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***Politics, Ethnicity and Jostling for Power: The Evolution of Institutions of
Muslim Leadership and Kadhiship in Colonial Kenya, 1895-1963***

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Abstract

Politics, Ethnicity and Jostling for Power The Evolution of the Institutions of Muslim Leadership and Kadhipship in Colonial Kenya, 1895-1963

Hassan Abdulrahman Mwakimako

This study demonstrates the flexibility and manipulability of Islamic leadership in a pluralistic situation, and argues that colonial policies and practices concerning Islamic legal practitioners (qādīs), their institutions (qādīs courts) reflected British prejudices about ethnicity and race. In a broad sense this work first examines how power, politics, ethnicity and colonialism influenced the development of political institutions among Muslims. Secondly, it debates the basis of the authority of the ‘ulamā’ as they were appointed to occupy the posts of Shaykh al-Islām, Chief Kadhi, lower Kadhis, and pseudo Kadhis. The dissertation articulates the nature of colonial power as indicated by British colonial officer’s responses to demands by Muslim populations in the towns of Mombasa, Nairobi and Mumias. It situates colonial power, especially its policy of ‘indirect rule’ and its impact, as the British colonial government embarked on administrative innovations that subsequently co-opted indigenous elites into the colonial administrative structures. The process began with the co-option of representatives of Arab communities of Mombasa into the Legislative Council, while similar demands by non-Arab Muslim communities were ignored. The study follows the development of opposing groups of civil society formed by different Muslim identity groups and exemplified by groups like Coast Arab Association, (CAA), Afro-Asian Association (AAA), Arab Association (AA) and African Muslim Society (AMS). The study points to the role and significance of ethnicity in political leadership among Muslim while tracing the institutionalization of race as colonial officers discoursed the states intervention on communal representations in colonial bureaucratic structures. The dissertation also focuses on how a section of Muslim elite, the ‘ulamā’ were co-opted into the colonial bureaucratic structures and appointed to serve as Shaykh al-Islām and Chief Kadhi. Through a chronology of appointments of prominent ‘ulamā’ to these posts the study identifies intra- Muslim competitions but also shows how preferences by colonial pro-consuls for ‘ulamā’ of Arab descent created an impression that non-Arab people were not qualified or eligible for the post turning a religious form of authority into prevalent racialized politics. The chronology of appointments questions the notion that knowledge espoused by the ‘ulamā’ propelled their influence and power and shows that loyalty to colonial policies and racial identity of appointees mattered more. The racialization of the authority of the ‘ulamā’ was instituted from the topmost post of Chief Kadhi to the lower positions of town Kadhis registrars of Muslim marriage in Nairobi and Mumias where preference for Arabs continued to be practiced.

This study was contemplated to identify, discuss and understand the role played by colonial authorities in the emergence of political and religious forms of leadership among Muslims during colonial Kenya. Its contribution is the argument that Muslim authority emerged in the colonial process of institutionalization and bureaucratization of its power and authority.

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Chapter One

1.1 Background to the study

This study dates back to late 1994, resulting from the proceedings of an ‘*ulamā*’ symposium,¹ organized by the Supreme Council of Kenya Muslims (SUPKEM),² involving ‘*ulamā*’ from all over Kenya who congregated in Nairobi to deliberate on problems afflicting Muslims, and thus expected to create a ‘mouthpiece’ institution of religious leadership and opinion. The symposium was the initial step in a process to establish a formidable and workable leadership structure involving Muslims with expert knowledge on various disciplines of Islamic faith. The need to solicit expert knowledge came about because on many occasions unity (*umoja*) had eluded Muslims due to divergent opinions on matters of religious and political leadership. For example, Muslims had failed to observe the beginning of Ramadan and festivals like ‘*id al aḍḥā*’ and ‘*id al fitr*’ due to misunderstandings pertaining to the question of which individual,

¹ The symposium was held in Nairobi at Huruma Muslim School, during August 12-14, 1994. It was attended by over one hundred ‘*ulamā*’ from all over Kenya.

² For a discussion of the formation of such organizations in East Africa see A. N. Chande, *Islam Ulamaa and Community Development in Tanzania: Case Study of Religious Currents in East Africa* (San Francisco, London & Bethesda: Austin & Winfield, 1998): 133-161; F. Constantin, "Leadership, Muslim Identities and East African Politics: Tradition, Bureaucratization and Communication," L. Brenner, ed., *Muslim Identity and Social Change in Sub-Saharan Africa* (London: Hurst & Company, 1993): 36-58, idem "Muslim & Politics: Attempts to Create Muslim National Organization in Tanzania, Uganda & Kenya," H.B. Hansen & M. Twaddle, eds., *Religion and Politics in East Africa: The Period Since Independence* (Nairobi: East Africa Educational Publishers, 1995): 19-31. A.B.K Kasozi, "The UMSC: An Experiment in Muslim Administrative Centralization and Institutionalization, 1972-1982," *Journal Institute of Muslim Minority Affairs*, 6, (1) 1985: 34-51.

organization, groups or officials had the authority to declare the sighting of the new crescent to usher in the beginning of each lunar month (*kuandama mwezi*), sighting of the new crescent. The recollection of some Muslims indicated that problems associated with moon sighting began in the early 1980's, after the death of Shaykh Abd Allāh Salih Farsy (1912-1982). During his tenure as Chief Kadhi of Kenya from 1964-1982, Shaykh Farsy rallied Muslims opinions and avoided controversy. Under his leadership Muslims avoided the persistent disagreements, conflicts and differences of Muslim opinions on important matters of societal concern.³ After Shaykh Farsy no other figure of religious authority was recognized and respected by a sizeable part of the Muslim communities in Kenya.⁴ Shaykh Abd Allāh Salih Farsy was succeeded by Shaykh Nasor Muḥammad Nahdy (b.1935-) who had other district Kadhis under his authority. However, these were not as authoritative on matters such as the problem of *kuandama mwezi* as Shaykh Farsy had been. Pronouncements by Shaykh Nahdy on 'moon sighting' were hardly observed. This period also coincided with the rise of Wahhabi inspired 'ulamā' whose obsession with a literalist interpretations of Islamic practice challenged the more conservative and traditional inspired Shaykh Nahdy, thus contributing to further divisions. Likewise, there existed various religious organizations which considered themselves institutions of leadership and public opinion amongst Muslims. The authority of these institutional forms of leadership was also challenged. Most organizations did not extend their activities to cover the whole of Kenya. The existence of the Chief Kadhi, other lower Kadhis and the Muslim organizations created a leadership dilemma for

³ Shaykh Ali, Mwinzagu. Personal interview. Mombasa, 17th August 1998.

⁴ Sentiments expressed by Abdulghafur al-Busaidi, Chairman, SUPKEM in his opening address to the participants of the symposium of 'ulamā' in Nairobi during 12-14 August 1994.

Muslims, as diverse voices and opinions emerged from multiple sources and trends, making it difficult for the larger population to identify with one source of religious authority. As a result, it was not clear who had the authority over religious leadership of the Muslims in Kenya.

Persistent differences between Muslims resulted from ineffective leadership as Muslims sought for an authoritative national body of '*ulamā*' who would contribute their knowledge towards uniting and guiding the opinion of the *ummah*.⁵ The SUPKEM supported the formation of a *Majlis 'ulamā*' as participants at the symposium echoed similar sentiments.⁶ The SUPKEM might well have been the institution to offer the leadership that Muslims required. But it found it necessary to invite the '*ulamā*' to establish the *Majlis* because Muslims had previously argued that the SUPKEM's leadership was not representative of all Muslims in Kenya. Its membership was confined to those affiliate Muslim associations who had participated in the election of its leaders.⁷

During the SUPKEM's symposium I witnessed a unique phenomenon of Muslims debating aspects of leadership. Observable phenomena included the microcosmic presentation of a diverse, racialized and ethnicized Muslim population, and evidence of the diverse geographical expanse from which Muslims had been drawn for the

⁵ This is the author's recollection of the sentiment expressed during the symposium organized by the SUPKEM.

⁶ Shaykh Ali, Darani. Personal interview. Mombasa, 18th August 1998. Shaykh Darani served as Kadhi in various districts in Kenya and has remained an outspoken critic of the leadership of SUPKEM.

⁷ Shaykh Ali, Darani. Personal interview. Mombasa, 18th August 1998.

symposium. These racial and geographical diversities were important categories that clarified the foundations upon which Muslims debated aspects of leadership, with discernible racial dichotomies between Arab, African and Indian Muslims. Racial and geographical diversities were further compounded by the existence of over forty African ethnic communities in Kenya. The geographical divides on which Muslims displayed diversities was broadly identifiable into two categories of Muslims from the coastal towns (*Waislamu wa Pwani*) and Muslims from the interior (*Waislamu wa Bara*).

The intentions to establish a *Majlis 'ulamā'* were genuine but its realization was difficult as attempts to include all diversities of Muslims led to spontaneous accusations that some participants were more concerned with sectional interests. The process was characterized by attempts by various racial groups to dominate the exercise. Identified as *Waarabu* (the Arabs), *Wahindi* (the Indians), *Waswahili* (the Swahili), *Wakikuyu* (the Kikuyu) or *Wabajuni* (the Bajun), these micro categories of Muslims lobbied to claim a stake in various anticipated positions in the proposed council.⁸ The interplay of regional divides between *Waislamu wa Pwani* (Muslims from the Coast) and *Waislamu wa Bara* (Muslims from the Interior or upcountry) demanded space in anticipation of the top position of a *mufti* or *Shaykh mkuu* (Grand Shaykh).

The opposing activities by the participants provoked my thoughts to review the SUPKEM's symposium as the scope of this study. The *'ulamā'* were to be viewed as *de jure* and *de facto* leaders in Islam. This attempt would have been vindicated had the

⁸ These Muslim diversities are also mentioned by S. Ayubi and S. Mohyudin, in "Muslims in Kenya: An Overview," *Journal Institute of Muslim Minority Affairs* 15, 1 & 2 (January & July 1994): 147.

proposal to establish the council of *‘ulamā’* been unanimous. To the contrary, some participants considered such attempts arbitrary. Proponents of the idea to establish the *Majlis* were accused of imposing the will of a few individuals over the community. Opposition to the establishment of the council was also based on a lack of precedents because, during the early centuries of Islam, the *‘ulamā’* did not evolve their own corporate standing nor were they a professional group of rank or status. Opponents of the establishment of the *Majlis* argued that it was an unnecessary innovation. It was noted that the *‘ulamā’* had an identity as *imāms* in worship and exegetes of Islamic theology and were extremely influential. Despite their ability to exercise effective and decisive pressure in the realms of public order and government they did not enjoy exclusive power and authority.⁹

SUPKEM’s efforts were commendable but the likelihood that the proposed *Majlis* would complicate the problem of leadership for the Muslims of Kenya was real. I was particularly interested in engaging with what was defined as the ‘riddle over leadership’ by Shaykh Ali Darani¹⁰ In a way I have pursued one aspect of the riddle in my attempt to clarify aspects of the social history of leadership amongst Muslims in Kenya. For everything else it might be in the service of scholarship, this research seeks to unravel the complexities illustrated by that meeting in 1994.

⁹ M.G.S. Hodgson, *The Venture of Islam: Conscience and History in a World Civilization*. Vol. 1 (Chicago: University of Chicago Press, 1974): 238.

¹⁰ Shaykh Ali Darani. Personal interview. 18th August 1998.

1.2 Research Problems

In the Muslim communities of Kenya there are two important questions concerning leadership. First, Muslims may ask what are the names of the leaders. Which institutions can be identified as offering leadership? Second, they want to know what constitutes the authority of a leader. The precursor to these questions is the persistent denial of the existence of formal groups of either individuals or institutions within the realms of power and authority in Islamic communities. The authority of individuals or groups who laid a claim to any form of leadership is usually challenged, as other Muslims will oppose its existence on the basis that the *Qurʾān* or Sunnah is not specific on such forms of leadership. Nevertheless, various interlocutors of power and authority have evolved in Islamic communities who have based their authority on a variety of sources. This study therefore researches the following problems: what are the forms of leadership available to Muslim society in Kenya? What are the circumstances of their existence? What are the social historical developments associated with their existence?

1.3 Objectives of the Study

This dissertation addresses the formation of leadership amongst Muslims in Kenya by focusing on five objectives. First, it seeks to clarify the forms of leadership available to Muslims prior to the emergence of colonial rule; second, to account for the institutions of the colonial state; third, to demonstrate the influence of colonial rule in the process and

development of new forms of leadership; fourth, to demonstrate the effects of colonial institutionalization of leadership; and fifth to account for the reactions of Muslims to colonial policies on leadership.

1.4 The Argument

The central argument of this study revolves around the question how forms of political leadership and judicial posts of Kadhiship became associated with leadership of Islamic communities of Kenya. It contextualizes the history of existing and contemporary forms of leadership within a process indicating the evolution of a community through socio-political history. Using the *‘ulamā’* and political organizations as examples of interlocutors of power in the Muslim community of Kenya, the dissertation makes two claims. The existence, sustenance and articulation of power and authority by the *‘ulamā’* and the political groups in Kenya have been influenced by the actions of internal social structures amongst Muslim societies. At the same time, the forms of leadership were mitigated by British colonial power as British officers interpreted and implemented administrative decisions. The two arguments are elaborated through a review of the appointments of the *‘ulamā’* to official positions as Kadhi largely emphasizing how British officers, representing colonial power, influenced social discourses on leadership institutions. In the Muslim community the study points to the enhanced authority of the *‘ulamā’* through appointments to post such as Kadhi, Shaykh al-Islām and Chief Kadhi. On the other hand, non-religious based traditional forms of authority expected to be included in the hierarchies of colonial power through representations by a nascent political groups. The emergence of political groups amongst Muslims was directly related

to British activities, and particularly, the establishment of the Legislative Council. With regard to political leadership, the British government's policy of selective participation in the Legislative Council enhanced a racialization of political leadership. Thus, British colonial activities became the mitigating influences that shaped the continuity and development of a racialized Muslim political leadership. British influence notwithstanding, the existence of diverse, pre-colonial racial interests contributed to communal competition and strife over leadership in the Muslim communities.

1.5 Scope and Limitations of the Study

The scope of this study is to cover a specific historical period, subject matter and content. Historically, the study covers the period of the institutionalization of British colonial rule from 1895 to 1963. The growth of British influences in Kenya dates back much earlier, but 1895 is regarded as the starting point of a formal British Protectorate. This year also marked the beginning of a new era for Muslim communities in the sense that a new colonial political order was ushered into existence, taking over from the Muslim Sultanate of Zanzibar. In the year 1963 the British relinquished power and Kenya gained independence (*Uhuru*). These two dates are not sacrosanct and reference will be made to earlier and later periods too, when particular events of post-independence or pre-colonial era will help to clarify our discussion.

The study does not claim to account for the entire history of Islam throughout Kenya. This has already been attempted in other studies. Instead, the historical component is

approached through case studies of the brief historical expansion of Islam in the towns of Mombasa, Nairobi and Mumias. These towns represent the diverse Muslim populations and the application of colonial rule in relation to Muslim communities. The Coast region is considered the 'home' of Islam in Kenya and is represented Mombasa. Nairobi was selected for its central location in the interior of Kenya, while Mumias is significant as it enables us to discuss how a single indigenous community of the Interior, the Wanga articulated a racially and ethnically based opposition to the Arab Kadhi within their community.

The study concentrates on the structures established by the colonial government which institutionalized the authority and power of the *'ulamā'*, who are included as a category of leaders because their authority is normatively based on their mastery of Islamic knowledge. The positions of leadership occupied by the *'ulamā'* in this study begin from the time when colonial authorities created bureaucratic juridical structures which became the primary institutions through which the *'ulamā'* institutionalized religious authority over Muslims. As officials in Muslim Courts, Kadhis existed at the Coast of Kenya during the reign of the sultanate of Zanzibar, doubling as traditional leaders, *wazee* (elders) and Muslim clerics. The difference between the Kadhi of the sultan's period and those of the British period, post 1898, was based on the procedures that resulted in their appointments. For example, the Sultan depended on the considerations and recommendations of his agents, the Liwali, to choose Kadhis. On the other hand, the British regarded Kadhis as state functionaries appointed on the basis of colonial ordinances. There was also another difference. During the sultanate, Kadhis doubled as

community elders, thus espousing both traditional authority and rational authority based on knowledge. However, when the British bureaucratized the post, Kadhis functioned as Court officers. In the process of the British establishing their authority, the *'ulamā'* were appointed as Kadhi in bureaucratized Islamic Courts and charged with the authority to institute Islamic (read Mohammedan Ordinance) codes of law.

The discussion of the appointments of the *'ulamā'* to the posts of Kadhiship undertaken in this study has been influenced by two factors. First, a bureaucratized Kadhiship was a colonial innovation that Muslims in Kenya came to accept as a tradition. Kadhis were thus a manifestation of colonial rule. Second, the principles upon which Kadhis were appointed implied that appointees were inclined to serve the interests of the appointing authority. Kadhis were rarely deemed to serve the interests of all Muslim communities, but were frequently accused of serving racial or ethnic interests. I shall hereunder in Chapters Five, Six and Seven show how their appointments were influenced by racial considerations.

The factors that I have proposed above provide the scope to discuss racially based tensions when *'ulamā'* were appointed by the colonial state to serve as Kadhis. The posts of Shaykh al-Islām and Chief Kadhi are included in the discussion of *'ulamā'* leadership in Mombasa but not in Nairobi or Mumias, because for a large part of the period 1898-1963, the post was based at the Coast and attracted *'ulamā'* from Mombasa and the surrounding settlements like Lamu. To cover a wider geographical area and to include the

diversities of Muslims in the discussions on racially based tensions in the appointments of Kadhis, the study also includes such debates in Nairobi and Mumias.

Leadership debates that emanate from the appointment of the *‘ulamā’* to Kadhipship are complemented by debates about other forms of leadership, especially the political forms. These are represented through an analysis of the factors responsible for the emergence of groups such as the Coast Arab Association (CAA), the Afro-Asian Association (AAA), the Arab Association (AA) and the African Muslim Society (AMS). Bent on articulating power, British colonial rule unilaterally used their authority to choose and favor one form of traditional leadership and ignore others. Thus, the Arab Liwaliship, a sultanic institution, was included in the colonial bureaucratic state, while other leadership forms like the *wazee* (elders) were excluded. The scope of this study thus includes an analysis of the challenges to the leadership of the Liwali and the subsequent emergence of political forms of leadership in the name of CAA, AA, AAA, and AMS mentioned above. These institutions represented sections of the Muslim community on the basis of two factors. Firstly, the colonial authorities exclusively appointed people of Arab ethnicity to participate in colonial structures of communal representation such as the Legislative Council. Secondly, the authority of the Liwali was constantly challenged when its incumbents were chosen, especially ‘Ali b. Şalim, as representative of Arab communities in the Legislative Council. Because the Muslim representative in the Legislative Council was an Arab who deemed his participation in the Council to cover the interests of Arabs only, other Muslim communities challenged and opposed this form of representation.

1.6 Justification of the Study

Aspects of leadership amongst Muslims in Kenya are discussed in various studies. I too need to justify another study of my own. Any reconstruction of the history of Muslim politics and leadership under colonialism must draw upon the general history of colonial Mombasa and coastal Kenya through A. I. Salim's pioneering study, *The Swahili-Speaking Peoples of Kenya's Coast, 1895-1965*.¹¹ Focusing on the social and political changes within the Arab and Swahili communities of the Coast, Salim makes passing, albeit valuable remarks about class, the 'ulamā' and other social divisions within the Arab community of Mombasa. Another analysis of East African 'ulamā' of the nineteenth century is R.L. Pouwels, *Horn and Crescent, Cultural Change and Traditional Islam on the East African Coast 800-1900*. While encompassing the period 800-1900, Pouwels' study of the nineteenth century draws on the knowledge of Shaykh 'Abd Allāh Salih Farsy, as expressed in his writings and interviews. Pouwels emphasizes change, especially the emergence of Arabic literacy among East African religious scholars. Taking note of the important role played by family networks, lineages and tribes in the processes of change, Pouwels notes that "things ... began to change in the nineteenth century under the tutelage of Hadrami 'ulamā', especially the *shurafa*."¹²

¹¹ A. I. Salim. *The Swahili Speaking Peoples of Kenya's Coast, 1895-1945*. (Nairobi: East African Publishing House, 1973).

While tracing some of the trans-oceanic links maintained by the exponents of the new Arabic literacy, Pouwels' account primarily seeks explanation for changing expressions of Islam within the parameters of East African history. Rather than seeking to explain nineteenth century changes in East African Islam as such, my thesis seeks to explain the increasingly important role of the colonial state as agency for change while tracing Muslim reactions to these changes. This should not be construed to mean that I see no need for including family connections to my study. On the contrary, I am aware of the important contributions by previous studies on the relevance of lineage networks in the authority of the 'ulamā' along the Coast of East African. Especially so, works by Farsy like *Tarehe ya Imam Shafii na Baadhi ya Wanavyuoni wa Mashariki ya Afrika*,¹³ translated into English and annotated by R. L. Pouwels.¹⁴ An additional, comprehensive and up to date study that touches on the networks of 'ulamā' and their genealogies and histories with special reference to Sayyid Aḥmad b. Sumayṭ Jamal al-Layl is that by Anne Bang.¹⁵ Such pioneering studies have adequately treated the genealogical and networking aspects of religious authority. Including extensive biographical sketches on the 'ulamā' discussed in this work would be duplicating what has already been done. Instead, I shall complement and draw inspirations from such works through my own analysis of how these 'ulamā' were appointed to their positions. In his *Mombasa: The*

¹² R.L. Pouwels, *Horn and Crescent, Cultural Change and Traditional Islam on the East African Coast, 800-1900* (Cambridge Univ. Press, 1987):131.

¹³ A. S. Farsy. *Tarehe ya Imam Shafi na Wanavyuoni Wakubwa wa Mashariki ya Afrika*. (Zanzibar: Education Department, 1944).

¹⁴ A. S. Farsy. *The Shafī'ī 'Ulama of East Africa, ca 1830-1970. A hagiographical Account*. Translated, edited and annotated by R. L. Pouwels, (Wisconsin: University of Wisconsin, 1989).

¹⁵ A. K. Bang. *Sufis and Scholars of the Sea: The Sufi and family networks of Aḥmad ibn Sumayṭ and the tariqa 'Alawiyya in East Africa. C. 1860-1925* (Thesis for the Degree of Dr. Art: University of Bergen, 2000).

Swahili and the Making of the Mijikenda, Justin Willis¹⁶ approaches the issue of ethnicity by focusing, for example, on the relevance of Mijikenda collective and “sub-group” identities in the politics of labor and leadership in Mombasa. Richard Stern’s work on urban development and African politics in Mombasa was the first real attempt to explain the coastal dimensions of African nationalist politics and colonial policies beyond those discussed by A. I. Salim.¹⁷ His data on the political competition between Coast African politicians in the Mombasa political scene provides only passing comments on the role of Islam as an identity, and ultimately characterizes Mombasa politics almost entirely in terms of competing personalities and their followers, with little regard for other aspects of social conflict. Karim K. Jan Mohamed’s dissertation,¹⁸ *A History of Mombasa, c 1895-1939*, examines urban development problems in Mombasa from a historical perspective. He presents an empirical discussion of ethnic groups, social classes and other aspects of colonial society in Mombasa, but his study is limited to the period before 1939.

Irrespective of the contributions made by these studies, my own study is different in approach. It is based on the absence of colonial voices and the role of its agency in previous works. Posts like Shaykh al-Islām and Chief Kadhi have been discussed by way of mentioning the facts that people like Sharif ‘Abd al-Rahman b. Aḥmad al-Saggaf (1844-1922) and Shaykh Al-‘Amin b. ‘Alī al-Mazrū‘i (1891-1947) held the posts.

¹⁶ J. Willis. *Mombasa: The Swahili and the Making of the Mijikenda*. (Oxford: Clarendon Press, 1993).

¹⁷ Richard Stern. “Factional Politics and Central Control in Mombasa, 1960-1969.” *Canadian Journal of African Studies*, 4, 1, (1970): 35-56.

¹⁸ Karim Kassam, Jan Mohamed. “A History of Mombasa c. 1895-1939: Some Aspects of Economic and Social Life in an East African Port Town during Colonial Rule.” (Ph.D dissertation, Northwestern University, Evanston, Illinois, 1978).

Shaykh Al-^cAmin is the most widely discussed of those who occupied the post of Chief Kadhi during the colonial period. To add to the debate of Chief Kadhis acting as Muslim leaders in Kenya, this study has identified other Kadhis who hitherto had not been fully studied. Consequently, this study contributes to a complete historiography of Chief Kadhis of Kenya during the period 1898-1963. Another important contribution of this study is the discussion of the role of colonial policies in the emergence of communal strife as *‘ulamā’* competed for appointment to serve as Kadhis. The study achieves this by reviewing the appointments with reference to the British colonial attempts to take charge of the social, political and religious aspects of Muslim communities. The chronology of appointments to the posts of Shaykh al-Islām, Chief Kadhi in Mombasa and the posts of Kadhi in Nairobi and Mumias enables this study to claim its contribution towards understanding the full potential and challenges that Muslims faced with regard to the posts held by *‘ulamā’* in the structures of colonial power, authority and leadership.

1.7 The Colonial State and Muslim Leadership: A Theoretical Perspective

The theoretical foundations of this study are based on an articulation of colonial power by way of defining the salient features of the British colonial state in Kenya. Its premise articulates the forms of leadership amongst Muslims in Kenya in relation to the vagaries of colonial rule. First of all, it is my argument that, under colonial rule, African societies underwent a radical reorganization of political and social spaces. Thus, I use a theoretical formulation based on the nature of British colonial power. Policies pursued in the culture of colonial power drastically altered the existing cultural geographies of African

societies, as the colonial state, created various institutions of power, authority and leadership. The effects of colonial rule were myriad, but, in Kenya, three dimensions are particularly relevant for investigation. What was the ideology of colonial rule? How did colonial power institute domination? What was the impact of the administrative framework developed by colonial rule? How it influenced the provision of opportunities for social promotion amongst Muslims. To assist and guide my responses to these questions, I use a characterization of colonial rule espoused by Georges Balandier who argues that the most striking aspects of colonialism are the following:

- The domination imposed by foreign minority upon the indigenous population by using the excuse of cultural, ethnic and racial superiority.
- The imposition and maintenance of ideologies justifying the position of the dominant groups.
- The presentation of the values of the rulers as a model to be emulated, and lastly keeping the contacts between the rulers and the ruled at a minimum by a policy of segregation.¹⁹

Evidently, colonialism is an event of major historical significance and its effects are a distinctive feature of existence in most African societies. Prolonged contemplation and comparison of how different societies coped with colonialism have given rise to different questions and approaches to the effects of colonial rule. Colonial rule is inextricably interwoven with peculiarities of power as the demands of colonialism caused old societies to disintegrate. Controlled by Europeans and as a hierarchy extending in time

¹⁹ G. Balandier, "The Colonial Situation: A Theoretical Approach," Immanuel Wallerstein, ed., *Social Change: The Colonial Situation* (New York): 34-61.

and space, colonial rule initiated a process of change with many implications. In Kenya, as elsewhere in Africa, the profound complexity and extraordinary ramifications of colonial rule included a constellation of social contributions, innovations and reactions, resulting in Balandiers' 'colonial situation', which transformed the social fabric of the colonized people.

Studies on colonial rule in Kenya have emphasized the political economy of colonialism as issues of the organization of labor. Class inequalities and underdevelopment were thus central themes.²⁰ However, the impact of colonial rule went beyond the political economy of labor and affected other social institutions. Such aspects include the question of how colonial rule articulated power and what its effects were on indigenous communities. How was power practiced by the colonial state? In a contemporary study of colonial power in Africa, Mahmud Mamdani argues that contemporary forms of power in Africa are a manifestation of the legacy of colonialism, because colonial rule is inextricably interwoven with peculiarities of power in its ramifications and authority.²¹ Accordingly, the problem faced by many colonial rulers was that of stabilizing alien rule, referred to as 'the native question'. Effectively, the crucial question remains, as phrased by Mamdani, "how can a tiny and foreign minority rule over an indigenous majority?"²²

²⁰ See for example, Frederick Cooper, *From Slaves to Squatters: Plantation labor and agriculture in Zanzibar and Coastal Kenya, 1890-1925*. (New Haven: Yale University Press, 1980).

²¹ M. Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (London: James Currey, 1996).

²² *Ibid.*, p.16.

In addressing the native question the British designed 'direct' and 'indirect rule'.²³ 'Direct rule' responded to the problem of administering colonies by creating a single legal order modeled on the "civilized" or laws of Europe. Its chief characteristic was the non-recognition of "native" institutions. 'Indirect rule' allowed the domination of indigenous communities within the context of a spatial and institutional autonomy. Indirect rule gave rise to two generic forms that amount to a distinction between 'identity' and 'differentiation'. The doctrine of identity conceived future social and political institutions of Africans to become the same as those of Europeans, while differentiation implied separate institutions appropriate to African conditions.²⁴

Indirect rule retained some indigenous forms of power and authority in tribal enclaves through tribal institutions and leaders, fostering leadership institutions within single culturally and linguistically homogeneous 'tribes'.²⁵ Ethnic communities were expected to practice power in such indigenous institutions and subject to 'ethnic discipline' through local structures of authority. These traditional or ethnic leadership institutions did not exercise authority on their own, however, because leaders became grassroots foundations of colonial domination. They were the means by which colonial rule derived a degree of legitimacy through its association with 'traditional' social forces.²⁶ What

²³ Ibid., p. 7.

²⁴ Ibid.

²⁵ B. Berman, "Structure and process in the bureaucratic states of colonial Africa," B. Berman and J. Lonsdale, *Unhappy Valley: Conflict in Kenya and Africa, Book One: State and Class*. (London, James Currey, 1992): 162.

²⁶ P. Ekeh, "Social anthropology and two contrasting uses of tribalism in Africa," *Comparative Studies in Society and History* 32, 4 (1990): 683-5. Terence Ranger, "The invention of tradition revisited: the Case of

happened in addition in Africa was that colonial authorities gave credence to a racialized reality, which they gradually sought to mould and manipulate through policies such as indirect rule.²⁷ Acting on the basis of racial preferences in the community, British colonial authorities deployed indirect rule in an already differentiated Muslim community. Perceiving Muslims of Arab descent as being more civilized, leadership of Muslims became the exclusive domain of Arabs. Consequently, Arab Muslims participated in structures of indirect rule as Muslims mediated leadership through such racialized and ethnically organized institutions and local powers, amongst them the Kadhis Courts and its officials.

As a system of social control, the colonial state incorporated and expressed a racial mode of power and domination through institutions managed by its pro consuls. As models of control, agents who managed these institutions sought to achieve and maintain compliance through the institutional mediation of power channeled through definitive strategies of control.²⁸ Anthony Giddens posits the characteristic of the state in its attempts at domination as corresponding to structural determination and instrumental agency. Domination is institutionally mediated in non-static institutions of social structure, usually reproduced and modified by more self-conscious collectivities or organization. Thus, the universal limit imposed on all forms of domination is the 'dialectic of control' whereby strategies of control employed by superordinate individuals

Colonial Africa." T. O. Ranger and O. Vaughan, eds., *Legitimacy and the State in Twentieth Century Africa* (London, 1993): 14-15.

²⁷ P. Woodward, *Sudan, 1898-1989: The unstable state* (London: Lester Cook Academic Publishing, 1990):5.

²⁸ Anthony Giddens, *The Nation State and Violence* (Cambridge: Polity Press, 1985): 8-10.

or groups call forth counter- strategies on the part of subordinates. These usually bring to bear strategies of their own and apply particular sanctions from the bottom up towards their superiors.²⁹

In a similar vein to Giddens' identification of the state-operating domination through social institutions and instrumental agency, this study identifies the colonial institutions used in the process of domination and how they were entrenched in the society. State structures illuminate a terrain of struggle for power as communities interacted with such modes of production not as abstract structures but as ones that confronted them directly. The peculiar characteristic of the colonial state in Kenya was the vast expansion of the capacity of state administrators like, District Officers, Provincial Commissioners, Attorney Generals, Native Commissioner and Governors to influence intimate aspects of daily activity. The foremost reason for the existence of colonial institutions was an unrelenting drive to establish and sustain the conditions of production of power.³⁰ Relations between Muslims and colonial power are encountered not just in historical experiences but in productions of structures of authority and power that took the form of particular juridical and political relations, and organizations which were precisely articulated as forms of production of power.³¹

In this study the British colonial state was a sphere of political domination that defined and regulated social relations within juridical-political forms that legitimized social

²⁹ Ibid., p. 11

³⁰ Giddens, *The Nation State*, 10.

³¹ Ibid., pp. 78-9.

activity. By means of abstraction the colonial state claimed to be removing social relations from the unstable variability of immediate inter-personal and class relations. Its claims were that these would be grounded on principles, ostensibly impersonal, founded in equity without awarding unfair advantage to one or another party. Colonial principles were also claimed to be universal, in the sense of applying equally to all who enter into relations. The colonial state took upon itself the responsibility to enforce these ideas at a level at which colonized communities were forced to perceive and accept them as natural and permanent. These activities of the state deployed relations of domination, simultaneously obscuring and presenting them as the natural order of things. Human creations thereby became social structural parameters, and power became hegemony in which the submission and subordination of the population was part of the natural order of the social world.³²

The above characterization of the operation of the colonial state in Kenya and its influences in the production of leadership amongst Muslims is applied cautiously, because the colonial state's articulation of power could not have lasted unless it had been grafted onto hospitable traditional analogues. This suggests that the colonial state related to and interacted with colonized communities by painting a picture of complexities that forced the colonized to ask questions about themselves, their society and their history which they had never asked before. Thus, the colonial state generated an unprecedented level of self-consciousness. It was a process whereby colonized communities dug deep into their past, reinterpreted their positions and formulated a range of responses. In the

³² Robert Alford and Roger Friedland, *Power of Theory: Capitalism, the State and Bureaucracy* (Cambridge: Cambridge University Press, 1985): 7-8.

process, new institutions introduced by colonial rule functioned directly through the medium of this self-consciousness. Ultimately, colonized communities played a vital role in structuring and shaping the influence of colonial rule.

Thus, colonial rule does not represent as drastic a rupture in the history of colonized societies as is often made out. No doubt European rule had an unprecedented reach and penetration, but its inherent limitations derived partly from the fact that new rulers intuitively perceived as radically and culturally different lacked the accessibility and relative familiarity of their predecessors. The complexities of colonial rule emerged when values, institutions and identities relevant to the articulation of power and authority, the very aspects forming the 'colonial situation', were components partly of the colonial legacy and partly of the indigenous societies. The crux of my argument here is that institutions emphasized by colonial power were deeply intertwined with the traditional ones of the indigenous people. Thus, colonialism did not impose of something entirely new and foreign. Rather, it evolved a new consciousness out of a subtle mixture of the old and new.

This study will approach the 'colonial situation' and its influence in the production of forms of leadership by engaging and confronting its particularistic dimensions. My view is that British colonial power was practiced to perform the role of an organ of society arising out of irreconcilable antagonisms and struggles among Muslim collectivities with conflicting interests. The Muslim communities of Kenya were differentiated, of multiple

identities, espousing different traditional forms of power, its organization and futuristic aspirations of leadership. The colonial state as another originator of the production and maintenance of power and authority created organizational structure to emphasize its own control over the rest of society.³³ More important though were the assumptions that the colonial state occupied a position above group conflicts by keeping such conflicts within the bounds of law and order. In Kenya, its actualization was the enacting of the *Subordinate Native Courts Ordinance* and the *Legislative Council Ordinance* as frameworks to coalesce and coerce indigenous communities to recognize and legitimize colonial power. Nevertheless, far from being the anticipated smooth and trouble-free administration, colonial institutions of power emerged as focal points of contestation and disputes on power and authority amongst Muslims in Kenya.

1.8 Sources

This dissertation is based on archival, documentary and oral evidence. A large body of primary material was consulted at the Kenya National Archives in Nairobi. The data collected encompassed hitherto unused materials including administrative decisions made by colonial officers like District Officers (DO), Provincial Commissioners (PC), Attorney Generals (AG), Native Commissioners (NC) and Colonial Governors (GH). These sources indicate that the question of Islamic leadership was a major concern of the colonial state. They also point to the directions which officials of the colonial state wished Muslims to follow. They display the official position of the state in relation to

³³ C. Mathema, *Wealth and Power: An Introduction to Political Economy*. (Harare: Zimbabwe Publishing House, 1988): 16.

Muslim leadership. The exchanges of communication between various cadres of colonial officials are used to decipher the circumstances under which the Shaykh al-Islām, Chief Kadhi and Kadhis were perceived by colonial officers and members of the Muslim community. These sources are equally useful and helpful in drawing inferences about how colonial officers directed the emergence and development of the positions of juridical leadership and political leadership amongst Muslims. Responses by Muslims appear within annual reports by District Officers and Provincial Commissioners, but they can also be found in other classes of data in the Archives as reports on native organizations.

Data on Muslims organizations such as the Coast Arab Association (CAA), the Afro-Asian Association (AAA), the Arab Association (AA) and the African Muslim Society (AMS) are available and classified in two ways in the Kenya National Archives. First, as files bearing the names of the organizations. Second, in the general correspondence found in files created by colonial officers who responded to petitions and administrative matters raised at the stations in which they were serving. Apart from these general files, colonial officers also created multiple personnel files for officials under discussions. Data on officials such as the Shaykh al-Islām would thus be in his personal file, along with the title of the post, such as Shaykh al-Islām or Chief Kadhi. More data was gathered from personal files with titles like Shaykh ʿAbd al-Raḥman b. Aḥmad, or Shaykh Muḥammad b. ʿUmar. Most Muslim officials had occupied junior positions as Kadhis before being promoted to the apex of Kadhiship. Thus, data on such individuals was also gathered from files created by officers in the judicial departments especially at the offices

relevant written documentation I could find. My purpose was to achieve the fullest reconstruction of the responses of colonized communities towards the British, as well as the British attitudes towards demands raised by their Muslim subjects. The process of integrating written and oral sources has been less daunting than might be imagined. Some oral informants had a formidable memory of events and sequences but lacked knowledge of historical dates. However, when placed alongside archival documentation, the oral narratives had proved remarkably consistent from a chronological point of view.

As stated earlier, participant observation was used as a method of data gathering. In the field, I collected data through a mix of observations at gatherings, informal discussion and the simple sharing of the rhythms of the day to day activities of the Muslim communities in Nairobi, Mombasa and Mumias. In Nairobi Mzee ‘Umar Sulaymān Mwajambia walked with me from his house to the Pumwani Mosque, where I was introduced to other informants. Likewise, Shaykh Sulaymān Munyu, the Registrar of Muslim Marriage Divorce and Succession in the Majengo areas of Nairobi allowed me to observe on several functions as he went about his duties, to register new marriages. The data gathered from participant observation was systematically reconstructed to delineate the varied contexts of social life and the process of production of forms of leadership but there will be no denial that the researcher was part of the dialogue.

Finally, I would like to mention that I have made generous use of quotations from various sources especially the archival material. These are duly acknowledged. In my view, no

apology is necessary for doing so, as quotations often made a point more effectively than paraphrasing or summarizing. The quotations moreover help to create the atmosphere of earlier times, and nowhere are these more useful than in my discussion of colonial responses towards demands by various Muslim communities for representation in official leadership institutions, and especially in the Legislative Council.

