

Assessing Compliance of Yobe State Sharia Court of Appeal with Maliki Rules in Determining the Quantum of Khul'

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Abstract

This article examines the extent to which the Yobe State Sharia Court of Appeal complies with Maliki jurisprudential principles in determining the quantum of compensation payable in khul' proceedings. Although khul' is well established under Islamic family law, limited scholarly attention has been paid to how Nigerian Sharia appellate courts apply classical Maliki rules in determining the amount of compensation payable upon dissolution. Adopting a doctrinal research methodology, the study analyses relevant constitutional provisions, classical Maliki legal authorities, statutory materials, and selected appellate decisions of the Yobe State Sharia Court of Appeal delivered between 2015 and 2018. The paper develops a two-axis compliance framework comprising outcome compliance, which assesses whether the compensation awarded falls within the range recognised by Maliki jurisprudence, and procedural compliance, which evaluates whether negotiation and hakamayn-led reconciliation were meaningfully facilitated before judicial determination of the quantum. The findings indicate that while the court's substantive decisions generally conform to the flexibility permitted under the Maliki School regarding the amount of compensation, procedural compliance is less consistent because many decisions do not clearly demonstrate structured negotiation or arbitration before judicial intervention. The article argues that greater procedural transparency would enhance both doctrinal fidelity and public confidence in the administration of Islamic family law. It recommends institutionalising a negotiation-first approach, formalising hakamayn referral where agreement cannot be reached, and providing fuller judicial reasoning when determining compensation.

Keywords: Khul'; Maliki School; Sharia Court of Appeal; Islamic Family Law; Judicial Compliance; Quantum of Compensation

1.0 INTRODUCTION

Marriage occupies a central position in Islamic law as a legal and moral institution intended to promote tranquillity (*sakinah*), mutual affection (*mawaddah*), and compassion (*rahmah*)

between spouses. The Qur'an repeatedly encourages spouses to live together in kindness and equity, recognising marriage as the foundation of family life and social stability.¹ Nevertheless, Islamic law equally acknowledges that marital relationships may irretrievably break down despite efforts at reconciliation. In such circumstances, the Shari'ah provides lawful mechanisms for dissolving the marriage while safeguarding the rights and interests of both spouses.

One of these mechanisms is *khul'*, a form of dissolution initiated by the wife in return for compensation paid to the husband. Unlike *ṭalāq*, which is exercised by the husband, *khul'* enables a wife who can no longer continue the marriage to obtain release from the marital bond upon satisfying conditions recognised under Islamic law.² The principal textual foundation for *khul'* is found in Qur'an 2:229, which permits a wife to ransom herself where both spouses fear that they cannot maintain the limits prescribed by Allah.³ The Prophetic precedent involving the wife of Thabit ibn Qays further establishes the legitimacy of *khul'* as an important mechanism for resolving irreconcilable marital disputes.⁴

Although the legality of *khul'* is generally undisputed among the Sunni schools of Islamic jurisprudence, jurists have differed regarding the amount of compensation payable by the wife. While all schools recognise the permissibility of compensation, they differ on whether the amount should be limited to the *mahr*, whether it may exceed the *mahr*, and the extent of judicial discretion where the parties fail to reach an agreement.⁵ Under the Maliki School, which governs Islamic personal law in the Sharia Courts of Northern

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¹ Qur'an 4:19.

² M.A. Ambali, *The Practice of Muslim Family Law in Nigeria* (1st edn, Tamaza Publishing Company Ltd, Kaduna, 1998) 164–170.

³ Qur'an 2:229.

⁴ *Ṣaḥīḥ al-Bukhārī*, Book of Divorce, Hadith No. 5273; *Ṣaḥīḥ Muslim*, Hadith No. 1480.

⁵ Wahbah al-Zuhayli, *Al-Fiqh al-Islami wa Adillatuhu* (Dar al-Fikr, Damascus, 1989) vol. 9, 6993–6998.

Nigeria, the determination of the quantum of compensation is guided by principles of fairness, mutual agreement, and judicial discretion, depending on the circumstances of each case.⁶

The constitutional framework in Nigeria confers appellate and supervisory jurisdiction over matters of Islamic personal law upon the Sharia Court of Appeal.⁷ In Yobe State, the court exercises this jurisdiction in accordance with the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Sharia Court of Appeal Law, and the substantive rules of the Maliki School.⁸ Consequently, judicial decisions concerning *khul'* should not only comply with statutory provisions but should also reflect the doctrinal principles governing compensation under Maliki jurisprudence.

