

# Evolution of Kadhis Courts in Zanzibar

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## Abstract

Zanzibar, is an Island on the east coast of Africa in Tanzania. The region is mostly populated by Muslims. This region had long time relationship in international trade with the people of near and far-east. The relationship however resulted in the islamization of the island. The early contact had ever lasting impact on the peoples of the region, yet the Islamic Legal System has been treated with a step mother affection since the colonial era. However, in recent times Muslims in the region including the island are asserting for a change of the status of administration of justice system in the region to make it in accordance to Islamic Law.

**Keywords:** Islamic Law, Kadhis Courts, Islamic Legal System and Zanzibar.

## 1. INTRODUCTION

African nations are made of different peoples and different legal system. But what is outstanding is that most of the legal systems were imported to Africa either by the Arab- Muslims or the colonial masters who were predominately Christians. In fact the evolution of these legal systems were not voluntary development of African legal systems but rather emerged as undue influence of the foreign legal system which eventually relegated the existing legal systems to the background. The colonial had upper hand in imposing their legal systems on Africans. (Okeke, C.N 2014). The court systems are seen as the last hope of the common man. To this end judicial institutions often rely on the competency and effectiveness of the officers of justice so that the people will continue to have confidence in the judiciary. These officers of justice system must always endeavor to be upright at all times. But adjudication process in Muslim courts are usually subjected a lot of criticisms by members of the public. Therefore there is the need to overall the Muslim courts system for the betterment of the Muslim societies the world over.

Islam had its origin in Saudi Arabia in the Middle East region of Asia. The religion is monotheistic in nature. The belief in the oneness of Almighty, known as Allah to members of Muslim faith. The Muslims contend that Islam is complete submission to the Will of Allah and that this directive is of divine origin. (Mukarran, 2005) Islamic Law, Islamic Legal System and Kadhis Courts are the cardinal concepts of this discourse. These concept are of common divine origin, but each evolve individually, and are quite distinct, particularly in modern times. Islamic jurisprudence is usually referred to as Shariah and its genesis is from the Quran, the holy book of the Muslims and the Sunnah of Prophet Mohammed. The Muslims explain that both the Quran and the Sunnah are of divine backgrounds. Muslims however, argue that since the Quran and the Sunnah are of God's guidance, these sources of Shariah were never amended or altered. ( Iqbal, 1974). Muslim Scholars justify this position by arguing that Islam is an all-embracing religion and that the Ijtihad of a particular period will elaborate on areas where either the Quran or the Sunnah is silent on matters affecting a given human society. (Mohammad, 1999 & Mohammad, 1991).

Islamic Law evolved after over two centuries after the demise of Prophet Mohammad. Islamic law was formulated and developed by Muslim jurists and scholars. These classic Muslim experts made use of knowledge of Muslim Jurisprudence. Fiqh for the legal drafting of Islamic law. On the other hand the Muslim legal Order evolved gradually with the peoples of Zanzibar and different regions of the world as a result of trade and migration of Arab Muslims from near and far-East. Therefore Islamic law existed side by side with the local or native laws in different regions of Africa. But as a result of the colonization of Africa emerging modern Muslim states in different parts of Africa, make use of various conceptions of Islamic law in the administration of justice system to regulate some vital aspects of the Muslims' ummah. (Otto, 2010). The Muslims justice system was environmental friendly since it co- existed peacefully with the African traditional customary laws long before the advent of the Europeans in different regions of Africa.

In different Muslim regions of Africa administration of justice on Muslims were conducted in Kadhis courts. But after the partition of the Africa continent and the occupation of Africa by the Europeans these Muslim courts began to be subjected to the repugnance test of Common law Legal system. With time these specialized religious courts system have jurisdictions clearly different from other courts and with time were incorporated into the national legal system in the countries where they are in operation. ( Butti, & Mohmmad, 1998).