1.9 Analytical Approach

The presentation of data in this study is influenced by my consideration of the historicity of human experience. I am presenting the social history of leadership amongst Muslims in Kenya on the basis of Gadamer's ideas that history is about human beings and human lives.³⁴ I analyze the data by assuming that human beings are not merely observers or spectators of events; rather, they are always part of broader social-historical contexts. During times of rapid social change and conflict, human beings are inclined to 'conjure up the spirit of the past,' and to disguise the present in order to reassure themselves of their continuity with the past.³⁵ This historicity of experiences creates the space for a social historical inquiry that concludes that the traditions familiar today were in fact recently invented traditions even though they seem to be more ancient.³⁶

³⁴ Hans-Gerg Gadamer, *Truth and Method* (London: Sheed & Ward, 1975): 235-74.

³⁵ Karl Mark, "The Eighteenth Brumaire of Louis Bonaparte," Karl Marx and Frederick Engels, *Selected Works in One Volume* (London: Lawrence & Wishart, 1968): 96-179.

³⁶ Eric Hobsbawn and Terence Ranger, eds., *The Invention of Tradition* (Cambridge: Cambridge University Press, 1983).

The historicity of my approach considers positions such as Liwali, Shaykh al-Islām, Chief Kadhi, Kadhi, Wazee, Shaykhs and organization such as the Afro Asian Association (AAA), the Coast Arab Association (CAA), the Arab Association (AA) and the African Muslim Society (AMS) as being constructs not only situated in definitive ways, but also embedded in specific social and historical conditions and processes. To take account of the ways in which they are structured, the conditions within which they emerged, and how they are articulated, I engaged them through three not so discrete stages of a sequential analytical and interpretative process comprising a definition of the spatial-temporal settings, the fields of interaction and of the social institutions. By 'spatial-temporal settings', I refer to specific locales like Mombasa, Nairobi and Mumias, where the production of forms of leadership occurred. A reconstruction of such locales contextualizes local contests of authority. 'Fields of interaction' refers to posts, positions and sets of trajectories, like the Shaykh al-Islām, Chief Kadhi, Liwali, the Legislative Council and colonial ordinances, which determined the relations between individuals and the opportunities available to them. Pursuing a course of action within such fields of interaction enabled individuals and organizations in the colonial state to draw upon a variety of rules, conventions and schemata as explicit and well-formulated precepts and guidelines. Analyzing these forms of leadership assists us to grasp their social contextualization and to reconstruct the historical conditions and context in which they emerged.

1.10 Organization of the Study

This dissertation comprises eight chapters. Chapter One introduces the subject under discussion, including the research problem, objectives, scope, limitations, justification, the theoretical assumptions on which the study is based, the sources and the methodology. Chapter Two lays the foundations for discussing aspects of leadership in Mombasa. It locates the historical existence of Islam, describes the diversities of Muslim communities and analyzes local organizations of leadership. It also examines the emergence of foreign influences including Arabs and how Muslim communities related with one another. The significance of Chapter Two lies in how it traces disagreements about leadership amongst the Muslims of Mombasa prior to the imposition of British colonial rule.

Chapter Three describes the encounters between Muslims and colonialism, tracing the impact of the agreement entered into between the British and the Sultanate of Zanzibar, which subsequently allowed the British to manage the Sultan's dominions. It argues that once authority was passed from the Sultan to the British, the latter embarked on a process that changed and re-defined the organization of leaders. Responding to demands from the Muslim communities, the British grappled with delicate communal interests based on race and ethnic diversities. This shows how, ultimately, negotiations between colonial officers propelled Arab Muslims to become *de facto* and *de jure* leaders in Muslim

communities. Chapter Three furthermore identifies the basis on which colonial officers made official decisions pertaining to leadership demands by Muslims, thereby institutionalizing race as a category upon which individuals and communities were included in the hierarchy of colonial power.

Chapters Four through to Seven are case studies of various forms of leadership, discussing the consequences of British racial policies and Muslims' reactions and responses. Chapter Four traces the origins of political leadership as responses to racial definitions of authority by discussing how non-Arab Muslims reacted to exclusion from participating directly in the Legislative Council. It argues that Muslims succumbed to colonial preferences for a racially defined leadership and perpetuated historical racial and group differences over leadership in their locales. The premise of Chapter Four is the negotiation of racially based communal interest in political leadership. The consequence was the formation of associations such as the Coast Arab Association (CAA), the Afro Asian Association (AAA) and its nemesis, the Arab Association (AA) and the African Muslim Society (AMS), thereby indicating the prominence of race in the political leadership struggles of Muslims in Kenya.

Chapter Five discusses the creation of the post of Shaykh al-Islām and its later variant of Chief Kadhi as the major innovations by colonial authorities concerning leadership of the *‘ulamā’*. Identifying the *‘ulamā’* as an important class of practitioners of power in Islamic communities, the Chapter argues that in Kenya, the *‘ulamā’* assumed official posts on the basis of racial prerogatives, emphasizing how racial favoritism was emphasized by

officials of the colonial state even as this was mitigated by the existence of Muslims from different racial backgrounds. This further complicated the process of appointing *‘ulamā’* to be Kadhi, ultimately leading to Arab Muslims being favored as opposed to other Muslim racial groups. This chapter shows the role of racial differences in the chronology of appointments of the *‘ulamā’* to the posts of Shaykh al-Islām and Chief Kadhi.

Chapter Six discusses the leadership of the *‘ulamā’* in Nairobi by drawing attention to early forms of leadership amongst Muslims and how the colonial authorities influenced changes in them. Subsequently the chapter shows how Muslims negotiated amongst themselves for the post of Kadhiship in Nairobi, continuing to display the role of colonial officers in the process of appointing the Kadhi, as well as the role played by racial and ethnic interests.

Chapter Seven discusses how the Wanga Muslims in Mumias were influenced by racial and ethnic identity conflicts to demand that Kadhi appointed in their area should be from the Wanga. Reviewing the Wanga demands as directly opposed to the wishes of the colonial government, the chapter describes again how Arabs or people deemed to be Arabs by the colonial state were favored for the posts of Kadhiship. This chapter chronicles the appointment of Sharif ‘Umar b. ‘Abd Allāh al-Maḥḍaly to Kadhi of Mumias among the Wanga and later the whole of Nyanza Province despite the opposition from the Wanga and other non-Arab populations. Finally, Chapter Eight reviews the general conclusions of the study.

Chapter Two

2.1 Pre-colonial Organizations of Leadership among Muslims in Mombasa

This chapter discusses pre-colonial forms of leadership and positions of influence amongst the Muslim communities of Mombasa. It explains the pre-colonial organization of leadership, the authority of leaders, their titles and how individuals ascended to these positions of authority. Taking into account pre-colonial forms of leadership, the chapter then elaborates on the factors responsible for changes in the forms of leadership. These factors include the emergence of Islam and the coming of the British to the Coast of Kenya. I argue that the existence of Islam influenced changes in traditional forms of leadership and paved the way for further changes as Muslims responded to colonial power. I will begin by locating Mombasa's social discourses on identity of belonging to the town, *wenyeji* or *umiji*. My preferences to use stories about Mombasa to indicate a variety of discourses of leadership lie in my conviction that, like all great cities, Mombasa too has its share of mythical narratives, many of which are told by its indigenous communities and visitors to the town alike. Such are the stories about the changing names of Mombasa. In extrapolating the meanings of these stories I argue, as did Martin Heidegger in *Being and Time*, that, "Man's relations to locations, and through locations to spaces, inheres in his dwellings. The relationship between man and space is none than dwellings, thought essentially."³⁷

³⁷ Martin Heidegger, *Being and Time* (Oxford: Basil Blackwell, 1978).

2.2 Mombasa, Gongwa, Mvita and Kongowea

Mombasa is an island on the east coast of the Indian Ocean. It occupies an area of about nine square miles with a coastline about three miles long and two and half miles wide. Except at the western end its coast consists of cliffs varying in height from about forty to sixty feet and a steep shore all around. Mombasa lies very close to the mainland and its deep channels provided excellent anchorage facility. It was the chief terminal on the eastern seaboard for caravan routes to the interior. The north-eastern anchorage, being the more sheltered, was the one mainly used in the 19th century. Early visitors to Mombasa were greatly impressed by the geographical position of this coral island. Arabs, the Portuguese, and later the British considered Mombasa to be an important strategic and commercial center on the coast. The British saw the potential of trade, civilization and power in the port of Mombasa. This was emphasized by Owen who noted that

“perhaps there is not a more perfect harbour in the world than Mombasa... facility of navigation constituted one of the greatest recommendations; as, by a proper attention to the monsoons and currents, voyages both to and from Mombasa may be affected with safety and certainty at all seasons. Goods sent from England to that part could be conveyed by the Arab dhows along the whole line of Coast, where they would meet with a sure market.... In conclusion our holding Mombasa as military station would be one of the most effectual steps towards the entire civilization of Eastern Africa.”³⁸

The climate of Mombasa is influenced by periodic monsoon winds. The northeast monsoon known as *Kaskazi* or *msimu* begins in November and lasts until February. The north-easterly monsoon winds begin to drop about March, when the south-westerly monsoon winds set in till they have fully developed in June and July. Between the

³⁸ F.W. Owen. *Narrative of Voyage to Explore the Shores of Africa, Arabia and Madagascar* (London: Richard Bentley, 1833): 412-413.

North-easterly and the south-easterly winds (called *kusi*) there is a short calm period called *maleleji*, after which the rains of *mwaka* fall. The latter part of *kusi* which blows in about August is called *demani* (calm winds). After the calm winds, *t'anga mbili* (two sails), set in, these being the variable winds that blow alternately from north and south. These winds enabled a two-way communication between the mainland and the offshore island almost all the year round. It is during these windy seasons that dhows from the Persian Gulf, Southern Arabia and India call at Mombasa.

Early accounts of Mombasa indicate that it was divided into two main parts, *Mji wa Kale* (old town) and an administrative center built by the Portuguese called Gavana.³⁹ But oral traditions indicate that these two quarters constitute two *miji* amongst many others that made up the Mombasa polity. For example, other names of locations are recalled with nostalgia because they remind its indigenous residents (*wenyeji* or *wenyetsi*) of some significant aspects of the social and political history of the town. The old names have been the subject of poetic compositions by Mombasans. For example Muyaka, one of Mombasa's great poets, composed poetry on the greatness of the town as a warning to invading forces.⁴⁰

³⁹ This was probably of Portuguese origin meaning a city of government. Krapf however refers to Gavana as Mji wa kale. He speaks of the Swahili of "Gavana or Mji wa Kale". Krapf J.L. *Travels, Researches and Missionary Labours during an Eighteen Years residence in Eastern Africa*, (London, 1961).

⁴⁰ For other works by Muyaka, see M. H. Abdulaziz, *Muyaka: 19th century Swahili Popular Poetry* (Nairobi: Kenya Literature Bureau, 1979).

As an ancient town ruled by Queen Mwana Mkisi, Mombasa's names included Gongwa, Kongowea and Nyali Kuu. About these names Muyaka composed the following verses:

- I. *K'ongowea ja mvumo, maangavu maji male
Haitowi lililomo Gongwa isingenyemele
Msiotambua ndumo na utambaaaji wa kale
Mwina wa chiza mbwi chile mtambuzwa hatambuli*
- II. *K'ongowea aridhimbi ukenda usijikule
Ina mambo t'umbitumbi, wajuvywa hawajuvile
Mara huliona wimbi lausha nyuma na mbele
Mwina wa chiza mbwi chile, matambuzwa hatambuli*
- III. *Mteza na Nyali K'uu kugeua mageule
Humvundanga maguu asende mwendo wa kule
Akawa p'aka mnyau, mnyau p'aka mwele
Mwina wa chiza mbwi chile, mtambuzwa hatambuli*
- IV. *Gongwa nda Mwana Mkisi, Mvita mji wa Kale
Uitupile viasi ukenda enda kwa p'ole
Inika chako kikosi maninga vyema sivule
Mwina wa chiza mbwi chile, mtambuzwa hatambule*
- IV. *Mvita mji wa ndweo ivumayo kwa kelele
Ilikutile t'utio panga za masimba wale
Haishi vigururumio na kwangusha mwanzi mle
Mwina wa chiza mbwi chile, mtambuzwa hatambuli*

I will render a translation of the verse of Muyaka, bearing in mind the social significance of the events explained in each stanza.⁴¹

- I. *K'ongowea roars like the surf, despite its calm waters
So placidly quiet is Gongwa not to reveal its great secrets
Nay strangers, perceive not its war-cries nor its warriors strategies
Mombasa is an abyss deep in its gloom even those well-informed comprehend not*
- II. *When going into K'ongowea refrain from being haughty*

⁴¹ The translations are largely inspired by those done by M.H. Abdulaziz in his *Muyaka*, however whenever I felt the need for clarity I have made some innovations of my own in this work.

*For its innumerable affairs are incomprehensible even to those who are informed
For suddenly a forward and backward surging wave appears
Mombasa is an abyss deep in its gloom even those well-informed comprehend not*

- III. *Trifle not with Nyali K'uu wishing to change its status
Whilst your legs are smashed to be unable to walk
You can be turned to a cat, a sickly cat
Mombasa is an abyss deep in its gloom even those well-informed comprehend not*
- IV. *Gongwa is the royal city of queen Mwana Mkisi, this Mvita our old city
Tread wily therein not to exceed its bounds
Lower your gaze; do not look straight in the eye
Mombasa is an abyss deep in its gloom even those well-informed comprehend not*
- V. *Mvita is a land of loud death-groans
Its long blades are already brandished, the swords of mighty lions
Its war cries are thunderous and loud
Mombasa is an abyss of deep gloom; even those well-informed comprehend not*

2.3 'Insiders and Outsiders': Social Composition in Mombasa

A mention of Mombasa often evokes memories of romanticism and reverence to a nostalgic past amongst indigenous residents and visitors alike. Visitors from within Kenya are curious about Mombasa's mysterious stories associated with marauding *jinn*s (demons) tormenting residents who fail to conform to the Islamic dispositions and character of its residents. Some visitors depart from Mombasa with awesome narratives of invisible cats that cry throughout the night to their displeasure. Others marvel at the hospitality of its residents, their laid-back life style, narrow corridors, unique architecture and, more importantly the historical significance of Mombasa on the eastern coast of the Indian Ocean. Against localized perspectives, the prejudice of unfamiliar visitors, against the background of archaeological excavations and historical treaties, against studies on early settlements in the coast of eastern Africa, Mombasa's mundane portrayal emanates

from its indigenous residents who engage in contentious social histories over who is *mwenyeji* (indigenous, or an insider) and who is *mgeni* (an outsider).

It is said that Bantu-speaking communities first inhabited the ancient settlements of Gongwa, Kongowea and Nyali Kuu. Amongst them were the Mijikenda and the Swahili who claim to be indigenous not only to Gongwa, Kongowea or Nyali Kuu but also the island of Mombasa. It is a characteristic misrepresentation to confine Mombasa to the Island, as its indigenous communities mention *miji ya upeoni* (settlements of the horizons) that formed the wider community of Mombasa including locations such as the areas of Changanwe, and Jomvu to the West, Nyali and Kongowea to the East, Kilindini and Mtongwe to the South, and Maunguja and Mtwapa in the North and North-East of the Island.⁴² With regard to the communities of Mombasa “it was common for archaeologists and historians to write that, although seafaring people intermarried with Africans, their coastal settlements developed in isolation from nearby African communities surrounding them and with which they traded.”⁴³ It is a misconception to consider Mombasa exclusively in relation to Arab settlements without mention of the centrality of other communities. New revisions on the oral histories of Mombasa locate the Mijikenda as having settled on the Island earlier. Oral respondents still maintained a position that the Mijikenda lived in Mombasa, not so much to be close to Arabs and enjoy the benefits of trade relations, but because Mombasa was their home.⁴⁴

⁴² Salim wa Katwa, Personal interview. Mtwapa, Mombasa 15th June 1998.

⁴³ Chaparukha M. Kusimba, *The Rise and Fall of Swahili States* (Walnut Creek. London. New Delhi. Altamira Press, 1999).

⁴⁴ Salim wa Katwa, Personal interview. Mtwapa, Mombasa, 15th June 1998.

2.4 The Swahili

Historically, the people identified as the Swahili have had no particular territory around which a boundary could be drawn. They have never had a state centre, or empire, or even a single political authority. Yet they have had certain marked features besides their language and their acceptance of Islam that have been unique to them and have distinguished them. Historically, the people known as the Swahili have had many identities from where peoples and groups could select any one in a given time situation. Mark Horton and John Middleton have identified two views of the Swahili identity. The first is that which is given to the Swahili by other person, that is, the Swahili are a culturally deracinated people, Arabised, and an un-African cluster of community. The other view identifies the Swahili as essentially a Creole people formed through immigration from Persian and Arabia. This would mean that the Swahili are an Afro-Arab society which culturally claims to form part of the world of western Asia than eastern Africa.⁴⁵ Neville Chittick puts this dialogue on the Swahili identity this way:

'the springs of this civilization are to be found on the northern seaboard of the Indian Ocean. But it cannot be said to be Arab; immigrants were probably few in number and there would have been far fewer women than men among them... most Arab men must have married Africans or women of mixed blood and their stock rapidly became integrated with local people.'⁴⁶

⁴⁵ Mark Horton and John Middleton, *The Swahili: The Social Landscape of a Mercantile Society* (Oxford: Blackwell, 2001).

⁴⁶ Neville H. Chittick, "The East Coast, Madagascar and the Indian Ocean" in R. Oliver, ed., *Cambridge History of Africa*, Vol. 3 (Cambridge: Cambridge University Press, 1977): 183-231.

The Swahili, on the other hand, see their own self-given identity in terms of their claimed ethnic origins, which may include those from outside of Africa. Ethnicity refers to actual or claimed places of origin and of descent from them to the present, and has little to do with race. Both external and internal definitions of identity may change and have changed over time, as the criteria alter with developments in local political and cultural conditions and aims. The Swahili discussed herein are those who in the early 19th century were inhabitants of Mombasa and the surrounding hinterland. Their organization reflected a socially and politically differentiated and hierarchical society, where everyone was conscious of their place, duties and obligations. In Mombasa the Swahili divided into two confederations of the Thelatha Taifa (three tribes) and the Tisa Taifa (nine tribes), who collectively called themselves the Thenashara or Twelve Tribes. The Tisa Taifa are sometimes referred to as the Mvita tribes or Miji Tisa (nine tribes), consisting of Wa-Mvita, Wa-Kilifi, Wa-Mtwapa, Wa-Pate, Wa-Shaka, Wa-Gunya, Wa-Katwa, Wa-Faza and Wa-Jomvu. These names suggest that at least seven of these groups, not including the Wa-Mvita and Wa-Jomvu, came from the old spatial settlement to the north of Mombasa. The Wa-Jomvu is a well-known pottery community of the coast which today has mainly settled further up the Mombasa channel at Maunguja and Jomvu Kuu. On the other hand, the three tribes (*Miji Mitatu*) or Thelatha Taifa comprised Wa-Kilindini, Wa-Changamwe and Wa-Tangana.

2.5 The Mijikenda

The important group of the polity of Mombasa is the Mijikenda who comprised nine tribes: Giryama, Digo, Chonyi, Kauma, Kambe, Ribe, Rabai, Duruma and Jibana.⁴⁷ Except for the Digo who also inhabited areas inside the Island of Mombasa, other Mijikenda groups inhabit the immediate outskirts of Mombasa in clearly identifiable areas. For example, the Chonyi live in western parts known as Chonyi, the Jibana, Rabai and Ribe inhabit the north eastern in areas identified with similar names. Mean while the Digo have extended their habitat to cover Tanga in Tanzania.⁴⁸ In Mombasa the Digo claim to be amongst the first community to settle in the Island in areas like Kongowea, Nyali, Kizingo and Makupa.⁴⁹ Because of the historically socio-economic and political significance of Mombasa communities including the Mijikenda and specifically the Digo have a tendency to disagree on the history of the town including matters of leadership. These disputes have significantly influenced how the Mijikenda and the Swahili perceive leadership in the town.

⁴⁷ An extensive discussion of the Mijikenda can be gleaned from T.T. Spear, *The Kaya Complex: A History of the Mijikenda Peoples of Kenya Coast to 1900* (Nairobi: Kenya Literature Bureau, 1978); Justin Willis, *Mombasa, the Swahili and the making of the Mijikenda* (Oxford: Clarendon Press, 1993).

⁴⁸ For a discussion of Islamic functionalism involving the Digo of Tanga in Tanzania see Abdin N. Chande, *Islam, Ulama and Community Development in Tanzania: A Case study of Religious Currents in East Africa*. (San Francisco, London & Bethesda: Austin & Winfield, 1998).

⁴⁹ Salim Gakweli, Personal interview. Mkomani, Mombasa 10th July 1998.

2.6 The Arabs

The other group of residents of Mombasa are Arabs, especially Omani Arabs comprising Mazrūʿī, Mandhry and BūSaidy clans. Though immigrant communities, Arabs carried into Mombasa inter-clan rivalries from Oman. In Oman, the Mazrūʿī are known as the Mazaria, a section of the Bani Jabir tribes who are residents of the valley of Jabir and the hilly districts east of Oman. They also inhabit the regions of Rastaq and Sumayil.⁵⁰ The Mazrūʿī appeared in Mombasa as soldiers of the Yarubi Imam of Muscat during the nineteenth century when Arabs and the Portuguese fought over Mombasa. After the wars the Mazrūʿī did not return to Oman but stayed in Mombasa, gradually intermarried with local inhabitants and became assimilated. At the turn of the nineteenth century most Mazrūʿī in Mombasa were second or third generation Swahili of both Arab and African descent. An indigenous Swahili family in Mombasa would hardly fail to trace their African ancestry amongst the Mijikenda. For example, because of blood relations between Mazrūʿī families and the Mijikenda, the Mijikenda often made reference to the Swahili and Mazrūʿī kinsfolk as *'Adzomba'* meaning uncles and nephews. The relationship between the Mijikenda, the Swahili and the Mazrūʿī has always been of great significance to the social and political survival of Mombasa. It was a relationship that varied with circumstances, and sometimes communities acted together which were at other times found on opposite sides.

⁵⁰ S. B. Miles, *The Countries and Tribes of the Persian Gulf*. Vol.2 (London 1919):432, idem "Notes on the Tribes of Oman," *Report on the Administration of the Persian Gulf Political Residency and Muscat Political Agency* (Calcutta, 1880): 30.

2.7 Social Organization and Leadership

The various groups that inhabit the Coast each see their history largely in terms of genealogy, of presumed or claimed descent from a founding ancestor and especially from an original homeland. Some of these claims are historically justified, others are not. Among these are the Shungwaya myths and claims of Shirazi origins based on ancient genealogies. Genealogies however are not always statements of actual ancestry but, rather validations of present authority and position. Descent and kinship are socially defined and measured for validation of status and may in fact not be biologically or historically true. The communities of Mombasa comprised ethnically and racially defined elements that together formed an Islamic demography, including groups that may loosely be referred to as indigenous and others whose fairly recent ancestors were immigrants from Arabia.

The elements named above have different and complementary political roles, and hold varying places in the overall system of social stratification. In Mombasa the Swahili and the Mijikenda organized their affairs through the institution of *umiji* or *midzi* (belonging to a settlement). The *Miji* (sing. *Mji*) of the Swahili and Mijikenda communities was the widest quasi-kinship grouping recognized in the polity. Members of *Mji* often traced the same patrilineal descent from a putative common ancestor. The areas occupied were known as *miji* and comprised the *mji* burial ground in most cases. Thus, *miji* were the home areas of kinship groups who occupied them. The *mji* was composed of a number of

Ascertaining the identity of the earliest inhabitants of Mombasa is problematic as Swahili and Mijikenda espouse similar myths of origin tracing their movements from a location called Shungwaya.⁵² Their arrival and settlement on locations of Mombasa is a point of conflicting and contradicting claims and accounts of the history of Mombasa. In most cases each claim is made with the intention of according an advantage to a specific community in important aspects of the social and political matters of the town. I will elaborate on the implications of such claims to the social relationships between the Digo and the Swahili.

Narratives of the early histories of the Mijikenda and Swahili communities provoke controversy over *wenyeji* (indigenouness). Both the Swahili and the Digo reckon and identify the real Mombasa as Mvita, Gongwa or Kongowea which are the homes of their ancestors, but seldom concur on who arrived first. Historically, ruins have been used to identify the earliest inhabitants. The Swahili, claiming Arab origins, usually cite ruins such as the *Jumba la Mtwana*, Gedi, and other ancient buildings at Vanga and Gasi as being proof of earlier arrival and habitat thereby refuting Mijikenda claims and migration histories that also locate their arrival earlier than everybody else.⁵³

⁵² For a discussion of this see T.T. Spear, *The Kaya Complex: A History of the Mijikenda Peoples of Kenya Coast to 1900* (Nairobi, Kenya Literature Bureau 1978), T.R.H. Cashmore, "A Note on the Chronology of the Wanyika of the Kenya Coast," *Tanganyika Notes and Record* 57 (1963); R.F. Burton, "The Shungwaya Myth of the Mijikenda Origins: A Problem of late Nineteenth century Coastal History," *International Journal of African Historical Studies* 5, 3 (1972); J. Willis, *Mombasa, the Swahili and the making of the Mijikenda* (Oxford: Clarendon Press, 1993).

⁵³Ramadhani Matano, Personal Interview. Mtongwe, Mombasa 12th August 2001.

The Swahili reference to ruins does not persuade the Digo who acknowledge they did not build stone houses. But they make counter claims against the Swahili using a paternity argument. The Digo, or more generally the Mijikenda, argue with the Swahili for the advantage that accrue to being considered the most indigenous community. Such advantages include occupying positions of prominence in town affairs. Thus, their argument that early Arab immigrants married local women and thus gave rise to the Swahili should conclude the dispute. But the debate continues. If the Swahili are not African in origins as most would claim, they also do not like to acknowledge that the Mijikenda were already in Mombasa when they arrived.

Other claims include the argument based on the name 'Swahili,' which is a Bantu word rooted in the Arabic word *Sahil* which has the meaning of margin or coast but often in Arab geographies meaning also 'port of trade'.⁵⁴ Swahili as an ethnic term was used by Omani conquerors who established the sultanate of Zanzibar in the nineteenth century so as to create preliminary order in their new colony. They used the word *sawahil* as the geographical designation for the East African coast and the word Swahili to refer to the indigenous population that lived there and the language that they spoke. Irrespective of whether the people of Mombasa were Swahili of Arab origins or Mijikenda who inhabited Mombasa, Gongwa, Nyali Kuu or Mvita, the identities of these communities are of relevance to our discussion for the organization of leadership (*uongozi*) in early Mombasa.

⁵⁴ J. Wansbrough, "Africa and the Arab geographers" in D. Dalby ed., *Language and History in Africa* (London: Cass, 1970): 89-101; M. Tolmacheva, The Origin of the name "Swahili" in *Tanganyika Notes and Records* 77-8 (1976):27-37.

Forms of social organization and practice of authority conformed to *miji* backgrounds as each *mji* was under the leadership of elders termed *wazee*. Each Swahili sub-group was under an *mzee wa mji*, while the Mijikenda identified their leaders as *dzumbe* or *angambi*, although titles like *kubo* were more pronounced in late nineteenth century. Any of them, *ngambi*, *kubo* or *dzumbe*, were representatives who formed a council of elders, *wazee wa mji*. Individuals assumed these positions on the basis of their knowledge of communal histories, wisdom and ability to respond positively to communal problems. Power depended on one's prowess to manipulate the community and to offer solutions to its troubles. According to some oral informants, knowledge of communal rituals and sacred rites contributed tremendously towards recognition and inclusion in councils that deliberated upon communal affairs. These epitomized power and authority amongst the people of Mombasa.⁵⁵

At the beginning of the early nineteenth century internal aspects of the social organization of the communities of Mombasa changed, as they came under the influence of Islam and its subsequent spread, its domination of the inhabitants of Mombasa by foreign Arab rulers, and the emergence of European colonial powers. These forces influenced the organization of leadership in Mombasa and were effectively responsible for communal strife and social cleavages.

⁵⁵ Ramadhani Matano, Personal Interview. Mtongwe, Mombasa 12th August 2001.

2.8 Influences of early Islam in Mombasa

The proximity between Arabia and the East African Coast points to possible early contact between the two regions. It is uncertain whether early trade contacts necessitated the spread of Islam because such contacts could have predated Islam. However, the advent of Islam in Arabia during the seventh century marks the turning point in the contacts between the communities of Arabian Peninsula and those of the east coast of the Indian Ocean, as initial trade contacts increasingly become relations involving a religious and cultural exchange.

The earliest contacts between the inhabitants of the East African Coast and Arabs are mentioned in the *Periplus of the Erythrean Sea* although it is silent on the religious characteristics of the communities.⁵⁶ Later chronicles such as that of Kilwa mentions the settlement of seven Muslim brothers from Persia who were escaping religious persecution in their country. It brings to our attention the conquest of Oman by al- Ḥajjāj, the Syrian Governor of Caliph Abdul Malik (65-86 A.H.; 655-706 A.D.) and the subsequent expulsion of its Muslim rulers Sulaymān and Sa'id.⁵⁷ These latter are said to

⁵⁶ A translation of the document is found in R.O. Collins, *Eastern Africa History* (New York: Markus Wiener Publishing, 1990): 48-49. G.S.P. Freeman-Grenville, *The East African Coast: Selected Documents From The First Century to the Earlier Nineteenth Century* (Oxford: Clarendon Press, 1962):1-2.

⁵⁷ An Arabic version of the Kilwa chronicle fell into the hands of the Portuguese in 1505 when Kilwa was captured. This story relates how seven brothers from al-Hasa on the Persian Gulf founded Mogadishu and Barawa. For an English translation of the chronicle see Freeman-Grenville, *The Mediaeval History of the Coast of Tanganyika* (Oxford at the Clarendon Press 1962, reprint 1966):45-210.

have fled with their families and headed for the East African Coast. Their settlement around 685 A.D. (65 A.H.) is recognized as the first settlement of Muslims along this coast. Records by Arab traveler and geographer Ibn Baṭṭūta who visited Mogadishu, Mombasa and Kilwa, observed the Muslim characteristics of its residents whom he defined observing *Shāfiʿī* codes of Islamic law.⁵⁸ The chronicles have recently been complemented by archeological excavations, most significantly the works of Mark Horton who excavated coins with the names of Muslim rulers dated 1050-1080 A.D. Such finds effectively placing the earliest presence of Islam along the East Coast of Africa around the ninth century.⁵⁹

The settlement of Arabs along the Coast of East Africa and the subsequently emergence of Islam influenced indigenous communities. Aspects of their social organization changed specifically as previous engagements and disputes took on an Islamic dimension. The terminology of leadership changed and titles such as *Mzee* were substituted with Shaykh, the latter being more fashionable and prestigious. Local rulers, the *wazee* of various *Miji*, collaborated with immigrant Arabs families, changing the units of power to incorporate quasi Africa and Arab dynasties. This arrangement favored the Arabs who occupied the highest positions in rulership, although some *wazee* exercised levels of autonomy in the affairs of the *Miji*. From thence, the overall rule of Mombasa was identified more with Arabs than with indigenous inhabitants. The Mijikenda complained

⁵⁸ Accounts by Ibn Baṭṭūta are in "Ibn Baṭṭūta: The East African Coast in 1331," R.O. Collins, *Eastern Africa*, 61-66.

⁵⁹ Mark C. Horton, *Shanga. The Archaeology of a Muslim Trading Community on the Coast of East Africa* (London: British Institute in Eastern Africa, 1996).

that they had lost most of their influence over Mombasa during such times when other communities began referring to them as the Nyika (the grassland people). Some Mijikenda elders argue that Mombasa was once a Nyika (grassland) inhabited by the Mijikenda groups.⁶⁰ However, it is important to note that when the Mijikenda were defined as Nyika, some Swahili groups further excluded them through claims of Swahili-Mijikenda patron-client relations. The Digo, for example, became incensed by these Swahili claims. On the other hand, the Digo's stubbornness in their demands for autonomy in the affairs of Mombasa led the Swahili to characterize them with an adage "*Mdigo ni mzigo*" (the Digo is such a burden).

The discussion above points to the fact that, social relations in Mombasa during the period of the Sultanate of Zanzibar and that of the British colonialism came under the influence of Islam. Communities came face to face with the difficult reality of belonging to one community based on a common religious identity. Among the difficulties are those that emerged as a result of attempts to forge common leadership institutions.

Between Swahili, Mijikenda and Arab Muslims, the latter assumed higher positions of leadership in the *ummah* though Arab clans disagreed amongst themselves. For instance the Mazrūfī competed against the Busaidi, Nabhany or al-Mandhry clans for prominence, power, authority and leadership.⁶¹ While the Arabs argued amongst themselves, the Swahili attempted to exclude the Mijikenda in the running of the affairs of the town by means of patronage, as Swahili ethnic groups claimed to have been allied to one

⁶⁰ Jumaa Keke, Personal interview. Mwabungo, Kwale, 2nd August 2001.

⁶¹ See, le Guennec-Coppens, F "Social and Cultural Integration: A case study of East African Hadramis" *Africa*, 59 (2), 1989:185-195.

Mijikenda group or the other. To assert their autonomy and claim a stake, the Mijikenda objected to the claims of patron-client relations with the Swahili and recalled that they held an independent stake in the affairs of Mombasa. Amongst the Mijikenda the Digo challenged the Swahili dominance of Mombasa. Although they formed a significant part of the Muslim population, the Digo were pushed out of their town settlements due to constant fights that emerged between the Omani, the Mazrū'i, or the Portuguese invaders. In fact, oral traditions indicate that one major clan of the Digo people, *achinga ngome* (literally meaning the people of the fort) had settled in close proximity to the present location of Fort Jesus in Mombasa, suggesting that the Digo belonged to both the Nyika as well as to the *mji* (town) settlements.⁶²

Contested religious identity, based on various claims of indigeneity, was part of the social discourse of difference. To have been exposed to Islam earlier enhanced claims of *wenyeji* and its prestige. Thus, the Mijikenda and the Swahili constantly disagreed on this aspect and argued about it. They still do so today. The Swahili claimed not to have identified with any form of religion other than Islam, but disagreed with the Digo over claims that the Swahili had been responsible for the Islamization of the Digo. The Digo abhorred and were offended by claims that they embraced Islam due to their interaction with the Swahili. In a conversation with some respected Digo *wazee*, I heard a total denial of coming to Islam through the Swahili. They felt slighted when reference to conversion of their ancestors to Islam was attributed or linked to their interactions with

⁶² This information was gathered in the process of collecting data for my MA project on conflict and tensions between the Sharia Law and Digo customs on inheritance, through discussions with informants like Said Suleiman Mwangumbo (interviewed 12/10/1991 and Bwana Kali on 11/01/1992. Recently this information was corroborated by Mohamed Omar Marzouk Dzimba, interviewed on 01/03/2002.

the Swahili.⁶³ They opposed such claims that “*hawakusilimishwa bali walifuata dini*” (they were not converted but rather observed religion). To emphasize that the Digo’s adherence to Islam was independent of any attempts at proselytisation by the Swahili, they would ask rhetorically “who was the first Digo to *pigishwa shahada* (made to pronounce the shahada) by the Swahili”? Since there are no known occasions when conscious efforts were made to win over the Digo people to Islam, a response to such a rhetorical question can be baffling. As the answer to who were the first Digo to take the *shahada* as an indication of embracing Islam is difficult to disentangle, studies on Islamization amongst the Digo will remain unclear.

The Digo are an important segment of the Muslim population, but Islamization amongst the Digo remains an enigma. The earliest historical study of the Islamization of the Digo is by David Sperling who dates the beginnings of Islam around the 1870’s. Sperling uses inscriptions of dates found amongst the earliest Mosques by the Digo.⁶⁴ However, the Digo would disagree by arguing that this was not an adequate assessment of when they started to practice Islam. In fact, I tend to concur that inscriptions on when a mosque was built hardly indicate the earliest beginnings of Islam. They may however indicate the time a mud and wattle mosque was turned into a stone structure. Furthermore, such inscriptions tend to express the enthusiasm of the Digo to built permanent mosques. It is

⁶³Juma Bakari, Oral interview. Mkomani, Mombasa 08th September 2001, Saidi Mwabanha, Pungu, Kwale 02nd September 2001, Rashid Salim Mwanke, Kisauni, Mombasa 15th September 2001.

⁶⁴ David. C. Sperling “The Growth of Islam among the Mijikenda of Kenya Coast 1826-1933” (Ph. D diss., University of London, 1988); W.F. McKay, “A Pre-colonial History of Southern Kenya Coast.” (Ph. D diss., Boston University, 1975).

easier to assume that the Digo built these new places of worship as strong adherents of the faith, and not as novices to Islam.

The difficulties encountered in discerning the chronology of the spread of Islam amongst the Digo, or even other Mijikenda groups for that matter, is as a result of the fact that there were no conscious proselytizing activities. It is difficult to find a Digo who accepts that their earliest ancestors pronounced the *shahada* under the tutelage of an Arab or a Swahili as an indication of *kusilimishwa* (having being guided to embracing Islam).⁶⁵ Some Digo do acknowledge learning some aspects of Islam from the Swahili but this constituted *kusoma kwao* (learning from them) and not *kusilimishwa*. The assumption of *kusilimishwa* takes an expression of cultural superiority between communities who claim to have assisted others in their practice of Islam. Along the coast of East Africa being a Muslim meant you were *mstaarabu* or culturally superior. Thus, the disputes between the Swahili and the Digo are to be understood against this background of claims to cultural superiority. The Digo would not accept to be referred to by the Swahili as the *washenzi* (uncultured) because they also practiced Islam. On the other hand, the Swahili would abhor being brought closer to the Digo because it seemed to lower their dignity as being one amongst the cultured communities of the town. It is with regard to these forms of relationships occasioned by Islam that we situate disputes over positions of influence and leadership in Mombasa.

⁶⁵ It is a common practice in the East African Coast when one embraces Islam they are made to pronounce the Creed attesting to have accepted that There is no god but Allah and Muhammad is His Messenger. Amongst the Digo people interviewed none recalled the remotest time when such activities were undertaken.

2.9 Power in Foreign Rule: Zanzibar and leadership in the Coast of Kenya

Apart from the emergence of Islam, the existence of foreign rulership in Mombasa influenced the organization of leadership and the accession to positions of influence. Since earliest times different communities fought over the control of Mombasa. These included the Arabs, the Portuguese and the British. These communities have played equally vital roles in the evolution and organization of leadership in the region. During 1498-1730, life on the East African Coast was characterized by struggles between the Portuguese, the Muslim inhabitants and the Imams of Oman. In 1478 vigorous campaigns ensued when the Portuguese sailor Vasco-da-Gama arrived. By 1540 another Portuguese Admiral, Francisco D'Almeida, sacked and subdued Mombasa.⁶⁶ The Muslim residents of Mombasa abhorred Portuguese behavior and their brutal rule. The existence of the Fort Jesus in Mombasa reminded them of the yoke of the Portuguese rule. Muyaka reminiscenced in his verses that

*Ngome ni ngome ya mawe na fusi la kufusiza
Ngome ni ya matumbwe, na boriti kuikiza
Ngome wetwapo sikawe, enda hima na kufuza
Ngome imetuumiza, naswi tu mumo ngomeni*

*The fort is built on stone and reinforced with coral
The fort has ceilings well-laid with poles and beams of Boriti
The fort! When you are summoned do not tarry but hurry and go quickly
The fort has certainly done us so much harm, are we still to revere the fort*

⁶⁶ For a history of Portuguese rule in Mombasa see C.R. Boxer & C. Azevedo, *Fort Jesus and the Portuguese in Mombasa 1593-1729* (London, 1960); Justus Strandes, *The Portuguese in East Africa* (Nairobi: East Africa Literature Bureau, 1968).