Despite the growing body of literature on Islamic family law in Nigeria, relatively little attention has been devoted to examining whether appellate courts consistently apply classical Maliki principles when determining the quantum of compensation in *khul'* proceedings. Existing studies primarily discuss the concept of *khul'* or the general jurisdiction of Sharia Courts without critically evaluating judicial compliance with Maliki doctrinal requirements in decided cases. This represents an important gap in contemporary Islamic legal scholarship.⁹

This article seeks to fill that gap by assessing the extent to which the Yobe State Sharia Court of Appeal complied with Maliki rules governing the determination of the quantum of compensation in *khul'* cases decided between 2015 and 2018. To achieve this objective,

⁶ Ibn Rushd, *Bidayat al-Mujtahid wa Nihayat al-Muqtasid* (Dar al-Kutub al-Ilmiyyah, Beirut, 1996) vol. 2, 70–73; Sahnun ibn Sa'id, *Al-Mudawwanah al-Kubra* (Dar al-Kutub al-Ilmiyyah, Beirut) vol. 2, 241–246.

⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended), ss. 275 and 277.

⁸ Sharia Court of Appeal Law, Cap. 124, Laws of Northern Nigeria 1963 (as applicable in Yobe State), ss. 2 and 14.

⁹ See A.M.J. Elesin, 'Analysis of Misconception of Nature of Dissolution of Nikāḥ at the Instance of Wife under Islamic Family Law' (2021) 2(1) *KWASU Law Journal* 198–206.

the article develops a two-axis compliance framework comprising outcome compliance and procedural compliance. The study contributes to Islamic legal scholarship by providing a structured doctrinal assessment of judicial practice and by proposing reforms aimed at strengthening procedural consistency and enhancing fidelity to Maliki jurisprudence in the administration of Islamic family law.

2.0 LITERATURE

REVIEW

The institution of *khul'* has attracted considerable scholarly attention within classical and contemporary Islamic jurisprudence because it represents one of the principal mechanisms through which a wife may lawfully terminate a marriage. While the legitimacy of *khul'* is firmly established by the Qur'an and the Sunnah, jurists have differed on several issues relating to its legal nature, the extent of judicial intervention, and, more significantly, the quantum of compensation payable by the wife. These doctrinal differences have continued to influence the administration of Islamic family law in jurisdictions that apply the Sharia¹⁰, including Northern Nigeria.

Classical Muslim jurists unanimously recognise the legitimacy of *khul'* from the provisions of Qur'an 2:229 and the celebrated case of the wife of Thābit ibn Qays, who sought dissolution of her marriage by returning the garden given to her as *mahr*. However, the juristic schools differ regarding the amount that may lawfully be taken by the husband. While the Hanafī and Shafī'i schools generally discourage taking compensation exceeding the *mahr*, the Maliki School adopts a more flexible position by permitting compensation that may be less than, equal to, or greater than the *mahr*, provided that injustice, coercion, or exploitation is absent and the agreement reflects the circumstances of the parties.¹¹

¹⁰ Qur'an 4:19.

¹¹ Wahbah al-Zuhayli, *Al-Fiqh al-Islami wa Adillatuhu* (Dar al-Fikr 1989) vol. 9, 6993–6998; Ibn Rushd, *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid* (Dar al-Kutub al-Ilmiyyah 1996) vol. 2, 70–73.

The Maliki position is extensively discussed in classical authorities. Sahnūn's *Al-Mudawwanah al-Kubra* recognises that *khul'* is fundamentally contractual and that the amount of compensation is ordinarily determined by mutual agreement between the spouses.² Similarly, Khalil ibn Ishāq, in *Mukhtaṣar Kahlil*, acknowledges the broad discretion afforded to the parties in negotiating compensation, while commentators such as Al-Ḥaṭṭāb in *Al-Tāj wa al-Iklīl* and Al-Dasūqī in *Ḥāshiyat al-Dasūqī* elaborate that judicial intervention becomes necessary where disagreement arises or where justice requires the court to determine an appropriate amount.³ Ibn Rushd, in *Bidāyat al-Mujtahid*, attributes the divergence among jurists primarily to their differing interpretations of the Prophetic traditions relating to *khul'* and the scope of judicial discretion in fixing compensation.¹²

Contemporary scholarship has equally examined *khul'* from doctrinal and practical perspectives. Ambali explains that Islamic law seeks to balance the husband's proprietary interests with the wife's right to freedom from an intolerable marriage by permitting redemption through compensation where reconciliation has failed.¹³ Gurin similarly observes that *khul'* should not be viewed merely as a contractual exchange but as an equitable remedy intended to preserve justice between spouses while protecting the objectives of Islamic family law.¹⁴

Within Nigerian legal scholarship, considerable attention has been devoted to the jurisdiction of Sharia Courts and the application of Islamic personal law. Nevertheless, relatively few studies have critically examined how appellate courts apply classical Maliki principles in determining the quantum of compensation payable in *khul'*. Elesin argues that confusion frequently arises because *khul'* is often treated interchangeably with *fasakh* and *tafrīq*, despite the significant doctrinal distinctions between these forms of marital

¹² Ibn Rushd (n 1) 70–73.

