

Adamu v Attorney General of Borno State (Nigeria) 1996 8 NWLR 203

1) Reference Details

Jurisdiction: Nigerian Court of Appeal

Date of Decision: 1996

Case Status: Concluded by the Court of Appeal

2) Facts

The plaintiffs/appellants claimed that both Christian and Muslim pupils in primary school in Gwoza Local Government Area of Borno State were entitled to equal treatment in both education and religion, and that the practice whereby Christians had to pay for their children to learn Christianity, while the Local Government paid Islamic teachers were unlawful and unconstitutional. They sought among other reliefs, a declaration that it was unlawful for pupils to be taught Islamic religion and Arabic language against their will and the wish of the parents. The Court granted the reliefs sought by the appellants, as they were incidental to their right to freedom of religion and freedom from discrimination on grounds of religion.

3) Law

- Chapter 11 of the Constitution of Federal Republic of Nigeria

4) Legal Arguments

The Plaintiff

The plaintiffs' alleged unconstitutional discrimination against Christian pupils by the local government authorises, on the grounds that Christian's parents were required to fund Christian instruction to their wards in primary schools in Gwon local government area. This practise was not applicable to Muslim parents for Muslim instructions to their wards.

The Defendant

The defendants argued that the right to a particular form of education fell under Chapter 11, of the Nigerian Constitution. Chapter 11 of the Nigerian Constitution provides for "Fundamental Objective and Directive Principles of State Policy." They are declaratory statements of national policy that establish broad economic, social and cultural guideline and are not justiciable under the Nigerian Constitution.

5) Decision

The Nigerian Federal Court of Appeal held that:

"It is conceded that chapter 11 of the constitution is not justiciable, but it is the law that where the provisions of the constitution defines a cause of action or enshrines certain rights, these provisions must be applied without any inhibition emanating from chapter 11..."

In other words, where any legislation for implementing the “fundamental objectives and directive principle of state policy” is in issue, the courts shall declare such legislation valid, unless the fundamental rights of a citizen are infringed or any other express provision are clearly infringed.

The point made was that where a local authority in the implementation of the fundamental objectives of state policy, adopts a system which infringes on a citizen’s fundamental right, such as the freedom of religion and freedom from discrimination on grounds of religion, that breach of the citizen’s right is justiciable.