The island of Zanzibar has advantage of good geographical location and it enhanced free movements of different peoples into the region from the time immemorial. This is made it possible for the gradual

Islamization of the Zanzibar archipelago, located in East Africa coast. Similarly, the natural harbor is strategically located and its suitability for ships from various regions of the world. (Hortson, & Middleton, 2001) Zanzibar is made up of two main islands, Unguja, and Pemba, other islets within the region are Uzi, Konjani, Funda, Panza and Tumbatu. (Bennett, 1963). The northern part of the Island was occupied by Tumbatu Watumba. The Pemba is mostly dominated by the Wapemba tribe. The aboriginals within the region were different tribes of Bantu speaking people known as Itadimu. (Pinns, A.H 1961).

Zanzibar Island is located near the coast of equatorial Africa and the island is separated from the continent by a canal some fifty kilometers long and it is the largest coral island in the Eastern Coast of Africa. (Dale, 1920). Zanzibar strategic location made it of commercial importance to the foreign traders and the people of interior of Africa. (Coupland, 1939). Moreover, the Monsoon winds which blow across the Indian Ocean assisted in the rapid transit from near and far-East to the Africa coastal region. (Fitzgerald, 1898). This resulted in the gradual transformation of the region with interactions with the Arabs, Persians, Portuguese, and Chinese. Zanzibar is located in the Modern day United Republic of Tanzania.

This paper will first explore the evolution of adjudication process in pre Islamic Arabian society and the gradual emergence of Muslim court system during the era of the Prophet Mohammad. In addition, reforms that took place during the Umayyad and Abbasid eras of Islamic history will be highlighted. The evolution of Kadhis Courts in Zanzibar will be discussed up to the time of colonial rule. And finally this paper will make an overview on the justification for a change of the status of administration of justice system in the region to make it in accordance to Islamic law.

## **2. JUSTICE SYSTEM BEFORE ISLAM**

The main aboriginals of the Hejaz area of the Arabian Peninsula were the Bedouins Arabs. The communal life of this group of Arabs was rather simple and primitive. They lived a nomadic life style. And the social system was based on family unit. A number of kindred clans made up a tribe. Each tribe had a chief who presided over judicial matters. (Arbery, 1964). On the affairs of the tribal chiefs relied on consultation with the people before a decision was made and adjudication process was guided by the tribal traditions and customs of the people during the pre-Islamic era. But more importantly, for justice system before Islam, the institution of the judge was not in existence. (Hitti, 1949). The litmus test of acceptance or disregard of judgments made by the tribal chiefs was the public opinion. However among the Bedouin Arabs mode of adjudication varied from tribe to tribe for this depended on the level of their civilization. (Iqbal, 1974).

## **3. THE ADVENT OF JUSTICE IN ISLAM**

Prophet Mohammad received his first revelation in cave Hira in Mecca after which other revelation was sent down to him. However, at the formative stage of Islam the primary legislation focused on the ethics of Islam. (Iqbal, 1974). With the Prophet migration to Medina there was an improvement in the scope divine of legislation that the Prophet received from Allah. New laws now began to develop not only on civil matters but included criminal offences. In Medina an Islamic state emerged with Prophet Mohammad as the Command of the Faith "Amir al- Mumini"( de Boer, 1903. & Donaldson, 1933) the use of Muslim judges first appeared during the time of the Prophet and the term Kadhis remained the term used for Muslim judges throughout Islamic history. Kadhis in the administration of justice among the Muslims faithful had undergone a lot of transformation over many centuries. (Gibb, 1949 & Mac Donald 1903). The Kadhis courts System became an institution of an Islamic State during the Umayyad Caliphate. This period in Islamic history was often describe as the golden era of an Islamic State. Kadhis courts witnessed growth and development during the period. The subsequent Islamic empires that existed after the era also assisted in the development of Muslim Court System. (Berkir, 1987).

During the classic era Muslim judges gave due consideration to local customs and traditions of the different peoples that were conquered by Islam. However, great caution were taken that such customs and traditions were not in conflict with the laws laid down by Islam. (Iqbal, 1974). The Abbasid caliphate era introduce tremendous improvement with administration justice system in an Islamic state with the creation of the Chief Justice whose court was the highest court under Muslim judicial system and the Chief Kadhi of the State had jurisdictions on the administration of Muslim endowment and the legitimization of accession or the removal of a Muslim ruler. (Callaghan, 1975).