¹³ M.A. Ambali, *The Practice of Muslim Family Law in Nigeria* (1st edn, Tamaza Publishing Company Ltd 1998) 169–175.

¹⁴ A.M. Gurin, *Introduction to Islamic Family Law* (Centre for Islamic Legal Studies, Ahmadu Bello University 2014) 121–126.

dissolution.¹⁵ According to the author, a proper understanding of these distinctions is essential for ensuring consistency in judicial reasoning and faithful application of Islamic jurisprudence.

Existing literature therefore provides substantial discussion of the legal foundations of *khul'* but offers limited empirical or doctrinal assessment of judicial compliance with Maliki principles in appellate decisions of the Sharia Courts of Appeal in Nigeria. In particular, little attention has been paid to whether courts consistently facilitate negotiation between the parties, utilise *hakamayn* where appropriate, or provide sufficient reasons when determining the quantum of compensation. This article seeks to address that gap by examining selected decisions of the Yobe State Sharia Court of Appeal through a structured compliance framework that evaluates both substantive outcomes and procedural adherence to Maliki jurisprudence.

There are divergent views among the Islamic scholars regarding the quantum or amount to pay by a wife to her husband either in kind or cash. It is natural that there should be differences in opinion, differences in thoughts, differences in taste, differences in temperament and inclination and difference of behavior. Sometimes such differences stimulate disputes which might develop grudges between the parties, and this situation brings about unbearable life.¹⁶ In such circumstances spouses are always advised to keep down their tempers and be patient. They should be tolerant and treat each other honorably for the Holy Qur'an says: "Live with your wives on a footing of kindness and equity if you hate them, it may be that you dislike a thing while Allah (SWT) brings about through it a great deal of good."¹⁷ Also, in another verse of the Glorious Qur'an: "if a wife fears cruelty or desertion on her husband's part, there is no blame on them if they arrange amicable settlement between themselves and such settlement is best."¹⁸

¹⁵ A.M.J. Elesin, 'Analysis of Misconception of Nature of Dissolution of Nikah at the Instance of Wife under Islamic Family Law' (2021) 2(1) *KWASU Law Journal* 198–206.

¹⁶ Ambali. M. A., *The Practice of Muslim Family Law in Nigeria*, Tamaza Publishing Company Ltd Kaduna, First Edition, (1998).

¹⁷ Q 4:19

¹⁸ Q 4:128

If all efforts or steps of reconciliation fail and the spouses have come to a point where they can no longer live together in peace and harmony, then dissolution of marriage is allowed. Dissolution of marriage is therefore a remedy, and exceptional rule which chooses the lesser evil and avoid the greater one, as provided by the Glorious Qur'an where it says: "But if they disagree and part, God will make them richer out of his abundance for God is that who cares for all and is all wise."¹⁹ As in the constitution where it provides: ²⁰ "there shall be for any state that requires it a Sharia Court of Appeal for that State." It also provides:²¹

The sharia Court of Appeal of a State shall, in addition to such other jurisdiction as may be conferred upon it by the law of the state, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law which the court is competent to decide in accordance with the provisions of subsection (2) of this section.

For the purpose of subsection (1) of this section, the sharia court of appeal shall be competent to decide:²²

any question of Islamic personal law regarding a marriage concluded in accordance with that law, including a question relating to the validity or dissolution of such marriage or a question that depends on such a marriage and relating to family relationship or the guardianship of an infant.²³

From the above, Yobe State is one of the states where Sharia Court of Appeal were established and the Court has the power to entertain matters involving Islamic personal law in accordance with Maliki school of thought as provided in section 2 of the Sharia Court of Appeal law.²⁴ Also section 14 of the Sharia Court of Appeal Law of Northern Nigeria – as adopted by all the Northern states that restricted the court to the application of Muslim law of *Maliki* school in both substantive law and practice and procedure.²⁵ From this it is

¹⁹ Q4:130

²⁰ Section 275, 1999 constitution of The Federal Republic of Nigeria as Amended.

²¹ Section 277.

²² Ibid 277(2)

²³ Ibid 277(2){a}

²⁴ Sharia Court of Appeal Law 1960, Laws of Northern Region of Nigerian 1960, Vol.1

²⁵ ibid

clearly seen that sharia courts are restricted and mandated to the application of Maliki school of thought in determining a matter before it.

In line with the above laws, the Yobe State Sharia Court of Appeal has been deciding cases that fall within *Khul' I* (in addition to other cases on Islamic personal law). It is therefore necessary to review some of the decisions of the Court on *Khul'* in order to determine whether the Yobe State Sharia Court of Appeal are complying with the rules and procedures of Maliki School of Thought in determining the quantum of *Khul'*.

