

## Proceedings and Judgments in the Amina Lawal Case

### Proceedings and judgment in the Sharia Court Bakori

Translated from the Hausa by Sama'ila A. Mohammed

#### (a) Proceedings 15<sup>th</sup> January 2002

Comp. No. - 11/2002

Case No. - 9/2002

Date - 15/1/2002

Sharia Court Bakori

Judge: Alhaji Nasuru Lawal Bello Dayi

Prosecutor: Commissioner of Police, Katsina State

Accused: Amina Lawal and Yahayya Muhammed<sup>54</sup>

Complaint: *Zina* contrary to section 124 Katsina State Islamic Law<sup>55</sup>

I, Police Prosecutor, Corporal Idris Adamu of the Nigeria Police Command, on behalf of the Katsina State Commissioner of Police, do hereby charge Amina Lawal and Yahayya Muhammed, both of them residing in Kurami, of committing the offence of *zina*. Both of the accused persons were arrested on 14/1/2002 by Police Constable Rabi'u Dauda and one other policeman, both of the Nigeria Police Criminal Investigations Department, Bakori Divisional Command. The accused are being charged jointly with committing the offence of *zina* from the time their courtship began, that is about eleven months ago, and continuing up until quite recently. As a result of their commission of this offence the 1<sup>st</sup> accused, Amina Lawal, has given birth to a baby girl. As this is contrary to Katsina State Sharia Law, we are hereby charging them before this court.

**Court to Amina Lawal:** Did you hear the charge against you by the police? What do you have to say?

**Amina Lawal:** Yes. It is true. I committed the offence of *zina* as a result of which I gave birth to a baby girl about nine days ago, on 8/1/2002.

**Court:** With whom did you commit this offence?

**Amina Lawal:** I committed this offence of *zina* with Yahayya.

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<sup>54</sup> This is the spelling of Yahayya Muhammed's name used in the record of the Bakori court. We have used it throughout, although in the appellate courts the spelling 'Yahaya Mahmud' is sometimes also used.

<sup>55</sup> Sic. The reference is to section 124 of the Katsina State Sharia Penal Code Law No. 2 of 2001, which provides: "Whoever, being a man or a woman fully responsible has sexual intercourse through the genital of a person over whom he has no sexual rights and in circumstances in which no doubt exists as to the illegality of the act, is guilty of the offence of *zina*."

**Court to Yahayya Muhammed:** Did you hear the charge against you? What do you say?

**Yahayya Muhammed:** I heard the charge. It is not true. I did not commit the offence of *zina* with her. I know that I approached her for marriage but I never committed *zina* with her. It was when she delivered that I was called to the palace of the village head of Kurami and I was confronted with the allegation that I committed the offence of *zina* with her. I denied this allegation. They then brought me to the police station where they threatened me that I should accept to have committed the offence of *zina* or else they would break my bones. So, I have not committed this offence.

**Court to Cpl. Idris Adamu:** Did you hear the response of the 2<sup>nd</sup> accused? What do you have to say?

**Cpl. Adamu:** I heard what the 2<sup>nd</sup> accused said. It is not true and I have witnesses. I pray the court to allow me to bring my witnesses.

**Court ruling:** The court grants the prosecution's request to bring its witnesses. The hearing of this matter is adjourned to 29/1/2002 to enable the police to conclude their investigations. Court further directs the accused to be remanded in prison custody.

**(b) Proceedings 30<sup>th</sup> January 2002<sup>56</sup>**

Today, 30/1/2002, the court recognises the prosecutor, Cpl. Idris Adamu, and the two accused persons, Amina Lawal and Yahayya Muhammed, so that the trial can continue.

**Court to Cpl. Idris Adamu:** Do you have witnesses you intend to bring; have you come with them?

**Cpl. Adamu:** Yes. There is a witness. That is the baby delivered 25 days ago who is the product of that *zina*. The baby has not yet been given any name.

**Ruling:** The court takes note of the baby of 25 days who is in the hands of the 1<sup>st</sup> accused. The court also takes note of the baby as the first evidence presented by the police prosecutor in this matter.

