

The Legal Conundrum of Non-Interest Banking. A Case Study of Islamic Bank in Nigeria.

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Abstract:

The issuance of license to Jaiz bank plc as the first full-flesh Islamic bank in Nigeria to carry on Non-interest banking has generated heated debate among scholars, jurist, religious leaders and public commentators in Nigeria. Chiefly among these debate borders on the constitutionality of Non-interest (Islamic) banking in Nigeria; whether or not Islamic banking is established with the aim of Islamizing the entire Nigeria and whether or not it is meant to discriminate against Non-Muslims in Nigeria. Consequently, this work seek to appraise the legal conundrum or constitutionality of Islamic banking in Nigeria with a view to ascertaining whether or not Islamic banking is meant to Islamize Nigeria or it is meant to discriminate against non-Muslims. However the outcome of this research article shows that Islamic (Non- interest) banking is constitutional and is not meant to discriminate against Non- Muslims or Islamize Non- Muslims. Rather with the practice of dual banking (interest and non interest banking) in Nigeria, Nigerians would have the advantage of having different credit choices, the Nigerian banking sector would be more competitive thus enhance quality services, creation of more employment opportunities and would give the Nigerian government the opportunity to secure non-interest loan from Islamic development fund available globally to finance infrastructural projects. This work further concludes that the major challenge this banking system is facing in Nigeria is lack of adequate awareness about the operation of the banking system and lack of robust legal framework to adequately regulate the system. It is therefore suggested that a more comprehensive legal framework should be enacted by the Nigerian National Assembly to appropriately regulate the non-interest banking sector as well as creation of more awareness about the operation of the system through the social media, town hall meetings, newspapers and radio commentaries.

Key Words : *Non- Interest Banking, Constitutionality, Islamic Banking, Conventional Banking, Central Bank of Nigeria, Secularity, Secularism.*

1. introduction

At the global financial market, there operate two financial systems which are the conventional banking system and the Islamic banking system. The conventional banking system is otherwise known as interest based banking system. This is because under the conventional banking system, banks receive deposits from savers and lend same

to borrowers at interest; a small portion of the interest is used to compensate the depositor while a larger portion is used by the banks. On the contrary Islamic banking system is otherwise known as Non-interest banking or profit and loss sharing (PLS) banking system. This is because this form of banking system prohibits the payment of interest in all ramifications and then adopts the principle of profit and loss sharing. Thus Islamic banking is defined as

a form of banking which is consistent with the principles of Islamic commercial jurisprudence and its application through the development of Islamic economics.

The fundamental principles of Islamic commercial jurisprudence (Non-Interest banking) includes the following: The prohibition of interest (*Riba/usury*) regardless of the purpose or rate at which interest is charged. This prohibition is found in the holy Quran chapters 30:39, 4:161, 3:130 and 2:28 as well as in the books of the Holy Bible: Exodus: 22:25, Leviticus 25:35-38 Proverbs 19:17 and Ezekiel 18:13. Second, Islamic banking places ban on unethical investments like investing in businesses that promotes the production of alcohol, pornography and gambling. This is because the above activities are against the ethical code of conduct as established by the holy Quran

Furthermore, Islamic banking adopts the principle of profit and loss sharing. Under this principle both the investor (provider of capital) and the entrepreneur (Islamic bank) are seen as partners, thus when profit or losses are made, same is shared according to the formula that reflects their level of financial participation. Unlike the conventional interest based banks whose relationship with their customer is that of creditor and borrower, where interest is fixed in advance and risk or loss is only incurred by the borrower. Finally Islamic banking encourages asset banking as such most financial transactions are tied to tangible assets like real estate investment or investment on goal. The rationale behind this idea is based on the fact that, this form of asset usually appreciates overtime and do not depreciate. [1] The idea of Islamic banking was developed due to the exploitative nature of conventional banks to its host countries and its customers. This exploitative nature is evident in the high interest rate charged on loans and other financial activities the render to its customers. Consequently, there have been discouragement on investment; there is high level of unemployment and increase in crime rate. High interest rate is one of the greatest machinery of exploitation at the international community. This is because it makes the