3.0 METHODOLOGY

This study adopted a doctrinal legal research methodology, which is the most appropriate approach for examining the legal principles governing the determination of the quantum of compensation in *khul'* under Maliki jurisprudence and their application by the Yobe State Sharia Court of Appeal. Doctrinal research primarily involves the systematic analysis of legal rules, principles, judicial decisions, and authoritative legal texts with a view to evaluating the consistency of judicial practice with established legal doctrine.²⁶

The research relied on both primary and secondary sources of law. The primary sources comprised relevant provisions of the Qur'an, the Sunnah of the Prophet (peace be upon him), the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Sharia Court of Appeal Law, and selected appellate decisions of the Yobe State Sharia Court of Appeal relating to *khul'* decided between 2015 and 2018. Classical Maliki authorities, including *Al-Mudawwanah al-Kubra*, *Mukhtaṣar Khalil*, *Mawāhib al-Jalil*, *Ḥāshiyat al-*

²⁶ Ian McLeod, *Legal Method* (10th edn, Palgrave Macmillan 2020) 18–26; Terry Hutchinson, 'Doctrinal Research: Researching the Jury' in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (2nd edn, Routledge 2018) 9–36.

Dasūqī, and *Bidāyat al-Mujtahid*, were consulted to establish the governing principles of Maliki jurisprudence on the determination of compensation in *khul'*.²⁷

The secondary sources consisted of textbooks, journal articles, conference papers, dissertations, and other scholarly publications on Islamic family law, particularly those addressing *khul'*, judicial discretion, and the administration of Islamic personal law in Nigeria. These materials were utilised to identify existing scholarly debates, evaluate contemporary interpretations of Maliki doctrine, and situate the present study within the broader literature.

To evaluate judicial practice, the study developed a two-axis compliance framework comprising outcome compliance and procedural compliance. Outcome compliance assessed whether the amount of compensation awarded by the court fell within the range recognised by Maliki jurisprudence and whether the award was supported by the evidence before the court. Procedural compliance examined whether the courts facilitated negotiation between the spouses, employed *hakamayn* where appropriate, and provided adequate reasons before exercising judicial discretion in fixing the quantum of compensation.

The selected appellate decisions were analysed qualitatively through doctrinal interpretation and comparative evaluation against established Maliki principles. The purpose was not merely to describe judicial decisions but to determine the extent to which they complied with the substantive and procedural requirements of Maliki jurisprudence governing *khul'* compensation.

4.0 LEGAL AND INSTITUTIONAL FRAMEWORK

The regulation of *khul'* in Nigeria is shaped by a combination of Islamic law, statutory

²⁷ Sahnūn ibn Sa'īd, *Al-Mudawwanah al-Kubra* (Dar al-Kutub al-'Ilmiyyah) vol. 2; Khalīl ibn Ishāq, *Mukhtaṣar Khalīl* (Dar al-Fikr); Ibn Rushd, *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid* (Dar al-Kutub al-'Ilmiyyah 1996) vol. 2.

provisions, judicial precedents, and the institutional structures responsible for the administration of Islamic family law. While the substantive principles governing *khul'* are primarily derived from the Qur'an, the Sunnah, and the interpretations of the Maliki school of Islamic jurisprudence, their application is influenced by the legal framework established under the Nigerian Constitution and the laws creating and empowering Sharia Courts. These institutions play a pivotal role in ensuring that applications for *khul'* are determined in accordance with both Islamic legal principles and the procedural requirements of the judicial system. An examination of this legal and institutional framework is therefore essential to understanding how *khul'* is implemented in practice and the challenges that arise in its administration.

4.1 Constitutional jurisdiction

The constitutional foundation of the Sharia Court of Appeal in Nigeria is contained in Chapter VII of the Constitution of the Federal Republic of Nigeria 1999 (as amended). The Constitution establishes a Sharia Court of Appeal for any state that requires it and confers upon it appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law.²⁸ The constitutional recognition of the court reflects Nigeria's plural legal system, which accommodates both the common law and Islamic legal traditions in matters relating to personal status.

Section 277 of the Constitution specifically empowers the Sharia Court of Appeal to determine appeals involving questions of Islamic personal law relating to marriage, dissolution of marriage, family relationships, guardianship, waqf, gifts, succession, and other matters recognised under Islamic law.²⁹ Consequently, disputes concerning *khul'*, being matters directly connected with the dissolution of marriage under Islamic law, clearly fall within the constitutional jurisdiction of the court.

²⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 275.

²⁹ Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 277(1)– (2).