This poem was composed in the early nineteenth century to display the communities' ill-feelings about the Portuguese. A mention of the Portuguese still evokes emotions in the town. In 1998, the then Mayor of Mombasa organized the *Mombasa Cultural Carnival* and invited its residents to celebrate its history. Participants were enthusiastic about the histories of bravery of the Muslims of Mombasa but a mention of the Portuguese period evoked strong opposition. Like Muyaka in the nineteenth century, a representative of the *Council of Imams and Preachers of Islam in Kenya* (CIPK), Shaykh Ali Shee, argued that *ngome imetuumiza naswi tu mumo ngomeni* (the fort has certainly done us harm, yet we revere the fort). It was a religious and political message warning that the Muslims of Mombasa had nothing to celebrate about the Portuguese reign and accused the Portuguese of the murder of thousands of Muslims, the plunder of the town and the burning down of "hundreds" of mosques.⁶⁷ Negative sentiments aside, the history of Mombasa is incomplete without a mention of the Portuguese, since from 1540 they controlled the city of Mombasa until 1698 when they were expelled with the assistance of the Omani Arabs. The Omani Arabs assisted the residents of Mombasa with ulterior motives. When they helped to defeat the Portuguese, their expansionist zeal revealed itself. Immediately after the Portuguese left, the rulers of Oman imposed their own governor over the indigenous communities.

⁶⁷ Shaykh Ali Shee was addressing Muslims and other participants during the Mombasa Cultural Carnival in April 1998, though these were his expressions the number of mosques allegedly burned down sounds like an exaggerated figure.

The first Liwali of Mombasa was the Mazrū'ī Nasir b. Abd Allāh.⁶⁸ In 1724, the indigenous coastal communities became disenchanted with their Omani overlords. For example, when Nasir b. Abd Allāh was Liwali, the Imam's indigenous soldiers mutinied and set up their leader Sese Rumbe, as Commandant at Fort Jesus. In 1744 changes in Oman influenced changes in Mombasa. Aḥmad b. Sa'īd of the Al-BūSaidy family seized power and became the Imam of Muscat and Oman. Muḥammad b. 'Uṭḥman, a Mazrū'ī kinsman, was then the Liwali of Mombasa. In an act of defiance he proclaimed in Mombasa that "The Imam is an ordinary citizen who has usurped Oman; I have usurped Mombasa." The stage was set for a struggle between the Al-BūSaidy and the Mazrū'ī.⁶⁹ To counter the Mazrū'ī challenge, Aḥmad b. Sa'īd decided to strengthen his hold on Zanzibar first by sending a garrison to the Island around 1746. In the same year he successfully contrived the murder of Muḥammad b. 'Uṭḥman. Despite Aḥmad b. Sa'īd's success he did not take control of Mombasa, because he had to consolidate his power in Oman first. As a consequence, the Mazrū'ī family regrouped and regained control and installed another Mazrū'ī, 'Alī b. 'Uṭḥman, as Liwali.

⁶⁸ There are variations on who was the first Mazrui Liwali. M.A. Hinawy gives the date of the first Mazrui governor as 1711, see M.A. Hinawy, *Al-Akida and Fort Jesus, Mombasa* (Nairobi: East African Literature Bureau, 1970):6 however, John Gray mentions that Nasir Ibn Abdullah was holding office when the real governor Ahmed bin Nasir set out for the pilgrimage to Mecca in 1727; see J. M. Gray, *The British in Mombasa 1824-1827* (London: Macmillan 1956): 5.

⁶⁹ The struggle for power between the Mazrui and the Sultans of Zanzibar is documented in N. R. Bennett, *A History of the Arab State of Zanzibar* (Cambridge: University Printing House, 1978): 22-25.

Meanwhile in Oman Aḥmad b. Saʿid died in 1784, and there followed another period of unrest until 1804 when Saʿid b. Şūltan usually known as Sayyid Saʿid became ruler. The murder of his brother in 1806 gave him absolute control over Oman. Rival claimants to the throne attempted to establish themselves along the East African Coast, but Zanzibar held out, and soon became the center of Oman activity on the Coast of East Africa.

Sayyid Saʿid had much to do in Oman in the early part of his reign and could not take any serious offensive against the Mazrūʿi until 1828. He set sail with a large fleet from Muscat and engaged the Mazrūʿi at Mombasa. A fierce encounter ended in victory for Sayyid Saʿid. A treaty was negotiated in which his authority was acknowledged. Sayyid Saʿid withdrew to Zanzibar, which had continued to be loyal to him, and stayed there for three months. Trouble in Oman necessitated his return and the Mazrūʿi immediately revolted in Mombasa. In the following years, Sayyid Saʿid had to send several expeditions to Mombasa, and it was not until 1837 that the power of the Mazrūʿi was finally crushed. Sayyid Saʿid, relying more on diplomacy than martial strength, persuaded the new Sultan of Mombasa, Rashid b. Salim to accept a treaty whereby Rashid continued to rule the Island but the Fort was to be garrisoned by Oman troops. A few months later Rashid was seized along with many of his leading supporters and banished to Bandar Abbas. The power of the Mazaria was thus broken.

After the power of the Mazrūʿi was finally crushed, Sayyid Saʿid controlled the whole coast from Mogadishu to the Ruvuma river. In 1832, he made Zanzibar his capital and ruled by appointing his representatives, the Liwali, in towns under his control. Other

officials under the Liwali included Kadhis and the Mudirs. Kadhis assisted and advised Liwalis on matters of the *Sharī‘ah* and other matters of local interest. Mudirs were administrative assistants in the communities. In this new organization of the Sultanate, Sayyid Sa‘īd appointed his BūSaidy kinsmen to the positions of Liwali and Mudirs in Mombasa. Thus, ‘Alī b. Nassir was appointed Liwali of Mombasa immediately after the last Mazrū‘i ruler, Liwali Rāshid b. Ṣalim b. Aḥmad al-Mazrū‘i had been deposed and he ruled up to 1845.⁷⁰

From 1870 when Europeans developed a keen interest in Mombasa, the Busaidi Liwali was Ali b. Nassir who was serving a second term. He seemed not to have liked the European presence because when Ludwig Krapf of the Church Missionary Society (CMS) landed in Mombasa in 1844, he carried with him a letter of introduction from Sayyid Said. But that ‘Alī b. Nassir was un-cooperative and refused to assist Krapf to find proper lodgings and in fact he issued an order that people should not call on Krapf. ‘Alī b. Salim was succeeded in 1872 by Salim b. ‘Alī al-Mandhry who was succeeded by Salim b. Khalfan in 1874 who was Liwali intermittently up to 1920. In 1874, Seif b. Sulaymān Deremky acted, while Salim b. Khalfan was in Zanzibar. Ali b. Nassir took over for another term from 1881-84.

When the Sultan appointed Liwalis, Mudirs and Kadhi in Mombasa, he hardly considered the Mijikenda or the Swahili Muslims, although these communities were allowed some

⁷⁰ For a history of the Zanzibar Sultanate see N. R. Bennett, *A History of the Arab State of Zanzibar*. (London: Methuen, 1978).

levels of autonomy in organizing for traditional authority and leadership. Various agreements were entered into between the Sultan's chief ministers (*wazir*) with the Thelatha Taifa and Tisa Taifa Swahili communities, resulting in the Swahili recognizing the sovereignty of the Sultan but skeptical on the authority of his representatives. Swahili elders have viewed the Mazrū'ī and al-BūSaidy Liwali as imposters in respect of the affairs of their town.⁷¹ For example the Swahili declined to recognize the authority of Shaykh Jabir who was appointed Kadhi by the Liwali. They complained to the effect that the Liwali was overstepping his bounds by appointing officials against their wishes. Opposed to the Kadhiship of Shaykh Jabir the Swahili of Thelatha Taifa favored their own kinsman, Shaykh Mshirazi. For illustrative purposes I will reproduce two agreements entered into between the Swahili and representatives of the Sultan at Zanzibar. These indicate how the Swahili related or interacted with the Sultan and his appointed officials in Mombasa.

The first agreement concerned the authority of the Swahili leader Shaykh Mshirazi who challenged the appointment of a Kadhi by the Liwali of Mombasa to serve amongst the Thelatha Taifa branch of the Swahili. This agreement was entered between Sultan Khalifa b. Sa'īd and the Swahili in the presence of the Sultan's Chief Minister, Sulaymān b. Muḥammad. It stated the following:⁷²

From Said bin Sultan
To whom it may be presented,

⁷¹ Bashir Mchangamwe, Personal interview. Nairobi, 16th August 1998.

⁷² I am indebted to the family of Haider Matano who drew my attention to these documents and most of the narrations on the Thelatha Taifa and Tisa Taifa communities in Mombasa. Copies of these are also found in the Kenya National Archives especially files KNA/PC/Coast/1/20/96.

We have agreed between Sheikh Mshirazi and ourselves that
He is the recognized leader amongst his community
No one is to surpass him.
I swear to God and His Prophet that during our reign and their lifetime,
during his (Shaykh Mshirazi's lifetime, all that is due as their right to
them is theirs.
If there is any dispute in his community, such dispute must be
submitted to him.
Shaykh Mshirazi and his predecessors are to settle disputes of their
community and the Liwali has no right to interfere.
It is upon us to guard the safety of Shaykh Mshirazi and his followers,
their lives and belongings.
Anyone who will stand against them is deemed to be our enemy and the
enemy of our representative.
If the Shaykh wishes that an offender be retrieved he shall be retrieved.
The Liwali shall follow their advice in connection with town affairs.
The Liwali shall be a person whom they like and if the Liwali will go
against them we swear by the name of God that we shall dismiss him
forthwith.
There will be no conscription imposed on them by our representative.

Knoweth whoever will see that all.
Written by his servant by his order
Signed. Sulayman b. Muḥammad (Minister)
26th Ramadan 1252 A.H
Confirmed by:

The text is very interesting in a number of respects. Firstly, Mshirazi is appointed as a leader but his responsibilities clearly included judicial matters. Kadhiship seems to entail broad leadership in the local affairs of the community. Secondly, the agreement also implies a parallel authority with the Sultan's representative, the Liwali. The Sultan seems eager to appease the beneficiaries that the Liwali will not work against their interest.

In this case the Sultan's appointees had continually attempted to interfere with the authority of indigenous leaders. The Swahili interpreted this agreement to give them autonomy and authority parallel to the Liwali. Yet a similar agreement was entered into five years later between the Thelatha Taifa and the Sultan at Zanzibar. This time this

agreement was entered into in the presence of Sulaymān b. Aḥmad, another Minister of the Sultan, and signed by Sultan Said. It states

From Pauper Sulaymān b. Aḥmad

To whom it may be presented amongst the residents of Mombasa.

That Shaykh, Shaykh bin Mshirazi is the leader of all the leaders (Tamim) for the THREE TRIBES and there is no one to interfere in his previous privileges. Whoever will disobey him or his orders and wishes him to be imprisoned he shall be imprisoned: and whomever he wants him to be fettered he shall be fettered and shall not be asked the reason why.

The Kadhi will be the one whom they like for that is their right. Ye people fear God to fulfill these conditions.

Full honor and respect is due to him for whatever is desirable.

The Kadhi will be the one whom they themselves wish to be for the purpose of leading them in prayers, officiate marriages and to settle disputes amongst them.

Knoweth this document is presented to him.

Pauper by his own handwriting.

Shaykh Jabir (Shaykh of the immigrant Arabs) shall not interfere with them in their matters except by their consent.

Whoever presents a document other than this but similar to it, is invalid.

29th Safar 1257 A.H

Written by Pauper, Signed Said (Sultan).

We can glean from these agreements signed between Sayyid Said and the representatives of the Thelatha Taifa and other Swahili communities that Sayyid Said was ready to accede to the demands made by local communities for as long as they accepted his ultimate sovereignty. Although future rulers of the Sultanate of Zanzibar, especially during the reign of Sayyid Barghash appeared to have been more assertive in their appointments, a precedent had already been set that future rulers and his representatives were expected to observe. Such agreements determined future relations between the Swahili of Mombasa and any other authority representing the Sultanate of Zanzibar.

Thus, when the British took over the authority to appoint officials including the Liwali and Kadhi, the Swahili continued to cling to their autonomy and at times declined to acknowledge the authority of non-Swahili officials appointed by the British. More importantly, the Swahili demanded to be enjoined and included in the hierarchy of positions of leadership in Mombasa. Whenever the Swahili were excluded from positions of leadership, they asserted to such historical antecedents to demand alternative leaders. Most of the demands by the Swahili emerged when the British appointed Muslim leaders as a result of agreements entered between the British and the Sultan of Zanzibar. I will discuss hereunder how the British instituted their authorities in Mombasa.

2.10 Early British Interests in Mombasa

The first time that the British were mentioned in Mombasa was during the Mazrui period in 1824-26. Mombasa became a British Protectorate then at the request of the Mazrui who wished to fly the British flag at Fort Jesus to discourage Omani attacks. This request was made to Captain Vidal when he docked his HMS Barracouta into Mombasa in 1823. Vidal initially declined to hoist the Union Flag despite “the many arguments and earnest solicitations” of the Mazrū‘i. But Captain Owen, Vidal’s commanding officer, sailing south from Muscat saw the British Flag flying from the Fort when they sighted Mombasa in 1824.⁷³ The Mazrū‘i did not wish to be ruled, but only to be able to fly the “Union Jack” at Fort Jesus should the Omani fleet be sighted.

⁷³ Sir John Gray, *The British in Mombasa* (London: Macmillan, 1957).

The British emerged more strongly during the reign of the Busaidy Sultans of Zanzibar who had defeated the Mazrū'i. As part of Britain's attempts to stamp out the slave trade, Sir Bartle Frere was sent to Zanzibar in 1873 to negotiate with Sultan Sayyid Barghash. On his return to England Frere asked the Church Missionary Society (CMS) to open a settlement at Mombasa for freed slaves. Within a year, more than six hundred rescued slaves were accommodated at Frere Town in the north mainland of Mombasa.⁷⁴ There was a feeling of resentment by many Arab slave owners who stated that most of the dwellers at Frere Town were run-away slaves from Mombasa. To counter this, the British Government paid compensation for all such runaways to their previous owners. Pressure from the British led to further agreements with the Sultans of Zanzibar, culminating in the abolishing of the slave trade, and the Zanzibar slave market was formally closed in 1873. In 1875, an internal dispute provided an opportunity for a greater British involvement in Mombasa. Muḥammad b. Abd Allāh, the Akida or Commandant of Fort Jesus, refused to leave the town he was recalled by the Sultan.⁷⁵ He attacked the Liwali of Mombasa and some loyal residents. Sayyid Barghash turned to the British and requested help in ousting the Akida. Two British naval ships bombarded the Fort until finally Muḥammad surrendered and was banished to Madagascar.

Apart from the desire to eradicate the slave trade, British involvement in East Africa in the last three decades of the nineteenth century stemmed largely from the fear that Germany might take over the whole territory. Karl Peters, had traveled into the interior of

⁷⁴ The history of freed slaves in Free Town is narrated in J.J. Mbotela, *The Freeing of Slaves in East Africa*. (London: Evans, 1956).

⁷⁵ M. A. Hinawy, *Al-Akida and Fort Jesus, Mombasa* (Nairobi: East African Literature Bureau, 1970): 6.

East Africa and persuaded several tribal Chiefs to sign trading documents, giving Germany rights in their lands. When Sayyid Barghash came to hear of these maneuvers he was not worried, and turned to the British for assistance. Britain was not anxious to antagonize the Germans and failed to give the Sultan the assurances he wanted. The Sultan was forced to agree to Germany taking parts of the inland East Africa south of Tanga along with Witu in the north. During the latter part of his reign Sayyid Barghash had persuaded Sir William Mackinnon to accept a trading concession on the Coast. The British government itself was approached but was still not eager to get involved. However, they encouraged Sir William Mackinnon to go ahead and open a trade front. It was thus that Sir William formed the British East Africa Association, which latter became the Imperial British East Africa Company (IBEAC) in 1888. Under agreements with the Sultan the British administered the Sultan's dominions, all the while acknowledging his authority. For example, in 1887, the first concession allowed the Company to exercise its powers over all his dominions with powers and authority to pass laws for the government. It also allowed the Company to establish courts of justice. However, a caveat was included where judges appointed by the company required the approval of the Sultan. The Sultan reserved for himself the authority to appoint individuals to positions of religious authority and influence. Thus, the Kadhi were initially nominated by the Sultan although the British appointed other officials such as collectors, District Officer and Mudirs.

As the Sultan allowed the administration of his dominions to fall under the authority of European Companies and later governments, he did not necessarily entrust the religious

affairs of his dominions to the new rulers. More emphatically, was that when a charter was granted to the IBEA it provided inter-alia that:

The company as such or its officers will not in any way interfere with the religion of any class or tribe of the peoples of its territories or any of the inhabitants there from. All forms of religious worship or religious ordinances may be exercised within the said territories and no hindrance shall be offered thereto.⁷⁶

2.11 Conclusions

This chapter has outlined what constitutes the Islamic demography in Mombasa. It dealt with how Muslim communities related with one another, and outline the extent and the limits of locals in the context of Arab rulers and British traders. I have drawn attention to an Islamic community characterized by overlapping, contentious and multiple identities that came under the influence of major social forces such as the authority of Zanzibar and British colonialism. A form of Muslim power was instituted by the Sultanate of Zanzibar although centrally authorized Liwali and local Kadhis. But the sultan was relatively weak but this was weakened until he eventually acquiesced to foreign British rule which ushered in the era of European colonization of Muslim communities. Although the control over the political affairs in the Sultan's dominions was passed on to the British, religious autonomy and protection was granted to the Muslim communities. It was a significant undertaking that formed the foundations for continuous Muslim objections to attempts by British officers to favor leaders who were not popular. Muslims deployed such guarantees to demand non- interference of the British in all matters of a religious

⁷⁶ See "Agreement between Great Britain and Zanzibar, respecting the possessions of the Sultan of Zanzibar on the mainland and adjacent islands, exclusive of Zanzibar and Pemba" in KNA/AG/1/198.

nature, including the choice of officials such as Kadhi and other positions of leadership and authority. The administrative arrangement entered into between the Sultan and the representatives of the British traders signaled the decline of the Sultan's authority over the Muslim communities and the propulsion of British power through the establishment of a protectorate over the Sultan's dominions in Mombasa and other coastal towns. I want to concentrate more on how the British managed the affairs of the Sultan in the next chapter.

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Chapter Three

3.1 The Colonial State, Race, and Muslim Officials

Participants at the ‘*ulamā*’ symposium organized by the SUPKEM in fact had agreed to establish a council of ‘*ulamā*’ or the Majlis but there were sentiments opposed to such an institution because of the fears that it could be used to propel ethnic based leadership. Neither the proponents of the accusation of ethnic biases nor its protagonists were far from reality. To discern Muslim attitudes towards posts of leadership such as Kadhi or Liwali, I will in this chapter uncover the basis upon which these posts were created and developed. Then I will follow this with an examination of the considerations on appointees and the factors that influenced their institutionalization in the colonial state. To confirm the role of ethnic predilections, this discussion will be placed in the broader context of colonialism because the Muslim communities of Kenya have had an interesting and unique history of colonialism, as the colonial desire for hegemony influenced almost every sector of the lives of the Muslims.

3.2 Colonial Power

In most instances the colonial state in Africa lasted less than a century, and leading theorists of colonial power have characterized colonialism as a “mere moment in historical time.”⁷⁷ In Kenya British colonization took the form of conquest, giving rise to colonial states characterized as having, “displaced indigenous institutions and replacing

⁷⁷ Crawford Young, *The African Colonial State in Comparative Perspective* (New Haven and London: Yale University Press: 1994): 9.

them with institutions of authority and government imposed by ... imperial power".⁷⁸ But the process of colonization also involved reactions from colonized societies, who embraced, refused, rejected and were obsessed by it. Periodizing the colonial enterprise identifies tripartite stages broadly defined firstly in the moments of conquest until the First World War, when the dominant objective was to construct an apparatus of domination and societal subordination into permanent rule. The second interwar period was concerned with consolidation of the empire through institutionalization, rationalization and routinization of the superstructure of colonial domination. The final stage entailed the gradual realization by colonial managers that its privilege and rule could not indefinitely persist as alien rule. The third stage falls around the 1940's when growing indigenous dissatisfaction forced reluctant metropolitan acceptance of transfer of sovereignty and ushered in processes of decolonization.⁷⁹ This chapter broadly engages the history of British colonial rule, perceived as an ambiguous adventure of control and response. Superimposing the discourse of colonial power and its effects on Muslims entails appreciating the historical explications of the legalities of colonialism. Such mapped produced seriously contested outlines of authority in the Muslim community.

During the time of British colonial power, legal identity was integral to the state's social mission of carefully dividing a society that was inherently fragmented, atomized and

⁷⁸Donald Denoon, *Settler Capitalism: The Dynamics of Dependent Development in the Southern Hemisphere* (Oxford: Clarendon Press, 1985).

⁷⁹ Crawford Young, *The African Colonial State*, 11.

centre-less.⁸⁰ One's identity was a momentous definition of rights and obligations. Colonial encounters included moments of individual and communal negation of one's identity because belonging to the 'wrong identity' carried with it the irresolvable consequences of loss of privileges. In the Muslim community of Kenya, the colonial state also defined local populations as "Natives" making them suffer an intractable social humiliation. As elsewhere, a native was defined as an utterly antithetical being who could not be brought into the realm of civilization, much less integrated into its emphatic instruments like those of the state. The native, in short, was denied a legal personality which was the domain of civil and civilized order within the ambit of civilization.⁸¹

Colonial officers' views of the native were that he could not become the same as the civilized, leading to a British policy that ensured the existence of an unalterable difference between natives and other communities. Consequently, an unsettled ambivalence permeated colonial power as a whole. Any native who demanded civility was checked by tentacular native regulations. The torpid incapacity of the native was one which prevented the assumption of civilized behavior and denied natives the ability to act transformatively. The native was nothing else than the opposite of the dynamism of the European identity. Nevertheless, the poverty of colonial powers' ability to define communities unexpectedly and unpretendedly allowed natives some effective action. Systems of 'indirect rule' proliferated, recognizing native modes of behavior although

⁸⁰ C. Poggi, *The Development of the Modern State: A Sociological Introduction* (London: Hutchinson, 1978): 121.

⁸¹ A.P. Thornton, *Doctrines of Imperialism* (New York, John Wiley & Sons, 1965): 158.

such effective action was always severely circumscribed. In respect of the application of 'indirect rule' in Kenya, existing native institutions could not operate outside the supervisory system of European administrators. Native institutions were recognized solely as being subordinate to the law of the colonist, and were denied such recognition if the colonist felt they would be 'repugnant to natural justice, equity and good conscience' or if they judged them to going contrary to the 'general principles of humanity.

The British colonist policy imbued itself with a claim to stand objectively and transcendently apart from the squabbling diversity of the native, a vantage point that was the basis of British claims to resolve native differences and to encompass and determine their very destiny. The progressive and evolutionary assumptions of imperial rule placed the colonist in a position to decide and act with an appropriate force. So, even when a local demand by the colonized was allowed some operative effect, its aberrations and inadequacies could be put right by the 'superior colonial' prescription.

I will analyze colonial hegemony through an overview of the statements attributed to colonial governors and other administrative officials as they went about their duties to legislate for Muslim people in Kenya. To begin with, I will by way of introduction review the policies that entrenched the colonial power, as a scheme through which the British colonial state met its *raison de'tre*, the desire to accumulate power and ensure its own production over time.⁸²

I will begin in 1895 when the British took over control of the Coast from the Sultan of Zanzibar and embarked on establishing a colonial administration, deploying principles

⁸² This concept is well discussed in Friederich Meinecke, *Machiavellism*, trans. Douglas Scott (New Haven: Yale University Press, 1957).

and policies that affected how Muslim posts were established and officials appointed. Pursuing a policy of instituting colonial rule, they rendered null and void the powers and validity of all historically formed cultures of eastern Africa. They filled this void with an artful structure of other elements, some intrusively European but others carefully selected on the basis of expediency which I will illustrate. The process of selective inclusion of Native forms of power and authority in the colonial hierarchies of power and bureaucracy, albeit undertaken on the basis of expediency and pragmatism, is a classic example of the ambiguity that was produced by colonial power. While on the one hand colonial officers wished to exclude natives from self regulated forms of power, on the other hand colonial policy allowed the inclusion and co-option of a selected class of Native communities and leaders. It will be seen how Muslim authorities were constructed in this gap between colonial power and latitude.

To successfully implement its rule the British needed a smoothly functional state apparatus to resolve the problem of authority in what Mahmood Mamdani has coined “how a tiny minority could rule over an indigenous majority”.⁸³ In Kenya the British embarked on implementing a ‘colonial situation’ by devising certain mechanisms of control, and adopted a ‘mode of incorporation as opposed to marginalization’ whereby Muslims were appointed as officials and functionaries of the state.⁸⁴ A myriad of problems had to be overcome in the process.

- How to institute British authority and its Muslim functionaries?

⁸³ Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton: New Jersey: Princeton University Press, 1996): 15.

⁸⁴ *Ibid.*, p. 295.

- How to coerce subjected people to accept the colonial version of law and order?
- How to control dominant social institutions of the colonized community?
- How to create an organizational capacity capable of transmitting and enforcing order from the center to the periphery?

In Kenya the colonial state's resolve entailed establishing the colonial service as an administrative system charged with maintaining law and order. The British colonial states that operated amongst Muslims had an administrative backbone stretching from the Secretary of State in London through the local Governors and thence down to the village headmen or Chief via the Secretariat, the Provincial and District administration. Secondly, the machinery necessary to deal with demands and conflicts arising out of the needs of a non-homogenous community in a new colonial situation was established. Thus, local Legislative Councils and Executive Councils were set up to represent communal interests to the government. Finally, local forms of officialdom and institutions were developed and charged with settling internal disputes and maintaining social order. Now, I will turn to the evidence to illustrate this colonial project.

In Kenya the institutionalization of Balandier's 'colonial situation' began with the establishment of differentiated institutions of rule with separate legal classification for subject populations.⁸⁵ The promulgation of the *East African Order-in-Council 1897*, officially entrenched colonialism, as it established differentiated institutions of the colonial state. The Order-in-Council established the *Native Court Regulation 1897* to

⁸⁵ An East African discussion of the Court structures can be found in H. F. Morris and James S. Read, *Indirect Rule and the Search for Justice: Essays in East African Legal History* (Oxford: Clarendon Press, 1972).

empower the Native Courts Commissioner of Kenya to make rules and orders for the administration of native courts. The *Native Court Regulation* created two classes of Native Courts, i.e. the Protectorate Court as the highest Court and Subordinate Courts known as Provincial Courts. This organization of Courts recognized the East African Protectorate as a district of the Bombay presidency. Thus, the Indian Civil and Criminal Procedure Codes were to apply in Kenya. The *East African Order in Council 1897* also established other native Courts constituted by the *Native Courts Authority of 1897*. Three classes of Native Courts were established. These included those presided over by European officers, those presided over by Arabs in the Coast region and those presided over by Native Tribal Chiefs or Elders.

To serve Muslims along the Coast the *Native Courts Authority of 1897* established two Subordinate Courts, viz. the Kadhi Courts and the Liwali Courts. Kadhi Courts were presided over by Muslim religious elite (the ‘*ulamā*’) with jurisdiction on Muslim religious matters of a personal nature such as marriage, divorce and succession. Its operative statutes were the *Mohammedan Marriage, Divorce and Succession Ordinance of 1897*, which *inter alia* identified the realm of its applicability within the former dominions of the Sultan of Zanzibar, its interlocutors, officials and figures of authority.⁸⁶

Demands to incorporate the marriage and divorce ordinance in areas outside the dominions of the Sultan were incorporated in this although amendments were effected around the 1900’s and the new ordinance that recognized Muslim officials with lesser authority was enacted in 1906 as the *Mohammedan Marriage, Divorce and Succession*

⁸⁶ A. I. Salim, *The Swahili Speaking*, 92.

Ordinance 1906. Its effects allowed the colonial government to determine how Muslims instituting marriage rituals would be recognized by the state. Its enactment stipulated the colonial perspective on Muslims in the interior of Kenya. The ordinance became the basis upon which the government denied Muslim demands for recognition of Kadhi in regions beyond the Coast. The Liwali Courts dealt with civil matters presided over by the representative of the Sultan, in the person appointed to be Liwali. In the Court hierarchy, the Liwali was a civil official who was assisted by junior officials like the Mudir and Akida. The establishment of the courts and field officers achieved two goals. In the first instance they fulfilled the undertaking given to the Sultan that the British will maintain forms of power and authority previously observed by the Muslim subjects of the Sultan of Zanzibar. At the same time, the courts established the primary mechanism for British hegemony. Apart from the Court structures, colonial rule manifested itself through the power, authority and influence of its 'proconsuls on the ground,' a constellation of field officers comprising Governors, District Officers and Provincial Commissioners in the service of Her Majesty's government.

3.3 Sir Arthur Hardinge(1859-1933) From Structure to Practice

In 1895 when the IBEA Company relinquished its management of the Sultan's inland dominions, Sayyid Hamed b. Thuwain entered into an agreement with Arthur Hardinge (later Sir Arthur Hardinge), the British agent and Consular General for management of the same.⁸⁷ By way of these agreements British officers were bestowed with the authority

⁸⁷ See "Agreement between Great Britain and Zanzibar," KNA/AG/1/198.

to appoint Liwali, Kadhi and other positions of influence. Initially, Muslim communities were pleased with the apparent shift of power away from the IBEA Co. back to the rule of the Sultan. But they were disappointed when realizing that the Sultan had actually replaced one European master with another. As the British aimed to establish their authority as quickly as possible, the changes caused considerable agitation amongst Muslims.⁸⁸ During Arthur Hardinge's appointment as Consul General during 1895-1900 he initiated changes with far-reaching implications and his successors continued with his policies with minor variations.

As discussed in Chapter Three, each community of Arabs, Swahili and the Mijikenda in Mombasa recognized the authority of individuals who emanated from their *mji* or ethnic group. Nevertheless, in the face of European rule, Muslims were unanimously concerned with whether the British would recognize their religious institutions, way of life, and generally, their leaders, whether Tamims, Wazee or Liwali. Of course, each community in Mombasa was concerned with the survival of communal or *mji*-based officials and leaders. The Swahili were less concerned about the position of Liwali because they were never appointed to serve in it. But, they were concerned about the validity of agreements they entered into with the Sultan concerning the authority of their Tamims and Kadhis.

To a large extent though, the people of Mombasa were concerned if the *Shari'ah* would eventually be applicable though this did not stop them from disagreeing on who should be appointed Kadhi or Liwali. The simmering agitation was equally critical to the British, and Arthur H. Hardinge recognized it. To counter any possible deterioration of the

⁸⁸ A. I. Salim, *The Swahili-Speaking Peoples*, 73.

situation he assured Muslims of positive British intentions concerning their religion, leadership and religious institutions. Hardinge tried to alleviate Muslim fears and publicly proclaimed that the Muslim religion would remain the public and established creed in the Sultan's territories; and further pronounced that cases were to be adjudicated on the basis of the *Sharī'ah* while Muslim administration of Liwali, Kadhi and Mudirs established by the Sultan would be maintained.⁸⁹

The assurance Hardinge gave did not deter him or future colonial administrators from instituting structures that strengthened colonial power. The application of the *Sharī'ah* was not necessarily inimical to colonial authorities. Muslim officials continued to hold positions in the administration but new structures that strengthened were incorporated in what was described as streamlining the organization of official positions. Principally, a division of roles and titles was suggested for Muslim appointees.

The first change drastically affected the Swahili communities. Instituted under the excuse of removing anomalies and haphazard methods of recognizing Muslim officials deployed by the IBEA Company, Hardinge abrogated the payment of *fidīya*, or tribute that was accorded to Swahili elders. The Swahili argued that they had entered into agreements with representatives of the IBEA Company to be paid tribute as the company used its territories like Kilindini harbor. In his changes Sir Arthur Hardinge abolished the *fidīya*. Extensive exchanges of communication ensued between leaders and representatives of

⁸⁹ T. Carmichael, "The British Practice Towards Islam in East Africa Protectorate: Muslim Officials, Wakf Administration and Secular Education in Mombasa and Environs 1895-1920", *Journal Institute of Muslim Minority Affairs* 17, 2, (1997): 293-309.

the Swahili on the payment of *fidiya*. In fact as late as 1934, the Swahili were still demanding payment from the government. Then, S. H. Jezan, Acting Provincial Commissioner, Coast had written in response that

When the Imperial British East African Company took its lease of the Coast it continued to make these payments, and the Protectorate government afterwards made provisions by a special annual vote of some \$61 under the heading "wazee of Mombasa". I do not know why the petitioners refers to it as Custom duty compensation, unless it may be because the rent payable by government for the Coastal Strip was originally assessed on the basis of the customs dues which the Sultan was receiving at that time, and perhaps represented the sources from which this annual grant was paid.⁹⁰

However, colonial officers in Mombasa constantly objected to such demands. The British denied having inherited the practice of paying tribute to the Swahili, but the Swahili accused the BuSaidy Liwali of Mombasa of having instigated this move. This accusation could again be gleaned from Jezan's memo to the colonial secretary when he informed him that,

In 1921, on the advice of Liwali Shaykh Ali bin Salim, the grant was discontinued on the grounds that the recipients were not the original people who had rendered the services.⁹¹

But Jezan himself was aware that the grant was actually discontinued by Hardinge because in the same memo he advises that

It was decided in Sir Arthur Hardinge's time, that as the recipients died, their individual grants should lapse.⁹²

Denying the *fidiya* due to the Swahili was part of Hardinge's grand plan to establish an efficient administration structure composed of loyal Muslim officials. Muslim officials

⁹⁰ S.H. Jezan, Acting Provincial Commissioner Coast, to Colonial Secretary, on April 16th 1934 in KNA/DC/MSA/2/1/172

⁹¹ Ibid.

⁹² Ibid.

were to be paid salaries, and not a tribute that the fidiya represented. What was even more interesting, however, was the fact that dispute invariably led to a conflict between the Liwali and the Swahili elders. Such contests continued with the consolidation of colonial rule. In the first Hardinge acted arbitrarily when he demoted Arab officials to junior positions compared to European officers.⁹³ Hardinge's precedents were perfected in a process to insubordinate Muslim officials. Sir Arthur Hardinge left the East African Protectorate in 1900 but subsequent administrators were even less sympathetic towards Muslim officials. Sir Charles Morton Eliot (1862-1931), who succeeded Hardinge and was Governor between 1900-04, was impatient with Muslim officials and minimized their importance in the administration. He is said to have visited the "wali" (sic, Liwali) of Mombasa but thought the Liwali did not discharge any important administrative functions. Eliot also criticized Hardinge for the apparent lack of progress during his stewardship.⁹⁴ In fact in 1901, Eliot made an attempt to end the Sultan's sovereignty by paying minimum attention to the agreements between the Sultan and the British. By 1904, Eliot's unilateral decisions concerning the affairs of Muslim communities prompted Sultan Ali bin Hammoud to intervene Eliot accused the Sultan of arbitrary interference. Eliot's stay was brief and in 1904 he resigned from the government citing insubordination. He wrote to his superiors in the principle of official etiquette: "I have the honor to submit, as His Majesty's Commissioner, I am the proper person to advise your

⁹³ A. I. Salim, *The Swahili-Speaking Peoples*, 71.

⁹⁴ L. I. Izuakor, "Colonial challenges and Administrative Response: Sir Charles Eliot and 'Native' Trusteeship in Kenya 1901-1904," *Trans-African Journal of History* 17 (1988): 34. Although Eliot was critical of Hardinge's demeanor he himself was described as "cold and reserved, he abhorred exercise and stayed indoors as much as possible claiming to preserve perfect health... a curious choice for rough-and-ready government..." C. Trench, *Men who ruled Kenya: The Kenya Administration, 1892-1963* (London: The Radcliffe Press, 1993) :19.

Lordship on the internal affairs of the Protectorate. Should your Lordship prefer to be guided by the advice of my subordinates. I have the honor to tender my resignation.”⁹⁵

Eliot was succeeded by Sir Donald William Stewart (1860-1905) who also displayed little sympathy for the role of Muslim administrators.⁹⁶ He admitted, though, that the colonial government was privileged to have an intelligent body of “Muslim officials who carried their duty with great tact”.⁹⁷ Nevertheless, Stewart was particularly anxious, lest Muslim officials became prominent, superseded the powers of Europeans, and were given an exaggerated idea of their authority. To curtail this, he instructed European officers to assert their authority by visiting their districts more frequently. Donald Stewart was instructing his juniors to be assertive in their duties as part of the official orders in the bureaucratic hierarchy of the colonial state. However, other keen observers of character especially C.W. Hobley, described Donald Stewart’s disposition and attitude towards his work as follows

a man of considerable force of character and shrewd common sense, but without business experience or training, except perhaps in the racing world. His powers of application were underdeveloped; he barely read files and as he went to bed late and rose late the affairs of the country had scant attention.⁹⁸

⁹⁵ For a full picture of the acrimony leading to Eliot’s resignation see M.P. K. Sorrenson, *Origins of European Settlement in Kenya* (Nairobi: Oxford University Press, 1968): 75-82.

⁹⁶ Eliot's temperament made it difficult for him to work with others in the colonial administration thus in May, 1904 he resigned citing insubordination from the Secretary of State who seemed to have acknowledged the advice of Eliot's subordinates. See C. Trench, *Men Who Ruled Kenya*, 23.

⁹⁷ A. I. Salim, *The Swahili-Speaking Peoples*, 93.

⁹⁸ C.W. Hobley, *Kenya from chartered Company to Crown Colony: Thirty years of exploration and administration in British East Africa* (London: Frank Cass, 1970): 127.

Steward's stewardship and actions lowered Muslim influence. Using the surveillance of European officer's he sought to overshadow and minimize the influence of Muslim administrators who had been appointed to serve in the colonial administration.

To facilitate the appointment of Muslim officials, British officers also took cognizance of the social and ethnic diversities prevalent in the Muslim community. Communities were organized in a hierarchy. Non-European communities such as the Arab, Swahili and Mijikenda were categorized as Natives. African were particularly marked in this regularly and Arabs were included as an after thought. The underlying rule that categorized these communities was the definition of natives outlined in the *Native Courts Regulation 1897* viz.

... a native is defined as meaning any native of Africa, not of European or American origin. It includes any person not of European or American origin, who, within the dominions of the Sultan of Zanzibar, would be subject to 'His Highness' jurisdiction even though such a person should have been in Africa.⁹⁹

Although the Muslim community was previously shown to be diverse and in constant competition, once the British colonial authorities legally defined the rights and privileges that separate communities could enjoy, it institutionalized the differences and influenced the perceptions of leadership. As a result, communal competitions over post of leadership become an endless process which was simultaneously old and new, grounded in the past and perpetually being re-enacted afresh.¹⁰⁰

⁹⁹ A. C. Hollis to Governor on 22nd December 1908 in KNA/AP/1/504.

¹⁰⁰ B. Berman, "Moral Ethnicity, Political Tribalism and State-Society Relations in Africa." *African Affairs*, 97, (1998): 312.

It cannot be argued that the differences that occurred among the Muslims were inherently of colonial origins. This will be overstating the role played by the British. Rather, we may indicate that pre-colonial Muslim societies were anything but unchanging. Pre-colonial Muslim societies were anything but unchanging. Its political and socio-cultural boundaries were marked by fuzziness and flexibility as Muslims existed within a reality of multiple, overlapping alternative collective identities. Relations of domination and dependence based on ethnicity pervaded Muslim communities and constantly presented an ambiguous, conflict ridden process through which people struggled to create islands of order and meaning.