economy of most states prone to external manipulation and worsens the internal and external debt of such nations [2]. Nigeria as a nation has suffered the effect of high interest rate when she borrowed from International Monetary Fund (IMF) in 1985. On this issue the comment of President Olusegun Obasanjo, the former president of the Federal Republic of Nigeria while commenting on Nigerian debt profile in 2008 is instructive. According to him “ what Nigeria borrowed as at 1985 was \$5 billion, Nigeria has paid about \$16 billion as at 1998, yet we have been told that we still owe \$28 billion [3]. The above increase is because of injustice occasion by high interest rate.

Furthermore, the recent global financial crisis 2004- 2005 which has affected most of the biggest economy of the world practicing conventional interest based banking is a clear indication of its ineffectiveness. This is because despite the effect of the global financial crisis that affected most financial institutions all over the world, Islamic financial institutions were marginally or not affected, rather Islamic banking institutions increased their reserves as well as attracting new clients. [4] Moreover, the Islamic Banking principle of profit and loss sharing coupled with the principle of ensuring that all funds are asset back up had been reported by the International Monetary Fund (IMF) to make Islamic banks more profitable than their conventional peers in the run up to the global economic crisis of 2004 – 2005. [5]

Consequent upon the aforementioned flows of conventional banking system, the Federal Government of Nigeria through the Central Bank of Nigeria (CBN) being the highest regulatory body in the Nigerian banking sector decided to join the race like its counterparts in United Kingdom, USA, Australia, Malaysia and South Africa to dualize the Nigerian banking sector by granting license to banks to offer non-interest financial services, either full-fledge or its subsidiary. The rationale behind this decision by CBN was to expand the Nigerian capital markets for emerging economics, propel economic development, create more employment opportunities, make the Nigerian banking sector more competitive, poverty alleviation and

reduce the effect of credit crunch in the real sector.

In line with the above decision of the CBN to dualize the Nigerian banking sector, approval was granted to the then Habid Bank Plc in 1992 to open a non-interest banking window offering a limited number of *shariah*-compliant products. In April 2003, the CBN granted Approval-In-Principle (AIP) to Jaiz International Plc to establish *Jaiz Bank* upon meeting the mandatory capital requirement. This bank became the first full-fledged Islamic bank in Nigeria with branches in Abuja (FCT), Kaduna and Kano state and started operation in 2011. Finally, the CBN in January 2011 released the Guidelines for the Regulation and Supervision of Non-Interest Banking in Nigeria as well as two other guidelines modifying the initial ones. The said guidelines were issued pursuant to section 28(1)(b) of the CBN Act (2007) [6] and the provisions of BOFIA (1991) [7] as

amended: sections 57, 61; 23(1).

However, the introduction of Islamic banking system into the Nigerian banking Sector has generated a lot of constitutional controversies among Nigerians. These controversies seem to question the legality of the introduction of the Islamic banking system in Nigeria as well as whether or not the introduction of Islamic Banking would not undermine the secularity of Nigeria as enshrined in section 10 of the 1999 Constitution of the Federal Republic of Nigeria; whether or not the introduction of Islamic Banking is a political strategy to Islamize Nigeria. Against this backdrop, this work will critically examine the constitutional issues raised above with a view to resolving them and to make appropriate recommendations.

2.0 The Legal Conundrum or Constitutionality of Non-Interest Banking System in Nigeria

Although much was not heard about the controversy over non-interest banking in Nigeria, despite the initial license (approval in principle) granted to Jaiz Bank Plc to operate as a non-interest or profit and loss sharing bank since 2004. [8] However, the situation changed when the former CBN Governor Mallam Lamido Sanusi

announced in 2009 of the readiness of the apex bank to issue guidelines which was meant to be followed by stakeholders wishing to establish Islamic or other non-interest banking in the country. [9, 10] Consequent upon this on the 4th of March 2009 the CBN issued the first guidelines [11]. This was followed by the announcement of the then CBN Governor S.