The jurisdiction conferred upon the Sharia Court of Appeal is not merely procedural but also substantive. The court is required to determine disputes by applying the principles of Islamic law governing the subject matter before it. Accordingly, where a dispute concerns *khul'*, the applicable jurisprudential principles are those governing *khul'* under the recognised school of Islamic law applicable within the jurisdiction.³⁰

4.2 Applicable doctrine and the Maliki baseline

While the theoretical debate continues, the Maliki School which is the primary authority for the Yobe State sharia Court of Appeal firmly treats *Khul'* as an irrevocable divorce. This ensures that the wife's "redemption" is final and that she is protected from a husband's unilateral attempt to reclaim the marriage after she has already paid for her freedom. The application of Maliki jurisprudence is particularly significant in disputes concerning the determination of compensation in *khul'* because the Maliki School adopts a comparatively flexible approach regarding the quantum payable by the wife. Judicial discretion, however, is not unlimited. Rather, it must be exercised consistently with the principles developed by classical Maliki jurists and with due regard to justice, equity, and the factual circumstances of each case.³¹

4.3. Doctrinal Foundations and Maliki Rules on Quantum

The constitutional and statutory framework establishes the legal competence of the Sharia Court of Appeal to determine disputes arising from *khul'*. However, the existence of jurisdiction alone does not guarantee doctrinal compliance. Judicial legitimacy equally depends upon the faithful application of the substantive principles governing *khul'* under Maliki jurisprudence.

Accordingly, where a court exercises its discretion in determining the quantum of compensation payable by a wife, such discretion must remain consistent with recognised Maliki principles relating to negotiation, voluntariness, fairness, and judicial intervention.

³¹ Sahnun ibn Sa'id al-Tanuki, *Al-Mudawwanah al-Kubra* (Dar al-Kutub al-Ilmiyyah 1994) vol 2, 45.

Failure to adhere to these principles may not necessarily deprive the court of jurisdiction, but it raises legitimate questions concerning doctrinal consistency and the quality of judicial reasoning.³² It is this distinction between jurisdiction and jurisprudential compliance that forms the central focus of the present study.

4.4 Qur'anic and Prophetic Foundations

The legal basis of *khul'* is primarily derived from the Qur'an and the Sunnah of the Prophet (peace be upon him). The principal Qur'anic authority is found in Surah al-Baqarah, where Allah provides:

...And it is not lawful for you to take back anything of what you have given them unless both fear that they cannot keep within the limits of Allah. But if you fear that they cannot keep within the limits of Allah, there is no blame upon either of them concerning that by which she ransoms herself...³³

This verse establishes the legality of *khul'* by recognising that a wife may obtain release from the marriage through the payment of compensation where continuation of the marital relationship has become impossible. Although the verse expressly authorises compensation, it does not prescribe a fixed amount. Consequently, the determination of the quantum has been left to juristic interpretation based upon the objectives of justice, equity, and mutual consent reflected in the Sharia.³⁴

The Prophetic Sunnah further clarifies the practical application of the Qur'anic provision. The most authoritative precedent is the case of the wife of Thābit ibn Qays, who informed the Prophet (peace be upon him) that although she did not question her husband's religious commitment or moral character, she could no longer continue the marriage. The Prophet directed her to return the garden that had been given as her *mahr* and instructed Thābit to

³² *Alkamawa v Bello* (1998) 6 NWLR (Pt. 552) 312, where the Supreme Court recognised that the applicable Muslim law administered by the Sharia Court of Appeal in Northern Nigeria is the Maliki School pursuant to section 14 of the Sharia Court of Appeal Law.

³³ Qur'an 2:229.

³⁴ Wahbah al-Zuhayli, *Al-Fiqh al-Islami wa Adillatuhu* (Dar al-Fikr 1989) vol. 9, 6990–6998.

divorce her.³⁵ This Hadith demonstrates that compensation forms an essential element of *khul'*, while simultaneously leaving open the broader juristic question concerning the permissible extent of such compensation.

5.0 NATURE OF *KHUL'* AND ITS DISTINCTION FROM *FASAKH* AND *TAFRĪQ*

Khul' is a unique form of dissolution of marriage under Islamic law that enables a wife to secure the termination of the marital relationship, usually by offering compensation to the husband in exchange for her release from the marriage. Unlike other forms of marital dissolution, *khul'* is founded on the principle of mutual agreement and serves as a mechanism for ending a marriage where continued cohabitation has become undesirable, even in the absence of fault on the part of the husband. However, it is often confused with other judicial remedies such as *fasakh* and *tafrīq*, both of which involve court intervention but differ in their legal basis, procedural requirements, and consequences. A clear understanding of the nature of *khul'* and its distinction from *fasakh* and *tafrīq* is therefore essential for appreciating the scope of women's rights to seek the dissolution of marriage under Islamic law and for ensuring the proper application of these remedies in judicial practice.