**Court Amina Lawal:** Have a look at the baby in your hands and confirm to the court whether it is the baby that was delivered by you and whose delivery was as a result of *zina*.

**Amina Lawal:** I have looked at her and she is the one.

**Court:** Do you agree that both of you committed *zina* which resulted in you giving birth to this baby?

**Amina Lawal:** Yes. It was Yahayya who deceived me by saying that he would marry me. He had been courting me for the past eleven months.

**Court to Yahayya:** Have you seen this baby who was born 25 days ago?

**Yahayya Muhammed:** Yes. I have seen her.

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<sup>56</sup> The hearing set for 29<sup>th</sup> January 2002 evidently could not hold on that day and was postponed to the next. This happened again later in the proceedings.

**Court:** Do you agree that she is the baby that was delivered as a result of the *zina* you committed?

**Yahayya Muhammed:** No. I do not agree. This is an attempt to tarnish my image.

**Court:** Is it true that you courted Amina Lawal for eleven months?

**Yahayya Muhammed:** Yes. It is true. I wanted to marry Amina for the past eleven months.

**Court:** Do you have witnesses who knew that you were not committing the offence of *zina* with Amina during the period of your courtship?

**Yahayya Muhammed:** No. I do not have any witness.

**Court:** Will you take an oath by the Holy Qur'an to the effect that you did not commit the offence of *zina* with Amina, which resulted in the birth of this child?

**Yahayya Muhammed:** Yes. I will take an oath.

**Ruling:** The court has accepted Yahayya's request to take an oath by the Holy Qur'an, in its presence, to the effect that he did not commit the offence of *zina* with Amina Lawal and that he was not responsible for her pregnancy. He also states that her allegation that he was responsible was an unwarranted defamation.

[Evidently the oath-taking followed: no record of it was made.]

**Ruling:** The court has accepted the oath Yahayya Muhammed took by the Holy Qur'an, in its presence, as valid.

**Court to Cpl. Idris Adamu:** The 2<sup>nd</sup> accused has taken an oath by the Holy Qur'an to the effect that he did not commit the offence of *zina*. In view of this, what do you have to say?

**Cpl. Adamu:** I agree, since he has taken an oath by the Holy Qur'an.

**Ruling:** Based on what has transpired above, the court having given the 2<sup>nd</sup> accused person an option to take an oath by the Holy Qur'an in obedience to Sharia as provided for in *Tuhfa* as translated by Usman Daura... [the text here becomes illegible at the bottom of a page.]

[The page of the transcript that should follow here is missing from the only copy obtainable for purposes of this translation. The contents of that page can be gleaned from the summary of the proceedings in the Bakori Court made by the Upper Sharia Court, Funtua in its ruling on Amina Lawal's appeal, as follows:<sup>57</sup>

After he took the oath, the court discharged the 2<sup>nd</sup> accused. The court then charged the 1<sup>st</sup> accused. The court said:

The court charges you Amina Lawal with the offence of *zina* to which you confessed before this court on 15/1/2002 where you said you committed the offence and as a result thereof you delivered a baby girl which the prosecutor tendered in evidence today 30/1/2002. Therefore this court is

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<sup>57</sup> The complete ruling of the Upper Sharia Court Funtua is reproduced below.

## PROCEEDINGS AND JUDGMENTS IN THE AMINA LAWAL CASE

satisfied and is convinced that you committed this offence of *zina* based on your confession before the court. The verse states that proof by admission is better than proof by evidence.<sup>58</sup> The other additional evidence is the daughter you delivered.

The court proceeded to say:

Since you accepted that you committed *zina* following which you give birth to this baby while you are sane and a Muslim, a divorcee not a virgin, therefore court accepts and is satisfied that you committed the offence. Therefore the charge is very strong against you Amina Lawal Kurami.

The court asked her whether she understood the meaning of the charge. She said she understood and she agreed.]

**Court to Cpl. Idris Adamu:** Has the 1<sup>st</sup> accused ever before been found guilty of the offence of *zina*?

**Cpl. Adamu:** No. This is the first time that the 1<sup>st</sup> accused is being found guilty of the offence of *zina*.