L. Sanusi on June 2, 2011 at a conference on Islamic Banking in Dakar Senegal that it has issued license to Jaiz Bank as the first Islamic Bank in Nigeria and modified version of the said guidelines was issued in July 2011. [12] According to the CBN the rationale behind licensing and issuing the above guidelines was to give opportunity for individuals who wish to practice non-interest banking to do so. This is because it would attract the economic benefit of the system to the Nigerian banking sector, as well as makes the banking sector more compliant with international standards and became more stable. [13]

However, the above move by the apex Bank to dualize the Nigerian banking sector did not go down well with certain group in the country especially Non-Muslim group. This group perceived the action of the CBN as a way of promoting Islamic religion in the country. Consequently, the group raised the following pertinent questions about Islamic banking. The group questioned the constitutionality of Islamic Banking in Nigeria since there was no provision in our constitution legitimizing it in Nigeria; they further alleged that the introduction of Islamic banking would undermine the secularity of Nigeria as contained in section 10 of the 1999 constitution; they also alleged the possibility of discrimination of non-Muslims in the practice of Islamic banking and finally the view non-interest banking as a means of Islamizing the contrary. On the other hand the protagonist of Islamic banking tenaciously held that Islamic banking is indeed constitutional because it is provided for in our banking legal framework. Consequently, they described the argument of the antagonist as inclination to religious sentiments at the expense of national development, objectivism and intellectual liberalism among others. [14] Based on

the divergent views we wish to address the arguments of both the antagonist and the protagonist school of thought on non-interest banking.

2.1 Arguments of the antagonist School of thought on Non-interest Banking in Nigeria

The antagonist of non-interest banking premised their arguments against Islamic banking on the following issues: The antagonist holds that, there is no provision(s) in the 1999 constitution of the Federal Republic of Nigeria authorizing the practice of non-interest banking in Nigeria, thus the practice is illegal, unconstitutional and void by virtue of section 1 of the 1999 constitution. [15]

Moreover, the antagonist alleged fear of possible discrimination against Non-Muslim in the services of Islamic banks in the country because Non-Muslim would become a minority group in this banking model as well as the believe that the introduction of Islamic Banking by the then CBN Governor (Sanusi Lamido) is a ploy to Islamize Nigeria as a country [16].

2.2 Arguments of the protagonist School of thought on Non –Interest Banking

The protagonist of non-interest banking maintains that the introduction of Islamic banking into the Nigeria banking sector is lawful and appropriate. According to them non-interest banking or profit and loss sharing banking was overtly provided for by virtue of section 23(2) and section 66 of BOFIA 1991 as amended. According to this school of thought BOFIA is the principal banking legislation that regulates banks and other financial institutions in Nigeria. The protagonist further held that non-interest banking/profit and loss sharing banking is further provided for in section 1 of the Guidelines for the Regulation and supervision of Non-Interest banking in Nigeria of 2011.

On the alleged discrimination of Non-Muslims, the protagonist held that currently Islamic banking is a global banking system practice across the globe, as such the contemporary practice of Islamic banking world over shows that this banking model render services to all category of customer's regardless of their religious inclination. As such it is not meant to Islamize Nigeria as a country

because you need not be a Muslim before you can contract with Jaiz bank plc in Nigeria [17].