5.1 The Concept of *Khul'*

Khul' is one of the recognised modes of dissolution of marriage under Islamic law whereby a wife secures her release from the marital relationship by offering compensation to the husband. Unlike *ṭalāq*, which is exercised unilaterally by the husband, *khul'* originates from the wife's desire to terminate the marriage where continued cohabitation has become unbearable, notwithstanding the absence of matrimonial misconduct that would ordinarily justify judicial dissolution.³⁶

³⁵ *Sahih al-Bukhari*, Book of Divorce, Hadith No. 5273.

³⁶ M.A. Ambali, *The Practice of Muslim Family Law in Nigeria* (1st edn, Tamaza Publishing Company Ltd, Kaduna, 1998) 164–170.

The legality of *khul'* is established in the Qur'an, where Allah permits a wife to redeem herself upon payment of compensation where both spouses fear that they cannot maintain the limits prescribed by Allah.³⁷ The Prophet (peace be upon him) further affirmed its permissibility in the celebrated case of the wife of Thābit ibn Qays, whom he instructed to return the garden given as *mahr* before directing her husband to dissolve the marriage.³⁸ These authorities demonstrate that *khul'* constitutes an equitable mechanism designed to protect a wife from remaining in a marriage that no longer fulfils the objectives of tranquillity, mutual affection, and mercy.

Under Maliki jurisprudence, *khul'* is generally regarded as an irrevocable dissolution (*talāq bā'in*) concluded through mutual agreement or, where agreement cannot be reached, through judicial intervention consistent with the principles of justice and equity.³⁹

5.2 Distinction between *Khul'*, *Fasakh* and *Tafrīq*

Although *khul'*, *fasakh*, and *tafrīq* all result in the dissolution of marriage, they differ significantly in their legal basis, procedural requirements, and legal consequences.

Khul' is fundamentally a redemption divorce initiated by the wife in consideration of compensation paid to the husband. Its distinguishing characteristic is the payment of consideration in exchange for release from the marriage, and it is ordinarily based upon the mutual agreement of the parties or judicial intervention where negotiations fail.⁴⁰

By contrast, *fasakh* refers to the judicial annulment of a marriage on legally recognised grounds such as fraud, incapacity, defect, apostasy, or the absence of essential conditions for a valid marriage. In *fasakh*, the dissolution is based upon a legal defect affecting either

³⁷ Qur'an 2:229.

³⁸ *Sahih al-Bukhari*, Book of Divorce, Hadith No. 5273.

³⁹ Ibn Rushd, *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid* (Dar al-Kutub al-Ilmiyyah, Beirut, 1996) vol. 2.

⁴⁰ Al-Ḥaṭṭāb, *Mawāhib al-Jalīl li Sharḥ Mukhtaṣar Khalīl* (Dar al-Fikr) vol. 4.

the marriage itself or its continued existence, rather than upon the wife's willingness to provide compensation.⁴¹

Tafrīq, on the other hand, denotes judicial dissolution granted upon specific statutory or juristic grounds, including cruelty, failure to maintain the wife, prolonged absence, imprisonment, or other circumstances rendering continuation of the marriage inequitable. Unlike *khul'*, the wife is generally not required to compensate the husband because the dissolution arises from the husband's default or other legally recognised grounds.⁴²

These distinctions are of considerable practical importance because the legal principles governing compensation differ according to the nature of the dissolution. Consequently, judicial decisions that fail to distinguish between *khul'* and other forms of dissolution risk applying inappropriate legal principles and thereby undermining doctrinal consistency.

5.3 Relevance to the Present Study

The present study is concerned exclusively with *khul'* proceedings because the determination of compensation constitutes the defining feature of that form of dissolution. Since the principal issue before the Yobe State Sharia Court of Appeal concerns the quantum of compensation payable by the wife, the applicable legal principles are those developed under Maliki jurisprudence relating specifically to *khul'* rather than the rules governing *fasakh* or *tafrīq*. Accordingly, the subsequent analysis evaluates the Court's decisions solely against the doctrinal requirements applicable to *khul'*.

6.0 ANALYTICAL FRAMEWORK FOR ASSESSING JUDICIAL COMPLIANCE

Before examining the individual decisions of the Yobe State Sharia Court of Appeal, it is necessary to establish the analytical framework employed in this study. Judicial compliance with Maliki jurisprudence cannot be assessed merely by considering whether

⁴¹ A.M.J. Elesin, 'Analysis of Misconception of Nature of Dissolution of Nikāḥ at the Instance of Wife under Islamic Family Law' (2021) 2(1) *KWASU Law Journal* 198–206.

⁴² Ibid

the amount of compensation awarded corresponds to the *mahr*. Rather, compliance requires an examination of both the substantive outcome reached by the court and the procedure through which that outcome was achieved.

Accordingly, this study adopts a **two-dimensional framework** comprising **outcome compliance** and **procedural compliance**. This framework provides an objective basis for evaluating whether the Court's decisions conform to the principles governing *khul'* under Maliki jurisprudence.