What the colonial state did was that it institutionalized the differences and gave them a semblance of permanence. In a historical construction, interpretation and use of race, colonial authorities accorded the scarce resources of leadership in Muslim communities as communal racial identities. Under colonial power ethnicity was a powerful ideology for social action and access, invoked by Muslim officials and faithfuls alike to maintain positions of privilege.¹⁰¹ Previously relevant during pre-colonial time, the authority of race was made effective by the state as colonial officials who appropriated it to resolve the contradictions of colonial rule in mediating social relations. In turn powerful ethnic sentiments were evoked by Muslims who participated in the process of identifying individuals for posts of Muslim leadership such as those of Shaykh al-Islām, Kadhi and Liwali.

¹⁰¹ A. Mafeje, "The ideology of Tribalism," *Journal of Modern African Studies*, 9, (1971): 253-261.

3.5 The Politics of Racial Representation

The political cultures and state ideologies of the colonizing polities in Africa were varied. Long before 'indirect rule' was elaborated into a theoretical doctrine of efficient domination by Lord Lugard in 1919, accommodation with local power structures was almost everywhere a practical fact. The underlying idea was to seek colonial allies in the existing local political cultures of indigenous communities of Africa. In early 1900, Hardinge instituted changes in Muslim leadership, he thought that Muslim officials who would serve in state bureaucratic institutions would emanate from within the communities. But Muslim communities comprised non-homogenous racial populations who demanded separate racially-based representation in the bureaucracy. Those holding pre-colonial authority, or having some locally recognized claim to it, could rely on a reservoir of legitimacy and the familiarity of prescriptive usage. Often there was competition among claimants to authority, on whose rivalries the colonial state played, and among whom it selected contenders willing to accept the diminished but still real power that colonial allies secured. The initial bases upon which allies were made was racial and the 'intermediaries of hegemony' popularized by Crawford Young were either an array of African chiefs or favored racial categories.¹⁰² Because of the diversities in racial composition in the Muslim community, the choice of which community to consider in the appointments of local pro consuls was a difficult one. Eventually, preference was accorded to Arab and Swahili communities at the expense of the Mijikenda. The

¹⁰² Crawford Young, *The African Colonial State*, 107.

Mijikenda were not included in the leadership of Muslims, as Hardinge initially espoused a policy of partiality towards Arabs and Swahili. He thought these two communities possessed valuable comprehension of politics, justice and government. Their exclusive participation in leadership positions was deemed relevant to influence other Muslim communities because:

This Arab and semi-Arab element is valuable, as it is on it alone that the administration depends for its native and judicial staff.¹⁰³

The Swahili would have been appeased had Hardinge thought of including them in the realm of officialdom. Was this opinion influenced by the fact that the Sultan had recognized their leaders prior to passing his authority to the British? Certainly they were waiting for better things to come but disappointed when Hardinge changed his position and excluded them.

Arab and upper class Swahili are the only natives who can read or who have any comprehension of politics, justice and government, [they are] a community of religion, language [and] this gives them influence over the Negro population.¹⁰⁴

Considering the diversities if not the fluidity of “Swahiliness”, Hardinge, in utter disregard of the aspirations of other communities, argued in racial terms in favor of the Arab and Swahili, but then stratified the Swahili into upper and lower classes. Intending to categorize that Swahili further, Hardinge argued that only the upper class Swahili and not all Swahili had the comprehension of religion, government and language to grant them the necessary authority over other communities at the Coast.

¹⁰³ Provincial Commissioner, Coast, to Acting Chief Secretary, ref. No. 5/24 of 16th September 1918 in KNA/PC/Coast/1/22/22.

¹⁰⁴ Ibid.

The policy of appointing and favoring Arabs in positions of leadership and authority was initiated by the Sultans of Zanzibar, institutionalized by Arthur Hardinge and refined and perfected by other colonial officers. Previously, I discussed the role of officials such as Charles Eliot and Donald Stewart who formulated and implemented colonial policies up to around 1918. Thereafter, other officers took over and continued to discuss and appropriate the usefulness of race in colonial rule.

The central actors during the 1920's were Charles William Hopley (1867-1947) who was Provincial Commissioner of the Coast; A.C. Hollis, the Colonial Secretary for Native Affairs and later Chief Native Commissioner; and R. W. Hamilton, the Principal Judge. Collectively, these three officials responded to community demands for inclusion in the hierarchy of leadership. Their attempts to stop a deluge of communities from demanding declassification from the derogatory 'Native' identity led to a further entrenchment of race and ethnicity as factors in the choice of leaders amongst Muslims. These officers responded to negotiations on the identity of Arab which, as a result of its privileges gained ambiguity as communities previously identified as Swahili claimed Arab identity. The government felt constrained to take action to confine the identity to a small group. It had already been known among government officers that

Descent with Arabs was traced through the father and consequently the offspring's of an Arab and an African is by them considered an Arab. For the case of the communities concerned most of the Swahili and other Mijikenda people would claim 'Arabness'.¹⁰⁵

Consequently, changes were initiated to exclude the Swahili through classifying Arabs into pure Arabs (*waarabu halisi*) and African Arabs. Although officials of the state

¹⁰⁵ R. W. Hamilton, Principal Judge to Governor on 13th December 1908 in KNA/AP/1/504

thought they had overcome the problem of diversities in the Muslim populations and their demands to participate in the structures of the colonial state, the fluidity of the Arab identity in Mombasa remained a cause for concern. As a result of historical and extensive intermarriages between Arabs and the Bantu communities during earlier centuries, the identity of the Arab was highly ambiguous. Amongst the Muslim communities most of the Bantu people could also demand to be identified as Arabs on the basis of having half Arab parentage. To avoid such an undesirable situation of half Bantu and half Arabs being eligible for leadership, the government wanted to control the definition of Arabness to meet the exclusion of populations of mixed race. The idea of an 'Arab' identity had to be handled with caution, so as to exclude the mixed races in positions of leadership reserved for Arabs. R.W. Hamilton continued to argue that,

Some definition of Arab could be found that would restrict its meaning to the better class pure-bred Arab, and yet be workable in practice. Otherwise a great body of half-bred Swahili would be included which is not desirable.¹⁰⁶

Attempts to redefine the Arab identity were meant to escape the ambiguity created by the existence of Arabs of mixed race. In terms of the leadership demands of the people, restricting the definition of an Arab would also assist colonial authorities to limit the participation of Muslims in posts of leadership to a few. R.W. Hamilton emphasized that some definition of Arab should be found that would restrict its meaning to purebred Arabs. He wanted an agreeable and workable definition so that large number of half-breed Swahili would be excluded from demanding classification of Arabness on the basis of having one Arab parent. This precaution was necessary as Hamilton was aware that:

¹⁰⁶ Ibid.

Descent with the Arabs was traced through the father and consequently the offspring of an Arab and African is by them considered to be an Arab.¹⁰⁷

In his contribution to the debate on the classification of the Swahili for the purpose of excluding them from the Arab identity, Hamilton wanted a 'cunning' definition of Arabness to be constructed: this was because the attempt to exclude the Swahili from Arabness was a complex undertaking as the gradations and boundaries that separated pure Arabs from those with African blood were small.¹⁰⁸

Other colonial officers contributed to further entrenchment of racial preferences in their choice of leaders amongst Muslims. A. C. Hollis, the Colonial Secretary for Native Affairs, whose portfolio included representing the interests of natives, emphasized favoritism of one racial category of the Muslim community against another. He wanted Arabs to be included in leadership but suggested the appointment of loyal Arabs. According to Hollis it was desirable to pick Arabs who were the most loyal and whose support to the policies of the colonial state could be relied on. Hollis was clear on his preferences when he said that

It was possible to pick one to present the Arabs especially that one who has always been most loyal to the government and whose support could be relied on.¹⁰⁹

Roughly a decade after a racialized policy was put in place in 1918, C.W. Hopley, the Provincial Commissioner for the Coast, recalled that they should implement the traditions observed by the Sultan who appointed Arabs to posts like Liwali and Kadhi because the

¹⁰⁷ R.W. Hamilton, Principal Judge to Governor on 13th December 1908 in KNA/AP/1/504

¹⁰⁸ Ibid.

¹⁰⁹ R. W. Hamilton, Principal Judge to Governor on 13th December 1908 in KNA/AP/1/504.

duty of leadership at the coast had always been the responsibility of Arabs. Hobley insisted on Arab prudence in racial terms, arguing that Arabs had several characteristics that made them of value to the Muslims. He opined, Arabs possessed greater intelligence than ordinary natives:

The Arab has several characteristics that made him of value particularly to the coastal areas. He possesses greater intelligence than the ordinary native of the country does. He possesses a hereditary gift of managing natives; the coast language is his tongue and is acclimatized to the coast climate.¹¹⁰

Colonial officers showered favors on Arabs but were concerned about the loyalty of officials whom they would appoint. A.C. Hollis, emphasized the importance of the Muslim Arab but also acknowledged that racial bias and loyalty should prevail. Hollis argued that the best way to govern Muslims was through the use of Arabs who would be appointed as Liwali and Kadhi. He thought it beneficial for colonial policy if Arab officials appointed as Liwali and Kadhi would regard themselves as an integral part of the general administrative machinery of the state as opposed to the notion that they were representing the Sultanate and hence a separate participation in administration.¹¹¹

It is an axiom that the best way to govern is through the use of Liwali, Kadhi and Mudirs. It is not to the benefit of colonial policy if the present situation whereby these officials... have been permitted to regard themselves as a class apart of the administration. Rather they should form an integral portion of the general administrative machinery of the Protectorate.... When they are a part of the service their duty was to ...conform to regulations, obey orders and carry out whatever is required of them.¹¹²

¹¹⁰ C. W. Hobley, Provincial Commissioner, Coast to Acting Chief Secretary on 16th September 1918 in KNA/PC/Coast/1/22/22.

¹¹¹ C. W. Hobley, Provincial Commissioner, Coast to Acting Chief Secretary on 16th September 1918 in KNA/PC/Coast/1/22/22.

¹¹² Ibid.

3.6 Conclusions

To conclude this chapter I contend that the opinions of colonial officers such as R.W. Hamilton, A.C Hollis and C.W. Hobley created the contentious racial considerations in their choice of leaders amongst Muslims. British colonial authorities deployed racial preference and loyalty to determine how Muslims would be appointed to official tasks. But, given the racial diversity of the Muslim communities, Muslims took this matter into consideration and competed against one another for appointment into positions of leadership. When Muslims debated with colonial authorities over who to include in leadership posts, they displayed a fragmented approach. Most Muslims favored racial exclusivity as a significant role in the determination of leadership.

Thus, emotional sentiments to create a solid identity, the *umma* ideal, occasioned by belonging to the same religion, were hardly ever asserted by Muslim groups. Muslims did not seem to rely on a common religious identity in leadership. As we will see some Muslim ethnic groups Arabs debated with the colonial authorities to be included in the realm of colonial power on the basis of being Arabs and not Muslims. Muslims had no qualms about declaring another group 'native' in order to exclude them from leadership. Being non-homogenous, Muslims were easily induced to accept racial preferences in the choice of officials. In turn colonial officers took full advantage of the situation as they exclusively and cunningly reserved the appointment of official positions for Arabs.

One ironic outcome of the 'native' question was the complete reversal of local meanings about place and belonging. Earlier the Mijikenda and the Swahili Muslims had argued among themselves over who was *mwenyeji*. Outside their languages the category of

nativity was something to be proud of. The *wenyeji* during pre-colonial era excluded the *wageni* (outsiders). But with colonial hegemony, native became the mark of exclusion, its holder a worthless imbecile whose vocation was to be under the control of others. In its English context, and colonial usage, the identity of nativity debunked the Swahili and Mijikenda as their pride and fortunes were turned upside down as they became social minnows in their own backyards, their *miji*.

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Chapter Four

4.1 The 'Arab Franchise': Muslim Political Leadership in Mombasa

Chapter Three discussed how colonial officers laid the foundations for racially based leadership by showing how the colonial state, faced with the needs of diverse Muslim demography, resorted to racial favoritism to accord leadership positions. In this chapter, I examine Muslim responses to these racial categories and find out what forms of political leadership evolved to account for the changes induced by the colonial policy of racially defined origins of leadership? The chapter shows how the state, faced by the leadership demands of a diverse, non homogenous Muslim community eventually deployed ethnic and racial favoritism towards Arab people to the chagrin of other communities. This chapter in particular discusses the emergence of an oppositional civil society formed by disenfranchised communities that also displayed visible features of the racial politics of colonial Kenya. The material in this chapter highlights the non-religious political structures of colonial Kenya. The following chapters follow then the religious positions in a similar vein.

I will clarify Muslim positions and reactions to changes in political leadership instituted by the colonial state and analyze petitions to the colonial government as Muslims demanded to be represented by a person whom they had directly elected to a Legislative

Council, as opposed to the government's method of appointing one for them. I emphasize the argument that, historically, how colonial power perceived communal representation on the Legislative Council greatly influenced and affected demands for access to leadership and power. Subsequently, it led to the emergence of racially based institutions of political authority in the form of the Coast Arab Association (CAA), the Afro-Asian Association (AAA), the Arab Association (AA) and the African Muslim Society (AMS). I discuss how each of these groups indicate attempts by Muslims to grapple with a contradictory race-based leadership as they negotiated what was termed the 'Arab franchise', viz. the permission to participate in the voting process for an Arab representative in the Legislative Council. The franchise was based on race from its inception and thus communities disagreed with the colonial government because it institutionalized tribalism and racial preferences.

4.2 The Idea and Ideals of the Colonial Legislative Council

How Africa was perceived in later colonial discourse can be gleaned from a 1946 statement by F.J. Pedler of the Colonial Office who described Africa as "the core of Britain's colonial position, meaning that Africa was the only continental space from which Britain still hoped to draw reserves of political and economic strength".¹¹³ Consequently, British thinking about Africa fell into general contexts of ideas of tutelage, development and trusteeship. British officials spoke a familiar language. The phrases that

¹¹³ Ronald Hyman, ed., *British Documents of the End of Empire, series A, vol. 2: Labour Government and the End of Empire, 1945-1951, part 1: Higher Policy and Administration* (London: HMSO, 1992): 32.

rang down the ages and were embedded in government documents included the establishment of 'Legislative Councils', 'a chain of representation', 'devolution of responsibility', the general refreshing of the old idea of 'indirect rule'. All were aimed at presumably managing the growth of nationalism and demands for self-determination of communities wishing to free themselves from the yoke of colonial rule.¹¹⁴ A summer conference on African administration was told that institutions of indirect rule were "in the first place the field of activity to which Africans can look for political training".¹¹⁵ In other words the development of responsible government was the "ultimate goal" in all African territories. However, different regional and local characteristics complicated the march to independence.¹¹⁶ From the perspective of such World War Two deliberations on indirect rule and independence, the experiences of Muslim in colonial Kenya appear relevant. Since the coastal region was a protectorate, colonial policies had to at least pretend that local government was desirable and required. The Muslim institutions of power, particularly in this particular area, provide an early example of how colonial designs coincided or clash with local responses.

4.3 Muslims and the Colonial Legislative Council

In Kenya petitions for communal representation on the Legislative Council are traced from 1905 through the activities of a small group of European settlers who demanded a form of representation with the British government. Numbering only a few hundred, the

¹¹⁴ Ibid., pp. 111-18, 121, 143-5, 149, 182-3

¹¹⁵ Ibid., p. 185

¹¹⁶ Ibid., pp. 338-9

European settlers pressed the British government to accede to their demands for an institution through which they could participate in the legislation of laws to govern their interests separately from those made in England. To meet these demands, the British government passed the *East African Order-in-Council of 1905* that created two institutions of governance, i.e. an Executive Council and Legislative Council. The Legislative Council was a representative body for the articulation of communal interests to the British government. Community representatives were expected to articulate the needs and expectations of their communities. Prior to 1945, the Legislative Council did not entirely serve the interests of all communities but rather of a selected few.

Initially, the Legislative Council in Kenya comprised official and non-official members. Official members were appointed to the Executive Council and formed the government. Non-official members represented the interests of various communities. The irony was that the represented communities did not initially exercise any role in deciding who was going to represent their interests because membership to the Legislative Council was the prerogative of the British Monarchy. The Legislative Council started to function in 1907 and was mandated to constitute, make and ordain constitutions and ordinances for the governance of the people. Irrespective of the fact that its powers extended to all communities, the British government appointed only white settlers to the Executive and the Legislative Council, excluding Africans, Arabs and Asians. Numerous objections were raised to challenge this exclusion. The British addressed the demands for non-white participation in the Legislative Council by applying the principle of trusteeship, viewing native communities as weak and unable to stand by themselves in a competitive world.

The interests of the natives were to be taken care of by Europeans. During later colonial practice, the Legislative Council was changed gradually to include non-white representatives. The process started with nominated members, followed by the addition of elected representatives. However, as expected, early colonial members of the Legislative Council participated not on the basis of their effective representation of communities, but their conservative attitudes and their likelihood to support colonial policies.

The participation of communities in the Legislative Council immediately created a difficulty because colonial Kenya was largely comprised of plural societies and communalism became a central problem of representation. The history of communities' participation in the Legislative Council best describes a display of striking racial prejudice. Inclusion of elected members to the Legislative Council presumed an accepted system of organizing representation on the basis of territorial residence. However, demands by African, Arab and Asian communities made the principle difficult to attain.

As in the other communities of Kenya, 'common will' was difficult to cultivate among Muslims. The society was characterized by plural ethnic entities which complicated attempts at communal representation. The colonial discourse of race required the cultivation of racial and ethnic identity as the basic units of representation. This not only ensured for future constitutional retardation but further exerted pressure upon government to eventually implement unjustifiable policies. Being a plural, mixed society, Muslims in Kenya disagreed amongst themselves on the basis of an assumed social distinctions of

being cultured or backward (*ushenzi, ustaarabu* and *unyika*). Invariably Arabs went along and participated in a skewed process of racially based communal representation. This enabled Arabs to develop an easy and disproportionate influence in the organization and recognition of leadership in the colonial state. Faced by such challenges other aggrieved Muslims organized themselves in groups such as the Coast Arab Association (CAA), the Afro Asian Association the (AAA), Arab Association (AA) and the African Muslim Society (AMS) to challenge the colonial states' preferences for leadership.

4.4 The African Muslim Society (AMS)

In July 1958, Abd al-Rahman Umar Cheka petitioned Sir Evelyn Baring, the Governor of Kenya on issues related to political representation, leadership and communal affairs of the African Muslims in Mombasa. A.U. Cheka's petition can only be understood in the context that, in the previous year, F.J. Khamis was appointed to the Legislative Council to represent African populations. African Muslims were not in favor of his nomination, arguing that he was not a Muslim and was not expected to articulate the special needs of the Muslim communities. Through the African Muslim Society (AMS), Muslims of African descent petitioned the governor demanding the nomination of an African Muslim to the Legislative Council to represent their interests. The AMS reminded the governor that other Muslim groups like the Arabs and the Indians were allowed to elect a representative from their racial-ethnic groups and demanded that they too wanted to be presented by an African Muslim. Arab Muslims had successfully elected Sharif Abd Allāh through the Arab Franchise whereas the Indian Muslims elected M.A.

Rana separate from the other non Muslims Indians. African Muslims did not expect Sharif Abd Allāh and M.A. Rana to articulate the needs of their African co-religionists. They complained that these co-religionists were not prepared to assist them in the Legislative Council when the matter at hand clashed with the immediate interests of their racial communities. Before sending the petition the AMS had identified candidates from amongst African Muslims which the government could nominate to Legislative Council, but the government declined to consider any of them. In mid 1958, the AMS wrote to the Governor of Kenya complaining that

It may be well be said that the Arabs and Asian Muslims can well serve the religious interests of our community in all vital problems affecting our faith, but experience has shown that neither of these two communities are prepared to assist us particularly when it involves a clash with their immediate interests.¹¹⁷

The scenario that African Muslims presented to the governor unfolded from previous racial, social and religious arguments about leadership amongst Muslims in Mombasa. Prior to the petition by the AMS, African Muslims had articulated similar demands through a variety of political groups and organizations. When A. U. Cheka petitioned the governor his action came at the tail end of petitions traced from the early 1920's. During this period the Mijikenda, the Thelatha Taifa and Tisa Taifa communities were concerned about their exclusion from leadership positions in favor of Arabs. Founded in the early 1950's by Muslims from the Mijikenda, Thelatha Taifa and Tisa Taifa, the AMS was a reinvention of previous interest groups formed to champion the interest of African Muslims. Its *modus operandi* was to continue the challenge against the colonial hegemony previously championed by organizations such as the Coast Arab Association

¹¹⁷ African Muslim Society to Governor of Kenya on July 31st 1958 in KNA/OP/1/497.

(CAA) and the Afro Asian Association (AAA).¹¹⁸ I will turn to a chronological discussion of these institutions by reviewing the factors responsible for their emergence.

The concerns raised by AMS were based on a historical foundation dating back to the reign of the Sultanate of Zanzibar. The AMS petitioned that since the British took over the rule of the Sultan's dominions they ought to have taken over other obligations that the Sultan had entered into with other communities.¹¹⁹ For example, the Sultan had entered into agreements acknowledging the Thelatha Taifa and Tisa Taifa's communal rights to exercise their freedom in the choice of leaders. These communities wanted to compel the British colonial state to acknowledge and continue this practice in the Legislative Council but the British rejected the proposal.

A review of appointments to the Legislative Council displayed communal strife and disagreements. But the significant factor in the petition by the AMS was its claim to articulate and defend the rights of African Muslims (*kutetea maslahi ya waislamu wa Kiafrika*).¹²⁰ Upon close scrutiny, the AMS took the mantle of challenging the notions of racial favoritisms from previous organizations. Its emergence in the 1950's was a

¹¹⁸ Apart from A.O. Cheka another prominent Digo Muslims who was a member of AMS included Salim Abdullah Mwaruwa who later was elected to a political post as the Member of Parliament for Mombasa North when Kenya became independent.

¹¹⁹ Mzee Ali wa Shafi, Personal interview. Kisauni, Mombasa, 18th September 1998.

¹²⁰ Rajab Sumba, Personal interview. Mombasa, 3rd September 1998. Rajab Sumba later rose to become the Mayor of Mombasa after Kenya gained independence. He acknowledges that he owes his victory and that of other African Mayors in Mombasa to the African Muslim population of Mombasa who always reminisces over their treatment during the colonial period. Whenever these sentiments are drummed to them they easily reinvent their colonial experience and rally behind a fellow African and Muslim for the position of Mayor.

reinvention of its forerunners, the Coast Arab Association (CAA) and the Afro Asian Association (AAA) which I will now discuss.

4.5 The Roots of Petitions, Race, and Representative Leadership

The earliest known demand by a Muslim community for representation in the Legislative Council was made in 1908, not in contradiction of demands made by the European settlers but as a response to the government's intent to include Indians in the Council. In 1907, the Indian community in the Protectorate took its cue from Europeans and demanded to be represented by an Indian in the Legislative Council. Sir James Hayes Sadler (1851-1922), the Governor of the East African Protectorate, was in favor of the request and asked the British government for permission to add two more seats to accommodate the Indian's demands. Europeans vigorously opposed this attempt but continuous pressures put on Sadler by the Indians eventually forced him to agree to appoint an Indian. Soon thereafter, however, Sadler was replaced by Sir Edourd Piercy Girouard (1867-1923) in early 1909 and the new Governor was not enthusiastic to support Indians. Girouard delayed the appointment as he requested for more time to study the situation. He seemed more concerned by the attempt to open representation on the Legislative Council to non-European communities. His worries were that the Indian case would be a precedent upon which other communities would base their demands, especially the Arab-Swahili, who were the "oldest native subjects and outnumbered the

Indians".¹²¹ In articulating these precautions Girouard was in fact correct, but an undertaking had already been given and an Indian was duly appointed to the Council despite the Governor's reservations. In late 1909, Indians were granted their first appointment to the Legislative Council, as Allibhai Mulla Jeevanjee, an Indian Muslim merchant, took his seat.¹²²

Word had gone around in Mombasa that an Indian was to be appointed to the Legislative Council. To claim their rightful political influence and status Liwali 'Ali b. Şalim (later Sir 'Ali b. Şalim)¹²³ organized other Arabs and responded with a demand for their inclusion too:

We understand that the government has decided to have Indians represented at Legislative Council by appointment of one member from their community, and we fail to see why Arabs should not be similarly represented though they are the subjects of the Sultan, since the same Legislative Council passes laws framed both for British as well as Sultan's subjects.¹²⁴

The wording of the petitions suggests that Arabs were concerned and demanded to be represented in the Legislative Council. However, other communities thought otherwise. It is said that the wording of the petition should have reflected the demand by communities who were subjects of the Sultan including Arabs and non-Arabs. Muslim representation in the Legislative Council started with protracted differences and acrimony as the

¹²¹ A.I. Salim, *The Swahili Speaking Peoples*, 95-97.

¹²² A.M. Jeevanjee's appointment was gazetted in the Official gazette of September 21st 1909.

¹²³ For a brief biography of Sir Ali bin Salim see, A. I. Salim, "Sir Ali bin Salim," *Kenya Historical Biographies* (Nairobi: East African Publishing House, 1971).

¹²⁴ A petition of residents of Mombasa under the leadership of Liwali Ali bin Salim to government of Kenya on 24th November 1908 in KNA/AP/1/504.

Thelatha Taifa and Tisa Taifa felt most aggrieved by the wording.¹²⁵ They complained and accused Liwali ʿAli b. Ṣalim to have categorically constructed the wording in such a way as to create the impression that Thelatha Taifa and Tisa Taifa communities did not require representation. On the contrary, prominent personalities amongst the Thelatha Taifa and Tisa Taifa communities such as Muses Mohamed had already initiated the demands for their representation, only for a group of some Arabs to connive and exclude them.¹²⁶

Popular sentiments indicate that Liwali Ali bin Salim instigated other Arabs who agreed with his idea to exclude the Thelatha Taifa and Tisa Taifa communities. These communities argued that the BūSaidy Arabs and Ḥadramy families were *wageni* (outsiders) while Liwali ʿAli b. Ṣalim viewed the communities as natives (in the colonial sense) who were not entitled to direct representation in the Legislative Council. Thus, ʿAli b. Ṣalim did not see any justification for the inclusion of these communities in the petition. Similarly ʿAli b. Ṣalim was accused of avoiding mentioning that the petition was raised on behalf of Muslim communities as a whole. With Arabs viewed as *wamanga* (from Manga) and thus foreigners, and the Thelatha Taifa and Tisa Taifa being viewed as natives or *wenyeji*, Muslims in Mombasa engaged in another dispute over who was indigenous. This dispute was more pronounced, as the colonial state responded to the petition.

¹²⁵ Mohamed Jambeni, Personal interview. Mtwapa, Mombasa 10th October 1998.

¹²⁶ Shekue Ali, Personal interview. Majengo, Mombasa on 3rd October 1998.

Petitions by Muslims were received with indifference by colonial officers but the responses were instructional, and indeed gave directions to events that ensued later. The responses were a catalyst of continuous disagreements on leadership that pitted the Arabs (*waarabu*) and non-Arabs (*wasiokuwa waarabu*), blacks (*weusi*) and whites (*weupe*) against each other. Political organizations were formed and petitions made, as government officers' sentiments in response to the petitions articulated colonial policy which displayed the role of the state in directing the choice of leaders. For example, Sir Piercy Girouard was convinced by the argument for representation of the Arab community. Nevertheless, he expressed some doubts and reservations on the suitability of including Arabs because government policy on communal representation in the Legislative Council was based on racial origins. Owing to the intermixture of races, it was difficult to draw a dividing line between the races in Mombasa.¹²⁷ Girouard's immediate concern was not only the varied origins of the communities of Mombasa but the fact that some people who were identified as Arabs were actually of mixed descent. If the demand for direct representation to the Legislative Council was granted without restrictions to the identity of an Arab, there would be an undesirable deluge of members. R.W. Hamilton, the Principal Judge, was initially positive, holding the view in his own words that:

It has actually struck me that it was an anomaly that an educated Arab Shaykh should as far as representation in the Protectorate is placed on a lower level than an illiterate Indian.¹²⁸

¹²⁷ See Secretarial minute no. 2497/1908 of 4th December 1908 in KNA/AP/1/504.

¹²⁸ R.W. Hamilton, Principle Judge to Governor on 13th December 1908 in KNA/AP/1/504.

But, unlike the Indian, the Arab was already identified as a native. According to the Ordinance this was the presumed obstacle to their inclusion in the Legislative Council.

Generally, R.W. Hamilton and Piercy Girouard concurred on the desire to have Arabs represented by an Arab, but the predicament that they faced was how to implement the government's desire to limit the number of Arabs eligible for representation to the bare minimum. Hamilton had already cautioned that were the demand to be granted, a majority of the diversified ethnic communities would be eligible to seek leadership and demand direct representation. In fact this could have been a justifiable action since descent among the communities at Mombasa was traced through the fathers and consequently many of the offspring of Arab men and African women were eligible Arabs. But the dilemma facing the government was the likelihood of the native Swahili and some Mijikenda people claiming Arabness in order to be included in the franchise.¹²⁹ Of course many people amongst the Swahili were aware of this predicament. They too were ready to take advantage of the loosely defined, sometimes precarious and ambiguous Arab identity. Prominent members of the Mijikenda such as Muses Mohamed were ready to debunk their African ancestry and claim Arabness in order to participate in the town's elective politics.¹³⁰

Both government and communities kept vigil on the possibilities to manipulate the identity of the Arab to favor the government's policies or the aspirations of people who

¹²⁹ Ibid.

¹³⁰ Ali Matano, Personal interview. Mombasa, 20th September 1998.

wanted to participate in the Legislative Council. Of course the ambiguity of the Arab identity complicated matters greatly. To escape this ambiguity, the identity of Arabness was deliberately restricted as government officers favored to create categories of Arabs comprising of pure-bred Arabs (*waarabu halisi*) and African Arabs. Pure-bred Arabs comprised people whose both parents were Arabs, while African Arabs had one non-Arabs parent. The latter category included most members of the Thelatha Taifa and Tisa Taifa communities, while the former was comprised of recent Arab immigrants from Oman and the Hadhramaut, amongst them the BūṢaidy, Nabhani and Shatiri families.

Colonial officers categorized the Arab identity, and accordingly a policy of racial discrimination in the Legislative Council was implemented. Being targeted for exclusion, the Thelatha Taifa, Tisa Taifa and Mijikenda protested. Generally, they wanted representation to be based on residence, religious identity or literacy. To their dismay, racial categorization became more pronounced. Government officials thought Arabs were better placed to lead than were people of African descent, i.e. the natives, as previously shown when C. W. Hobley argued that Arabs possessed greater intelligence and that it was their hereditary gift to manage natives.¹³¹

As the appropriateness of Arab leadership was discussed, government's expectations on the conduct of Arabs in government also became clearer. A. C. Hollis argued that if an Arab was a desirable participant in the Legislative Council it should be the prerogative of

¹³¹ C. W. Hobley, the Provincial Commissioner, Coast, made these racial biases to Acting Chief Secretary while discussing leadership at the Coast. See KNA/PC/Coast/1/22/22.

the government to decide which individual would participate. The people to be represented could not decide who would represent them. More importantly, the government wanted to choose a loyal Arab whose support could be relied on.

It was possible to pick one to represent the Arabs, especially that one who has always been most loyal to the government and whose support could be relied on.¹³²

Ultimately, there emerged pillars of racial favoritism and loyalty to authorities which determined appointments to positions of leadership but also created foundations on which other institutions of leadership that challenged those favored by the state were founded. Gradually and steadily racial preference and loyalty to the colonial state were deployed, and leadership became the exclusive prerogative of a particular community, i.e. the Arabs. The communities of the Tisa Taifa, Thelatha Taifa and the Mijikenda persistently rejected Arab leaders elected on the basis of racial preferences.

Eventually, the government acceded to demands in the “Arab” petition of 1908, but there was no celebration in the community because the leader was to be appointed instead of being elected. In early 1912, the first Arab representative to the Legislative Council was set to take his seat and Liwali ‘Alī b. Şalim was nominated. As expected, most Muslims who perceived their identity as *waarabu halisi* (pure Arabs) went along and accepted the appointment of Liwali ‘Alī b. Şalim. However, the Thelatha Taifa and Tisa Taifa were not impressed. I will show later, in this chapter, that the Tisa Taifa and Thelatha Taifa communities did not support his appointment because it did not represent the true wishes

¹³² A. C. Hollis to Governor on 22nd December 1908 in KNA/AP/1/504.

of all Arab communities or those of other Muslims in Mombasa. Though the government had delineated African Arabs from pure-Arabs, Thelatha Taifa and Tisa Taifa argued that they were the descendants of original Arab dwellers; hence they deserved representation more than did Liwali ‘Alī b. Şalim whose progeny were recent immigrants.

Social confrontations over *wenyetsi* that had earlier bedeviled the Swahili and the Mijikenda were reenacted between descendants of early Arab immigrants to the Coast of East Africa and recent immigrants, with the former attempting to deny legitimacy to the latter. Liwali ‘Alī b. Şalim did not enjoy the support of the Thelatha Taifa, Tisa Taifa or the Mijikenda because he was not *mwenyetsi*. If anything, being *mwenyetsi* implied being a native who did not enjoy the right to participate in the Legislative Council. What mattered to government officials and influenced their choice was that Liwali ‘Alī b. Şalim conformed to the two pillars of being a pure Arab and displaying unequivocal support and loyalty to the colonial state. Amongst British officers these considerations were paramount and non-negotiable. It can be gleaned that Liwali ‘Alī b. Şalim was representing Muslim political leadership in the Legislative Council, because he was a Muslim and representative of the Sultan. The Thelatha Taifa and Tisa Taifa had not yet been identified Arabs and Liwali ‘Alī b. Şalim was an ‘Arab representative’. It seems to have been wishful thinking by leaders of Thelatha Taifa and Tisa Taifa that they could claim Arabness because they had blood relations with Arabs. But they confused Arab representation with ‘Muslim representation’. While the former was racial and favored by colonial officers, the latter was religious and outside the realm of civil representation. Nevertheless, Liwali Ali bin Salim’s appointment to the Legislative Council was opposed

as a Muslim leader, a representative who did not and was not ready to adequately represent the interest of all racial diversities that comprised the Muslim communities under the Sultan.

The most ardent opponents of ‘Alī b. Ṣalim were leaders of the Tisa Taifa, Thelatha Taifa and the Mijikenda Muslims who criticized the racial and ethnic basis of his position. There was no doubt that ‘Alī b. Ṣalim’s position symbolized the rule of the Sultan, and that other Muslim communities thus expected him to be impartial. At the same time, the Liwali was not an absolute leader. Even during the reign of the Sultan some communities did not necessarily have to recognize his authority. Ideally the Thelatha Taifa, Tisa Taifa and possibly the Mijikenda expected the Liwali to exercise his authority in consultation with them. On the contrary, however, the Liwali assumed overall authority and paid little attention to the authority of the *wazee* (elders) of the Mijikenda or those of the Thelatha Taifa and Tisa Taifa communities. To challenge this principle the Muslim communities demanded that the Liwaliship be maintained as a representative of the leadership of the Sultan of Zanzibar, but were opposed to the appointment of ‘Alī b. Ṣalim as Liwali and representative of the communities of Mombasa in the Legislative Council.

The Thelatha Taifa, Tisa Taifa and Mijikenda were willing and ready to champion the cause of electing a leader, but they first had to overcome an obstacle. The statutes had categorized them as natives hence they were not eligible for direct representation in the Legislative Council. To overcome this they should be de-categorized as natives. There was a semantic irony in this nativity. The Mijikenda, Thelatha Taifa and Tisa Taifa had

no objection to being classified natives if it meant they were *wenyetsi* for that is indeed. But, they objected to the categorization of nativity which denied them the right to have their leaders appointed to institutions of leadership within the colonial state.

Although Liwali ‘Alī b. Şalim and most British officers were not in favor of the demands by the Thelatha Taifa, Tisa Taifa and Mijikenda Muslims, O.F. Watkins, the Chief Native Commissioner from the late 1920’s was surprisingly sympathetic to their cause. He realized that the categorization of the Thelatha Taifa and Tisa Taifa as natives was a potential cause for animosities between them and those considered as pure Arabs on the one side, and the government on the other. Watkin’s advice to the government was to minimize the potential for agitation, and he wanted the government to recognize the Thelatha Taifa and Tisa Taifa as Arabs on the basis of their extensive alliances and intermarriages with earlier immigrant Arabs on the East African Coast. At least Watkins supported the idea that amongst the Thelatha Taifa and Tisa Taifa some had an identifiable Arab pedigree, as he criticized the officially inspired divisions between pure Arabs and half bred Arabs to be unjustifiable and arbitrary. The Thelatha Taifa and Tisa Taifa thus found sympathy in Watkins but his interventions did not meet their demands.

Even as Watkins was assisting the Thelatha Taifa and Tisa Taifa communities to extricate themselves from the predicament of the native identity, he probably could not undo the influences of Liwali ‘Alī b. Şalim on the government. It is argued that Liwali ‘Alī b. Şalim was aware that he stood no chance of participating in the Legislative Council if the modality included direct election of the representative He was further

concerned that if the Thelatha Taifa and Tisa Taifa were accorded Arab status, they would use their numerical advantage to lobby the government against his appointment. Either way, ‘Alī b. Ṣalim did not wish to put his Liwaliship or his seat in the Legislative Council in jeopardy, and therefore used his position to frustrate efforts by other Muslims who had the potential to challenge his leadership.¹³³ Inevitably, this hostility drove the Thelatha Taifa, Tisa Taifa and some Mijikenda into uniting with other Arabs to challenge ‘Alī b. Ṣalim’s leadership.

4.6 The Coast Arab Association (CAA) 1921-24

Politicking for social space in Africa (African Nationalism), as skeptics liked to point out, was more a theory than reality. Certainly ‘African Nationalism’ in the broader sense was hard to locate. There was a series of movements, whose character and progress depended on variables: the emergence of political elites, the growth of political groups, and the beginning of political unrest. Usually these factors were specific to a region. The state in which Muslims found themselves as colonial subjects represented the “focus of all contradictions of colonial power”.¹³⁴ That is, on closer examination of colonial power we are dissuaded from the ‘natural’ responses of colonized people to European rule and argue that colonial power itself contained the seeds of its decline. The growth of ‘national’ political groups was preceded by important and necessary political manifestations, arising from intellectual as well as social discontent.

¹³³Rajab Sumba, Personal interview. Mombasa, 3rd September 1998.

¹³⁴ Kwame Nkrumah, *Towards Colonial Freedom: Africa in the Struggle Against World Imperialism* (London: Heinemann, 1962): 32.

The fact supporting this analysis is that British colonial power always needed to create political structures to enable them to broaden the base of their rule. It was also the case that the emergence of political elites following this process of politicization as did British demands for more opportunities to manage social political affairs in the colony. Thus, challenges to colonial rule whenever they appeared were a complex phenomenon. The idea that it was simply a modern invention must be qualified. People are not blank sheets on which elites inscribed their ideologies; rather their activities always involve a dialogue between past and present. Primarily resistance to colonial conquest and domination, while not always nationalist, at least provides nationalism with the beginnings of a tradition to which it can appeal.¹³⁵ Similar to the general African groups that opposed colonial rule, Muslims in Kenya found themselves having to deal with the British who were colonial rulers; appointers of local advisors; makers of elected councils; makers of a legislature with limited powers; the augmenters of those powers; the grantors of a greater degree of responsible government and then independence.¹³⁶ This multifaceted reality shaped the way local participators engaged with the colonial power. In turn certain indispensable local interests acted to balance more securely their space in the colonial power.

The conflicts over political authority and leadership that occurred during the moments of colonial power amongst Muslims in Kenya were laid bare as the empire sought to find

¹³⁵ Thomas Hodgkin, *Nationalism in Colonial Africa* (London: Muller, 1959): 179.