2.3 Appraisal of the Contending Views

After a critical review of the arguments of the antagonist and the protagonist of non-interest banking, an objective analysis of the above arguments is pertinent in order to resolve the fundamental issues raised by both sides. Against this backdrop the following germane issues would be addressed:

2.3.1. Whether it is Constitutional for the Central Bank to License Non -Interest or Profit and Loss sharing banking in Nigeria

The term constitutionality is derived from the word constitution and constitutional. The term constitution has been defined in the case of *Attorney General of Ondo State v. Attorney General of the Federation & 35 Ors* as the organic instruments which confers powers and also establishes rights and limitations. It is further viewed as the grundnorm or the highest law of a nation which regulates all legislative, executive and judicial acts repugnant to its provisions [18]. On the other hand the term constitutional is viewed as something or an act allowed or limited by the constitution of a country . . . [19] in the same vein, the term constitutionality is used to depict the nature or state of a decision or an action which is consistent with the dictates of a constitution [20]

Consequent upon the above, it must be pointed out that, there is no place in the 1999 constitution of the Federal Republic of Nigeria where there is a provision made for Islamic banking or any other banking model in Nigeria to be practiced. This is because the constitution cannot pretend of being capable of making provisions for all laws that need to be [21]. However, by virtue of its supremacy clause as contained in section 1 (1) of the constitution, the constitution becomes supreme and validates all the laws of the land as the makers and such laws derive their law making powers from it. Through this provision the constitution assume the status of the grundnorm as postulated by Kelson in his pure theory [22]. Consequently, all the banking laws passed by the Nigeria National Assembly which legitimize Islamic banking have their roots

and validity traceable to the constitution through this means. Furthermore, by virtue of section 315(1) of the 1999 CFRN as amended which states *inter alia*?

“ *subject to the provisions of this constitution an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this constitution and shall be deemed to be . . . (a) an act of the national assembly. . .* ”.

Based on the above provision, when a law is made before the constitution came into force, the validity of such law(s) is co-opted into the constitution and are referred to as existing laws [23] . Consequent upon the above provision (sec 315), all the laws that regulate banking practice in Nigeria are validated by the constitution.

On the strength of the above argument, the protagonist of non-interest banking / profit and loss sharing banking in Nigeria tenaciously held that the legal foundation of Islamic banking was provided for in section 23(1) of the Banks and Other Financial Institutions Act (BOFIA) which states as follows:

“Every bank shall display at its offices its lending and deposit interest rates and shall render to the bank information on such rates as may be specified from time to time to the Bank *provided that the provisions of this sub-section shall not apply to profit and loss sharing banks*”

The implication of the above is that, through section 23(1) of BOFIA, non-interest banks or profit and loss sharing banks in Nigeria are exempted from the mandatory requirement of displaying their interest rate and rendering such information to the apex bank.

Furthermore, section 66 of BOFIA further lays to rest what profit and loss sharing banks are when it states as follows:

“*Profit and loss sharing bank means a bank which transacts investment or commercial banking business and maintains profit and loss sharing accounts*”.

The implication of the above section is that profit and loss sharing banks in Nigeria are recognized as a type of bank that is permitted to carry on

banking business in the country. In the same vein, Islamic banking or profit and loss sharing banking is provided for in section 1 of the Guidelines for the Regulation and Supervision of Institutions Offering Non-Interest Financial Services in Nigeria. The section states *inter alia*.

“ The Central Bank of Nigeria, (CBN) New Banking Model authorizes the establishment of the following banking structures as defined under the Banks and Other Financial Institutions Act (BOFIA) 1991 as amended:

- (i) Commercial Banks;
- (ii) Merchant Banks; and
- (iii) Specialized Banks.

Specialized Banks include non-interest banks, microfinance banks, development banks; mortgage banks and such other banks as may be designated by the CBN from time to time ”.

The above section further classified Non-interest banking into two categories :

- I. Non-interest banking and finance based on Islamic commercial jurisprudence;
- II. Non-interest banking and finance based on any other established non-interest principle.

In the same vein, the above section explained that Islamic banking is one of the models of non-interest banking, it serves the same purpose of providing financial services as do conventional financial institutions save that it operates in accordance with principles and rules of Islamic commercial jurisprudence that generally recognizes profit and loss sharing and the prohibition of interest, as a model.