6.1 Outcome Compliance

Outcome compliance concerns the substantive correctness of the court's decision in relation to the amount of compensation awarded. The principal question is whether the compensation determined by the court falls within the range recognised under Maliki jurisprudence and whether it is supported by the facts established before the court.

In assessing outcome compliance, particular attention is paid to whether:

- i. the court recognized that compensation may legitimately be less than, equal to, or greater than the *mahr*;
- ii. the amount awarded reflected the evidence presented by the parties;
- iii. the decision avoided manifest injustice to either spouse; and
- iv. the court's reasoning was consistent with established Maliki authorities.

Where these requirements are satisfied, the decision is regarded as substantively compliant with Maliki jurisprudence.

6.2 Procedural Compliance

Procedural compliance concerns the manner in which the court reached its decision. Classical Maliki jurisprudence places considerable emphasis upon reconciliation, negotiation, voluntariness, and judicial fairness before compensation is determined.

Accordingly, procedural compliance is assessed by considering whether the court:

- i. encouraged reconciliation between the spouses;
- ii. afforded the parties an opportunity to negotiate the amount of compensation;
- iii. considered the appointment of *hakamayn* where appropriate;
- iv. relied upon admissible evidence;
- v. provided adequate reasons for exercising judicial discretion; and
- vi. observed the principles of fairness and natural justice throughout the proceedings.

These procedural safeguards ensure that judicial discretion remains consistent with the objectives of the Sharia and the equitable nature of *khul'*.

6.3 Relevance of the Framework

The adoption of this framework distinguishes the present study from earlier works on *khul'*, which have generally focused on explaining the legal principles governing dissolution without developing objective criteria for evaluating judicial practice. By examining both substantive outcomes and procedural fairness, the framework provides a more comprehensive basis for assessing the extent to which appellate courts adhere to Maliki jurisprudence in determining the quantum of compensation.

6.4 Case Analysis (Yobe State Summaries)

Each case is analysed using a standard framework covering procedure, mahr, claimed versus awarded amounts, applicable Maliki rules, and compliance.

6.5 Alhaji Bukar Bello v Yagana Zakariya

The case originated from the Area Court, Yunusari, Yobe State, where the respondent sought dissolution of marriage through *khul'*. The trial court granted the dissolution and ordered the respondent to pay ₦20,000 as compensation despite the appellant's claim of ₦1,000,000, noting that the original mahr was equivalent to ₦8,000. On appeal, the Upper

Sharia Court upheld the application of Maliki principles permitting compensation equal to or slightly above the mahr but revised the amount to ₦50,000. The Sharia Court of Appeal affirmed this decision, relying on authorities such as the *Muwatta of Imam Malik* and *Bidāyat al-Mujtahid*, which allow khul' compensation exceeding the dowry.⁴³ The court further emphasised the judicial discretion to fix reasonable compensation to prevent abuse and undue prolongation of litigation.⁴⁴

6.6 Ahmadu Illu v Sa'adatu Hassan

The appeal raised key issues on the Islamic law of khul', particularly under the Maliki school. The appellant challenged the decision of the Upper Sharia Court, Gashua, on the ground that he was not consulted on the adequacy of the ₦20,000 compensation awarded. The Sharia Court of Appeal held that khul' is lawful and does not require the husband's consent regarding the quantum, as Maliki jurisprudence permits compensation equal to, less than, or greater than the mahr. Relying on the Prophetic precedent of Thabit ibn Qays and his wife, as well as *Hussaina v. Tsiriko* (1991), the court found no procedural or substantive error. It affirmed that judicial discretion extends to determining appropriate compensation, including additional items beyond the dowry. Consequently, the appeal was dismissed in line with the Sharia Court of Appeal Civil Procedure Rules 1960.⁴⁵

6.7 Ali Babawo v Hadiza Abubakar

The case concerns a wife's petition for *khul'* arising from the husband's failure to fulfill agreed marital conditions, leading to loss of respect and breakdown of the marriage. The trial court granted dissolution and ordered the wife to return the full mahr. On appeal, the appellant challenged, inter alia, the admissibility of the respondent's witnesses on grounds of bias.⁴⁶ The Sharia Court of Appeal held that evidence of close relatives is admissible

⁴³ Ibn Rushd, *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid* (Dār al-Kutub al-ʿIlmiyyah, Beirut, 1996) vol. 2, 70–73.

⁴⁴ Alhaji Bukar Bello v Yagana Zakariya APPEAL NO: YBS/SCA/CV/GSH/06/2016

⁴⁵ *Hussaina v. Tsiriko* (1991) 1 NWLR 356 at page 364

⁴⁶ Ali Babawo v Hadiza Abubakar APPEAL NO: YBS/SCA/CV/GJ/22/2015

where no benefit, harm avoidance, or likelihood of bias is established, relying on *Alhaji Samaila Isa v. Nura Isa & Ors* and *Hada v. Malumfashi*.⁴⁷ The appeal was consequently dismissed.