Since the era of the Abbasid Caliphate Kadhis Courts System had undergone a lot of metamorphosis particularly during the period of the last Muslim empire. The Ottoman Empire entrenched Islamic law in Europe, near and Middle East after the collapse of the Abbasid Caliphate in 1258. However, the Ottoman caliphate operated secular legal system essentially organized around a system of local jurisprudence. Ottoman legal system were of three types, namely the Muslims courts, non- Muslim courts, trade courts.( Bento, 2001) The end of the Ottoman created great set back not only for the expansion of Islam but in the growth and development of Muslim Legal System. ( Peletz. 2002). The partition of Africa in the nineteenth century and the advent of colonialism in different regions of Africa had negative impact on the status of Islamic law in Africa. This was the jurisdiction of

Muslim Court System were limited to Muslim Personal Matters. All efforts to change the status quo have never yielded positive fruits, but Muslims in different regions of Africa had continued to glamour for right to the courts of their choice and full practice of their religion.

#### **4. THE EVOLUTION OF KADHIS COURTS SYSTEM IN ZANZIBAR**

Zanzibar archipelago is dominated by the Swahili speaking people of East Africa (Horston & Middleton, 2001) the history of the Swahili cities like that of Zanzibar is not different. This was because the Swahili people or Zanzibar were for a long time portrayed as one of Muslims or Arabs dominated with native Africans playing a role of passivity. (Brady, 1950). The Swahili language originated from the Bantu family language and developed as an urban language in the eighth century. (Horton, M and Middleton) The exact date when Islam became a religion practiced by a majority of the people in the region were not known. But historians argued that the earliest mosque in Zanzibar was constructed in Kizimkazi in 1107 AD. This contention was often used in justifying the presence of Muslims settlers in the area. (Ingram, 1967). The East African people had trade relations with South East Asians who brought into East Africa new articles of trade into the common market. This resulted into commercial and cultural intercourse with the Arab settlers though the Swahili were in majority. But despite the early contact with the Arabs African practices and rituals were still practiced. (Gonzales, R.M 2009). The twelfth and fifteen centuries was regarded as the golden era of Arab civilization in the region since Swahili towns such as Tanga, Mombasa, Kilwa came greater under the Arab influence. (Ingram, 1967).

The Portuguese were the first Europeans to reach the East coast of Africa it was accidental because they saw it was short cut to India. (Ingram, 1980). Their interest in the East coast of Africa started in the fifteenth century to discover a sea route to India and Far East. However, later the Sultan of Oman controlled the East coast of Africa from Muscat, Mauritius, Reunion, Persia, India as well as the Dutch territories. During the reign of Sultan Bargash bin Said a concession for a term of fifty years was given to the Imperial British East Africa Company to administer the ten miles coastal strip of Kenya which was previously under the authority of the Sultan of Zanzibar. The agreement gave all powers to British company on matters on commercial arbitration with time judges were appointed to court of justice. Thus the gradual evolution of the English court system court type.

However, the judges though were subjected to Sultan's approval they made use of Common law in determining cases brought before them. The concession given to the British by the Sultan was a serious political oversight on the part the ruler of the region. This was because the administrative officers that were appointed by the British exercised jurisdiction over Sultan subjects. These officers were given consular rank therefore they were empowered to exercise extra territorial jurisdiction on behalf of the crown over British subjects. (Allot, 1976). Moreover, a charter was granted to the Imperial British East Africa Company in with stipulation that the company shall not interfere with the region of any class or tribe of the people in the region. In the administration of justice by the British company to the inhabitants of the region, it was agreed that the British shall always have respect to the customs and laws of the tribes and different peoples within the territory.

The administration of justice in accordance to Islamic Legal System along the east African coast dated from the time of establishment of the Sultanate Empire at the beginning of the nineteenth century. This was an indication that an Islamic State existed in the region with political and religious influence in areas that stretched from the Bendir coast of Somali to northern Mozambique. With the Sultan as the Command of the Muslims faithful, kadhis courts were in existence a vital organ of an Islamic State (Strandes, J 1989)

However, the influence of Zanzibar began to reduce with the establishment of the British Protectorate in the region in 1890 and dominating influence of the Sultan power began to reduce. In addition, towards the end of 1897 the Imperial British East Africa entered into another negotiation with the Sultan whereby the administration his dominions were entrusted to officers that were directly appointed by His Majesty's Government to whom alone they shall be responsible and had full powers in regards to executive and judicial administration. (Mwangi, 1995).