The implication of section 1 of the Guidelines for the Regulation and Supervision of Institutions Offering Non-Interest Financial Services in Nigeria is that the CBN has approved Non-Interest banking system as one of the banking systems that can operate in the Nigerian banking sector. Moreover, the power of the CBN governor to make guidelines, regulations is adequately provided for by virtue of section 57 of BOFIA which states *inter alia* thus:

- “ (1) The Governor may make regulations,

publish in the Federal Gazette to give full effect to the object and objectives of this Act

(2) without prejudice to the provisions of subsection (1) of this section; the Governor may make rules and regulations for the operations and control of all institutions under its supervision”.

Also, the move by the CBN in designating non-interest banks as one of the specialized banks in Nigeria is predicted on its powers as contained in section 66 of BOFIA which defines specialized banks to include Nigeria industrial development banks, Nigerian Agricultural Cooperative bank etc and such banks as may be designated from time to time by the CBN.

Consequent upon the above cited sections of the 1999 constitution and BOFIA, it is our considered opinion to state that it is the Nigerian law makers who had authorized and legitimized the practice of profit and loss sharing banking otherwise known as Islamic or non-interest banking like other advanced nations, into the Nigerian banking section. It is also important to note that the only overtly known non-interest banking in the world today is Islamic banking [24] which is basically practice upon the principle of profit and loss sharing and prohibition of interest in all its financial transactions.

2.3.2 Whether by virtue of section 10 of the 1999 constitution of the Federal Republic of Nigeria (CFRN) as amended, the licensing of non-interest banking tends to undermine the secular status of Nigeria?

In addressing the above issue, the first question to be addressed is the meaning of secularism, secularity and what a secular state is. This is pertinent because the debate on the aforementioned issue revolves round the understanding or misunderstanding of the above concepts. Consequently, the term secularism had been defined as an ideology which believes that religion should not be involved in the organization of a society, education etc [19]. secularism has also been defined as a system of social organization that does not allow religion to influence the government. [25] Consequent upon the above, secularism in most cases is viewed as an ideology that tenaciously holds that religion

should not be the basis of government as such religion has no place in public life. [26] This connotes the extremity of not only abandoning religion but also opposing any form of religious sensibilities in governance.

On the other hand, secularity is defined as the attitude of neutrality and indifference to religion and religious consideration [27]. Thus secularity could be viewed as a concept of convenience that enjoys neutrality in attitude to religions especially in a multi-religious society [20, 28]. The above concept received correct judicial interpretation in the famous United State case of *Everson v. Board of Education* where the Supreme Court held that:

“Neither a state nor the federal government can set up a church. Neither can pass a law which aid one religion nor prefer one religion or another. Neither can force or influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any religion”.

Resulting from the above ruling, secularity is a concept that advocates for the neutrality of a state on religious matter. It is pertinent to note that to guarantee the secularity principle of any state the right to freedom of religion has to be guaranteed. According to the case of *Tega Esabunor and anor v. Dr. Tunde Feweya and 4 Ors* the court held that the right to freedom of thought, conscience or religion implies a right not to be prevented without lawful jurisdiction to choose the cause of one's life, what one believes in and a right not to be coerced into acting contrary to one's religious believe. However, this right is always limited if exercising this right would amount to infringing on the rights of others or would put the welfare of the society into jeopardy.

In the same vein, secular ity has been defined by *The New Webster's Dictionary of English Language* 40 as relating to the worldly or temporal concerns, not specifically religious. This definition does not evoke the idea of completely eliminating every religious consideration in the governance of a state as canvassed by the earlier definition of secularism. Thus a secular state is a state which adopts the principle of neutrality in relation to religious matters. It claims to always treats all its citizens equally regardless of religion, and avoid preferential

treatment for citizens of a particular religion or non-religion over other religions [29] . Moreover, countries that are secular does not mean they are irreligious but they are seen not to be adopting a particular religion as state religion but adopting a neutral attitude to all religion especially in a multi religious country. Moreover, it has to be pointed out that the Nigerian secularity principle is premised in the provisions of the 1999 constitution which states as follows:

“The government of the federation or state shall not adopt any religion as state religion” [30] .