¹³⁶ W.P. Kirkham, *Unscrambling an Empire* (London: Chatto & Windus, 1960): 32-3.

some broader basis of political authority through identifying local elites with whom colonial officers could or must work with. In the process the chosen elites were accorded a significant role in the governing of affairs of the state. Amongst Muslims colonial favor fell on Liwali ‘Alī b. Ṣalim who was accordingly appointed to serve in the Legislative Council. However, it was normal that such elites would not be ‘nationally inclined’ but locally minded; moreover, in their localities, minority groups which were not regarded as significant by the colonial power were ignored. Among these were the Mijikenda, Thelatha Taifa and Tisa Taifa who opposed the nomination of Liwali Ali bin Salim to the Legislative Council. In order to express the opposition, they formed the Coast Arab Association (CAA), in July 1921. Rashid bin Soud, a member of the Thelatha Taifa, was appointed its first president.¹³⁷

The CAA, were aware that they would engage in direct confrontation with colonial authorities and even more so with Liwali ‘Alī b. Ṣalim, so they went to solicit the support of the Sultan. This action was meant to prove to the Liwali and the colonial government alike that the Thelatha Taifa and Tisa Taifa communities were independent of the leadership of other communities. They also wished to acknowledge the relevance of the Sultan of Zanzibar in contradistinction to British colonial authority. In his response Sayyid Khalifa b. Harub, the Sultan of Zanzibar, did not hesitate to acknowledge the CAA as representatives of the interests of the *wamiji* of Mombasa. He wrote back to them with words of support and encouragement to the effect that:

¹³⁷ See Mombasa Times of 12th July 1921 where a letter to the Acting Colonial Secretary was published notifying both the public and the government of the formation of the Coast Arab Association.

I have received your kind letter and also a copy of the constitution of your Association with the aims of which I am fully in accord and which I am very much pleased with. I pray to God for the betterment of all of you. At all times when it is possible I shall not fail to keep a watch on you every side.¹³⁸

Once Sultan's support was assured the CAA intensified a campaign to sensitize and recruit members from the community. The government's initial reaction was worry and concern. Colonial officers in Lamu and Mombasa wanted to gather information and share it among themselves "in respect to the new Arab Association".¹³⁹ This reaction led to attempts to undermine the credibility and relevance of the CAA. Colonial officers were largely dismissive, claiming that the CAA could not be viewed as representing the majority. G. H. Osborne was not so sure, as the CAA seemed to have registered the support of about sixty residents of Mombasa,¹⁴⁰ while the support given to the CAA by the Sultan was alleged to be out of ignorance.¹⁴¹ With a sense of diffidence G.H. Osborne suggested that the Sultan should be asked to repudiate the sentiments of his letter until he was sure that his officers, especially the Liwali, were in accord with the Association.¹⁴²

Denying the representative capacity of the CAA and asking the Sultan to repudiate his support indicated the state's desperate attempts to defeat the objectives of the CAA. First to be coerced against supporting the CAA was Sultan Sayyid Khalifa b. Harub. He did

¹³⁸ Sultan Sayyid Khalifa b. Harub to Shaykh Haidar bin Mohammed, Secretary, Coast Arab Association on 11th July 1921 in KNA/PC/Coast/1/1/377.

¹³⁹ District Commissioner Lamu to senior Commissioner Mombasa on 24th August 1921. The reliable source mentioned here was the Superintendent of Police in Lamu District.

¹⁴⁰ G. S Osborne, Resident Commissioner Mombasa to Acting Colonial Secretary on 13th July 1921 in KNA/DC/MSA/1/8/5.

¹⁴¹ G.H Osborne to Colonial Secretary ref. No. 632/455 of 20th July 1921 in KNA/DC/MSA/1/8/5.

¹⁴² Ibid.

not explicitly withdraw support for the CAA but at least was willing to comply with a suggestion that his future communication with the CAA would have to be sent through Liwali ‘Alī b. Şalim.¹⁴³ The CAA categorically declined to channel their communication through the Liwali.¹⁴⁴ Rashid b. Soud wrote to the Resident Commissioner, furiously protesting the suggestion. He argued that ‘Alī b. Şalim had nothing to do with the CAA, as he was neither a member nor an officer of the Association.

The Liwali does not hold any office in the Association nor has he anything to do with it whatsoever in a representative capacity. If you insist that our communication should be forwarded through Ali bin Salim, we should have no option but to protest about it as of course we cannot possible recognize the Liwali as our representative in any sense whatsoever.¹⁴⁵

It did not matter to the CAA that the government had strongly supported ‘Alī b. Şalim as a leader. Whereas the government argued that he was competent and had proven his knowledge and useful wisdom, the CAA regarded these qualities as being useful to the government but not to the Thelatha Taifa, Tisa Taifa and Mijikenda Muslim residents of Mombasa.¹⁴⁶

Though the CAA was adamant in its resolve not to recognize ‘Alī b. Şalim as leader in any capacity, the government attempted to weaken the CAA’s support. Convinced that the association was the brainchild of principally younger Muslims, its membership was to

¹⁴³ J.A. Sinclair, Acting High Commissioner to Governor of Kenya on 23rd August 1921 in KNA/PC/Coast/1/1/377.

¹⁴⁴ W.K. Notley, Acting Governor of Kenya to British Resident Zanzibar, ref. no. 5.22632/13 of 3rd August 1921 in KNA/PC/Coast/1/1/377.

¹⁴⁵ Rashid bin Soud to Resident Commissioner Mombasa on 20th December 1921.

¹⁴⁶ See the governments positive remarks about Liwali Ali bin Salim’s qualities of leadership in G.A.S Northcote, for Colonial Secretary to Resident Commissioner for onward transmission to Coast Arab Association ref. No. S. 22632/26 of 2nd March 1922.

be scuttled with the founding of the Protectorate Debating Society (PDS) around August 1921. Guided by senior government officers the PDS was meant to dissuade potential members from joining and supporting the CAA. In 1923, the District Commissioner in Mombasa had reported in the annual political records that the PDS was supposed to be an alternative avenue for younger people to engage in frank and open discussions on subjects affecting the society.¹⁴⁷

These attempts to dissuade potential members from joining the CAA also targeted individuals from prominent and influential families which sometimes led to violence. For example Muḥammad al-Maawy was a staunch opponent of the CAA and his opposition infuriated Abd Allāh Boky, the CAA's spokesman in Lamu, leading the two to become embroiled in an intense conflict.¹⁴⁸ The opposing activities bore some results as people such as Abd Allāh b. 'Umar, 'Ali b. Juma, Aḥmad b. Yusūf Madi and Fādhīl b. 'Umar from Lamu withdrew their support for the CAA. But the CAA also made sure that it reached the communities and asserted its position and influence. In late January 1922, a mass meeting, doubling as a recruitment drive, was held at Majengo in Mombasa. The CAA claimed that the magnitude of Muslims who attended this meeting was proof of its popularity, and in fact authorized the CAA to make further demands. These included additional seats for Muslims in the Legislative Council but also for some to be appointed to the Executive Council. Taking credit for and reporting this development, Rashid b.

¹⁴⁷ Mombasa District Annual Report 1923 in KNA/DC/MSA/1/3/182.

¹⁴⁸ The District Commissioner, Lamu, gave Mohammed al Maawy when he went to inquire about the needs for an Arab representative in legislative Council. See District Commissioner Lamu to Senior Coast Commissioner of 24th August 1921 in KNA/PC/Coast/1/1/377.

Soud telegraphed the Colonial Secretary in London with the information that a mass meeting held between Arabs and natives under the auspices of the CAA had unanimously resolved to allow the CAA to demand additional seats in the Legislative Council and the Executive Council on behalf of the communities of Mombasa.¹⁴⁹

The resolution passed at the CAA's meeting of January 1921, was meant to indicate that the opposition to Liwali 'Alī b. Ṣalim was widespread in the community. However, 'Alī b. Ṣalim enjoyed the support of the state and was not worried. He was confident that the government would not recognize the CAA as official spokesmen of any community in Mombasa for as long as they were opposed to his leadership.¹⁵⁰ He further infuriated the CAA by exploiting the racial tensions that existed in the communities of Mombasa by his insistence that most members of the CAA were of mixed Arab-Bantu origins that could not pass for *waarabu halisi* (pure Arabs). Based on this, they had no legal grounds to demand inclusion in the Legislative Council. 'Alī b. Ṣalim emphasized the ethnic divisions to his advantage as the notions of 'pure Arab' (*waarabu halisi*) and non-Arabs or African Arabs (*wasiokuwa waarabu*, or *waarabu waafrika*) eventually weakened the effectiveness of the CAA. While an impression can be created that the membership of CAA was entirely opposed to Ali b. Salim, in reality some groups within the organization thought they could exploit their Arab background and gain some privileges. The *waarabu halisi* (pure Arabs) who had joined CAA accepted Ali b. Salim's overtures, and as a result weakened the organization.

¹⁴⁹ Telegraph from Rashid bin Soud, President, CAA to Colonial Secretary on 20th January, 1922 see KNA/DC/MSA/1/3/182.

¹⁵⁰ Liwali Ali bin Salim to Coast Arab Association on 14th December 1922 in KNA/PC/Coast/1/1/377.

For a short while in 1924, the District Commissioner reported that he was elated that the CAA, was closing down.¹⁵¹ Government officials were happy on the report of the possible demise of the CAA but this feeling was not shared amongst its supporters. Individuals such as Rashid b. Soud and Ali Haidar Matano, representing respectively the Thelatha Taifa and Tisa Taifa, accused the government of having interfered with the running of their organization, weakened it and finally leading to its collapse. They were bitter when the government favored the Indians and those it deemed pure Arabs. These sentiments were further enhanced with direct accusations of ‘Ali b. Şalim working in collusion with the government to disenfranchise other communities of Mombasa.’¹⁵²

When the CAA disbanded in 1924, it was a major setback for the political aspirations of the Muslim community among the Thelatha Taifa, Tisa Taifa and Mijikenda of Mombasa. But they continued to explore other ways, including forming other organizations. The moods and feelings of the people in Mombasa seemed to have supported the demands for an elected representative. Thus it was only a matter of time before these demands were re-enacted with vigor through new associations. Deploying a political slogan to express their continued resolve to make demands for an elected representative, the people of Mombasa committed themselves ‘a luta continua’, or *mapambano bado yaendelea* (the struggle continues).¹⁵³

¹⁵¹ Mombasa District Annual Report 1924.

¹⁵² Ahmed Matano, Personal interview. Mombasa, 10th August 1998.

¹⁵³ Abdulrahman Cheka, Personal interview. Mombasa, 8th August, 1998. Aluta continua as a political slogan was later deployed again by Abdalla Salim Mwaruwa, a Digo politician who not only supported the

4.7 The Afro Asian Association (AAA) and the Arab Association (AA)

The next phase of the vow that African Muslim made to themselves probably begins somewhere between 1924 to 1927, when ‘Alī b. Ṣalim was both Liwali and Arab representative in the Legislative Council while the Thelatha Taifa, Tisa Taifa and Mijikenda continued pressing for an elected member to the Legislative Council. Had the CAA survived the next three years, the organization would have been directly credited with having achieved its objectives, because in 1927 the government added another seat for Mombasa and the Coast and allowed the communities to elect the representatives. It would have been expected that the communities were elated by this decision considering that they had been demanding representation for more than two decades. This was however not the case. To the dismay of the Thelatha Taifa, Tisa Taifa and Mijikenda communities the government termed the seat “the Arab Franchise”, meaning that only people identified as Arabs were eligible to vote for and be voted into the Legislative Council.

In fact once a decision to add another seat had been made preparations for election began in earnest. Not all Arab males were invited to register as voters, but only pure Arab males.¹⁵⁴ The Thelatha Taifa, Tisa Taifa and Mijikenda were apprehensive once more as this requirement excluded them. As they had done previously, they again organized

African Muslim Society but was also elected Member of Parliament for Mombasa North after independence.

¹⁵⁴ See section 9 (1) (c) of the Legislative Council Ordinance (Cap. 24).

themselves for another longer period of agitation, characterized by political intrigue and frustrations.¹⁵⁵

In 1927 members of the Thelatha Taifa, Tisa Taifa and Mijikenda communities formed the Afro-Asian Association (AAA), with Shaykh Muḥammad Abdul Karim as President. The new association seemed to recognize the dual African and Arab heritage of some Muslim communities. In contrast, the “pure-Arabs” also founded a similar association the Arab Association (AA) in the following year with Shaykh Rashi b. Şalim as President. The formation of the AAA and the AA is indicative of the significant role that racial identity played in the political leadership in the Muslim communities of Mombasa. The membership of the AAA and the AA comprised Muslims divided along racial and ethnic lines. When they argued about the political leadership of Mombasa, they were constantly antagonistic.¹⁵⁶

A manifestation of racial and ethnic antagonism was the preparation of the voter’s roll as the ideas expressed by colonial officers such as A. C. Hollis, R. W. Hamilton and C. W. Hopley with regard to the ambiguity of the Arab identity were put into practice. The preparation of the voters’ roll and the stipulation that only Arab males be included in the voters’ register meant that Arab identity had to be unpacked in view of its previously mentioned cumbersome composition. To overcome this, two even more cumbersome criteria were adopted. First an individual had to prove actual Arab origin through an

¹⁵⁵Abdulrahman Cheka, Personal interview. Mombasa, 8th August, 1998.

¹⁵⁶Mombasa District Annual Report 1928.

unbroken male pedigree. Second, communities had to prove that the Sultan of Zanzibar had previously accorded them Arab status or basically recognized them to be Arabs.¹⁵⁷ This might have given some leeway for the Thelatha Taifa and Tisa Taifa to produce their famed agreements with the Sultan that recognized them as part of the independent hierarchy of leadership in Mombasa.

But the measure was certainly not favorable to the Acting Attorney General, T.D.H. Bruce who thought that the attempt was flirtation with the law that clearly declared that only male Arabs were eligible voters.¹⁵⁸ He thought that the distinction between pure Arabs and impure Arabs should be left to the ingenuity of registration officers who were given the discretion “to examine each application and determine, whether adequate proof of qualification as ‘male Arab’ has been submitted”.¹⁵⁹ This blank authority was criticized for creating a possible manipulation of the exercise. Members of the Thelatha Taifa and Tisa Taifa accused Liwali ‘Alī b. Ṣalim of influencing their further disenfranchisement. Most of the Thelatha Taifa and Tisa Taifa could only claim an assumed, probably fabricated, descent from early centuries of Arab immigrants. An “unbroken pedigree of descent through known male Arab”, was almost impossible to establish.¹⁶⁰

¹⁵⁷ W.M. Logan to Acting Attorney General on 2nd May 1928 in Secretarial files no. LEG. CO.3/L/1 in KNA/AG/24/38.

¹⁵⁸ These were the sentiment of T.D.H. Bruce, the Acting attorney General when responding to the suggestions made by W.M. Logan. See Secretarial minute no. LEG. 8/L/1 of 10th May 1928 in KNA/24/38. This enabled Logan to inform the Resident Commissioner Mombasa of the same, see Logan to Resident Commissioner Mombasa in ref. no. S. LEG. Co 3/L/1/14 of 25th May 1928 in KNA/AG/24/38.

¹⁵⁹ Ibid.

The requirement for communities and individuals to authenticate their claims to Arab identity through an unbroken male pedigree excluded the Thelatha Taifa and Tisa Taifa communities, creating a considerable apprehension and agitation. It was time for the AAA to seize the opportunity and petition the government. The AAA argued that the government should reconsider the requirements, suggesting that an Arab was a person whose father was an Arab. In proposing this criteria the AAA was relying on the extensive evidence of the intermarriages between Arab males and Bantu women in Mombasa that produced half-Arab half-African people as a basis for their claims to be Arabs. Bearing in mind that Arabs from Arabia had intermarried with local communities of the coast for centuries, the AAA further argued that it was unacceptable for the government to recognize recent immigrants from Arabia for exclusive participation in the franchise. But more important was that the AAA impressed upon government to take into consideration similarities of culture and religion, or even literacy as another criterion. Explicitly the AAA came out strongly to argue that:

The Mohammedan community of the Coast was in fact one in blood, religion, custom and law... and respectfully request that this unity should be recognized by law and that every Arab and African Mohammedan who is able to pass the prescribed literacy test should be admitted to the voters-roll.¹⁶¹

Initially, the question of who should be identified as Arab and who could not attain that identity pitted the Thelatha Taifa and Tisa Taifa communities under the AAA on one side against Liwali 'Ali b. Şalim and other officials of the colonial state on the other. The

¹⁶⁰Shekue Ali, Personal interview. Majengo, Mombasa 11th September 1998.

¹⁶¹ Afro Asian Association petition to the Governor of Kenya through the Resident Commissioner Mombasa on 3rd December 1928, as a result of a community meeting held the AAA on 2nd December 1928, in KNA/AG/24/38.

pure-Arabs concurred with the legalistic requirements because it favored their interests. But as long as the legal interpretations disadvantaged other communities, especially those who were deemed 'not so pure Arabs', the pure Arabs could care less. This was the position taken by Liwali 'Alī b. Ṣalim. The Thelatha Taifa, Tisa Taifa and Mijikenda accused 'Alī b. Ṣalim of being a representative of *waarabu halisi* (pure-Arabs) but not *waislamu wote* (entire Muslim communities). The government did not help either when it categorically rejected suggestions by the AAA to substitute a religion for birth qualification for participation in the Arab franchise.

Despite apprehensions in the community, there was hope that an amicable solution would be achieved on the method of communal representation in the Legislative Council. The government promised to hold an inquiry into the franchise with the aim of reviewing the composition of its participants.¹⁶² Thus, from 1930-34, the government attempted to work out an appropriate definition of the term "native". This was necessitated not only by constant petitions and acrimony in the communities but also by the government's wishes to minimize inter-communal antagonism whenever voting for the Arab representative was due in Mombasa.

¹⁶² J.E.S Merrick, Acting Chief Secretary to Governor on 15th February 1929 in KNA/24/38, the Attorney General W.C Hamilton also advised that the law did not contain a definition of the term Arab. Therefore the decision to include individual in the voters roll should be left to the judgment of the registering officer. See W. C. Hamilton to Chief Secretary Ref. No. L. 24/21/6 of 21st March 1929 in KNA/AG/24/38.

4.8 Defining the Native

Throughout the early 1920's when the CAA began the process of challenging the modalities upon which 'Alī b. Şalim had been appointed to represent Mombasa and the Coast in the Legislative Council, and in the 1930's when the AAA did the same, members of these organizations (most of whom were of the Thelatha Taifa and Tisa Taifa) had considered themselves to be Arabs, although they were not pure-Arabs. The obstacle that these communities faced in their aspirations to be included in the Arab franchise was that the pure-Arabs did not favor their inclusion in the voters' register and in fact went further to influence the government to have them declared non-Arabs. Nevertheless, despite these differences the two communities actually faced a common problem, because legislative statutes had categorized them both as natives irrespective of whether one was a pure-Arab or an African Arab. In the hierarchy of privileges they were classified as natives and thus could only demand and be accorded the rights and privileges available to this category.

When the Arab representatives assumed their seats in the Legislative Council, one of the issues they brought up for debate was their demand to be defined as non-natives. They had two obvious reasons. First, they found the term 'native' to be offensive, as it carried with it connotations of being backward, uncouth and primitive.¹⁶³ Second, Arabs wanted to express the view that they were masters of the African people and they did not wish to

¹⁶³Ustadh Harith Swaleh, Personal interview. Mombasa, September 18th 1998.

be put in the same racial category with people of African descent. This second motive made sure that communities like the Thelatha Taifa and Tisa Taifa did not stand a chance to challenge Arab people who were appointed to positions of leadership. This meant that once Arabs managed to convince the government that they did not deserve to be categorized as native, they would demand separate considerations and favors. These opinions were strongly defended by Sir Mbarak Ali Hinawy an Arab gentleman who recommended that the government should give a precise legal definition of an Arab. He suggested to the government to enact a short ordinance so that, any other law or ordinance notwithstanding, the term native shall never be so interpreted as to include an Arab. Alternatively, the government should “agree in principle that in any sectional Legislation Arabs should never be grouped with natives”. Despite his suggestions Mbarak Ali Hinawy also argued he had faith in the courts’ ability to ascertain who was an Arab in any particular case although he favored the position of the pure-Arabs.¹⁶⁴ On the other hand, the Thelatha Taifa and Tisa Taifa were not worried about being declared “native” because natives were merely of a lower social status. In fact, were the interpretation of the term native was to carry with it the notions of being *mwenyeji* (indigenous), the Thelatha Taifa, Tisa Taifa and Mijikenda communities would have been comfortable. It was the government’s emphasis on the opprobrious connotations of being native that they opposed. More so, they rejected the rule that natives could not participate in direct representation of their interests in the Legislative Council.

¹⁶⁴ These sentiments were expressed by the Provincial Commissioner, Coast to the Colonial Secretary in KNA/ AG/1/312.

In 1930, the government responded positively to Mbarak Ali Hinawy's suggestions. A couple of Bills were brought up for debate in the Legislative Council. The most significant of these was the *Ordinance to Amend and Define in more precise terms the Definition of the Expression 'native' 1930* and attempts to review the *Interpretation and General Clause Ordinance 1908*.¹⁶⁵ But the state bureaucracy was slow and, before a conclusive decision had been reached it was election time again. Could the government accept postponing the elections until a decision on who was native or what entailed Arabness had been reached? If this was meant to appease the demands by the Thelatha Taifa and Tisa Taifa for inclusion in the voters' roll, the Arabs and the government seemed to be the least concerned. Furthermore, elections had previously been held despite petitions by the AAA. Although going ahead with the elections meant continuing to exclude a section of the community in Mombasa, the government still went ahead to call for the registration of voters. Obviously the AAA were infuriated and warned that if the elections were held without their participation, then the representative elected would not be recognized by the Thelatha Taifa, Tisa Taifa and Mijikenda communities in Mombasa.¹⁶⁶

This stern resolve by the AAA met mixed reactions from the government. Some officials were sympathetic while others were outrightly dismissive, and even hostile. For example, N.R. Montgomery favored the inclusion of the Thelatha Taifa and Tisa Taifa in order to appease the AAA, arguing that these communities had considerable admixture of Arab

¹⁶⁵ This Ordinance contained all the statutes that defined the privileges accorded to natives but more important it contained the initial definition that categorized Arabs as natives.

¹⁶⁶ Resolution of the Afro Asian Association adopted in their meeting of 28th February 1931 and end to the Colonial Secretary on 3rd March 1931 in KNA/AG/24/38.

blood due to the obvious historical reason of intermarriages. Further, Montgomery argued that the Thelatha Taifa and Tisa Taifa communities had strong Islamic influences and wondered why questioning the Arabness of these communities was necessary when they desired to register as voters. Montgomery was a sympathetic officer who wished to have the Thelatha Taifa and Tisa Taifa accorded Arab identity to avoid the intermittent disputes in Mombasa over the representative to the Legislative Council.¹⁶⁷

N. R. Montgomery was in favor of expanding the franchise to incorporate the wishes of the AAA in order to avoid extending the prevailing antagonism between Arabs and other members of the Muslim communities. He understood that if changes were not effected the disputes would re-emerge annually and contribute to a hardened position. He suggested that the Legislative Council Ordinance and the additional Royal Instruction of March 1927 be amended to include two nominated members (one official and another unofficial). These would represent the interests of the Arabs and other communities.¹⁶⁸ If the government added another seat and appointed someone from the membership of the AAA it would minimize the insoluble differences between the communities. However, other officers were not in favor of Montgomery's ideas. C.G. Howell and Beresford Stookes argued that adding another representative from the membership of the AAA was inviting problems because such an official was not expected to side with the government but would rather have allegiance to his communities.

¹⁶⁷ N. R. Montgomery, Provincial Commissioner, Coast to Colonial Secretary, ref. No ADM/5/1/11/11/6 of 31st March 1931 in KNA/AG/24/38.

¹⁶⁸ Ibid.

Irrespective of the differing opinions it was crucial for the problem at hand to be resolved. Were Arabs native or not? Were the Thelatha Taifa and Tisa Taifa Arabs? In the debate about representatives in the Legislative Council the identity of a “native” was the hardest riddle (*kitendawili kigumu*) that the communities and the government had to solve.¹⁶⁹ Generally, for the AAA the problem was not whether they were *wenyeji* or not; rather, the problem was how to continue with a policy that denied indigenous communities participation in the Legislative Council.

By the mid 1931, it was evident that the Attorney General was faced with a real difficulty in his attempts to meet the demands of the two antagonistic Muslim communities. Amending the *Interpretation and General Clause Ordinance* to declare all of them non-natives would not have met the demands of the communities. Despite such misgivings and notwithstanding the proviso of any other Ordinance to the contrary, the Attorney General proposed for debate in the Legislative Council a draft Bill to declare certain races, viz. the Arabs, Swahili, Somali and Baluchi born in Africa, as non-native.¹⁷⁰ In fact, such attempts were later pre-empted by Sharif Abd Allāh Salim, the elected Arab member of Legislative Council. He asked in a Westminster parliamentary tradition whether the government was aware that the Arabs were not natives of Africa but Semitic communities and that their presence in the East Coast of Africa was merely in search of empire and trade. When he posed his question, Sharif Abd Allāh wondered why Arabs

¹⁶⁹Marzuk Omar Dzimba, Personal interview. Nyali, Mombasa, 20th September 1998.

¹⁷⁰ These are the wording of the Bill titled “The Status of Arabs and others Ordinance 1930”, the communities mentioned were all Muslim communities and the spirit of the Bill was to declare them non-natives so that they can seek representation and practice leadership in the Legislative Council.

were classified as natives.¹⁷¹ His intentions indicated to the government that he would support declassification of Arabs as native. It is equally relevant to consider that Sharif Abd Allāh was a beneficiary of a policy that denied communities opposed to his leadership the chance to participate in the Arab franchise. Sharif Abd Allāh's contributions caused considerable anxiety in Mombasa. The government was also concerned about its inability to define the native appropriately although consultations were being held with the Provincial Administration at the Coast.¹⁷²

Did Sharif Abd Allāh's contributions assist in resolving the predicament to define a native? Not really. His contributions did not favor the positions of the Mijikenda, Thelatha Taifa and Tisa Taifa. Instead he wanted to ensure the protection of the privileges of the so called pure-Arabs to which he was a direct beneficiary. Sharif Abd Allāh's lengthy correspondence with the Attorney General registered his strong objection, to the inclusion of other Muslim communities in the category of non-natives. But due to the tensions generated by the debate amongst the Muslims he did not wish for the government to inform leaders of the Thelatha Taifa or Tisa Taifa about his objection fearing the repercussions of the Thelatha Taifa, Tisa Taifa and Mijikenda once they came to learn of his sentiments.¹⁷³

¹⁷¹ Daily Standard of 5th June 1931.

¹⁷² Native Commissioner to Attorney General, ref. NLEG. 74/16 of 22nd March 1932 in KNA/AG/1/313.

¹⁷³ Sharif Abdullah Salim to Attorney General on 27th September 1931 in KNA/AG/1/313.

Meanwhile the AAA also lobbied the government. In April 1932 a delegation of ten AAA members under Soud Ali Bashir met the governor and raised their concern over continuous exclusion of the 'African Arabs' from the Arab Franchise.¹⁷⁴ Soud Ali Bashir's argument made reference to the period when the Sultan had granted them equal status with the so-called *waarabu halisi*. The government continued to rely on the difficulty in drawing a dividing line to distinguish some members of the Thelatha Taifa, Tisa Taifa and perhaps some Mijikenda from their kin who were claiming Arab status. But more central was the government's open intention to absolve itself from the responsibility by asking the Thelatha Taifa and Tisa Taifa to negotiate with the pure-Arabs and come to an agreement.

Apparently an early agreement between those Arabs who were already participating in the franchise on the one hand and members of the Thelatha Taifa and Tisa Taifa on the other, about who was eligible for the Arab Franchise was unlikely. Defining whether the Swahili were natives or not proved to be a difficult task. If the proposed Bill had been passed in Legislative Council, it would have allowed the Swahili communities non-native status and made them eligible to vote for a leader in the Legislative Council. It is easy to conclude that there was an opinion within government that the Muslim communities were only concerned about the status of being declassified as natives and that they would be content once they had been declassified. This was the gamble that the Provincial Commissioner for the Coast was asking other officers to consider, which was opposed by

¹⁷⁴ A. I. Salim. "Native or non-native" The Problem of Identity and Social Stratification of the Arab-Swahili of Kenya", in B. A. Ogot (ed.,) *History and Social Change in East Africa, Hadith 6* (Nairobi: East African Literature Bureau, 1976): 65-85.

the legalistic thoughts of A. D. MacGregor. The government however had to hasten the decision to table the Bill in the Legislative Council for debate. It was easy for the government to simply delete all references to the Swahili for as long as satisfactory, clear-cut and comprehensive definition was not found for the community.¹⁷⁵ This was the action taken by the government to the detriment of members of the Twelve Tribes who had come close to being included in the 'Arab franchise'.

Ultimately the Bill was brought before the annual Governors' Conference of 1933 for executive discussions. Intended to categorize some Muslim communities outside the native identity, the Governors' conference foresaw potential trouble in exercising colonial authority. If the Bill was allowed to go through, it would have excluded the Thelatha Taifa and Tisa Taifa communities from the authority of any native ordinances. In a way this was an attempt not to confer status, rather to distance the communities mentioned from colonial power. In the light of these considerations the Governors' Conference recommended that the government of Kenya should shelve the discussion on the Bill awaiting recommendations of its deliberations by the law officers' conference.¹⁷⁶

4.9 Conclusions

To re-emphasize appropriation of race by colonial authorities, this chapter's concluding remarks confirm Mahmood Mamdani's notions that British colonial policy racialized

¹⁷⁵ A. D. MacGregor to Chief Secretary Ref. No. L.329/29 of 23rd September 1932 in KNA/AG/1/313.

¹⁷⁶ C. Walker, Secretary, Governors' Conference to A. D. MacGregor, Attorney General, Ref. No. C/LEG.C/B.1 of 10th March 1933 in KNA/AG/1/313.

structures and order. Reformulated, direct and indirect rule are better understood as variants of despotism: the former centralized, the latter decentralized. As they learned from the experience - of both the ongoing resistance of the colonized and of earlier and parallel colonial encounters - colonial power generalized decentralized despotism as their principle answer to the native question.¹⁷⁹ The dovetailing of both direct and indirect rule and the demarcation between urban and rural sites meant that the colonial state was effectively a bifurcated state in which two systems of rule co-existed under a single hegemonic authority. On the one hand, it functioned through the rule of law and rights when it came to Europeans and Arabs who were classified as citizens on the other hand, it was a state that ruled over subjects who were not entitled to any of the rights associated with real citizens. It was only at the time of decolonization that the boundaries of civil society were extended to make room for an indigenous civil society, but when it first emerged via organizations such as the CAA, the AAA and the AMS, it was not surprising that it took a 'tribalized form'.

Thus, contests about political leadership in Muslim communities were based on the question of identity categorized in a triune of Europeans, Asians and Natives. This last category comprised the underprivileged communities, amongst them the various groups of Muslim Arabs, Bantu communities and communities of mixed descent of Arabs and Bantu. For communities to join the privileged groups of Asians and Europeans, they had to claim to be non-natives. Thus both the Arabs and the mixed descent communities claimed to deserve inclusion in the hierarchy of power and authority in the colonial state.

¹⁷⁹ M. Mamdani, *Citizen and Subject*, 18.

However, the real natives, the Mijikenda, too deserved to participate. The real problem was that including all these communities did not fit into the colonial organization of power. What it meant in practical terms was that certain communities were in fact necessary to exercise colonial power. In this situation it happened to be the Arabs who were the fortunate ones. The identity of Arabs was problematic, however and the diverse identities of the Muslim peoples unavoidably led to the emergence of racial and ethnic group alliances. Muslims identified themselves as pure-Arabs or African Arabs, and negotiated for leadership based on this identity. Attempts to consolidate a 'Muslim' leadership in the face of colonial power culminated in racially based groups such as the CAA, the AAA, the AA and the AMS.

The use of the 'Arab' identity to include those who were in positions of leadership in the Muslim communities was a cunning ploy to deny the majority of the Muslim people the right to exercise leadership. Colonial authorities efficiently used this practice in order to continue exerting indirect domination. Instead of acting in accordance with the colonial preference, Muslim groups under the AAA offered alternative definitions of the identity of an Arab, which included most of the Muslim communities. For the AAA an Arab was not necessarily one whose parents were both Arabs nor was it one who had recently immigrated to the East African Coast from Arabia. Rather, an Arab by definition is a person whose father was an Arab. In view of this definition, the AAA asked the government to consider that the intermarriages between Arabs and Bantu communities along the Coast had in fact produced communities that had legitimate claims to Arabness. The idea that one had to produce an unbroken pedigree of descent from Arab males in

order to participate in the voting exercise was unacceptable to the AAA. This principle was another construction by the colonial government to exclude other Muslim communities from participating in the election of leaders in favor of a section of the Arab people.

The AAA brought together Muslim communities because of their realization that by allowing the communities to participate in the 'Arab Franchise'; it was providing a representative for the Muslim community of the coast. This was a community that the AAA recognized as having a common system of laws, customs and cultures. However, the government which was oblivious of this granted the right to vote based on racial grounds, discriminating between pure Arabs and African Arabs or coast Swahili. The Muslim community regarded this action as arbitrary and instead proposed literacy as the qualification and basis for Muslim leadership. This would in fact enable every Arab and African Muslim who was able to pass the prescribed literacy test, to be admitted to the voters' roll.¹⁸⁰

This chapter has shown how; within a religious community social groups based on racial identity compete with religious identity. The Muslim community did not use its religious identity because doing so would have curtailed privileges that some communities were enjoying exclusively. Thus those communities who were to participate in leadership positions did not approve of the use of religion as a unifying identity. It is in this sense that the leadership institutions of the Liwali and the Kadhi, which were apparently

¹⁸⁰ Afro Asian petition to the Governor of Kenya on 3rd December 1928 in KNA/AG/3/6.

religious and political posts for Muslims and accessible to any Muslim person, turned out to be exclusive leadership institutions for specific racial communities and not for the Muslim people as a whole. Those who held these positions chose to rely on narrow racial sentiments to maintain their positions fearing that they might lose them. Thus, Liwali ‘Alī b. Ṣalim who was considered to be Muslim representative and holding a Muslim community leadership position did not find it against the principles of religious solidarity when he

exploded the bombshell on the Thelatha Taifa and Tisa Taifa when he announced in the assembly of Arabs dressed in their rich robes and turban ... that only Arabs were eligible to participate in the ‘Arab Franchise.’ Members of the Thelatha Taifa and Tisa Taifa were not recognized as Arabs and so would not be allowed to vote.¹⁸¹

In actual sense non-pure Arab Muslims were not only disenfranchised by being denied the rights of participating in the elective politics, they would also not be appointed to posts of religious significance which were also reserved for Arabs, one of which was the post of Shaykh al-Islām and Chief Kadhi, which forms the discussion in the next chapter.

¹⁸¹ See Ahmed Idha Salim, “Native or Non-Native?”

Chapter Five

5.1 Conflicts and Tensions:

The Appointments of Shaykh al-Islām and Chief Kadhi ca.1898-1963

In *Maker of Modern Arabia*, Ameen Rehani wondered whether Saudi Arabian religious elites were the powers that held rulers and their people together and thereby acted as a ‘medium of control’, despite claims that the ‘*ulamā*’ seldom meddled in politics.¹⁸² In response to Rehani but within the context of the ‘*ulamā*’ in Kenya, this chapter discusses the establishment of a bureaucratized post of Shaykh al-Islam and its variant of Chief Kadhi by way of reviewing social debates in the chronology of appointments. I intend to discuss the development and evolution of the authority of the ‘*ulamā*’ from their pre-colonial positions as local interlocutors of religious authority to urbanized, bureaucratized officials. Likewise, I will trace the social origins of discourses of differences and contradictions based on the appointments of individuals to occupy the post of Shaykh al-Islām and Chief Kadhi.

At the onset of colonial rule in Africa, Islam seemed to represent the most comprehensive ideological challenge to colonial hegemony as it provided a transcendental justification for resistance and a religious imperative for action. This led early colonial officials to consider Islam as a mortal danger to their rule, and hence gave rise to their decision to

¹⁸² Ameen Rehani, *Maker of Modern Arabia* (Boston: Houghton-Mifflin, 1928): 200.

manage Muslims with care. Such colonial schemes to manage Muslims ranged from demonological classification to attempts at co-option and incorporation. Defined broadly within the framework of 'indirect rule' started by Lord Lugard with regard to the co-option of the defeated leaders of Hausa-Fulani in Northern Nigeria, the British policy of indirect rule was also applied in Kenya. I want to clarify the fluidity of the phenomena of colonial power by paraphrasing Homi Bhabha to the effect that colonialism took its power in the name of history and repeatedly exercised its authority through the drama deployed by a galaxy of practitioners and interlocutors of law, culture and custom, appearing in cultural and historically specific milieus.¹⁸³

The historical and cultural significance of the production of political leadership and institutions, and the experience that inherently implicated the power relations between the indigenous and the colonizer was a racial confrontation of developing political institutions of leadership in the Islamic community. Its interface, in terms of colonial power relations with regard to the religious elite, will be shown to have been substantiated, secured and established by coalescence and consent. Colonial power thus fell within the paradigms expounded by Antonio Gramsci, Partha Chatterjee and Ranajit Guha who argued that, for hegemony to be complete, dominance must be secured by overtly peaceful means.¹⁸⁴ In other words it was pertinent that the success of the colonist project required a guarantee of the active participation of groups of elite, or a portion of

¹⁸³ Homi Bhabha's actual words were: "If colonialism takes power in the name of history it repeatedly exercises its authority through the figures of force." See "Of Mimicry and Man: The Ambivalence of Colonial Discourse," Frederick Cooper and Ann Laura Stoler, eds., *Tensions and Empire: Colonial Cultures in a Bourgeois World*. (Berkeley: University of California Press, 1997): 153.

¹⁸⁴ See especially Ranajit Guha, "Discipline and Punish," P. Chatterjee and G. Pandey, eds., *Subaltern Studies VII: Writings on South Asian History and Society* (New Delhi, 1992): 69.

them, since hegemony critically required ideological domination.¹⁸⁵ To contextualize Rehani's queries to Kenya, I will argue that, at the heart of British colonial power was the negotiation of the relationship between Muslim interlocutors of religious knowledge and authority, the *'ulamā'*, who were eventually co-opted into the colonial bureaucracy through appointments. The process of such appointments shaped Muslims' ideas on the appropriation of colonial power leading to a discourse of inequality, rivalries and racialized competition.

The specifics of this study include identifying and discussing the appointments of the *'ulamā'* to the position of Shaykh al-Islām and Chief Kadhi. I will begin by introducing what is known about them and then proceed with a historical chronology of their appointments from the early colonial period onwards. What is known is that there was a post-colonial constitutional arrangement that created the juridical post of the Chief Kadhi; this was developed during the colonial period from another arrangement that guaranteed the non-interference with Muslims' religious affairs, as the British agreed that;

The Mohammedan religion will remain the public and established creed in the Sultan's dominions and all cases and law suits between natives will continue to be decided according to the Sheria.¹⁸⁶

¹⁸⁵ N, Abercrombie, S. Hill and B. Turner, eds., *The Dominant Ideology Thesis* (London: 1985):12.

¹⁸⁶ See agreement between Great Britain and Zanzibar respecting the possessions of the Sultan of Zanzibar on the Mainland and adjacent Islands, exclusive of Zanzibar and Pemba." The agreement was signed between the Sultan of Zanzibar and Sir Arthur Hardinge, Her Britannic Majesty's Agent and Consul General on December 04, 1895 in KNA/AG/1/198.