**Court:** Court is adjourned till 13/2/2002 so that hearing in this matter will continue.

### (c) Proceedings 13<sup>th</sup> February 2002

Today 13/2/2002 the court recognises the prosecutor, Cpl. Idris Adamu and the 1<sup>st</sup> accused person, Amina Lawal. But the court again adjourns hearing in this matter until 27/2/2002, to allow Amina Lawal to complete the traditional 40 days maternity hot bath, associated with delivery of new-born babies. Also, the court has granted bail to Amina Lawal with Idris as surety.

### (d) Proceedings 20<sup>th</sup> March 2002

Today, 20/3/2002 the court recognises the prosecutor, Cpl. Idris Adamu, and the 1<sup>st</sup> accused person, Amina Lawal, so that the court can go ahead and sentence her according to Sharia.

**Court to Amina Lawal:** Have you named this baby of yours?

**Amina Lawal:** I have named the baby Wasila.

### Finding of Guilt

I, Nasuru Lawal Bello Dayi, the judge of this Sharia Court Bakori, have charged, and I find you, Amina Lawal Kurami, guilty of the offence of *zina* of which the Commissioner of Police of Katsina State complained against you and Yahayya Muhammed to this court on 15/1/2002. The COP complained that both of you committed the offence of *zina* in

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<sup>58</sup> No authority is here given for this proposition. But see the Court of Appeal (Kaduna)'s statement in *Alhaji Umaru Haruna Mai-Aiki v. Danladi Mai-Daji* [2006] 3 Saranniya Law Reports Pt. II pp. 39-60 at 53-54: "In another context it was stated that an admission is more preferable to witnesses' testimony – *Al iqrar minal shubud*. See Ruxton *Maliki Law* Ch. XXII para 7." The book of Ruxton referred to is a translation of much of *Mukhtasar Khalil*, as to which see the "Bibliography of Islamic Authorities" given in part IV of this chapter. (Thanks to Ahmed S. Garba for this citation.)

the town of Kurami for the past eleven months and as a result of this act, you gave birth to a baby girl. You confessed to the act and pleaded guilty of the offence without wasting the time of the court while the 2<sup>nd</sup> accused person, Yahayya Muhammed, denied committing the offence. This court finds you guilty based on the charge I preferred against you and your confession to this court to the effect that you committed the offence of *zina* and the prosecutor's physical evidence of the baby girl you delivered, by name Wasila, which you confirmed to this court was a product of *zina*.

As a result of your confession to this court and the evidence of the prosecutor of your new-born baby, by name Wasila, your offence is contrary to Sharia as Allah (SWT) stated in the Holy Qur'an in *Suratul Bani Isra'il* verse 32:

And come not near to unlawful sex [*zina*]. Verily, it is *fahishah* (immoral sin) and an evil way.

So, this court has found you guilty of this offence which is contrary to Sharia in your capacity as a Muslim, sane, adult and even once married as you explained to this court. As a result, this court will judge you according to the provisions of Sharia in *Risala* at p. 128, where it is stated that:

A *mubsinat* who commits *zina* is to be stoned until she is dead.

And the commandment of Prophet Muhammad (SAW) in *Arba'una Hadith*, no. 14, where it is stated thus:

Abdullah bin Mas'ud (may Allah be pleased with him) narrated that the Prophet (peace be upon him) said, "It is impermissible to take the life of a Muslim who bears testimony that there is no God but Allah, and I am the Messenger of Allah, except in one of three cases: the adulterer, a life for a life, and the renegade Muslim [apostate], who abandons the Muslim community."<sup>59</sup>

The verse of the Qur'an, the passage from *Risala*, and the hadith of Prophet Muhammad (SAW) which have been quoted agree exactly with the provision of Section 125(b) of the Sharia Penal Code Law of Katsina State.<sup>60</sup>

The court has discharged the 2<sup>nd</sup> accused, Yahayya Muhammed, who Amina stated was responsible for her pregnancy and therefore her co-partner in the commission of the offence of *zina*. This is because he denied committing the offence and there are no eye-witnesses to the offence or to his culpability. Moreover, he took an oath by the Holy Qur'an. The court has based its decision on the provision of Sharia law which provides for only three instances where an individual can be convicted: one, the confession of a sane Muslim; two, witnesses who confirm the commission of the offence; and three, the emergence of pregnancy in an unmarried woman or a woman without a husband.