Based on the above exposition, it is our considered opinion that secularism connotes the ideology that religion should be completely abandoned and should not be the basis of political leadership is not what is desired in a secular state like Nigeria which is an ethno - religious and pluralistic society. Rather it is the principle of secularity which adopts neutrality in religious issues because of the diversity in religion and culture, among the various states that make up the federation. Thus secularity would be viewed as a principle which is aimed at encouraging peaceful co-existence among citizen of a nation professing various religions. Resulting from the above, secularity is therefore a principle that guard against anarchy and conflict in a pluralistic nation like Nigeria irrespective of the percentage that practice the minority religion(s) in the state. This is because the conscience and freedom of the minorities in a pluralistic nation like Nigeria are as important as those of the majority and vice versa [31] .

On the strength of the above analysis we wish to state that the licensing of non-interest banking by the CBN as an alternative form of banking system which is practice alongside the conventional banking system has not in any way amounted to adoption of Islam as a state religion as contained in section 10 of the 1999 CFRN as amended or undermined the secularity of Nigeria. This is because the CBN in licensing non-interest banking in Nigeria, specifically categorized non-interest banking models into non-interest financial products and services based on principles of Islamic commercial jurisprudence and others

which are based on any other established rules and principle The implication of the above is that, CBN has not restricted the license to only non-interest banking which is Shariah compliant, but there is opportunity for licensing other banks who may be interested in practicing non-interest banking that may be Christian compliant or even African traditional religious compliant as the case may be. Thus CBN cannot be accused of favouring only one religion at the expense of others.

2.3.3 Whether or not the services of non-interest bank would be discriminatory on non-Muslim customers

Right from 1992 when approval was given by the CBN for the operation of non-interest banking window in Nigeria there had been apprehension as to whether or not non-interest bank would give equal opportunity to Non-Muslims and Muslims customers in the course of discharging their services to the public. In addressing the above issue, it is pertinent to state that, non-interest banking which is Shariah compliant is a product of Islamic law called Shariah. Shariah is divided into three essential groups which includes *Aqidah* (which deals with rules governing believe in all mighty *Allah*), *Akhiaq*, (which deals with rules governing Muslim behavior with the society) and finally *Fiqh* (which governs the relationship between man and his creator and the relationship between man and another man in the society). [32] Moreover, *Fiqh* is further divided into “*ibadat*” and *Al muamalat* ” where *fiqh ibadak* which otherwise governs the Islamic commercial jurisprudence does not discriminate against Muslims or Non-Muslims but rather treat them equally.

Supporting this line of reasoning, there is evidence that Prophet Mohammed during his life time engaged in trading with a Jewish merchant who was a non-Muslim. As such during the demise of the Holy Prophet, his armour was found in the custody of a Jewish merchant. The Jewish merchant further explained that the Holy Prophet received a loan from him and placed his armour as collateral security. Consequent upon the fact that Islamic (non-interest) banking is rooted in Shariah principle as exemplified by the Holy Prophet, who despite the fact that he is a Muslim carried on

commercial transactions with Non- Muslims (Christians Jew) there is no religious, moral or legal basis for any perceived discrimination against Non- Muslims by Muslims in the course of practicing non -interest banking.

Furthermore, the Islamic banking being practice across the globe covering above 75 countries with a World Wide asset of above \$822 billion making it the fastest growing segment of the global financial system [33] , is gaining popularity both in Muslims and non-Muslims countries, for instance in United Kingdom, the Central Bank Act and the Finance and Banking Institution Act have been amended to accommodate the operation of Islamic banking despite the minority population of about four percent Muslim in the country [34] . Moreover, economic giants like America, China, Germany, Japan, Italy etc have developed comprehensive rules, policies and regulation for the effective operation of Islamic banking in their various countries [9] . Based on the above analysis, it has been established world over that Islamic Banking render its services to the general public regardless of their customers religious inclination. Thus, there is the strong believe that Nigerian Jaiz bank would not do otherwise.