Apart from the assurance that the British would not hinder the religious practices of the colonized people they also undertook to confirm all present administration in Mombasa, and all *walis, cadis*... in their present positions.¹⁸⁷

The *walis* identified above was a misspelling of the Swahili word Liwali, being the position of leadership that represented the Sultan of Zanzibar, which was mentioned and discussed in Chapter Four. The *Cadis* are Kadhis (or in its Arabic form the *qāḍī*) who will form the basis of discussion in this chapter and the following ones. Without wishing to infringe on the personal sensitivities of individuals and families whose relations were appointed to serve as Chief Kadhi or Shaykh al-Islām, I attempt to come to terms with the differences of opinion and lack of chronological knowledge on how such prominent ‘*ulamā*’ came to occupy their posts. More specifically with regard to the posts, I ask questions including, who, when, how and why a certain ‘*alim*’ was appointed and not another. I ask these questions because of the depth and seriousness with which Muslims held and continue to hold the posts and its holders in high regard. Simple as these questions might appear, they are in fact challenging for reasons having to do with the complexity of the events that took place both at the time this study was conceptualized i.e. in 1994 and at present in relation to the post of Chief Kadhi. The chronology of appointments from 1898-1963 endeavors to explain the implications of the post of Chief Kadhi in relation to the problem of religious roles performed by the ‘*ulamā*’. Amongst these events currently taking shape with regard to the post of Chief Kadhi is the revelation that the long-serving Chief Kadhi, Shaykh Nador Muḥammad al-Nahdy, who

¹⁸⁷ Ibid.

occupied the post from 1982-2002, had actually retired from the judiciary services in February 1990 and had been on contract appointment for a decade since then. On 1st October 2002, Shaykh Nasor Muḥammad al-Nahdy was informed that his contract would not be renewed, thus paving the way for the appointment of a new Chief Kadhi.¹⁸⁸ To add to the melodrama of appointments was the fact that Shaykh Nasor Nahdy was replaced by Shaykh Ḥamad Muḥammad Kassim al-Mazrū'ī (b.1950), the son of Shaykh Muḥammad Kassim a former Chief Kadhi until 1963. Being a Mazrui the appointment of Shaykh Ḥammad's points to the continuity of Mazrui stronghold of the post of Chief Kadhiship which began in the early 20th century.

At the time that the post of Chief Kadhi was changing hands from Shaykh Nahdy to Shaykh Ḥammad there was another significant development expected after the *Constitution of Kenya Review Commission* (CKRC) had recommended the strengthening of the functions and authority of the Kadhis Court. In its draft recommendation, the CKRC had wished to create a Kadhis Court of Appeal, and further sought to elevate the posts of Kadhis, especially that of the Chief Kadhi so that, the

Chief Kadhi shall have the same status, privileges and immunities as a High Court judge, the Senior Kadhi as a Chief Magistrate and the District Kadhi as a District Magistrate in a magistrate court.¹⁸⁹

The CKRC also recommended that revisions of decisions, judgments and decrees from Kadhis Courts should be the duty and prerogative of the Islamic Courts, thus suggesting a

¹⁸⁸ See *Daily Nation*, October 30, 2002, as Dola Indidis from the Judicial Service Commission responds to complaint by Muslims to the effect that the retirement of Shaykh Nahdy was irregular.

¹⁸⁹ See Section 201 (3) of the *Draft Bill, Constitution of the Republic of Kenya 2002*. pp. 118-200.

departure from the previous constitutional practice where appeals from the Kadhi Courts could be heard and determined by any judge of the Appeals Court, irrespective of their religious affiliations or knowledge. While these are the anticipated changes in the functions and authority of the Kadhi's Courts in Kenya the appointment of Kadhis also departs from the Constitution of Kenya. This had been enacted by the new Parliament in 1963, which basically acknowledged the existence of Muslim Courts. The changes anticipated as a result of the CKRC's recommendations are viewed as historical progressions that began in early nineteenth century. I will now turn to discuss this history from the colonial period.

5.2 Pre-colonial Authority of the 'Ulamā'

The British colonial period was a brief, constitutive moment in the history of Kenya, ending in 1963. It lasted about sixty years, but the social imagery that Kenyan colonists used to represent others and construct narratives of domination and subordination can best be understood as emanating from social processes taking place in the borderland of experiences between European and indigenous peoples' knowledge and experience.¹⁹⁰ This borderland is a space of interculturality, of overlapping 'part' societies and local communities influenced by both local traditions and colonial innovations. Local traditions are those that identify patterns of behavior during the pre-colonial period.

¹⁹⁰ Just to reiterate the historical scope of this study, this discourse is true of the period since when the Imperial British East Africa Company (IBEAC) was awarded a Royal Charter in 1888, after Germany and Britain signed accords defining their spheres of influence in East Africa. In 1895 the IBEAC relinquished its interests and Kenya became part of the East African Protectorate. Kenya became a colony in 1905.

Prior to the establishment of colonial rule Muslims along the Coast recognized the authority of *‘ulamā’* on the basis of traditional forms of leadership in each community. As prominent members of the communities, *‘ulamā’* were only influential within the boundaries of their *miji*, or ethnic groups. Rarely was the authority of *‘ulamā’* from the Arabs, for example, easily recognized by the Thelatha Taifa or Tisa Taifa communities. If this did happen, it was made possible with the necessary influence of community elders or the patronage of a local *‘alīm*. For example, an *‘alīm* from another community would be invited to participate in Muslim matters of another community as a guest of his contemporaries, but they would rarely wish to be overall masters in other communities. With the exception of a Sufi Shaykh who had followers cutting across social cleavages, the authority of the *‘ulamā’* to institute Muslim rituals such as marriage and burials was usually confined to their ethnic communities and *miji*. During the reign of various sultans from Zanzibar attempts to establish functional Muslim jurisdiction included appointing *‘ulamā’* as Kadhi but their authority was confined to their locality of birth or residence. This fact has already been pointed out in Chapter Three of this work in the case where the Thelatha Taifa Swahili entered into agreements with the Sultan which enabled their leaders to claim exclusive authority over their communities. Based in the local *miji*, the Kadhi instituted the *sharī‘ah* as local elders (*wazee*) who represented their communities in the Sultan’s court. It was common that their legal competence in Islamic disciplines was not a central factor when considering their inclusion in the Sultan’s hierarchy of court orderlies. Instead, the most fundamental consideration was their authority as traditional leaders.

The onset of British rule in 1895 initiated fundamental changes in the organization of Muslim social life. Colonial rule initiated in the defeat of the Sultanate of Zanzibar, and by the protectorate agreements, established British control over coastal strip from Vanga in the south to Kipini in the north. This area was previously controlled by the Sultan of Zanzibar. Amongst other things the agreements served to affirm the Busaidi Sultanate of Zanzibar's influence in that region, recognized the authority of Islamic judges (*qāḍī* or Kadhi) and guaranteed the maintenance of Muslim codes of law.¹⁹¹ But once British authority was entrenched, a process of change ensued with far-reaching impact and responses.

Colonial authorities initiated changes by establishing posts for '*ulamā*', arguing that it was meant to streamline the operations of Muslim elites by institutionalizing and incorporating '*ulamā*' in a colonial bureaucracy. Its consequences were contests over appointments. The '*ulamā*' vied for positions in competition with others, and communities showed strong inclinations to support individuals from specific towns and racial communities. What ensued was ethnic and racial competition for positions. During the pre-colonial era Muslims were comprised of differentiated, non-homogenous communities. They were not under any obligations to accept or recognize the influence and authority of '*ulamā*' from beyond racial social barriers. When posts of Kadhi were

¹⁹¹ Under British rule Kadhi were expected to serve as legal advisors and to decide all cases affecting the personal status of coastal Muslims in regard to marriage, divorce, inheritance and religious disputes. In 1897, an Order-in-Council created the new position of Shaykh al-Islām and later changed to Chief Kadhi, charged with hearing appeals from Kadhi's courts and serving as Islamic legal advisors to the High Court. A. I. Salim. *Swahili-Speaking*, 79, 82; Y.P. Ghai and J.P. McAustin. *Public Law and Political Change in Kenya*, (Nairobi: Oxford University Press, 1970): 165.

included in the colonial hierarchy, colonial authorities required its holders to be recognized across social differences.

The careers of prominent elites appointed to be Shaykh al-Islām and the Chief Kadhi indicate the relevance of racial identity but also emphasize the relevance of loyalty to colonial policies, the ability and reliability of the appointee to assist in managing the affairs of Muslims. Arguably, the posts of Kadhiship were established to meet the 'Protectorate Agreements' but colonial officers had a habit of making unilateral decisions to abolish them. Failure to meet these attempts led to a gradual weakening of the authority and influence of holders. Throughout the changes and new appointments, the post of Shaykh al-Islām and its later development to Chief Kadhiship were maintained by the colonial state to appease Muslim sentiments.

In 1898, Sir Arthur Hardinge, the British Consul General, introduced an innovation with far reaching consequences when he thought of ways to streamline and organize the 'ulamā' and meet the condition of the 'Protectorate Agreements'. To apply the *sharī'ah* the *Mohammedan Marriage Divorce and Succession Ordinance* 1898 was promulgated. Two goals were achieved through this. First, it created the authority on which ritual power and authority espoused by the 'ulamā' was formally articulated in the British colonial bureaucracy. Second, it established a hierarchy of positions for Kadhi who were incorporated into a state bureaucracy as functionaries of the state. However, a chronology of appointments of 'ulamā' to occupy the highest position of Kadhiship, the

Shaykh al-Islām and later the Chief Kadhi, reveals emerging social and communal strife amongst Islamic communities, as individuals challenged one another for appointment.

5.3 *The Shaykh al-Islām:*

‘Sharīf Abd al-Raḥmān b. Aḥmad al-Saggaf 1844-1922

Arguably Kadhis existed as a distinct category prior to British colonial occupation because the Sultanate of Zanzibar had established and recognized the authority of such social leaders. We ought to include such developments as well, but for the purposes of this study and for historical convenience we shall confine the discussion to the colonial period.¹⁹² The year 1898 is an appropriate beginning to discuss the effects, reactions and consequences of including the ‘*ulamā*’ in the bureaucratic institutions of the colonial state. It is at this time that, Sharif ‘Abd al-Raḥmān b. Aḥmad al-Saggaf (1844-1922), popularly known as Mwinyi Abudi, was appointed as the first Shaykh al-Islām. Born in Siyu in the Lamu Archipelago, Sharif ‘Abd al-Raḥmān b. Aḥmad al-Saggaf was unexpectedly co-opted into the Muslim elite leadership.¹⁹³ His appointment was least expected in Mombasa as he was not known amongst the existing vocal personalities. In

¹⁹² Pre-colonial discussions of leadership roles especially the Mazrui are best argued in Shaykh Al-Amin bin Ali al-Mazrui. *The History of the Mazru'i dynasty of Mombasa*. Translated and annotated by J. Mcl Ritchie (New York: Oxford University Press, 1995, Abdallah Salih Farsy. *The Shaf'i Ulamaa of East Africa, ca. 1830-1970: A Hagiographic Account*. Translated, edited and annotated by Randall L. Pouwels (Madison, University of Wisconsin, 1989).

¹⁹³ For a history of Siyu, not necessarily include a discussion of the ‘*ulamā*’ see Brown, W. Howard. *History of Siyu: The Development and Decline of a Swahili Town on the Northern Kenya Coast* (PhD Dissertation, Indiana University, 1985).

fact his was the first indication that the British discouraged the appointment of vocal local ‘*ulamā*’. Even before choosing Sharif ‘Abd al-Raḥmān, the British thought of appointing the first Shaykh al-Islām from Egypt. But they did not carry out this plan due to financial consideration expected by the anticipated appointee that the government could not meet.¹⁹⁴ Thus, when Sharif ‘Abd al-Raḥmān was appointed in 1898 it was to be a temporary appointment until a permanent one was found. In 1921, it was reported by the Senior Commissioner of the Coast, that

The position of Shaykh al-Islām was recognized by Sir Arthur Hardinge who attempted to obtain a man learned in law from Egypt. The salary asked however by a man who would have met the case was Fls. 900 a month which could not be afforded.¹⁹⁵

Considering that by the virtue of various agreements the government had to ensure the continuity of forms of leadership already recognized by Muslims, it is not clear why the first local person appointed was considered temporary. We can speculate that the government still wanted to appoint someone from Egypt if they could find a leader who was agreeable to their remuneration package. Were an Egyptian to be appointed Shaykh al-Islām, perhaps the discourse that emerged subsequently would have been different from the existing one. Nevertheless, a local person was indeed appointed, eliciting localized reactions.

¹⁹⁴ Egyptian ‘*ulamā*’ especially from Al-Azhar were popular with the British as most appointments to positions of Grand Qāḍī were by default Egyptians. For Sudanese case see Shamil Jeppie, Containing “Colonial sharia” in the Sudan.” Paper presented at the Third Symposium of the Islamic Law in Africa Project, Centre for Contemporary Islam, University of Cape Town, 11-14 March 2002.

¹⁹⁵ Senoir Commissioner of Coast to Acting Colonial Secretary, Ref 3726/87 of 22 September 1921, in KNA/PC/1/21/302.

The Shaykh al-Islām had to reside in Mombasa which was then the city of colonial government before it was moved to Nairobi around 1900. Because the office was to be based in Mombasa, its *wamiji* (townspeople) expected some of its erudite scholars to be appointed as the Shaykh al-Islām. The British Administration anticipated that the communities would disagree and challenge the authority of any local appointee because of the dominance of pre-colonial practice whereby each community recognized and respected *‘ulamā’* from their respective ethnic groups. This could be one of the reasons why Sharif ‘Abd al-Raḥmān’s initial appointment was considered temporary. What is important here is to note that the appointment localized the debate but did not eliminate sharp divisions and opposition to Mwinyi Abudi. A resident of Lamu with hitherto unknown connections in Mombasa, Sharif ‘Abd al-Raḥmān’s appointment seemed a pragmatic administrative decision taken by the British government. The intention to import an Egyptian was a response to avoid feuds between the local communities over the position. Despite these precautions the appointment of a non-resident of Mombasa reveals a continuity of similar thoughts.

Equally significant, the British could not have thought of appointing a local *alim* because of the oppositional role that notable individuals and groups of Mombasa, especially the Mazrū‘ī and members of the Thelatha Taifa and Tisa Taifa, communities had expressed over the Sultan’s actions to hand over his reign to the British. Earlier opposition to colonial rule also influenced the choices of appropriate holders of Kadhipship, even though Sharif ‘Abd al-Raḥmān was appointed on the basis of his experience after having

served Sultan Sayyid Barghash as Kadhi of Siyu.¹⁹⁶ But can this mean that the appointed *‘alim*, Sharif ‘Abd al-Raḥmān supported the Sultanate of Zanzibar which most residents of Mombasa had opposed? Certainly this could have been one of several reasons, but the most pronounced reason for opposing Sharif ‘Abd al-Raḥmān’s appointment was that he was considered *mgeni* (outsider) to the political and religious debates about leadership in Mombasa. Conversely, his appointment, although perceived as being temporary was not received well in Mombasa. In early 1902 Swahili residents protested against the existence of Sharif Abd al-Raḥmān as Shaykh al-Islām at the expense of Swahili *‘ulamā’*, notably from the Thelatha Taifa and Tisa Taifa Swahili people.

Once the post of Shaykh al-Islām was established, institutionalizing it in the colonial bureaucracy took a long time. The first decade since its establishment was a period of trial and error, characterized by a lack of clear guidelines as to its operations and existence. Most often the post depended on the whimsical attitudes of senior colonial officers, as this phenomenon of an undefined policy revealed its repercussions in subsequent new appointments.

It is not clear whether colonial authorities favored the existence of Muslim elites in the bureaucracy as a constitutional arrangement or as means to appease the disgruntled Muslim population. During his tenure Sharif ‘Abd al-Raḥmān’s position was rather ambiguous even to Muslims. He was a *qāḍī* (a judge) and not a *mufti* (jurist). As a judge

¹⁹⁶ It is important to note that Sharif Abdulrahman bin Ahmed had initial troubles with the Sultanate of Zanzibar as he was incarcerated at Fort Jesus on the orders of Sultan Majid. See Farsy Abdalla Salih, *The Shaf’i Ulama of East Africa, ca.1830-1970: A Hagiographic Account*. Translated, edited and annotated by Randall L. Pouwels, (Madison, University of Wisconsin, 1989): 51-54.

he institutionalized and rationalized the *sharīʿah* in the Kadhis Court, and was thus a state functionary. However, the Muslim population expected much more of his role than the stipulated legal duties. As Shaykh al-Islām, he was expected to be the titular head of the community and to guide the Muslims on religious and political matters, in addition to performing his legal duties in the courts.

The Shaykh al-Islām's judicial sphere was mainly defined by British colonial logic. By 1912, two diverging views had emerged in response to the problem whether Sharif ʿAbd al-Raḥmān was a judge or an administrator, as two sections of the government's bureaucracy argued about the establishment of the position. Justice Bonhar Carter of the colonial judiciary was of the opinion that the Shaykh al-Islām was a judicial officer. Contrary to Carter, the Provincial Commissioner, upon realizing the important role of the Shaykh al-Islām amongst the Muslim populations, wanted to have an influence on the role of Sharif ʿAbd al-Raḥmān and insisted that the *alim* was an administrator.¹⁹⁷

As a result of its ambiguity the post of Shaykh al-Islām was left to develop into an almost parallel institution within the government, thus raising a considerable concern. The role of the Shaykh al-Islām, remaining undefined, worried some colonial officers for its apparent lack of supervision by either the judiciary or the executive arms of the government. This led the Provincial Commissioner of the Coast to question the desirability of having a native member of the administration holding an office

¹⁹⁷ See exchange of opinions on the position of the Shaykh al-Islām in the state bureaucracy in communication between the Provincial Commissioner, Coast, the chief Justice J. W. Barth and Judge A.T. Bonhar Carter in KNA/PC/Coast/1/21/92.

independent from European executive.¹⁹⁸ These intermittent developments eventually necessitated the confinement of Shaykh al-Islām to judicial functions.¹⁹⁹

In the eyes of the Muslims of Mombasa, the Shaykh al-Islām was subject to a different discourse. But, thus confined, Sharif ʿAbd al-Raḥmān became famous only as an *alim* who held the grandiose post Shaykh al-Islām. As a matter of fact he was the only person to hold the title, as after him the title was changed. His best known virtues were prudence, piety, moral righteousness and an almost Sufi denial of wealth, pride and all things worldly. At the time that Sharif ʿAbd al-Raḥmān was appointed as Shaykh al-Islām, he had been a Kadhi of Siyu since 1878, but his appointment in 1902 brought him to an urban Islamic discourse with political, racial and ethnic inclinations and overtones. The people and leaders of Siyu had historical disagreements with the communities of Mombasa.²⁰⁰ They are known to have supported different foreign powers in the extensive battles over control of the Eastern African Coast. When a man from Siyu was appointed to a post which was tenable in Mombasa, some communities of Mombasa opposed him. Although he had accumulated over two decades of experience working as a Kadhi, the people of Mombasa immediately opposed his appointment in favor of locally based ʿulamāʾ. For example, the Mazrūʿī were initially in favor of Shaykh Sulaymān b. ʿAlī b. Khamīs al-Mazrūʿī (1867-1937), while Swahili patriots of the

¹⁹⁸ Provincial Commissioner, Coast, to Chief Justice in ref. No. 38 of September 08, 1912 in KNA/PC/Coast/1/21/92.

¹⁹⁹ J.W. Barth, Acting Chief Justice to Acting Provincial Commissioner, Coast on September 18th, 1912 in KNA/PC/Coast/1/21/92.

²⁰⁰ See Brown, W. Howard. History of Siyu: The development and decline of a Swahili Town on the Northern Kenya Coast (PhD Dissertation: Indiana University 1985): Chapter 4.

Thelatha Taifa and Tisa Taifa communities supported one of their *Wanachuoni wakubwa*, (one of the leading scholars) Shaykh Ahmad b. Ali Matano whose *madrasa* (Islamic school) was situated at the *Mji wa Kale* quarters of Mombasa.²⁰¹

Sharif ‘Abd al-Raḥmān was opposed in Mombasa because he hailed from outside town. However, he possessed personal qualities that eventually endeared him to the colonial government and the Mazrū‘ī clans. It is reckoned that he was of a peaceful character and disposition and shunned controversy. His character won him accolades from the government and the sympathy of the Mazrū‘ī who allowed him to deliver *darsa* (mosque lectures) at Shaykh Mbaruk Mosque on the Makadara grounds.²⁰² Despite initial opposition Sharif ‘Abd al-Raḥmān survived racial challenges through his career. But it is clear that his appointment generated the way in which future Muslim officials were defined between colonial administration and Muslim interests.

In the early 1920’s old age had caught up with him, he was frail and described to be “almost out of work and merely a figure head”.²⁰³ The most possible solution was to find another person to replace Sharif ‘Abd al-Raḥmān, especially since Muslims still held the position to be theirs by way of agreements. However, during this time an idea started to

²⁰¹ See KNA/PC/Coast/1/17/118.

²⁰² This mosque was built for the benefaction of the oppositional and leadership activities of Shaykh Mbaruk bin Rashid Salim al-Mazrui (d. 1910). For his brief biography see T.H. R. Cashmore “Sheikh Mbaruk bin Rashid Salim el-Mazrui” in Norman R. Bennett ed., *Leadership in Eastern Africa: Six Political Biographies* (Boston: University Press, 1968): 109-137.

²⁰³ These sentiment were expressed by the outgoing Acting Provincial Commissioner, Coast to C. W. Hobley, the incoming Provincial Commissioner, Coast through Justice J. W. Barth, the Chief Justice in KNA/PC/Coast/1/21/92.

develop amongst colonial officers that the post should be abolished. Chief Justice J.W. Barth, suggested in the early 1920's that a Shaykh al-Islām should only be appointed whenever there was a need for such services Muslims thought that colonial authorities were inclined to abolish the post.²⁰⁴ To contain such developments a temporary appointment of any expert on Mohammedan law was suggested. Though Muslims had opposed the first incumbent, they expressed a strong desire to have the post maintained because the occupant served as a source of guidance to the Muslims. The desire to abolish the post from the colonist was desire either, and the government was advised that it needed someone to represent the Muslim population.

I will show that the debates on whether to abolish or not to abolish, to appoint on a permanent, a temporary or an *ad hoc* basis to the post of Shaykh al-Islām or Chief Kadhi were issues discussed throughout the 1920's to the 1960's. For example, in the case of Sharif 'Abd al-Rahmān's successor, abolishing the post would have been too severe a step. It was too soon, and Muslims still sentimentalized the partly existing agreements with the Sultan. Thus, the initial attempt to abolish the position was not implemented, although it was decided to weaken the role of the holder. Further, the suggestion to appoint someone on a temporary basis would have meant ignoring the real possibility that Muslims had attached a special significance to the position. In a nutshell, Muslims would be dissatisfied with a mere advisor, especially when the appointee was less qualified than the now venerated Sharif 'Abd al-Rahman b. Aḥmād al-Saggaf.²⁰⁵

²⁰⁴ Chief Justice J.W. Barth to Acting Colonial Secretary in KNA/PC/Coast/1/21/302.

Despite being characterized as cumbersome, undefined and temporary in the colonial bureaucracy, Sharif ‘Abd al-Raḥmān maintained the post and his posture for over two decades. By the 1920’s he was old and his productivity was questioned. He was not relieved of his position, and neither was the post abolished. Rather, he was retired with pension. On the 20th May 1922 when the venerated Shaykh al-Islām passed away, it was important enough to inform Winston Churchill of this.²⁰⁶ He in turn authorized a condolence dispatch to the family, expressing his sympathy with the family and the Muslim community in their bereavement. Sharif ‘Abd al-Raḥmān’s career, spanning over three decades, illustrates that the post of Shaykh al-Islām played a symbolic role for Muslims in Kenya and that it was geared to develop as a focus for unified religious leadership except when Muslims argued about the racial identity of the holder and the town from which he emanated. Nevertheless, it developed under the watchful eyes of British officers who were concerned that the post might acquire independent or parallel authority with posts held by Europeans. In this case, the post had to be under the supervisory realm of senior officers in the government preferably British. Of course, the post pointed to several matters pertaining to the relationship, between Muslims and colonial state, as well as amongst diversified Muslim communities. It laid the foundations on which to review the perspectives on Muslim and colonial state relationships, which became clearer in subsequent appointments.

²⁰⁵ Sentiments of Senior Commissioner, Coast in response to queries from Acting Colonial Secretary, ref. No. 3726/87 of September 22nd 1921 in KNA/PC/Coast/1/21/302.

²⁰⁶ Winston Churchill was then the Secretary of State for Colonies and Downing Street, London. See correspondences in KNA/Coast/1/21/302.

5.4 Shaykh Muḥammad b. ‘Umar Bakore ca.1932

The retirement of Sharif ‘Abd al-Raḥmān necessitated a search for his replacement. At the same time attempts to abolish the position were not pursued further; but changes began to be implemented gradually. For example, the next occupant was not given the more respectful title of Shaykh al-Islām but was termed the Chief Kadhi. What seemed to be a mere change in the nomenclature ended up being a conscious effort by the government to weaken the influence of the position. An interesting development ensued in the search for a replacement for Sharif ‘Abd al-Raḥmān. It had been touted that Mombasa had some influential and knowledgeable ‘*ulamā*’ amongst its residents. For example, Shaykh ‘Abd ‘Allāh Salih Farsy noted that one of the most erudite ‘alim in Mombasa was Shaykh Sulaymān b. ‘Alī al-Mazrū‘ī (1867-1932).²⁰⁷ Sulayman al Mazrū‘ī had been neglected when Sharif ‘Abd al-Raḥmān was appointed although he had occupied the post of Kadhi in Mombasa from around 1910. Probably, Shaykh Sulaymān expected to be appointed however, when J. W. Barth consulted with other leaders in the government, Liwali ‘Alī b. Ṣalim expressed his opinion that there was hardly any local expertise to be relied upon to occupy the position.²⁰⁸ I was informed that

²⁰⁷ Shaykh ‘Abd Allāh Ṣalih al-Farsy, *Tarehe ya Imam Shafi na Wanavyuoni Wakubwa wa Mashariki ya Afrika* (Zanzibar: Education Department, Zanzibar, 1944).

Liwali ʿAlī b. Ṣalīm had purposely attempted to bypass the appointment of a Mazrūʿī kinsman because they were an influential family with considerable political clout in Mombasa.²⁰⁹ It seemed the Liwali was worried that the position of Chief Kadhi would develop into a parallel institution of Muslim authority and took the advice not to appoint a Mazrūʿī kinsman. These worries inevitably ruled out the possible appointment of Shaykh Sulaymān or his equally viable nephew, Shaykh Al-Amin b. ʿAlī b. Nāfir al-Mazrūʿī (1891-1947).

As had happened in early 1902, the Mazrūʿī were bypassed in 1922 when the successor of al-Saggaf was appointed. Non-Mazrūʿī candidates, Shaykh Muḥammad b. ʿUmar Bakore and Shaykh Ḥamed b. Muḥammad b. Iṣṣa al-Timamī were proposed. The latter was a seasoned and experienced Kadhi who had served in Lamu since 1902. The former seemed to have qualified on the basis of his experience as a clerk or assistant to the Shaykh al-Islām. Apart from these considerations Shaykh Muḥammad b. ʿUmar's strong credentials were his recommendation as a most straightforward, and in every way a reliable, Arab official.²¹⁰ The other competitor, Shaykh Ḥamed b. Muḥammad was a protégée of Liwali ʿAlī b. Ṣalīm, who recommended him with confidence as an Arab of good family who had served faithfully with diligence as a clerk in the High Court.²¹¹ The

²⁰⁸ These sentiments are expressed in correspondences between the Senior Commissioner, Coast as he responded to queries directed to him by the Acting Colonial Secretary in ref. 3726/87 of September 22nd 1922 in KNA/PC/Coast/1/21/302.

²⁰⁹ Munir Mazrui, Personal interview. Mombasa, January 06, 1999.

²¹⁰ These were remarks by the Senior Commissioner, Coast expressed in KNA/AP/1/21/302.

²¹¹ See correspondence emanating from Chief Justice J.W. Barth to Colonial Secretary in confidential letters ref. No. 5562/2 of December 31st 1921 in KNA/AP/1/313.

basis upon which the two were recommended indicated racial favoritism, as it was specified that the Arab identity of the contestants had to be clear. In fact it was incredible that Ḥamed b. Muḥammad was considered for the post as he had never served as a Kadhi at any time in his career. Liwali Ali b. Salim's recommendation of a clerk in the High Court at the expense of seasoned and experienced *‘ulamā’* and Kadhis such as Shaykh Sulaymān b. ‘Alī and Shaykh Al-Amin b. ‘Alī al-Mazrū‘ī calls for explanation. His rejection of a Mazrū‘ī appointments were politically motivated because apart from the Liwali putting obstacles to a possible Mazrū‘ī appointment he also introduced a requirement that potential candidates would be “Arabs above suspicion”.²¹² Of course this could mean that there were Arabs whom the government suspected to be opposed to its policies and the rule of the colonial state. It might also imply that the Arab identity of some aspirants to posts such as Kadhis not acceptable.

The racial qualification and requirement for loyal appointments were fundamental in the second round of conflicts about the appointment of the Chief Kadhi. The colonial state, supported by the Liwali, started to develop a bias towards Arabs whom it went on to appoint exclusively as Kadhi at the expense of other Muslim groups. Thus, the Mazrū‘ī were Arabs but they did not yet fit into the category of reliable Arabs for the purpose of high-level government appointments. Liwali ‘Alī b. Ṣalim had already made sure that they would only remain as Kadhi in towns and that they could not be elevated to the post of Chief Kadhi. Candidates from other Muslims groups such as the Thelatha Taifa were

²¹² See correspondences emanating from Chief Justice J.W. Barth to Colonial Secretary in confidential letter ref. 5562/2 of December 31, 1921 in KNA/AP/1/313.

disqualified on the basis of their non-Arab status, thereby disqualifying Shaykh Ahmed b. Ali Matano. Once such protagonists were out of the race, a choice had to be made between Muḥammad b. ʿUmar and Muḥammad b. Iṣṣah al-Timamī.

To determine the most suitable amongst the Arab candidates, they were required to write a qualifying examination. In keeping with a long tradition of scholarly collaborations between the Muslims of the Eastern Coast of Africa, the eminent Comorian, Sayyid Aḥmād b. ʿAbu Bakr Sumayṭ (1861-1925), was asked to prepare the examination for the two candidates.²¹³ Of the two candidates Shaykh Muḥammad b. ʿUmar fared better and he was promptly appointed to the position. On the 9th August 1922, G.A. S. Northcote wrote to Winston Churchill, the Secretary of State for Colonies and informed him that,

Moḥammad bin Omar, Kadhi of Lamu since 1909, has been offered and has accepted the vacant post of Shaykh al-Islām, the title of which has been altered to the more appropriate one of Chief Kadhi.²¹⁴

Ḥamed b. Muḥammad was offered the post of Kadhi of Lamu which was vacated by Shaykh Muḥammad b. ʿUmar Bakore.²¹⁵ But Ḥamed b. Muḥammad declined the offer,

²¹³ The most recent, comprehensive and up to date account on the life and teachings of Sayyid Aḥmad b. Abu Bakr Sumayṭ is Anne K. Bang, "Sufis and Scholars of the Sea: The Sufi and family networks of Aḥmad ibn Sumayṭ and the Ṭarīqa ʿAlawīyya in East Africa c. 1860-1925" (Thesis submitted for the Degree of Dr. Art, University of Bergen, 2000); earlier works include those of A. S. Farsy, *The Shaḥī Ulama of East Africa, ca.1830-1970* p. 74. See also R. L. Pouwels, *Horn and Crescent: Cultural Changes and Traditional Islam on the East African Coast, 800-1900*. Cambridge: Cambridge University Press, 1987.

²¹⁴ G.A. S. Northcote to Secretary of State for Colonies, in KNA/PC/Coast/1/21/302.

citing physical conditions that rendered him unfit to accept the appointment for Lamu.²¹⁶

It is argued in Mombasa that Ḥamed b. Muḥammad actually felt slighted by the lower position he was offered. He thought that his experience as an assistant to the Shaykh al-Islām and having attended his *darsa* (mosque lectures) was adequate to warrant his elevation.²¹⁷ If this is what Ḥamed b. Muḥammad felt when he was not appointed, it is interesting to speculate what the Mazrū‘ī felt especially after some of its members were denied the opportunity to compete.

Shaykh Muḥammad b. ‘Umar Bakore’s elevation to Chief Kadhi, is an enigma. He was the first person to hold the position after its title was changed from that of Shaykh al-Islām to that of Chief Kadhi. Like his predecessor he was not favored amongst the ‘*ulamā*’ on the Coast of Kenya. His name does not appear in other studies on prominent ‘*ulamā*’, and his appointment raises more questions than answers. Did his predecessor recommend him because they both hailed from the Lamu archipelago? There is a strong likelihood that this is what happened. Nevertheless, what is certain is that Shaykh Muḥammad b. ‘Umar Bakore had previously replaced Sharif ‘Abd al-Raḥman b. Aḥmad al-Saggaf as Kadhi of Lamu. When he was appointed the people of Lamu acknowledged the honor bestowed on their town for the second time. They were proud and concurred with the appropriateness of the appointment of another person from Lamu. Shaykh Muḥammad b. ‘Umar was popular, and there was a certainty

²¹⁵ See Colonial Secretary to Chief Justice in confidential communication ref. No. S. 3726 of July 29th 1922 in KNA/AP/1/1313.

²¹⁶ J. W. Barth to Colonial Secretary in confidential ref. 984/22 of August 1922 in KNA/AP/1/1313.

²¹⁷ Harith Swaleh,, Personal Interview, Mombasa, 07 January 1999.

that he would perform his duties with diligence. This was based on the confidence by the people of Lamu that Shaykh Muḥammad b. ʿUmar was an honest Kadhi who never judged partially against the poor or the illiterate but judged equally and rightly according to the law.²¹⁸ The bottom line was that the people from Lamu were proud at having surpassed the pride of the *wamiji* of Mombasa with the second appointment of someone from Lamu to replace Sharif Abd al-Raḥman b. Aḥmad al-Saggaf.

In August of 1922, Shaykh Muḥammad b. ʿUmar accepted his appointment. However, the post that he accepted was in fact going through certain unexpected changes that influenced his attitude towards his employers. They were not mere changes in the nomenclature from Shaykh al-Islām to Chief Kadhi but a systematic attempt to erode the influence of the post in the community. These changes made it clear that the Chief Kadhi was but a mere judge and one amongst many other state functionaries in the judiciary. His authority was curtailed and confined to personal matters of marriage, divorce and succession. Against the expectations of the Muslim people, the Chief Kadhi could not comment on matters beyond his court duties.

Shaykh Muḥammad b. ʿUmar Bakore received a lower salary than the Shaykh al-Islām and his housing benefits were withdrawn. The government blamed the unsustainable economic position for its actions, but Shaykh Muḥammad b. ʿUmar felt slighted over the reduction of his emolument, even more so when the government argued

²¹⁸ These sentiment were expressed by residents of Lamu in support of the appointment of one of them as the Chief Kadhi, see KNA/AP/1/1313.

that the emolument granted to Sharif ‘Abd al-Rahmān b. Aḥmad al-Saggaf was personal to him because of the respect and status that the government had for him. The Chief Kadhi argued that, since he was performing similar duties as the former Shaykh al-Islām, he deserved an equitable consideration and that there was no justification to accord him a lower remuneration unless the government was indicating that the post was not significant anymore. Apart from the remuneration Shaykh Muḥammad b. ‘Umar was worried about the negative implications for his standing in the community because the changes in the nomenclature had created a feeling that he was not worthy of the same status as his predecessor. When he did not move into the residence of his predecessor, all sorts of stories and speculations started to circulate in Mombasa. These stories included a feeling that Shaykh Muḥammad b. ‘Umar was not happy and not deserving of his appointment. Speculation was rife that the Chief Kadhi was not ‘wanted’ by the government and neither was he ready to serve under unfavorable circumstances.²¹⁹

In mid-1923, animosity and an uncompromising relationship had developed between the government and the Chief Kadhi, though sympathy towards Shaykh Muḥammad’s plight from some European officials in the government was evident. They were concerned that the government was unnecessarily antagonizing a leader whom they should depend on to win over Muslim confidence. They argued that the Chief Kadhi could either reduce or increase antagonism between the state and Muslim faithful? Some government officials did not concur with the treatment meted out to the Chief Kadhi who was already held in

²¹⁹ Harith Swaleh, Personal interview, Mombasa, 07 January 1999.

high esteem and moreover was an old gentleman of deservedly high prestige.²²⁰ T.D. Maxwell, the Acting Chief Justice, was particularly concerned by the attitude of the government and its treatment towards Shaykh Muḥammad b. ‘Umar. He reminded the British that the Chief Kadhi had always proved his effectiveness in assisting the government to stop agitations against the government organized by what Maxwell viewed as “younger hot-headed Mohammedans.”²²¹ In support of a higher remuneration for the Chief Kadhi Maxwell advised the Acting Governor that,

I am fully aware of the present financial difficulties of the government but I would submit that the difference between \$72 and \$42 per annum is a small price to pay to maintain the dignity and the contentment of a distinguished servant of the Crown whose loyalty and whose usefulness are above question.²²²

T. D. Maxwell wished for the government to consider paying a small price to maintain the dignity and contentment of a distinguished servant whose usefulness was above question.²²³ With T. D. Maxwell’s influence Shaykh Muḥammad b. ‘Umar’s remuneration was improved, but his authority remained weakened. He was only the Chief Kadhi but not the Grand Shaykh of Islam. Consequently, Shaykh Muḥammad b. Umar was not content with his position. He continuously complained of maltreatment by the government because such actions were responsible for loss of his *heshima* (respect) in the community.

²²⁰ T. D. Maxwell, Acting Chief Justice to Acting Governor, ref no. J. C. 9488/41-22 of July 15, 1923 in KNA/AP/1/1313

²²¹ Ibid.

²²² Ibid.

²²³ Ibid.

5.5 *Shaykh Sulaymān b. ‘Alī b. Khamīs b. Sa‘īd al-Mazrū‘ī (1867-1937)*

By the time Shaykh Muḥammad b. ‘Umar was appointed, the authority of the Chief Kadhi had been weakened but it was still a popular position and ‘*ulamā*’ craved to be appointed to it. But it was not possible for just any person who thought they were qualified to be appointed. The government had set its own standards and preferences on the basis of the significance of the position. It was important that appointees were loyal and sympathetic to government policies. Inter-communal rivalry also meant that communities would oppose the appointment of an individual from another community, as shown by the way the Swahili in Mombasa were opposed to the appointment of Sharif ‘Abd al-Raḥmān b. Aḥmad al-Saggaf. The support and boasting expressed by the people of Lamu when Shaykh Muḥammad b. ‘Umar succeeded Sharif ‘Abd al-Raḥman, further expressed the relevance of communal cleavages as critical factors for the post. The government was also wary of appointing people whose families had a tradition of opposing European rule in their communities. The fact that the Mazrū‘ī were opposed to European rule in Mombasa, weakened the chances of its ‘*ulamā*’ to be considered for the position of Shaykh al-Islām and Chief Kadhi. On the two previous occasions the top posts had eluded the Mazrū‘ī, though some of their highly knowledgeable members maintained lower positions in areas where they exercised considerable influence, e.g.

Takaungu.²²⁴ While in junior posts, the Mazrū‘ī waited for an opportunity to occupy key positions.