<sup>59</sup> The quoted text is given first in Arabic, then in Hausa. We use here the translation of the Arabic into English given in Ibn Rajab, *Jami Al-Ulum Wal-Hikam, A Collection of Knowledge and Wisdom*, rendered into English by Muhammad Fadl (Umm Al-Qura: Al-Mansura, Egypt: 2002), p. 175.

<sup>60</sup> Section 125(b) provides that: "Whoever commits the offence of *zina* shall be punished: ... (b) if married, with stoning to death (*rajm*)."

#### PROCEEDINGS AND JUDGMENTS IN THE AMINA LAWAL CASE

Because of this, since you, Amina Lawal, have confessed and you have come with the baby you delivered and presented her to the court to take notice of, this conviction has become imperative on you under section 125(b) of the Katsina State Islamic Law.

**Court to Amina Lawal:** Do you have anything you wish to say to the court?

**Amina Lawal:** No. I do not have anything to say to the court except that I ask for forgiveness.

**Court:** As at today, state when you delivered the baby.

**Amina Lawal:** I delivered the baby two months and eight days ago.

**Court:** In how many days will you wean your baby, Wasila?

**Amina Lawal:** In the next eighteen months.

**Court to Cpl. Idris Adamu:** Was this the first time or are there other times in which you found the accused committing this offence?

**Cpl. Adamu:** This is the first time she is committing the offence.

#### Judgment and Sentence

Based on what transpired above, I, Alhaji Nasuru Lawal Bello Dayi, Judge of this Sharia Court Bakori, have convicted you, Amina Lawal Kurami, of committing the offence of *zina* and have accordingly found it lawful that you be sentenced to death by stoning in accordance with the provision of section 125(b) of the Sharia Penal Code Law of Katsina State.

The sentence of this court is with effect from today, 20/3/2002 but the sentence will not be carried out until on 20/9/2003, that is, after you have weaned the baby you are carrying, by name Wasila.

#### Appeal

If you are not satisfied with this judgment you have the right to appeal against it to the Upper Sharia Court Funtua within thirty days.

**Court to Amina Lawal:** Do you have anybody to bail you so that you will not be under prison custody in view of your new-born baby?

**Amina Lawal:** Yes. I have somebody who will bail me and that person is Musa.

**Court to Musa:** Did you hear the judgment delivered by this court? Do you undertake to be bringing the convict to this court every two weeks?

**Musa:** Yes. I agree to be bringing her to court.

**Ruling:** The court has accepted to grant bail to Amina on the condition that Musa will bring her to court every two weeks. This bail is bail after sentencing. The court grants this bail on the compassionate consideration of Amina's new-born baby.

#### (e) Proceedings 21<sup>st</sup> March 2002

Today, 21/3/2002, the court recognises the Musa who received Amina Lawal on bail.

CHAPTER 6: TWO FAMOUS CASES

**Court to Musa:** Musa, what do you have to tell the court?

**Musa:** I am here to inform the court that here is Amina Lawal. I have brought her back to the court. I will not continue to bail her.

**Court to Amina Lawal:** Did you hear? What do you have to say?

**Amina Lawal:** Yes I heard. And I appeal to the court to allow Idi Mai Yankan Farce Kurami to bail me.

**Court to Idi Mai Yankan Farce Kurami:** Will you agree to receive Amina Lawal into bail on the condition that every two weeks you will bring her to court?

**Idi:** I agree. I will receive her into bail. And I will be bringing her to court every two weeks.

**Ruling:** The court has accepted the plea and has granted the request of Idi Mai Yankan Farce Kurami to take Amina Lawal into bail and to be bringing her to court every two weeks up to the time she has weaned her baby so that the sentence of the court can be carried out.