To further buttress the fact that Islamic banking operators are not too religious bias or discriminatory, the current CBN Governor, Mr. Godwin Emefiele who is a Christian was appointed recently by the International Islamic Liquidity Management Corporation (IILMC) which is an international Islamic organization responsible for ensuring the liquidity of Islamic banks as its chairman despite the fact that he (the CBN Governor) is a Christian. This appointment took place during its 17th governing Board meeting in Jakarta, Indonesia [35] .

However, in the event of any discrimination on non- Muslims in the discharge of the services of non-interest banking in Nigeria, the aggrieved party has a right to challenge this discrimination by virtue of the provisions of section 42(1) (a) of 1999 constitution which protect

Nigeria citizens against possible discrimination on grounds of religion, place of origin, sex etc.

2.3.4 Whether or not the licensing of non-interest banking in Nigeria is a ploy to Islamize the entire country

It has been held by the antagonist of Islamic banking that, the introduction of non-interest banking in Nigeria is a ploy by Sanusi Lamido the then CBN Governor to Islamize the entire country. Based on the above an objective analysis is pertinent. First, it has been alleged that the idea and licensing of Islamic banking is the brain work of the then CBN Governor in the person of Mallam Lamido Sanusi which is aimed at Islamizing the entire country because he is a Muslim. However, this appears not to be the correct position of things because, approval for non-interest banking in Nigeria was given by the CBN in 1992 to Habib bank limited to open a banking window which is Shariah compliant in Nigeria. This was followed by the granting of license (approval in principle) to Jaiz Bank Plc in 2004, by the CBN under the leadership of Prof. Charles Soludo the then CBN governor, who is a Christian [36] . The question then would be, how possible is it for the then CBN Governor who actually introduced non-interest banking and incidentally a Christian would intend to Islamize the country through the introduction of Non interest banking system and up till date he is still a Christian? I think what Sanusi Lamido did was to issue guidelines/framework for the proper operation of the already introduced non-interest banking in the Nigerian banking sector. This cannot with due respect tantamount to being the brain behind the introduction of non-interest banking with the aim of Islamizing the entire country.

Still on the issue of Islamization, it has been canvassed earlier that Islamic banking is a global form of banking practiced in above 75 countries of the world and in most advanced economies of the world [37] . For instance, the above banking system is practiced in United Kingdom with a minority Muslim population of 4% [38] , Germany [39] , Japan , USA [40] , China [41] , Italy and even in Vatican city the home of Christendom [42] etc. The pertinent question is then, have all the aforementioned countries been Islamized after many years of practicing Islamic banking? Is the

said banking system doing very well; despite the fact that majority of these countries population are non- Muslims? With due respect to the antagonist of Non-Interest banking, the above claim cannot be maintained because they cannot claim that all the aforementioned countries have been Islamized because of their long practice of Islamic Banking, they cannot also claim to be more economically, educationally, or more religious than the above mentioned countries who despite their secular nature and the differences in religion, have allowed the said banking system to operate in their various states and it is contributing greatly to their economic development.

To further buttress the fact that Islamic banking is not a ploy to Islamize any country, the then pontiff of the Roman Catholic Faith, Pope Benedict xvi in 2009 was reported to have given his support to Islamic Banking and had further suggested to conventional banks to adopt the ethical principles that form the corner stone of Islamic finance in a bid to regain customer trust. The pope further advised conventional banks to look at the rules of Islamic finance to restore confidence in their banking system especially at a time of economic global crisis.

2. Conclusion

Although, the role of banks in the economic development of any given country cannot be over emphasized because they are considered as the main stay of every prosperous economy. This is because they serve as custodian of funds to many families, make funds available to many companies, as well as mobilizer of funds through savings in form of deposits and channeling same to productive investments in the economy [43] . Nigeria being a developing nation with a set target of developing its economy to the level of being rated among the world ' s top twenty economies by the year 2020 needs a very sound financial system that would cater for all categories of persons in the society.