In 1924 such an opportunity presented itself when Shaykh Muḥammad b. ‘Umar Bakore asked for accumulated leave after working for a couple of years without going on leave. The following sequence of events propelled the Mazrū‘ī to become likely contenders for Kadhiship. Before Shaykh Muḥammad’s leave could be approved, someone had to be found to replace him during his absence. Liwali ‘Alī b. Ṣalim suggested Ḥamed b. Muḥammad al-Timamī for the temporary appointment. This time Ḥamed could not take up the position since he was already serving as ‘unofficial member’ of the Legislative Council. At this time Liwali ‘Alī b. Ṣalim could not suggest the name of Shaykh Sulāymaān b. ‘Alī who was then serving as Kadhi of Mombasa. Instead he thought that he himself could perform the duties of the Chief Kadhi, with the assistance of a competent clerk. Nevertheless, he could also sit in for the Chief Kadhi but possible conflicts of interest ruled him out. Acting as Chief Kadhi meant that he would hold two official positions concurrently. Although other individuals were being considered, there was no mention of any Mazrū‘ī ‘*ulamā*’ for the temporary appointment. It was when all the possible appointees had been ruled ineligible that Shaykh Sulaymān b. ‘Alī, then the only Mazrū‘ī in the hierarchy of Kadhiship, was considered. As Kadhi of Mombasa, Shaykh Sulaymān was appointed temporary Chief Kadhi and the Mazrū‘ī began to

²²⁴ For a history of Takaungu see Peter Langer Koffsky. History of Takaungu, East Africa 1830-1896 (Ph.D. Dissertation, University of Wisconsin-Madison, 1977).

gradually assert their position.²²⁵ According to some oral informants Shaykh Sulaymān b. ‘Alī was intellectually obliged to recommend his competent nephew and later son-in-law Shaykh Al-Amin b. ‘Alī b. Nāfi‘ al-Mazrū‘ī (1891-1947) as Kadhi of Mombasa while he undertook the duties of a temporary Chief Kadhi.²²⁶ Within a short spell of time the Mazrū‘ī fortunes began to rise again, as they entrenched themselves in official Kadhiship.

Arguably, the Mazrū‘ī were not minnows in the politics of the posts of Kadhiship or strangers to general leadership politics in Mombasa. As we have shown, during the reign of the Sultanate of Zanzibar, they were a prominent community. Nevertheless, some had been appointed to such positions as Kadhi, Liwali and Mudir, amongst others. Shaykh ‘Alī b. Abd Allāh b. Nāfi‘ al-Mazrū‘ī (1825-1894) was one of the earliest and most far-sighted of pre-colonial Mazrū‘ī Kadhis. He was widely traveled and tutored by prominent ‘*ulamā*’ in the Middle East, especially the Hijaz and held the position of Kadhi under various Sultans.²²⁷ He pioneered pre-colonial Mazrū‘ī scholarship while his progeny sustained its tradition during colonial and post-colonial Kenya. Thus, when they were passed over in the first two appointments during the early colonial period all they

²²⁵ This first temporary appointment amongst many for Shaykh Sulaiman b. Ali lasted between August 30th 1924 through to February 19th, 1924, his other similar temporary appointments were made during April 1st, 1929 to July 13th, 1929 and August 14th, 1932 to November 13th, 1932.

²²⁶ Jambeni Salim, Personal Interview, Takaungu, 22th February 1999.

²²⁷ The importance and relevance of the Hijaz to the Islamic Scholarship in the Coast of East Africa is discussed in Ulrike Freitag “Hadhrāmūt: a religious centre for the Indian Ocean in the late 19th and Early 20th Centuries” *Studia Islamica* (1999): 165-185.

needed was a little patience before their fortunes began to raise during the Chief Kadhiship of Shaykh Muḥammad b. ‘Umar Bakore.

During his Chief Kadhiship Shaykh Muḥammad b. ‘Umar Bakore did not particularly cultivate a cordial working relationship in the government. I have already discussed his disillusionment, complaints, frustrations and accusation of maltreatment by the government. In 1926 the government awarded medals of honor to some individuals in recognition of their services during the First World War. The Chief Kadhi was not amongst these recipients. He thought however that he deserved the honor after serving the colonial state as a censor. In January 1926, the Chief Kadhi wrote to the Chief Justice stating that

Having observed several persons in Mombasa have been awarded medal for War services, I make this application in the hope that Your Honor may be pleased to recommend my services to the proper authorities, for the grant of a War Medal. I served as a censor at Lamu from August 1914 until the end of the war.²²⁸

Previously, Shaykh Muḥammad b. ‘Umar had complained over his emoluments. This time he was disappointed when he did not make it to the list of recipients for medals of Honor. His demand was not modest either. He wrote to the government to the effect that, after observing that several persons would be awarded war medals, he too was applying to have his honor respected with a medal for his services during the war.²²⁹ This demand had an underlining significance for the role of ‘*ulamā*’ during the war.

²²⁸ Shaykh Mohamed bin Omar to Chief Justice on January 30th 1926 in KNA/AP/1/1313.

²²⁹ Shaykh Mohamed bin Omar to Chief Justice on January 30th, 1926 in KNA/AP/1/1313.

Shaykh Muḥammad b. ‘Umar revealed that the *‘ulamā’* did not just teach or give mosque lectures; they also participated in censoring Swahili, Gujarat and Urdu mail that passed through the postal services.²³⁰ The Kadhi also lodged a strong accusation, claiming that he had replaced the Kadhi of Lamu in 1908 and worked without remuneration when the government did not have adequate funds. Considering his frustrations, he contemplated resigning from the post of Chief Kadhi.

The government contemplated abolishing the post once the Chief Kadhi hinted at his resignation. And true to his intentions, in early April 1932 Muḥammad b. ‘Umar Bakore tendered his resignation, ending a rather distressed career. From 1908 when he had taken up the Kadhiship of Lamu, until he was appointed to the substantial position of Chief Kadhi in August 1922, he had served the government for over three decades. Having reached the age of over sixty years he wrote to the government, urging to be allowed to retire.²³¹

Whenever a new person was due to be appointed Chief Kadhi, the government made a concerted effort to abolish the position altogether, or to include new changes that either weakened that authority of the next holder or curtailed his influence in the society. In the first two appointments between Sharif Abd al-Raḥman b. Aḥmad al-Saggaf and Shaykh Muḥammad b. ‘Umar the government had implemented such changes unilaterally. In the 1930’s when Shaykh Muḥammad b. ‘Umar contemplated retiring, the

²³⁰ Ibid.

²³¹ Shaykh Mohamed bin Omar to Chief Justice on April 11, 1932 in PC/Coast/2/2/107.

government revived their intentions to abolish the post by arguing that there was not enough workload to justify the post of Chief Kadhi. In fact, considering that the Chief Kadhi was an appeal position in the Court structure, the thirteen cases that Shaykh Muḥammad b. ‘Umar had sat on during the period 1930/31 seemed adequate. Furthermore, the Chief Kadhi did not just perform purely juristic duties in court. He was acknowledged as an important officer who was consulted by most administrators on many aspects of the Islamic community. The constant intentions to abolish the post were rather significant.²³²

When the Chief Kadhi finally resigned, the Muslims and some government officers first began to take positions on next choice. C. W. Hobley, the Provincial Commissioner for the Coast, revived hopes for the Mazrū‘ī kinsmen. Hobley recommended Shaykh Sulaymān b. ‘Alī, citing his successful tenure as Kadhi of Mombasa, his leadership abilities and his considerable command of *heshima* (respect or honor) in the community.²³³ Added to these advantages we have also indications that Shaykh Sulaymān also successfully served as temporary Chief Kadhi on a number of occasions. Shaykh Sulaymān was thought of as a possible replacement, but there was no confirmed indication that he was willing to take up the post. On the other hand, Shaykh Al-Amin b. ‘Alī’s intentions were more direct and forthcoming. He harbored

²³² See comments by District Registrar of High Court, Mombasa to Registrar, Supreme Court of Kenya, ref. No. C 236/32 MP. No. 11/32 of April 16, 1932 in KNA/AP/1/313.

²³³ C.W. Hobley to Registrar Supreme Court of Kenya in confidential letter ST. 4/1/10/6 of April 21, 1932 in KNA/AP/1/313.

ambitions to be Chief Kadhi to continue with his late father's tradition. He did not hesitate to write to the government requesting to be considered for the post.²³⁴

In April 1932, C. W. Hobley supported the appointment of Shaykh Sulaymān as Chief Kadhi, but the deliberations whether to abolish the post or not been finalized. Murray Jack, the Registrar of the Supreme Court, was against the appointment of Shaykh Sulaymān and favored abolishing the post. He argued that Shaykh Sulaymān was more effective as Kadhi of Mombasa where there were more disputes for him to handle, than at the Chief Kadhi's office. He was concerned that the departure of Shaykh Sulaymān would have an adverse impact on the effectiveness and smooth functioning of the Kadhis Courts in Mombasa.²³⁵ Despite these misgivings and a strong lobby to abolish Chief Kadhiship, the post survived for a second time. More significantly it re-propelled Mazrū'ī clansmen to the helm of Islamic elitist leadership albeit with changes that further weakened the position. The post was no longer pensionable.²³⁶

In October 1932, Shaykh Sulaymān offered an appointment to be the first Mazrū'ī Chief Kadhi in the colonial era. Shaykh Sulaymān held the position of Chief Kadhi from 1932-1937. His tenure was famous as it indicated the beginning of Mazrū'ī power in the colonial state. There was grumbling in the community over the inevitable rise of the Mazrū'ī, as Shaykh Sulaymān favored and supported the appointment of his nephew and

²³⁴ His letter was dated April 20, 1932 in KNA/PC/Coast/2/2/106.

²³⁵ Murray Jack to Colonial Secretary, ref. No. JC 1646/19-24 of August 18, 1932 in KNA/AP/1/1313.

²³⁶ Colonial Secretary to Registrar, Supreme Court of Kenya, ref. S/E 3726/II/28 of October 7, 1932 in KNA/AP/1/1386.

son-in-law, Shaykh Al-Amin b. ‘Alī (1891-1947) to Kadhiship. Despite the opposition and accusation that he was attempting to make Kadhiship hereditary, Shaykh Sulaymān argued that his basis for supporting Shaykh Al-Amin was his confidence in his knowledge after having tutored him personally. He was confident that his student and son-in-law had acquired competence in the relevant knowledge to meet the challenges of Kadhiship. This is what the Mazrū‘ī claimed, but other Muslims speculated that to Shaykh Sulaymān, Shaykh Al-Amin was what the Swahili would have proverbially termed *zimwi likujualo* (better the devil that you know).

The desire of Shaykh Sulaymān to appoint a fellow Mazrū‘ī could only be understood within the context that the Mazrū‘ī had previously been passed over in the position. Nevertheless, there was no unanimous support for this action from other *wamiji* in Mombasa. The most ardent critics of the Mazrū‘ī were other Swahili, especially the Thelatha Taifa and Tisa Taifa. Like the Mazrū‘ī, these Swahili communities had also been passed over when the two ‘*ulamā*’ from Lamu were appointed. The Thelatha Taifa and Tisa Taifa communities thought that they would split the positions of Kadhiship with the Mazrū‘ī. Their plan was that when a Mazrū‘ī was appointed to Chief Kadhiship, then they would have left the lower position of Kadhi of Mombasa to other *wamiji*, preferably non-Mazrū‘ī ‘*ulamā*’. The Thelatha Taifa and Tisa Taifa wishes were not acceptable to the Mazrū‘ī, who however, seemed to have already made up their mind that they would hold onto both the Kadhiship of Mombasa and the Chief Kadhiship. These thoughts materialized when Shaykh Sulaymān passed away in 1937, and another

Mazrūʿī Shaykh Al-Amin b. Alī Nāfiʿ al-Mazrūʿī (1891-1947) was poised to take over the Chief Kadhi position.

5.6 Shaykh Al-Amin b. ʿAlī b. Nāfiʿ al-Mazrūʿī 1891-1947

The most known, popular and well-documented Kadhi during colonial Kenya is Shaykh Al-Amin b. ʿAlī b. Abd Allāh b. Nāfiʿ b. Mazrūʿī b. Abd Allāh b. Khamīs b. Abd Allāh b. Alī al-Mazrūʿī (1891-1947). Studies of the Shaykh indicate that he was largely associated with directing, impacting and dominating the local Islamic intellectual tradition and Islamic modernism in Kenya.²³⁷ There was no doubt that Shaykh Al-Amin had studied under some of the most prominent and well respected ʿulamāʾ on the Coast of East Africa including his father and his father’s contemporaries such as Sayyid Aḥmad b. Sumayṭ (1860-1925) and Shaykh ʿAbd Allāh Bā Kathīr (d.1925). With his insatiable desire for knowledge, Shaykh Al-Amin had exposed himself to the ideas of Ibn Taymiyya and Muḥammad Abduh to sharpen his already critical contributions to Islamic social discourses in Kenya. Shaykh Al-Amin’s tenure as Kadhi can be regarded as the most eventful period in the history of Chief Kadhiship. Inducted into an official government position in 1910 as a clerk to the Kadhi of Mombasa, he rose through the ranks to become the acting Kadhi, full-fledged Kadhi and then the Chief Kadhi. During his rise he also cut short his services to the government when he resigned from 1919 to

²³⁷ See F.H. El-Masri. “Sheikh al Amin b. Ali el Mazrui and Islamic Intellectual Tradition in East Africa,” *Journal Institute of Muslim Minority Affairs* 8, 2 (July 1987): 229-237; R. L Pouwels, “Sh. Al-Amin b. Ali Mazrui and Islamic Modernism in East Africa 1897-1947,” *International Journal of Middle Eastern Studies* 13, 3, (1981): 329-345.

1921 to teach Arabic at the Arab school in Mombasa. He returned to Kadhiship and government service in 1924. Certainly his illustrious career can lead to the conclusion that his appointment was conducted smoothly and was unanimously accepted in the community. On the contrary, though, Shaykh Al-Amin's Kadhiship was sometimes strongly opposed especially since it was associated directly with claims and accusations of favoritism and patronage by the Mazrū'ī. B.G. Martin argues that being the son of an *alim* is very important for attaining authority and recognition among the 'ulamā'. This point is particularly true among the Mazrū'ī.²³⁸ At every major point of changes amongst Kadhis, the Mazrū'ī clansmen have always had enormous influences as both aspirants and conspirators in the process of appointments.

I have mentioned previously that in 1932 Shaykh Sulaymān b. 'Alī was appointed Chief Kadhi and that he supported Shaykh Al-Amin for the vacant post of Kadhi for Mombasa. This heralded the beginning of Shaykh Al-Amin's career, as his appointment was supported by the District Commissioner in Mombasa who thought that Shaykh Al-Amin's support for the Kadhiship of Mombasa was unanimous.²³⁹ However, the Thelatha Taifa and Tisa Taifa were opposed to the possibility of two Mazrū'ī clansmen holding both the post of Chief Kadhi and Kadhi of Mombasa. They suspected that the Mazrū'ī were attempting to monopolize the Kadhiship in Mombasa. Under the Afro-Asian Association (AAA) they demanded clarifications of this and posed questions

²³⁸ B.G. Martin, "Notes on Some Members of the Learned Classes of Zanzibar and East Africa in the Nineteenth Century," *African Historical Studies*, 4 (1971): 525-46.

²³⁹ See District Commissioner, Mombasa to Provincial Commissioner, Coast on August 10, 1932 in KNA/PC/Coast/2/2/106.

to the government wanting to know if the posts of Kadhipship were hereditary. Of course relations between the Mazrūʿī and other communities in Mombasa were not always peaceful. The Thelatha Taifa and Tisa Taifa sometimes disliked the Mazrūʿī because they claimed that in the ancient history of wars in Mombasa the Mazrui lured one of their leaders, Stambul, into Fort Jesus, murdered him and left him to decompose without burial according to Muslim rites.²⁴⁰ Stambul's murder is sometimes an almost vivid experience to his followers. Mombasa poets have also immortalized his death. The historical animosity between the Mazrūʿī and the Thelatha Taifa and Tisa Taifa prevailed, and even continues to be reenacted in important political affairs of the Mombasa polity. The opposition met by the Mazrūʿī from other communities should therefore be viewed with this history in mind.

However, in the matter of appointment to both positions of Chief Kadhi and Kadhi of Mombasa, the Thelatha Taifa and Tisa Taifa were also concerned about a possible miscarriage of justice as a father-in-law and teacher was expected to review judgments emanating from a lower Kadhi's court, where, the Chief Kadhi's student, nephew and son-in-law was the judge. They based their opposition on civility and accountability. To avoid conflicts of interest in the course of the two Mazrūʿī Kadhi's work, the AAA proposed that other non-Mazrūʿī candidates be considered for appointment. While the AAA opposed the appointment of Shaykh Al-Amin b. Alī on the basis of ethnic favoritism, they could also be accused of similar attitudes. While proposing alternative candidates the AAA supported candidates such as Shaykh Muḥammad b. ʿAlī Bashir,

²⁴⁰ M. H. Abdulaziz, *Muyaka: 19th Century Swahili Popular Poetry*, pp. 114-115

Shaib b. Shallo, Khamis b. Hussein, Khamis b. Shafy and Said b. Ahmed. All these were members of the Thelatha Taifa and Tisa Taifa ethnic groups and ardent supporters of the AAA.

Other political reasons were also advanced to oppose the appointment of Shaykh Al-Amin b. ‘Alī. In 1932 three elders and active members of AAA from the Thelatha Taifa and Tisa Taifa, Shaykh ‘Alī Muḥammad Muses, Aḥmad b. Matano and Muḥammad b. ‘Alī Bashir, objected to Shaykh Al-Amin’s suitability citing his political involvement as editor and owner of a controversial journal, *al-Islah* (the awakening).²⁴¹ Despite such opposition the Mazrū‘ī did not desist from supporting the appointment of their kinsmen whenever an opportunity presented itself. In 1934 Shaykh Al-Amin was appointed as Acting Chief Kadhi and infuriated other Muslims when he appointed his relative Shaykh Ma‘mūn b. Sulaymān to become Acting Kadhi in Mombasa. These were only acting positions, as Shaykh Ma‘mūn would have to leave office once the Chief Kadhi returned from leave and Shaykh Al-Amin assumed his position. However, the Thelatha Taifa and Tisa Taifa argued that the Mazrū‘ī were practicing nepotism in the appointment of Kadhi. They argued that Shaykh Ma‘mūn b. Sulaymān lacked sufficient knowledge for the post but was appointed because he was a Mazrū‘ī clansman.²⁴²

²⁴¹ The government was equally concerned over Shaykh Al-Amin’s involvement with *Al-Islah* which took a rather pan Islamic and oppositional view towards European and their treatment of Islam and colonization of Muslim communities. However, Shaykh Al-Amin had already given an undertaking that he would sever his relationship with *al-Islah* in the event of his appointment as Kadhi of Mombasa. See Provincial Commissioner, Coast to Chief Native Commissioner on October 18, 1932 in KNA/PC/Coast/2/2/106.

²⁴² These were representing the views of the AAA, see KNA/PC/Coast/2/2/168.

In 1937, Shaykh Al-Amin was elevated to Chief Kadhi, resulting in more conflicts amongst Muslims. Shaykh Al-Amin's antagonists were *‘ulamā’* from the Thelatha Taifa and Tisa Taifa who also harbored ambitions to be appointed Kadhi of Mombasa. Conflict was triggered by Shaykh Al-Amin's apparent support for the son of his mentor and relative, Shaykh Ma‘mūn b. Sulaymān al-Mazrū‘ī, to be appointed Kadhi once he was appointed Chief Kadhi.²⁴³ This time round, the *‘ulamā’* of the Thelatha Taifa and Tisa Taifa gathered courage and petitioned colonial authorities to be considered for appointment as Kadhi in Mombasa instead. The aspirants included Khamis Shafy who put in his application but the government responded that “there were already several persons eligible for the post of Kadhi”.²⁴⁴ This response seems to have infuriated Khamis Shafy who wrote back urging that it was quite clear to him that other people would also be interested in the position, but he anticipated the government would make the position competitive.²⁴⁵ Shaykh Muḥammad b. Abd Allāh al-Rudāin and Shaykh Sa‘īd b. Aḥmad applied.²⁴⁶

The Thelatha Taifa and Tisa Taifa argued against the apparent intentions of the Mazrū‘ī to make the posts of Kadhi hereditary, but were unable to dislodge any of the

²⁴³ C. H. C Boulderson, Provincial Commissioner, Coast to District Commissioner, Mombasa in KNA/PC/Coast/2/2/106.

²⁴⁴ Khamis bin Shafy to Provincial Commissioner, Coast on March 24, 1937 in PC/Coast/2/2/168.

²⁴⁵ Ibid.

²⁴⁶ Shaykh Muḥammad b. ‘Abd Allāh al-Rudain had previously served as Kadhi of Siyu from 1923 but was retrenched in 1928, while Shaykh Sa‘īd b. Aḥmad had served as Kadhi of Takaungu between 1926/27 and Vanga from 1929-1932 when the post was abolished. From then Shaykh Said went to live in Moshi, Tanzania.

Mazrū'ī appointees. As Shaykh Ma'mun b. Sulaymān was made the Kadhi of Mombasa, Shaykh Al-Amin continued to be the Chief Kadhi from 1937 -1947. At the time of his death in Mombasa in 1947, Shaykh Al-Amin b. 'Alī b. Nafi al-Mazrū'ī was one of the greatest Muslim scholars on the Coast of Eastern Africa. He had contributed considerably to Islamic intellectual life but a chronology of his career would be poorer if the role played by racially based tensions to his appointment or that of *miji* were ignored.

**5.7 Sayyid 'Alī b. Aḥmad Badawy Jamal al-Laly (1907-1989)
and Shaykh Muḥammad b. Qāsim al-Mazrū'ī (1912-1982)**

In this section I will discuss the careers of these two '*ulamā*' who succeeded Shaykh Al-Amin one after the other. Their careers were intertwined despite the opposing attitudes from the people of the towns that both hailed from. In 1947 the death of Shaykh Al-Amin rekindled another similarly intriguing search for his successor. This time conflicts pitted the Mazrū'ī against the '*ulamā*' of Lamu. Already the Swahili of Mombasa had expressed a general resentment over the Mazrū'ī dominance of Kadhiship with which the people of Lamu seemed to have concurred. They thought that since two '*ulamā*' from Lamu had held the position concurrently, followed by two from Mombasa, it was now the turn for someone from Lamu to ascend to the position. The concern by the people of Lamu was not unfounded either. It was in response to the government after another Mazrū'ī, Muḥammad b. Qāsim al-Mazrū'ī (1912-1982) was identified as the most suitable replacement.²⁴⁷

In Lamu and Mombasa Muslims engaged one another in discussing which town would produce the next Chief Kadhi. It was in fact almost inevitable that a Mazrūʿī would be appointed. But Liwali ʿAli b. Şalim influenced the government moved into another direction. As in 1897 when the government showed a lack of confidence in the abilities of local ʿulamāʾ, when opted to appoint the Shaykh al-Islām from Egypt, this time Liwali ʿAli b. Şalim revisited this idea, apparently to avoid the appointment of a Mazrūʿī. He argued that it was not prudent to appoint a local person so as to avoid further animosities between the people of Lamu and Mombasa. Instead, he suggested that the position be given to someone from outside the feuding communities and thought of by suggesting the legendary Comorian and long-time resident of Zanzibar, Sayyid ʿUmar b. Aḥmad b. Sumayṭ (1896-1973).

In 1947 when Sayyid ʿUmar b. Sumayṭ was proposed for Chief Kadhiship of Kenya, he had been in the service of the colonial authorities in Zanzibar as its Chief Kadhi since 1937. He was highly regarded and the government of Zanzibar refused to release him to serve in Kenya. With a sense of decorum Kenya's request was turned down. Zanzibar argued that it would be a great loss to its judiciary and difficult to replace the indispensable Sayyid ʿUmar b. Sumayṭ.²⁴⁸ Apparently, Sayyid ʿUmar b. Sumayṭ had been recalled from Grande Comoro to Zanzibar after the retirement of the then Chief Kadhi of

²⁴⁷ See E. J. O'Farell, Registrar, Supreme Court to Chief Justice ref. 659/6 of April 28, 1947 in KNA/AP/1/1206.

²⁴⁸ Chief Secretary, Zanzibar to Chief Secretary, Kenya in confidential letter no. CPF of June 28, 1947 in KNA/CA/20/31.

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Zanzibar, Shaykh Ṭāhir b. Abī Bakr al-Amawī (d.1938) because after the death of Shaykh Ṭāhir, “finding a good *qāḍi* was not easy, and the authorities now turned to the son of their former Chief Kadhi to take over”.²⁴⁹

The failure to secure the services of the illustrious Sayyid ‘Umar b. Sumayṭ was disappointing for Kenya, but he was nevertheless involved in the process of appointing the next Chief Kadhi from the three identified candidate, Shaykh Ma‘mun b. Sulaymān al-Mazrū‘i, the Kadhi of Mombasa, Shaykh Muḥammad Jambeni, the Kadhi of Lamu, and Shaykh ‘Abd Allāh b. Muḥammad Bā Fadl (1902-1965), the Kadhi of Takaungu. Sayyid Omar b. Ahmad b. Sumeit was asked to prepare an examination for the candidates.²⁵⁰ Not every candidate favored the examination as a means to fill the post. Liwali ‘Ali b. Salim supported the method and was accused of interfering with the process in order to favor specific candidates. Surprisingly, the candidate that Liwali ‘Ali b. Salim was accused of favoring was Shaykh Muḥammad b. Qāsim (1912-1982), who was earlier mentioned positively though he did not seem to have pursued the idea after that. When the names of candidates for the examination were announced, his name did not appear, but he appeared as a late entrant poised to take the post. When Shaykh Muḥammad b. Qāsim was included in the competition, Shaykh Ma‘mun b. Sulaymān withdrew his candidature, apparently in favor of his uncle, and probably to avoid pitting one Mazrū‘i against another. Likewise,

²⁴⁹ See Anne K. Bang, *Sufis and Scholars of the Sea*, 282-283.

²⁵⁰ See Joyce R. Ginn, District Registrar, Supreme Court of Kenya to Registrar, Supreme Court of Kenya ref. No. ‘C’ 772/P. 7/34 of August 11, 1947 in KNA/CA/20/31.

Shaykh ‘Abd Allāh Bā Fadl declined to write the examination and withdrew, but he gave the excuse that the examination was a smokescreen to sneak in a Mazrū‘i. Shaykh Bā Fadl argued that he was not only much older but in fact deserved the appointment because he was the most experienced of the other candidates, having served many years as Kadhi and intermittently as *ad hoc* Chief Kadhi in the absence of Shaykh Al-Amin. He was sure he was going to replace him and hence felt that the requirement for him to write an examination with younger and certainly junior staff was an attempt to embarrass him. Feeling ridiculed, the thought of the possibility of him loosing his *heshima* (respect) in the event that the younger candidates performed better, Shaykh Bā Fadl opted out of the process and blamed Liwali Ali bin Salim for this debacle.

Liwali ‘Ali b. Salim told a different story in exonerating himself from the accusations by Shaykh Bā Fadl, dismissing the notion that serving as *ad hoc* Chief Kadhi was a guarantee or prerequisite for direct accession to a substantive post. He also believed that younger people were eligible for nomination for the post, as age was not a consideration. Moreover, Shaykh Muḥammad b. Qāsim al-Mazrū‘i, whom Shaykh Bā Fadl referred to as the younger man who was also junior in a service, had actually impressed senior government officers when he also served as temporary Chief Kadhi. It was Shaykh Muḥammad’s impressive work that led Justice Bartley to recommend him when a position of Chief Kadhi became available. Liwali Ali b. Salim responded by absolving himself from accusations leveled against him. His suggestion for the examination was not

to embarrass older *‘ulamā’* but the need to see that the most competent Chief Kadhi served Muslims.²⁵¹

Shaykh Ma‘mūn and Shaykh Bā Fadl’s withdrawal left Shaykh Muḥammad b. Qāsim and Shaykh Muḥammad Jambeni, both hailing from Mombasa, in the competition. In order to include a regional balance, especially considering that the people of Lamu had equally raised a concern over possible Mazrū‘i dominance, Sayyid ‘Alī b. Aḥmad Badawy Jamal al-Layl (1907-1978) was included to give the exercise a representative and competitive character.²⁵² A resident of Lamu, Sayyid Aḥmad Badawy was recommended and described as a “highly suitable individual, both as regards to his knowledge of the law and his upright character”.²⁵³ Meanwhile, to prove his good intentions, Liwali Ali bin Salim impressed upon the government to hasten the process of appointing the Chief Kadhi, because the post had remained vacant for a long time while Muslims in the whole of East Africa were anxiously waiting for it.²⁵⁴

The examination was thought of as a convincing way of appointing the Chief Kadhi, but its results were nullified because of discrepancies in the dates in which the candidates wrote the examination. Sayyid ‘Alī Badawy wrote his papers two days later than the other aspirants and it was rumored that he could have had prior knowledge of the examination.

²⁵¹ Liwali Ali bin Salim to Provincial Commissioner, Coast on March 01, 1948 in KNA/CA/20/31.

²⁵² ‘Unofficial’ implied an alim who was not in the service of the government as a Kadhi yet.

²⁵³ E. R. A Davies, Provincial Commissioner, Coast to Chief Secretary in confidential letter ref. No. SF. 29/2/52 of March 15, 1948 in KNA/AP/1/1206.

²⁵⁴ Ali bin Salim to Provincial Commissioner, Coast on March 01, 1948 in KNA/CA/20/31.

This cast aspersions on the standing of Sayyid ‘Alī Badawy. As a result of the discrepancies in the examination dates, the government ruled out Sayyid Alī Badawy; the Provincial Commissioner argued that he would not be appointed even if his answers were the most satisfactory or his appointment most desirable.²⁵⁵ In fact the Chief Secretary was not particularly impressed by the examination as a reliable or suitable way of appointing a Chief Kadhi. He favored the use of a board to interview and select the most impressive candidate.²⁵⁶ Thus, instead of the examination, a selection board was constituted to appoint the Chief Kadhi.

5.8 Chief Kadhi from the Interior?

In the period 1898-1947, the post of Shaykh al-Islām and Chief Kadhi was exclusively dominated by Arab ‘*ulamā*’, but it was a period characterized by communal strife.

The post developed with considerable sentimental reference amongst Muslims and maintained an aura of importance in the community, as ‘*ulamā*’ who occupied the post were respected and viewed with nostalgia, despite constant oppositions during initial periods of appointment. Towards the 1950’s its characteristic coastal dominance was about to be changed.

²⁵⁵ Provincial Commissioner, Coast to Chief Secretary in confidential ref. No. SF. 29/2/52 of March 15, 1948 in KNA/AP/1/1206.

²⁵⁶ J.B. Gould for Chief Secretary, to Provincial Commissioner, Coast, in confidential letter No. E. 7/3/123 of April 23, 1948 in KNA/AP/1/1206.

During May of 1948, Muslims resident outside the coastal area were invited to contest for appointment to replace Shaykh Al-Amin. In fact further steps towards the institutionalization were included as an advertisement was posted in all administrative centers inviting candidates for the post of Chief Kadhi. Candidates were required to possess a thorough knowledge of Muslim law pertaining to all sects and particularly the *shafi'i* sect, be of exemplary character and integrity, possess knowledge of the Arabic language, and preferably know English as well.²⁵⁷ Contrary to previous attempts to abolish the post due to an inadequate workload, large number of Appeals waiting the new Chief Kadhi made the appointment more urgent.²⁵⁸

In 1948 when the post of Chief Kadhiship was opened to contestants outside the Coast, it was still dominated by applicants from the Coast and attracted only one interior-based *ʿalim*, Shaykh Ishaq Muḥammad, a Somali from the Uasin Gishu district. Other aspirants included four members of the Swahili groups, Haji Shaibo b. Shallo,²⁵⁹ Muḥammad b. ʿAlī Bashir,²⁶⁰ Khamīs Shafy and Muḥammad b. ʿAlī Haji,²⁶¹ from the Thelatha Taifa and Tisa Taifa who contested with Sayyid ʿAlī b. Aḥmad Badawy.²⁶²

²⁵⁷ E.R. A. Davies, Provincial Commissioner, Coast to Provincial Commissioner, Nyanza, Rift Valley, Central, Northern Frontier Province and Officer-in-Charge, Ngong, in ref. No. SF. 29/2/58 of May 08, 1948 in KNA/CA/20/31.

²⁵⁸ District Registrar, Supreme Court to Provincial Commissioner, Coast in ref. No. 'C'814/P.7/34 of June 23, 1948 in KNA/CA/20/31.

²⁵⁹ He stated that he was a student of Shaykh Abdul Majid bin Zahran who was Kadhi of Lamu and also studied under Shaykh Abdulrahman bin Ahmad Saggaf, the former Shaykh-ul-Islam.

²⁶⁰ He was serving as a member of the Wakf Commission.

²⁶¹ These two had previously worked as Muslim vakils.

Shaykh Muḥammad b. Qāsim al-Mazrū‘i withdrew from the process in favor of Sayyid ‘Alī Aḥmad Badawy. The selection board was impressed by Sayyid ‘Alī Aḥmad Badawy as well and he was appointed, making him the third person from Lamu to assume the position. Sayyid ‘Alī Aḥmad resigned within a year after appointment, for reasons still unclear. Speculation abounded that because of the examination discrepancies discussed earlier the government was not willing to appoint Sayyid ‘Alī Badawy. The selection board went ahead and appointed him anyway. When he resigned questions were asked. Was he forced to resign? Was he found incompetent? Was their *fitina* (strife by creating animosity) involved in his resignation? There was no doubt about Sayyid ‘Alī Badawy’s knowledge or his pedigree. The son of the venerated Sayyid Aḥmad b. Ṣāliḥ Badawy Jamal al-Layl (1889-1936), he was tutored by his father and the contemporaries of his father, Sayyid ‘Alī Aḥmad Badawy was appointed to the position of Chief Kadhi with the anticipation that he would bring both his filial connections and knowledge to the benefit of Muslims. But he was disadvantaged by a lack of experience in the colonial bureaucracy and its standards of duty probably contributed to his frustrations with the post.

Other reasons advanced for Sayyid ‘Alī Aḥmad Badawy’s resignation include claims that because of his Sharifite lineage he was steadfast and unwilling to take orders from European District Commissioners and Provincial Commissioners. He could not withstand the supervision by colonial officers on when and how to perform his duties as a Muslim

²⁶² While all the candidates were invited to appear before the board Shaykh Isahak was not as he did not receive favorable recommendation from the District Commissioner, Uasin Gishu. See P.F. Forster, Provincial Commissioner, Coast to Registrar, Supreme Court ref. No. ST.4/3/VI/252 of June 25, 1948 in KNA/CA/20/31.

judge. It is also argued that, amongst all occupants to the post of Chief Kadhi during the colonial period, he was the only one who left with his respect intact because when he realized that he could not cope with the demands of the position, he did not continue to cling to it but resigned to preserve his dignity.²⁶³ His detractors claimed that Sayyid ʿAlī Badawy fared so badly that his tenure strengthened the resolve of colonial officers to abolish the post of Chief Kadhi. Indeed, when he resigned in 1950, it was difficult for Muslims to convince colonial authorities to appoint his replacement immediately. There still remain contentious issues surrounding Sayyid Badawy's short tenure. It is only known that after resigning as Chief Kadhi he was invited to Zanzibar by Sayyid ʿUmar b. Abd Allāh, the Principal of the Muslim Academy, where he took up a post as an instructor on Ṭaṣawuf. Perhaps the difficulty is expressed by the efforts undertaken by S. M. Muhashamy, the Liwali for Coast, to have the post revived.

5.9 The Lost Decades: 1950s-1960s

For about a decade from 1950 since the resignation of Sayyid ʿAlī Badawy resigned, the post of Chief Kadhi remained vacant with no substantive appointment, though Shaykh Muḥammad b. Qāsim al-Mazrūʿi was occasionally appointed *ad hoc* Chief Kadhi to sit as Appellant judge in the High Court. Muslims agitated for its revival, but it was not until the mid-1960 when concerted efforts were made by S.M. Muhashamy who as Liwali felt duty-bound to represent the interest of Muslims to the government. He

²⁶³ Abdulrahman Mwinyi Faki, Personal interview. Madina, Saudi Arabia January 28, 2002.

reminded the government of constant demands from the Muslim community for the reinstatement of the post of Chief Kadhi.²⁶⁴ The government responded with mixed reactions to Muhashamy. It argued that there were few cases to warrant the appointment, and claimed shortage of funds to sustain the post. Muslims viewed these as excuses to deny them the opportunity to be served by such an official. Some sensed interference in their religious affairs contrary to the 'Protectorate Agreements'. It was during the period of 1950-60 that Muslims started to critically analyze the relevance of having the Chief Kadhi appointed by the government.²⁶⁵

A sense of frustration had engulfed Muslims over the extensive absence of the Chief Kadhi. In his petition to the government Muhashamy expressed Muslim feelings of frustrations over the absence of a Chief Kadhi. At the same time he also tried to understand government's apprehensions. Muhashamy acknowledged that there were fewer cases that the Chief Kadhi could preside on. He concurred that Sayyid 'Ali Badawy was a respected theologian but did not have experience as Kadhi. However, Muhashamy's opinion was that the accusation of inefficiency on the part of Sayyid 'Ali Badawy and not lack of work had led the government to suspend further appointments to the post.²⁶⁶ He argued that circumstances had changed since the early 1950's. With an increase in the population of Muslims, the Chief Kadhi would be kept busy. There was also a clamor for an independent authority to advise the judiciary on

²⁶⁴ S.M. Muhashamy to Provincial Commissioner, Coast, on July 15th 1960 in KNA/CA/9/96.

²⁶⁵ Salim Hoka, Personal Interview. Nairobi, January 2002.

²⁶⁶ S.M Muhashamy to Provincial Commissioner, Coast on July 15, 1960 in KNA/CA/9/96.

matters pertaining to Islamic codes. Furthermore, there was a popular feeling amongst Muslims that there were qualified and suitable persons available and ready for appointment if only the government was willing to revive the post.

The views espoused by the government and those of Muhashamy on behalf of Muslims were diametrically opposed. The government was of the opinion that the post was not abolished. It did not concur with the Muslims' sentiments and accusations that it had abolished a statutory post meant to serve Muslims. To support its argument the government had appointed *ad hoc* Chief Kadhi whenever there were Appeals that demanded the attention of such and official. The argument by government to maintain Kadhis in the District due to the availability of workload and to appoint Chief Kadhi on an acting case-by-case basis was consistent with this view. But some government officers were forthright and blamed Sayyid 'Ali Badawy as a Kadhi who "was neither able nor willing to fulfill the functions of the Chief Kadhi".²⁶⁷

S. M. Muhashamy initiated the process to have the Chief Kadhi appointed from 1960. By 1962 no positive action had been taken by the government as yet. However, this was a period close to independence and the colonial government was involved in negotiations with various communities in Kenya. During one such meeting Muhashamy held a 'corridor discussion' with Justice Rudd that triggered another sequence of events, leading to a substantive appointment of a Chief Kadhi.²⁶⁸ In fact, that meeting is probably

²⁶⁷ These sentiments are found in a memo addresses to the Provincial Commissioner Coast, dated July 7, 1960 signed HJC in KNA/CA/9/96.

responsible for the institutionalization of the post of Chief Kadhi in independent Kenya because afterwards Muhashamy assisted other government officers in drafting concise roles and functions of the Chief Kadhi. The main tasks included allowing the Chief Kadhi to advise Judges on matters of Islamic Law, especially junior Kadhi who instituted matters of Muslim Marriages, Divorce and Succession; to supervise the work of other junior Kadhis throughout Kenya; to examine candidates for the post of Kadhi; and to train in Islamic Law Kadhi's clerks amongst whom are often future candidates for the post of Kadhi.

