respondents an opportunity at education or curtail their freedom of practicing their religion.

The only consistent argument which has traversed the Appellants case is that the 1st and 2nd Respondents having freely chosen to obtain formal education at the Atunrashe Junior High School, Surulere, Lagos State, must abide by the rules and regulations of the school including wearing the school uniform as prescribed by the state policy and rules on

guidelines on uniformity in mode of dressing of students in public schools.

I hold the opinion that bringing religious sentiments and biases to bear on dress code in a formal setting such as public primary and secondary school will not augur well for the students. If every student were to cover their school uniforms with their different religions togas, I wonder what the school compound would be like. Imagine a scenario where students who are traditional religious worshipers turn up at school fully adorned with their traditional worship regalia on top of their school uniforms and students whose faith prescribe wearing of white garments without shoes turn up in that fashion. What would the school environment look like? It would be chaotic to say the least. I make bold to say that the Respondents' argument that any

other group seeking indulgence similar to their demand would have to provide biblical or other scriptural evidence which the government would be required to investigate, is grossly misleading as faith is a matter of believe and not wholly codified.

What I am laboring to say therefore in a very simple term is that if hijab is not part of the recommended school uniform for female students of the school, it has no business being worn by the student as part of the school uniform. I so hold.

Apropos of the above, I adjudge that the learned trial Judge was right to have dismissed the suit. The appeal is meritorious and is accordingly allowed by me. As a corollary, the judgment of the court below delivered on

21/7/2016 is hereby set aside and the judgment of the trial court delivered on 17/10/2014 is hereby restored.

Appeal Allowed.

JOHN INYANG OKORO
JUSTICE, SUPREME COURT

CERTIFIED TRUE COPY
Date 6/7/2022
Sign
Supreme Court of Nigeria

APPEARANCES:-

O. Osunsanya ACSC, MOJ Lagos State for the Appellants.

Hassan T. Fajimite Esq; with Nasir Rumokemi Esq, Ahmed Adetola Kazeem Esq; for the Respondents.