In order to achieve the vision of Nigerian being among the best twenty economies of the world in the year 2020 (vision 2020), the Central Bank of Nigeria being the apex bank decided to make the Nigerian financial system to be more competitive,

through the dualization of the banking system, by licensing the operation of Islamic (non-interest) banking like its counterparts, in United Kingdom, United State of America, China, Malaysia, Australia etc. The fundamental aim of the CBN dualizing the banking system is to expand our capital market for emerging economics through the adoption of Sukku (Islamic bond), stimulate favourable competition within the financial system to enhance efficient services to customers, propel economic development, creation of employment, reduction of poverty among Nigerians, reduction of apathy among the non-banking public as well as cushion the effect of credit crunch in the real sector of the economy [44] .

Furthermore, it has been discovered in the course of this research that both the conventional and the non-interest (Islamic) banking system offer similar service as it relates to making of profit and collection of deposits from their clients [1] . However, they differ based on the fact that, while conventional banks receive and pay interest, non-interest banks are prohibited from receiving or paying interest [45]

, while the former completely transfer the entire business risk to the borrower, who must pay the principle sum and the multi layers of interest at a particular date irrespective of what the business outcome looks like, the latter share profit and losses of the business depending on the rate of financial involvement and the rate of return of the business .

It has been further observed that conventional banking system is not a Christian banking system as canvassed by most scholars. This is because the major banking technique adopted by this banking system is payment of interest either by the bank or its customer depending on the nature of financial contract the bank or its customer enters into. However, the Holy Bible prohibits Christians from engaging in any usurious (Interest) based transactions. The above prohibition is found in Exodus 22:25, Leviticus 25:35-38 and Proverbs 19:17. Furthermore, the Holy Bible passed a death penalty on any Christian who participates in interest based transaction.(see. Ezekiel 18:13) Hence conventional banking is a capitalist banking model and not a Christian banking model as erroneously

believed by many.

The licensing of non-interest banking into the Nigerian banking sector by the CBN is lawful and constitutional. This is because CBN only licensed the practice of a banking system that is provided for by our banking law as contained in sections 23 and 66 of BOFIA 1991 as amended and duly validated by section 315 of the 1999 constitution as amended.

However, the legal regimes regulating banking practice in Nigeria are inadequate to effectively regulate non-interest banking in Nigeria. Hence, there is need for urgent review of our banking laws to create an enabling environment for non-interest banking to thrive well in our banking sector. Despite the various challenges and the inadequacies of the Nigerian banking laws, non-interest banking system *vis-à-vis* dual banking system remains one of the survival recipe to revamp the Nigeria economy which is at a state of total collapse, if the Nigerian government creates an enabling environment supported with adequate legal and regulatory framework for the operation of the above mentioned banking system.

Finally, having established that both the Christian and the Islamic faith expressly prohibits interest based transactions by its members, and whereas the 1999 Constitution by virtue of section 38 (1) of the 1999 CFRN guarantees the right to freedom of Thought, Conscience and Religion as well as freedom to manifest and propagate ones religion or belief in worship, teaching, practice and observance, couple with the fact that section 16 (1) (d) of the 1999 CFRN protect the right of every citizen to engage in any economic activities outside the major sectors of the economy. We think it is a basic Fundamental Right, for Nigerian citizens (both Muslims and Christians) to be given opportunity to carry out their economic activities in a manner conducive with their religious belief. Such opportunity would mean provision of a level playing field by the government in a pluralistic society like Nigeria where citizens should have various choice of how they conduct their business and the licensing of a financial system which would respect the religious sensibilities of its citizen. Hence the action by the CBN licensing

dual banking with due respect to the antagonist of Non interest banking is properly conceived and constitutional [46– 59]

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