Initially the British tolerated dual Legal system, for Kadhis Courts existed side by side with the English styled courts system in the region. The British with the indirect rule system gradually adjusted the jurisdiction of Muslims court system and limited their scope to Muslim Personal Matters. (Allot, 1976) Eventually the British were able to eliminate local or native laws by subjecting the local, native and Islamic Legal order to the repugnancy test this development made nonsense of the existing pre-colonial Legal systems. In addition the East Africa Order in Council of 1897 provided for proper management of native courts. This arrangement further subjugated the Islamic Legal system under the supervision of the British.

The British were of the opinion that courts were not just meant to administer justice but rather that the English court system was regarded as an extension of western civilization. (Mamdani, 1996). Some scholars argue that the fundamental position of the British colonial policy was the belief that imperial rule could be justified only by a commitment to rule of law (Metcalf, 2007). Again, historians argued that the British desire to base the administration on English perspective and the introduction of new form of legal order was to maintain

law and order in territories that were under their jurisdiction. This was one of the main political and justification for colonial rule in Africa. (Morris, 1972)

The British between 1897 – 1900 had greater influence along East coast of Africa. The turning point in the political landscape of the region was the enactment of East Africa Order in Council in 1897. This brought about the creation of native courts and the emergence of chief native courts, provincial courts, district courts and High courts. The Order in Council reduced the jurisdiction of Kadhis courts to Muslims personal matters. These court's jurisdiction were limited to matters like marriage divorce, inheritance, child custody and Muslims endowment.

Another vital reform of the Kadhis courts was the establishment of grading system and the position of Chief Kadhi was created for the region. In addition, Arab local governor, Liwalis and Mudir were granted magisterial powers with jurisdiction on civil and criminal matters. With this legislation by the British, the Kadhis courts system became mere appendage of the English legal system. (Article, 15 East Order in Council, 1897) The legislation further subjected Muslims courts system of the High Court of Justice and the Sultan of Zanzibar became a mere ceremonial head of the region and lacked political, religious, and economic control of the territory.

## 5. CONCLUSION

The evolution of Kadhis Courts System had long historical antecedents and like other historical process great needed to be taken in order not to derail the people's culture or civilization. This fact is responsible for complex and sensitive nature of the discourse. Scholars argued that the application of Islamic Legal System in relation to its being a Religious Legal System and the validity of the provisions of the in relation to international human rights standards. This notwithstanding the fundamental rights of the Muslims are also at stake, hence the growing assertion of full operation of Muslim Legal order. The demand is often seen by the Muslims as denial of Muslim identity particularly in Zanzibar and other Muslims regions of the world. The fact remains that various national movements after post-colonial were frustrated by various regimes that political control without satisfying the wishes and aspirations of their peoples. And it was argued that African leaders need to wake to meet up with the hopes and aspirations of their people for these peoples to benefit from Islamic social welfare packages and to brave to embark on independent policies framework with taken instructions from the West.

In recent times, arguably there are frustrations, resentments, and the assertion of Muslims Court System became a common point for identifying with Islam, a noble image of the Muslim societies in different regions of the world. The evolution of Kadhis courts system had undergone centuries of historical process. It may be regarded as a history of Muslims' civilization. This trend had survived for many centuries and hence it is part and parcel of the peoples of the region and their demands have become part of contemporary legal history and need to be well taken for the sake of protection of Muslims' identity.

In an attempt to improve the effectiveness of Kadhis courts in Zanzibar a flash back was made to the legal history of the region. The outcome, it is hoped would assist parliamentarians, policy makers and other relevant authorities on the way forward in reforming Muslims legal order for the betterment of the people of the region. This discourse would no doubt provoke further discussions and debates on not only about the effectiveness of the courts system, but also to generate solutions to some of the inherent weaknesses common with Muslim courts system in this region of Africa.

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