6.4 Hajiya Halima Muhammed v Bulama Ibrahim Driver

This is an appeal from the Upper Sharia Court, Damaturu, concerning the dissolution of a marriage. The petitioner sought divorce on the ground that she became ill whenever she had marital relations with her husband for over two years. The trial court initially referred the matter to arbitrators (*hakamayn*), but the petitioner appealed, stating she no longer loved her husband and would rather harm herself than remain in the marriage.

The respondent confirmed her claims, and the court then asked if she could return the exact dowry paid at marriage. Upon her agreement, the court dissolved the marriage through *khul'*, requiring her to refund the dowry. The court also advised that parties should not be forced into reconciliation in such cases.

The decision was based on the tradition of the Prophet (the case of Thabit and his wife Jamila) and the Maliki school, which requires the wife to return only the exact dowry no more, no less.⁴⁸

7.0. DISCUSSION: COUNTER-ARGUMENTS

7.1 Summary of Sampled Case Findings

The cases examined generally demonstrate substantial compliance with the substantive principles of Maliki jurisprudence. In several decisions, the courts required the husband to

⁴⁷ *Alhaji Samaila Isa v. Nura Isa & Ors* and *Hada v. Malumfashi* (1993) 7 NWLR (Pt. 303) 1 at 14–15.

⁴⁸ *Hajiya Halima Muhammed v Bulama Ibrahim Driver* YBS/SC/DTR/CV/11/2019

accept the return of the *mahr* as compensation, while in at least one case the Court upheld compensation exceeding the *mahr*, a position recognised within Maliki jurisprudence where the agreement is voluntary and free from oppression or bad faith.⁴⁹ The principal concern arising from the decisions is therefore not the substantive outcome but the procedural reasoning adopted by the courts. In some judgments, the record does not indicate whether meaningful efforts were made to facilitate negotiation between the parties before the court determined the quantum of compensation. Similarly, although the appointment of *hakamayn* is not a mandatory condition for the validity of every *khul'*, greater judicial consideration of reconciliation mechanisms, where appropriate, would better reflect the Qur'anic preference for amicable dispute resolution and strengthen the transparency and legitimacy of judicial discretion.

7.2 Counter-argument and response

A first counterargument is that compensation should be capped at *mahr* based on the Thabit ibn Qays precedent and the protective purpose of *khul*. On that view, exceeding *mahr* risks commodifying dissolution and enabling exploitation. A second counterargument is institutional: requiring negotiation and *hakamayn* steps in every case may delay relief and increase costs, undermining access to justice.

The response is twofold. Doctrinally, Maliki materials are frequently read as permitting quantum flexibility (less, equal or more) in appropriate circumstances, while still condemning oppression or bad faith.⁵⁰ The procedural answer is not to eliminate judicial discretion but to discipline it: courts should require a recorded negotiation stage, then a time-bounded *hakamayn* effort where appropriate, before fixing a quantum. This preserves speed while improving legitimacy and reducing appeals.

8.0 CONCLUSION AND RECOMMENDATIONS

⁴⁹ Ibn Rushd, *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid* (Dār al-Kutub al-'Ilmiyyah, Beirut, 1996) vol. 2

⁵⁰ Ibid

This research focuses on evaluating the extent to which the Yobe State Sharia Court of Appeal adheres to the Maliki School regarding the determination of khul compensation. According to the Maliki School, specific rules guide how the amount of khul is decided in cases of marital separation. The parties are generally allowed to negotiate and agree on the compensation themselves. However, if they cannot reach an agreement, the court has the discretion to determine an appropriate amount based on the circumstances, which may be equal to, higher, or lower than the dower paid by the husband at the time of marriage.

These rules are designed to accommodate the varying circumstances of different cases and to ensure fairness to both parties. In line with these principles, the Yobe State Sharia Court of Appeal has ruled that the compensation may correspond to the dower originally paid by the husband, either in full or adjusted as necessary.

The paper recommends as follows:

- i. Courts should implement a recorded negotiation-first stage on quantum before fixing any amount.
- ii. Where agreement fails, courts should appoint *hakamayn* (one from each side) with a defined timeline and a written report.
- iii. When fixing quantum, courts should separate claimable from unclaimable items and require proof for expenditures beyond mahr.
- iv. The court should give brief reasons explaining which Maliki rule is being applied (agreement, flexibility or discretion) and why the chosen quantum is proportionate.
- v. For appellate review, records should clearly document the steps taken (negotiation, *hakamayn*, evidence) to reduce “fair hearing” appeals.