Once the guidelines were agreed upon, Muhashamy informed the government that he had given the matter of the appointment of Chief Kadhi due consideration and was of the opinion that Shaykh Muḥammad b. Qasim al-Mazrū'ī was the most suitable person for the post. Muhashamy recommended Shaykh Muḥammad b. Qasim because he came from a respectable family in Mombasa, he was brought up and trained in *Sharī'ah* by an eminent scholar (viz. Shaykh Al-Amin b. 'Alī), his character was beyond reproach, and his service in matters concerning *Sharī'ah* had always been reliable and useful. Apart from holding the post of Kadhi of Mombasa, Shaykh Muḥammad b. Qasim previously acted as *ad hoc* Chief Kadhi since the time Sayyid Aḥmad Badawy resigned from government service.²⁶⁹

²⁶⁸ See Justice Rudd to D.W. Hall, Provincial Commissioner Coast, on July 06. 1962 in KNA/CA/9/96.

²⁶⁹ S.M. Muhashamy to Provincial Commissioner, Coast, on July 15th, 1960 in KNA/CA/9/96.

Shaykh Muḥammad b. Qāsim's standing in the process of appointing another Chief Kadhi was enhanced by his intellectual achievement as well as his filial connections. He was appointed as Chief Kadhi from early May of 1963, onwards though he was almost like a default Chief Kadhi since the resignation of Sayyid ʿAli Badawy. He had wished to be appointed Chief Kadhi since the late 1940's, but was appointed to an *ad hoc* position instead. Nevertheless, he held on to his ambition which took two decades to realize. When he was finally appointed to a substantive post, it enhanced not only his career but also the Mazrūʿī dominance on the post of Chief Kadhi in Kenya. He fitted well into a common Swahili adage, *mvumilivu hula mbivu* (patience bears rewards). Shaykh Muḥammad b. Qāsim al-Mazrūʿī maintained this post with dignity until early 1968 when he resigned, citing ill health.

5.10 Conclusions

As Muslims in Kenya hold the view that the post of Chief Kadhiship is basically a manifestation of religious leadership by the ʿulamāʾ, it is equally probable that the reasons for the establishment of the post were political rather than religious. The British were interested in the reliability of the holders of the post of Chief Kadhi to help them administer the Muslim population. The chronology of the appointment of various ʿulamāʾ to the post shows the complicity of the ʿulamāʾ who went along to gain the post on the strength of ethnic groups or family connections. The relevance of filial connection gained

prominence, as *‘ulamā*’ probably concerned about competition from others, chose relatives and acquaintances to replace them or be appointed to strategic posts, anticipating to be succeeded by them in the future. The British established the post but could not predict how Muslims would perform. When the position proved popular and its authority gained confidence in spite of ethnic and racial competition, the British weakened its influence through changes. Some of the changes included trimming the jurisdiction of the Shaykh al-Islām, or making temporary appointments. There were several attempts to abolish the post entirely as well. In addition, from the example of Shaykh Bakore, it was clear that the Chief Kadhi was expected to serve British interests during the First World War. The Muslim communities seemed to have found the post of relevance; as they faced a colonial power that only appointed Europeans to positions of power and authority, the Chief Kadhi symbolized their acknowledgement by the government. Among the Muslims themselves, the post extended the Arabization of religious power and authority, and enhanced competitions between the residents of Mombasa and Lamu.

Chapter Six

6.1 The Colonial State and the Muslims of the Interior The making of pseudo Kadhi in Nairobi ca. 1945

Previous chapters discussed aspects of institutionalization and racialization of leadership, power and authority along the East African coast. This chapter continues to show the role of racial predilections in the process of appointing figures of authority and power in Islamic communities. Unlike the previous chapters' discussions of the apex of Islamic religious authority in the post of Shaykh al-Islām and Chief Kadhi, this chapter and the next show cases of similar attitudes of racialization of leadership positions in the interior of Kenya. A racialized discourse engaged officials in Nairobi who argued about the appointment of a 'pseudo-Kadhi' was argued.²⁷⁰ As mentioned earlier the strength of Muslim Courts on the Coast ensued from the agreements entered into between the Sultan and the British government, giving rise to what we have termed the 'Protectorate Agreements.' Unlike the situation that prevailed on the Coast, Muslims residents of the interior were not able to rely on existing agreements to substantiate and support their demands for the establishment of Kadhis Courts. Thus, colonial authorities developed separate rules which they applied in the process of deciding the appointments of Kadhi in

²⁷⁰ Colonial authorities did not recognize Muslim officials outside the Coast as being Kadhi, I have decided to term them 'pseudo-Kadhi'. I will put this term in inverted commas when used for the first time. In its subsequent use I will depend on the vigilance of the readers and not revert to the inverted commas in order to avoid an unpleasant reading. It is specifically for this reason that I view the 'Kadhi' of Nairobi and the interior of Kenya as 'not quite Kadhi'.

the interior. Muslims, of the interior too responded differently, in accordance with their situation.

This chapter presents two arguments that will assist us to appreciate the existence of interlocutors of marriage rituals amongst Muslims in the interior of Kenya. First, colonial authorities were reluctant to establish Muslim courts outside the coastal strip but nevertheless wished to exert influence on the authority of existing practitioners of Muslim rituals. Second, through a unique interpretation of statutes aligned with the establishment of Muslim courts and its officials, Muslims residing in the interior of Kenya were not party to the agreements signed between the Sultan and British authorities. As a result demands for establishing Muslim courts in the interior were denied because the government viewed the interior as falling outside the bounds of Islamic laws. I will thus explore the mixed fortunes of the existence of Kadhis in the interior of Kenya as a constitutional irony solved by the establishment of not so authoritative, not so powerful, but mainly functionary Muslim officials. This chapter will look at the differences in colonial perspectives on the Coast and the interior in terms of the obligations to establish Muslim institutions, but will also indicate similarities in the process that racialized the posts of Kadhi. The discussion is situated on the basis of a 1906 Ordinance which created rules and guidelines on the conduct of Muslims pertaining to matters of personal status.

6.2 Mohammedan Marriage Divorce and Succession Ordinance 1906: Its Impact on the pseudo-Kadhis

The discussions on the post of Shaykh al-Islām and Chief Kadhi were juxtaposed to the argument that rules established by the *Mohammedan Marriage Divorce and Succession Ordinance 1898* required interlocutors to articulate and thus elevate the hitherto communally based authority of ‘*ulamā*’ to incorporate their influence and power over a wider society of Muslims. While the positions of Shaykh al-Islām and Chief Kadhi were occupied exclusively by the elite from Mombasa and Lamu, this chapter and the next move away from the Coast towards the interior to discuss the development of the authority of the ‘*ulamā*’ in Nairobi and Mumias, Nyanza Province. Its premises remain the hegemonic concerns of the colonial state, as the posts under discussion were institutionalized and located within the jurisdiction of the *Mohammedan Marriage Divorce and Succession Ordinance 1906*, especially with regard to its rules on titles and the geographical areas of its applicability. Arguably marriage laws survived better during colonial rule in comparison with other aspects of African customary laws. Their good fortune was attributed to the essential differences between European social structures and African cosmologies.

Whereas the perfect model of a marriage according to English law was a monogamous union, a customary marriage and, for that matter, an Islamic marriage (i.e. what was defined as a Mohammedan marriage) was potentially polygamous. Equally, customary and Islamic rules of succession were based upon concepts fundamentally different from

those on which the succession laws of the Empire were based. A sympathetic attitude by colonial officers towards non-European marriage rules was thus evident, as they did not attempt to enforce British norms on personal aspects of the colonized communities. Of course, in areas that came under strong missionary influence, attempts were indeed made by missionaries to impose Euro-Christian standards of behavior, enforced through a Eurocentric perspective of being repugnant to natural justice. Evidence of such non-interference was the enactment of marriage ordinances that created space for non-Europeans to observe their personal laws. I will not engage with the sociological assertions that such marriage ordinances supported African and Muslim cosmologies, but I will be concerned with the discussion of how they created official interlocutors as practitioners of *nikah* (marriage ritual) amongst Muslims, centered on the debates on appointments to occupy the post of 'Kadhi'.

In 1898, the Commission of the East African Protectorate pointed out to the Foreign Office the inadequacies of a previously enacted Foreign Marriage Act which catered for the needs of non-African populations, because it did not allow for celebration of marriages between persons who were not British subjects. The Commissioner had asked to be granted the necessary authority to introduce the Indian Christian Marriage Act and "perhaps even extend it to native Christians".²⁷¹ However, it is argued that the Foreign Office foresaw various legal difficulties if such a course were followed, and for several years no decision was taken. Reference to the Colonial Office, however, revealed that the approach in territories under their control was for the Governor to issue Regulations or

²⁷¹ H.F. Morris, "Indirect Rule and the Law of Marriage", H.F. Morris and James S. Read, *Indirect Rule and the Search for Justice: Essays in East African Legal History* (Oxford: Clarendon Press 1972): Chapter 7.

Ordinances on marriages. The reaction of the Foreign Office was that such action was highly irregular and that the legislation was *ultra vires*, since authority in the respective Order in Council to legislate for the peace, order, and good government of the territory could not cover legislation on the subject of marriage. While such was the original view pertaining to non-European residents in the territories, in the same year Muslims were exempted from any form of colonial interference in their personal matters by the agreements entered into between British representatives and the Sultan, preventing the former from interfering with the Mohammedan religion. This action later became an unforeseen side effect that absolved Muslims from personal laws derived from English law precepts.

In 1898, the *East African Order-in-Council* established separate Court structures, viz. the Mohammedan Native Subordinate Courts, falling under the general umbrella of *Native Court Authority 1897*. The particular Court structures formed include the Kadhis Courts, which *inter alia* instituted the *Mohammedan Marriage Divorce and Succession Ordinance 1898*, then applicable in the Sultan's dominion but later ratified to the *Mohammedan Marriage Divorce and Succession Ordinance 1906*, which enabled quasi Muslim court officials to be allowed authority to institute Islamic rituals of a personal nature in the interior of Kenya. The statutes enacted defined and assumed the territorial applicability of Muslim rules and norms. I have taken the liberty to identify the Muslim officials appointed in the interior of Kenya in the case study of Nairobi and Mumias, as pseudo-Kadhi because they were not appointed on the basis of the agreements entered

into between the Sultan and British authorities, and because their authority and power in the eyes of government officials were lower.

Before I discuss the practicality of ethnic disputes over candidates who made themselves available for appointment as pseudo Kadhi, I would like to mention that the institutionalization of the *Mohammedan Marriage Divorce and Succession Ordinance 1906* posed practical problems in both Nairobi and Mumias because the Ordinance created a statutory requirement that confined some titles to certain specific geographical areas. According to the Ordinance Kadhis were Muslim officials whose jurisdiction was confined to the dominions of the Sultan of Zanzibar. Thus, the government could not appoint Kadhis for Muslims who resided outside the dominions of the Sultan and the Coast of Kenya; neither was it under any obligation to recognize the authority of such an official whenever they exercised their authority over Muslims residing outside the dominions of the Sultan. Irrespective of this, Muslims somehow, less concerned about the statutory position of the titles of Kadhi, recognized certain individuals who instituted marriage rituals as Kadhi. Thus, there were Kadhis in Nairobi and Mumias and other parts of *bara* for that matter, whose authority Muslims recognized and called upon to institute and legalize (in the Islamic sense) their *ndoa* (marriage rituals) and ceremonies. If the government had ignored the authority of such practitioners of Islamic rituals, it would have lost control over a section of the community over which it wished to exercise power. Such Kadhi would also create parallel forms of authority and power, which was not desirable. To disentangle the predicament the government sought to recognize the role of such individuals while still not committing itself to recognizing them with the title

of Kadhi. In an authoritative advice by R.M. Comber, the Crown Advocate to District Officers pertaining to the government's attitude towards Kadhis in the interior, it was made categorically clear, viz.

His Excellency does not favor the appointment of Kadhi outside the Coast Strip as salaried Government servants. He is however prepared to appoint any person recognized by the Mohammedan community in any District to be Kadhi for such a District to be Registrar under the *Mohammedan Marriage and Divorce Ordinance 1906*.²⁷²

Three reasons were advanced by the government as being applicable to Nairobi and Mumias: one, that the statutes did not allow for the appointment of officials designated as Kadhi outside the Sultan's dominions; two, that the government was not prepared to remunerate such officials when appointed; and, three, the government did not favor the establishment of Kadhi Courts in areas outside the confined districts of the Coast Province that were initially under the rule of the Sultan of Zanzibar. In these three factors were centered the racial tensions and conflicts in the process of negotiating the appointment of Kadhi in Nairobi and Mumias.

In the Protectorate, i.e. the areas falling within the dominions of the Sultan of Zanzibar, Islamic Sharī'ah was partially applied, but Nairobi and Mumias fell into the colony of Kenya, where British laws applied *in toto*, thereby creating a practical dilemma as Muslim immigrants in these areas did not perceive a geographical application of rules on religious rituals and norms, but rather assumed a spiritual and moralistic inclusiveness irrespective of political geography. Assuming a universalistic application of Islamic norms, coupled with an anticipated establishment of the *ummah* ideal Muslims demanded

²⁷² R.M. Comber, Crown Advocate on 14th October 1910.

the establishment of Muslim Courts in the interior of Kenya, which was compounded by diverse interests of Muslims based on strong ethnic and racial affiliations. The discussion herein considers the circumstances under which pseudo-Kadhis were recognized, appointed and subsequent ethnic and racially based conflicts emerging out of competing interest by individuals who wished to occupy the posts. Its practicality in the interior of Kenya will be discussed by way of two case studies, one for Nairobi in this Chapter Six, and the other for Mumias and the Nyanza Province in the proceeding Chapter Seven.

6.3 Nairobi: the New Frontier

The concept of *ummah* is significant in Islam because of its strong emphasis on unity of believers in the case of the need to unify diverse social elements on the basis of a common adherence to faith. Factors that provide an opportunity for co-religionists to display an impressive solidarity include increased travel, trading interactions, migrant labor and the development of administrative towns. Expecting a convergence of Muslims to result in increased unity however is an over-statement of the realities in Muslim societies. Most often Islamic societies display striking differences in their perceptions of the *ummah*. Instead of providing unity amongst diverse communities, Islam tends to provide religious symbols of one sort or another over which Muslims assert exclusiveness.

Heterogeneous Muslim populations thus do not necessarily produce a collective religious consciousness. In early nineteenth century Nigeria, ethnic exclusivity developed between

Hausa and Yoruba co-religionists.²⁷³ Established by a few Yoruba Muslims in Ibadan, the population of Muslims increased as a result of the proselytization efforts of the Hausa amongst the Yoruba. Eventually, the Hausa were a minority amongst the Muslims in the city. Using their numerical advantage the Yoruba began to dominate the *jumaah* mosque, which was the most important symbol of Hausa claims to exclusiveness. Realizing that they could no longer claim exclusiveness on the basis of Islam alone, the Hausa turned in large numbers towards the Tijanniya, eventually holding *jumaah* prayers in another quarter of the town. The actions of the Hausa constituted an attempt to establish an exclusive and separate 'ritual community'. Ritual exclusiveness played a political role that they did not want to share with the Yoruba. The depiction of the relationship between Hausa and Yoruba and the ensued competition over religious authority indicates a failure by Muslims to conform to the *ummah* ideal. Instead, it emphasized ethnic exclusiveness. The Nigerian example is applicable to Muslims in Kenya. A review of how Muslims related to one another in the growing metropolis of Nairobi reveals similar communal strife over religious authority and symbolism displayed by competition for Kadhiship.

6.4 Muslims in Nairobi

The city of Nairobi was established during early twentieth century as a small railway camp grew rapidly to a modern metropolis.²⁷⁴ Pressed by the need to exploit the interior of Kenya, the British craved a reliable means of communication between the interior and

²⁷³ This argument on West Africa is well developed by Michael Bantom, *West African City: A Study of Tribal life in Free Town* (London: Oxford University Press, 1956).

²⁷⁴ The importance and historical significance of the railway to the development of Nairobi is discussed in Charles Miller, *The Lunatic Express: An entertainment in Imperialism* (New York: Macmillan, 1971).

the Coast. A survey to build a railway line was commissioned in 1892, and its construction began in 1895. Six years later in May of 1901, the line reached a swampy stretch of land that local Maasai tribesmen called *Uaso Nyirobi* (a place of cool waters). Later anglicized Nairobi, it was the last stretch of open ground before the long climb up the Kikuyu escarpment towards Lake Victoria. Nairobi's development owes much to the building of the railway headquarters and its centrality, which attracted all sorts of European missionaries, settlers, travelers and their handlers and porters. Gradually Nairobi developed in importance until in 1901 the British made it the administrative capital, surpassing the coastal town of Mombasa in importance.

The establishment of Nairobi as the capital of Kenya further attracted visitors who came to settle and trade in the city. In a span of less than a decade Nairobi had become a hub of activities with a diverse urban population. The town's population comprised people from diverse social, racial, ethnic, religious and political backgrounds. Europeans were mostly colonial administrators, missionaries and seekers of fortune. The African people were usually porters and guides, while most Asians were directly involved with the railway company and employed as clerks and artisans. A few Asians were traders. Muslims were found amongst Asians and Africans from the coastal communities of Kenya and Tanganyika. These include ethnic groups such as Manyema, Makua, Nyamwezi, Bajun and Digo. In the beginning there were hardly any Muslims amongst the local Kamba, Kikuyu and Maasai communities of the interior. However, through social interaction and especially intermarriage, an upcountry Muslim demography developed.

Nairobi developed a diverse and active Muslim population whose social interactions displayed the internal dynamics of a society coming to terms with the crisscrossing loyalties of ethnic groups and religious identities.²⁷⁵ In the foremost communal strife was indicated by the separate ethnic based settlements. In Nairobi, Africans resided in separate locations with the Asians or Europeans. Amongst African groups ethnic divisions accounted for differences in residence (*kambi*). Two important camps of Muslims included *Kambi ya Waswahili* (the Swahili camp) and *Kambi ya Wasomali* (the Somali camp). There was also a significant import of Nubi Muslims. These were Nubi tribesmen who served the British government during the First World War. After the war by way of gratitude, they were given the land that they called *Kibra* (bush or thicket).²⁷⁶

The end of the Second World War also witnessed an increase in the Muslim population of Nairobi when members of two Somali clans, the Essak and the Habruwal, settled in Nairobi. In the African settlements Muslims resided in separate quarters identified by ethnic identity. I have already mentioned above that, in Nairobi, the Swahili quarters were referred to as *Kambi ya Waswahili* (the Swahili camp). Its residents comprised categories of coastal communities such as the Manyema, Nyamwezi, Digo and Bajun. Though these communities were of diverse ethnic origins in their native locations, in Nairobi they were all identified as the Swahili on the basis of a common dialect,

²⁷⁵ For a history of Islam in Nairobi see Yusuf A. Nzibo. "The Swahili and Islamization in Nairobi: 1888-1945" (Staff Seminar Paper no. 1 1986/87, Department of History, University of Nairobi). A. N. Maingi, "The Diversity Factor in the History of Islam in Nairobi 1900-1963", (MA Dissertation, University of Nairobi, 1987). Kabiri, Ngeta, "Islam and Colonialism in Kenya: A case study of the Kenya African Muslims in Nairobi to c. 1939" (MA Thesis, Kenyatta University, 1990).

²⁷⁶ A description of the history of the Nubi settled at Kibera in Nairobi can be found in Timothy Parsons, "Kibra is our Blood": The Sudanese Military Legacy in Nairobi's Kibera Location 1902-1968" *The International Journal of African Historical Studies*, Vol. 30, No. 1 (1997) 87-122.

Kiswahili, and their adherence to Islam. Amongst them, true Swahili were communities who resided much closer to the sea. Thus, the Bajun would claim to be more Swahili than the Nyamwezi who lived more inland. Further, closeness to Arabs through intermarriages also authenticated one's claims to be a true *Mswahili* (Swahili person). In the case of Nairobi, communities such as the Digo, Makua, Nyamwezi and Manyema were mere 'hangers on' to Swahiliness. When the Swahili held religious rituals, like the *maulidi* (from Arabic *Milad-un-Nabi*), true Swahiliness manifested itself as each of the communities organized their rituals separately. It was common in Nairobi during the early twentieth century for the Nyamwezi or Digo to hold separate *maulidi* to challenge another *maulidi* held by the Bajun. Equally each *kambi* (camp) settled by Muslims recognized its own leaders, the *wazee* (elders).²⁷⁷

Pangani, one of the largest African settlements in early nineteenth century Nairobi, is said to have comprised several mosques all associated with a separate ethnic group. *Mji wa Mombasa* fell within Pangani and was inhabited by various Swahili groups.²⁷⁸ Communities built mosque according to group affiliations. The first ever Mosque built in this area was known as *Masjid Awal* or *Masjid Anisa* and had been built by the Bajun.²⁷⁹ Other non-Bajun coastal communities worshipped at another Mosque, *Msikiti wa kati* (center Mosque), while converted African Muslims from the Kikuyu, Kamba and Maasai were inclined toward building their own *mahaji* mosque as well. Muslims religious

²⁷⁷ Omar Suleiman Mwajambia, Personal Interview. Nairobi 22nd June 2001.

²⁷⁸ For a history of African Settlements in Nairobi see Werlin H. Herbert, "The Nairobi City Council, The Politics of Co-operation in African Local Politics" (Ph.D Dissertation: UCLA 1966).

²⁷⁹ Omar Suleiman Mwajambia (a.k.a Mzee Pembe) Personal interview. Nairobi, 22 June 2001.

rituals followed a similar pattern at the settlements. Each community prayed at their own mosque and recognized separate leaders of mosques and *kambi* (settlements). These considerations became manifest with attempts to institute a single practitioner of rituals especially *kuoza* (marriage).²⁸⁰

Interactions between Muslims and colonial officers occurred when the latter initiated attempts to exercise authority over the recognition of Kadhi. In 1906, the *Mohammedan Marriage, Divorce and Succession Ordinance* was promulgated to stipulate guidelines on what would make up a legal Muslim marriage: the role and functions of officials who constituted the same; regions where Muslim marriage laws were applicable; and the title of various categories of officials, their functions and areas of jurisdiction. Initially the Ordinance only applied to the coast of Kenya as part of the government's undertaking with the Sultan. In principle, British officers were under obligation to implement Islamic laws at the Coast, but there were no specific guidelines on how to deal with Muslims in the interior. The absence of guarantees for implementing Muslim laws in the interior meant that Muslim petitions for its application were left to the discretion of colonial officers on the ground.

Muslim immigrants from the Coast settled in the interior faced an ambiguous arrangement. They appropriately recognized *wazee* (elders), *maalims* (teachers) and shaykhs who officiated in Muslim marriages as Kadhi. But the government was concerned about the constitutional applicability of the title of 'Kadhi' in the interior of

²⁸⁰ Maulidi Jasho, Personal Interview. Nairobi 24th August 1999.

Kenya. I will show that, according to the *Mohammedan Marriage, Divorce and Succession Ordinance 1898*, Kadhi were Muslim officials whose domain, areas of influence and authority were confined to districts along the Coast of Kenya. The government was not obliged to implement Islamic codes in the interior and thus assumed that titles like 'Kadhi' were not applicable to such areas. Thus, when Muslims termed the *wazee*, tribal Shaykhs and *maalims* who instituted marriage rituals as Kadhi, colonial officers considered this an aberration or against the rules and regulations.

Different perspectives between Muslims and colonial officers with regard to the titles of Kadhi created an administrative bottleneck calling for the resolution of three contentious issues. First, with or without the government's recognition, Kadhis had previously existed in Nairobi because for as long as one was capable of meeting the religious roles and functions and was acceptable in a community, such individual was titled Kadhi. On the other hand, the government was not in favor of having each community recognize a separate Kadhi, arguing that it was not a prudent and acceptable administrative practice. Secondly, there was the problem of statutory use of the title of Kadhi. The government rejected the application of the title of Kadhi amongst Muslims in the interior, arguing that the title was statutorily applicable only in the Sultan's domains. Third, the government wanted to inhibit the practice of having every community recognize its own Kadhi. Instead, it favored having one individual, appointed by the government and recognized by all Muslims, to institute Muslim marriages. During the period 1902-1945 these insoluble issues concerned both the government and Muslims alike.

6.5 Appointing pseudo-Kadhis in Nairobi

The *Mohammedan Marriage, Divorce and Succession Ordinance 1906* granted colonial officers the authority to supervise and decide who could be Kadhi. District Officers, District Commissioners and Provincial Commissioners interpreted and implemented the rules to be observed by Kadhi, as they assumed a supervisory authority over appointees. When intentions to institute one Kadhi for Nairobi were revealed to the community not only did the Muslims jostle for the position while aligning themselves on racial and ethnic grounds, but government's practice and thoughts and interference were made manifest.

The first aspirant, Shaykh Ibrahim Abdullah, a Somali, applied to be appointed "Mohammedan Kazi (sic) in Nairobi".²⁸¹ He supported his request with credentials claiming to have a thorough knowledge of Arabic, Swahili and Urdu, complemented with a fair comprehension of English.²⁸² The Swahili proposed Shaykh Abud b. Shaykh Kale al-Bajun to challenge the Somali aspirant. Collectively, the Swahili and the Somali viewed the government's intention to appoint one Kadhi for all Muslims in Nairobi as an opportunity for the appointee to exercise authority beyond the confines of the racial group. Aware of this, Lalli Ahmed, the *mzee* (elder) of the Swahili rallied his community

²⁸¹ Sheikh Ibrahim Abdulla to Registrar of the High Court, Mombasa, of 30th February 1907 in KNA/AP/1/368.

²⁸² Sheikh Ibrahim claimed to have been to the Government School at Steamer Port, Aden where he acquired these qualifications.

behind their kinsman.²⁸³ This action eventual led to an acrimonious competition between the Somali and the Swahili.

An appraisal of the nature of racialized Muslim posts of pseudo-Kadhi benefits more from a review of the process of appointments once initiated. Individuals and communities were already in disagreements. Hence the government pursued demands made by the Swahili to the effect that previously colonial officers recognized the Swahili candidate, Shaykh Abud b. Shaykh Kale as Kadhi for Nairobi. The government's concern was not so much the individual but the title. Thus when Judge R.W. Hamilton inquired about the position of Kadhi he was concerned about the terms under which such officials existed.²⁸⁴ As a matter of fact F.W. Issack, the government's representative in Nairobi, responded in favor of the Swahili claims advising that Shaykh Abud had previously performed the role of a Kadhi.²⁸⁵ The Swahili expected an immediate confirmation of Shaykh Abud but, to be fair to the other applicant, the certificate that the Swahili had produced was not taken into consideration. Instead, it was impressed upon the colonial officers in Nairobi to be wary of the government's principle that Kadhis were performing an important religious function for the Muslims but that they were also helping in general administrative function. Thus, whoever was appointed had to meet, amongst others, the qualities of being reliable and sympathetic to the attitudes of the colonial administration.

²⁸³ The Swahili produced a certificate with the seal of the East African Protectorate dated 20th November 1906, stating that "... Sheikh Abud has been appointed Kadhi by the sub-committee of the Swahili community in Nairobi". See KNA/AP/1/368.

²⁸⁴ R. W. Hamilton, Principal Judge, made this inquiry on 5th February 1907 through F. W. Issack, Collector, in Nairobi.

²⁸⁵ F. W. Issack, to Judge R.W. Hamilton, in favor of the appointment of Sheikh Abud on 5th February 1907 in KNA/AP/1/368.

Furthermore, the Kadhi of Nairobi should by necessity be acceptable to the community if he were to be successful in performing his task. The most important consideration was that colonial officers had to be sure that the appointee was a “man of reputable character.”²⁸⁶

Communal tensions and competition became evident as Muslims lobbied influential individuals amongst themselves. Maulana Abd Allāh Shah, an Asian Muslim philanthropist, was approached to support the Swahili candidate but he thought none of the aspirants was competent to effectively undertake the duties of a “Kadhi”, and suggested the government should engage someone competent from the Coast.²⁸⁷ Before a decision was reached, Shaykh Ibrahim Abd Allāh became rather impatient out of concern that the Swahili were attempting to influence prominent people in their attempts to cheat him of the position. In desperation, he challenged Abud’s candidature arguing that the latter’s knowledge was inadequate. Shaykh Ibrahim requested a duel with Shaykh Abud where he, Shaykh Ibrahim, would ask his competitor “one question or two” to determine who was more knowledgeable and appropriate for the appointment.²⁸⁸

In Nairobi, the Somali comprised two opposing clans, the Essak and the Habruwal. Unlike the Swahili, the Somali did not necessarily support Shaykh Ibrahim's candidature as some faulted his knowledge and character to indicate that he did not enjoy a privileged

²⁸⁶ R.W. Hamilton, Principal Judge to F. W. Issack, the Collector, on 7th February 1907, in KNA/AP/1/368.

²⁸⁷ This was the opinion of one Maulana Abdulla Shah one influential Muslim amongst the Asian community, to F. W. Issack on 15th February 1907 in KNA/AP/1/368.

²⁸⁸ Sheikh Ibrahim to F. W. Isaack on 3rd May 1907, in KNA/AP/1/368.

position. One Somali elder, Ibrahim Hassan was critical of Shaykh Ibrahim and accordingly intimated his opinion to the government, suggesting that Shaykh Ibrahim Abd Allāh

...should not get the position of 'Sheikh of Islam' (sic), because he does not know Mohammedan religion well, he could not differentiate between wrong and right and was a backbiter.²⁸⁹

Ibrahim Hassan's reference to 'Sheikh of Islam' above might create two false impressions, viz. that Shaykh Ibrahim Abd Allāh was considered for the post of Shaykh al-Islām or that the Muslims in Nairobi thought that once one had been appointed 'Kadhi' then you are the 'Sheikh of Islam'. I think Ibrahim Hassan confused the two terms so that it was a case of improper perception of the post of Kadhi in Nairobi and its relation with the post of Shaykh al-Islām, then held by Sharif 'Abd al-Raḥman b. Aḥmad al-Saggaf. Nevertheless, Ibrahim Hassan's objections revealed intra-Somali rivalries, adding to the already existing inter-racial differences between the Swahili and the Somali. Ultimately intra-Somali rivalry enhanced chances for the appointment of a Swahili as R.W. Hamilton, the Principal Judge, thought it was inadvisable and undesirable to appoint a Somali 'Kadhi' in Nairobi.²⁹⁰ Contrary to the suggestion by Maulana Abd Allāh Shah, the government thought it was untenable to import someone from the Coast, as they would have higher financial demands.²⁹¹

²⁸⁹ Ibrahim Hassan to Government on 6th March 1907 in KNA/AP/1/363.

²⁹⁰ Sentiments expressed by Judge R. W. Hamilton regarding the appointment of Sheikh Ibrahim Abd Allāh on 20th March 1907 in KNA/AP/1/368.

²⁹¹ There was an element of financial consideration here, a Kadhi from Mombasa would probably ask for Rs 70.00 per month which government was not willing to pay as yet.

Emerging communal differences delayed the appointment of a “Kadhi” in Nairobi, but its urgency was felt when the judiciary department came under pressure. They could not decide upon Muslim matrimonial matters without the assistance of a “Kadhi”. In fact cases involving Muslims had in the interior been filed in the Court but adjourned since a “Kadhi” had not yet been appointed.²⁹² Since the idea to appoint a Kadhi had been mooted for a long time, an immediate appointment was demanded. Referring to the availability of Shaykh Abud bin Shaykh Kale al-Bajun, G.A. Logan, Nairobi’s Town Magistrate, expressed the view that the judiciary had already identified a man from ‘Siu’ for appointment.²⁹³

By September 1907 the appointments of a ‘Kadhi’ became even more likely once various bureaucratic procedures involving authentication of the appointee’s knowledge by the Shaykh al-Islām had been complete.²⁹⁴ Involving a visit to Mombasa, the process took some time, but when Shaykh Abud visited Mombasa, the Shaykh al-Islām recommended him positively though with some reservation, because “Shaykh Abud b. Shaykh Kale al-Bajun was not well qualified for all general laws, but pertaining to matters of Marriage and Divorce laws, he found him [a] qualified, intelligent and competent man.”²⁹⁵ Sharif Abd al-Rahman’s recommendation supported the appointment, but suggested that

²⁹² These were worries expressed by G.A. Logan, Nairobi Town Magistrate to Assistant Deputy Commissioner, Nairobi ref.no.104/07 of 22nd March 1907, in KNA/AP/1/368.

²⁹³ Siu or Siyu is a location in the Lamu archipelago where Shaykh Abud b. Shaykh Kale al-Bajun hailed from before settling in Nairobi. It is also important to mention that Siu was then considered as one of the centers of Islamic learning having produced some of the prominent *ulama* in the Coast to include Sharif Abd al-Rahman b. Ahmad, the Shaykh al-Islām.

²⁹⁴ R. W. Hamilton to Acting PC, Nairobi ref.no.C/1221 of 9th September 1907, in KNA/AP/1/501.

²⁹⁵ Sharif Abd al-Rahman b. Ahmad to Judge R. W. Hamilton on 15th October 1907, in KNA/AP/1/368.

Shaykh Abud should improve his knowledge of other matters of Islamic laws to gain competence as 'Kadhi'. Thus guaranteed, he was appointed to the post albeit on a probationary basis pending review and a further test after a year.²⁹⁶ The suggestion that Shaykh Abud improve his knowledge of other disciplines in Islamic law was intended to see that he performed better, but Shaykh Abud was contented with his appointment, and became complacent, which proved his undoing later.

Temporary and probationary, Shaykh Abud's appointment declared the Swahili winners in the ethnicized competition for the position, but the Swahili candidate was a "pseudo-Kadhi", not accorded the full authority of Kadhiship. Shaykh Abud was allowed to preside over Muslim marriages and divorces. To his adversaries, especially the Somali, the temporary appointment signified the government's lack of confidence in the "Kadhi" and the hope to dislodge him was raised as Somali detractors made Abud's task difficult by constantly challenging his authority.

Disagreements abounded, and the government hesitated to confirm Shaykh Abud's appointment after he served for one year. Remaining precariously unconfirmed, Shaykh Abud lodged complaints to the government over its procrastination, expressing dissatisfaction and wonder as to why one year had elapsed since his appointment, yet "power was not invested upon him."²⁹⁷ Frustrated he blamed the Somali for his woes and responded to their challenge by accusing them as unauthorized people illegally

²⁹⁶ Judge R. W. Hamilton recommended that Sheikh Abud be offered a salary of Rs. 30.00 to be increased to 40.00 after successful completion of probation and positive reports from the Shaykh al-Islam.

²⁹⁷ Sheikh Abud to Principal Judge, R. W. Hamilton on 18th January 1908, in KNA/AP/1/501.

performing the roles of Kadhi. Because they were not appointed by the government Shaykh Abud viewed them as impostors and 'private Kadhi' (*Makadhi wa kibinafsi*), unlike himself who was the 'public Kadhi' (*Kadhi wa ummah*) appointed with government's authority. He impressed upon the government to allow him take disciplinary action against the unauthorized impostors but also accused the government of complicity because these

...unauthorized Kadhi were adjudging people whom the government has no knowledge but government has not granted me the power to prosecute them...these 'private Kadhi,' were corrupting the law and they did not listen to me, the 'public Kadhi'. Further they were making '*fitina*', making tricks and making tribal statements against me.²⁹⁸

Shaykh Abud's complaints were not simply the frustrations of an embattled, powerless state functionary in the face of adversity. Rather, the scenario points to the difficult position Muslim officials faced while operating in multi-ethnic Muslim communities. The complaints and criticisms were based on the government's intents to appoint a single 'Kadhi' for the entire population of Muslims. It brings to the fore the '*fitina*', agitation and contests based on ethnic differences and considerations over Kadhiship in Nairobi. Episodes leading to Shaykh Abud's appointments were good evidence of British attempts for centralization of the post of 'Kadhi', but it is the racialization and Arabization part of the discourse that makes this discussion relevant to the thesis. Probably the government did not need to interfere with how or who conducted marriage rituals. In this respect, the Somali would have been left alone to recognize and respect Somali Kadhis, likewise the Swahili. However, the government's desire for centralization and bureaucratization meant that communities were compelled to recognize the person appointed by the

²⁹⁸ Shaykh Abud complaint to Judge, R.W. Hamilton on 18th January 1908, in KNA/AP/1/501.

government without recourse to informal tribesmen. This increased racial competition for the honor and respect emanating from the authority bestowed by the appointment.

6.6 An unpalatable fiqh: The Story of Haji Hussein's marriage to Fatuma

When Shaykh Abud was appointed Kadhi, considerable *fitina* was generated by his Somali detractors, and Shaykh Abud did not miss an opportunity to blame them. However, his troubles did not entirely emanate from the Somali. His performance itself was wanting. When he was appointed, the government had anticipated a smooth administration of Muslim affairs through him. But ensuing agitation and opposition to his authority frustrated both the Kadhi and the government. Colonial officers such as F.W. Issack, the District Commissioner of Nairobi who had supported his appointment were generally not impressed by Shaykh Abud's performance.²⁹⁹

Differences between Shaykh Abud and F.W. Issack were based on how each perceived the role of the other. While Issack thought that Shaykh Abud was under his supervision and as such his junior in rank, Shaykh Abud viewed Issack's interventions and supervision of his work as unwarranted interference. These differences persisted to such an extent that at one time F.W. Issack attempted to have Shaykh Abud relieved of his position and duties by accusing him of incompetence and financial impropriety. Generally, Issack and Abud each thought they had powers independent of the other, especially so for Shaykh Abud who could not withstand interference in Islamic matters

²⁹⁹ By this time F. W. Issack was the District Commissioner for Nairobi.

while Issack, on the other hand, viewed Abud as a subordinate officer who should abide by orders from his superiors.

The government did not remunerate Kadhis in areas outside the Coast Province but, to meet their expenses, Kadhis were allowed to collect fees from their duties in a self-remunerating process. Likewise, Abud collected fees for the services he rendered which F.W. Issack did not favor. Consequently, F. W. Issack accused Shaykh Abud of financial impropriety and inefficiency. The District Commissioner accused the Kadhi of not accounting for revenue collected in the process of marrying people, hearing cases and granting divorces. But a serious charge was leveled at him in that he had “collected fees but the amount stated in his books did not tally in every case with the sum paid to government”.³⁰⁰ The Kadhi was thus implicated in serious and scandalous financial mismanagement bordering on theft. To further aggravate the matter F.W. Issack accused the Kadhi of implementing bad *fiqh* (jurisprudence) by misrepresenting and transgressing the boundaries of Shari‘ah law when he allowed women to ask for large sums of money as *mahr* (dowry).³⁰¹

F.W. Issack's sentiments sent clear signals that the administration in Nairobi was not satisfied with the performance of the Kadhi. Basically, Shaykh Abud was not meeting the government's expectations to maintain order and act as a mediator between the

³⁰⁰ These were complaints by F. W. Issack, the District Commissioner, Nairobi to Provincial Commissioner, Nairobi, ref. no. 5 of 12th June 1909, in an attempt to have Sheikh Abud relieved of his position as a result of misappropriation of funds and inappropriate bookkeeping, see KNA/AP/1/501.

³⁰¹ Certainly F. W. Issack was himself embellishing on his understanding of the legal requirements concerning *mahr* because the Shari‘ah does not specify how much can be asked as dowry.

administration and the Muslims. He had failed to assert his authority among the Muslims of Nairobi, and the government was disappointed. Shaykh Abud himself was accused of being responsible for stirring up endless strife between various ethnic groups. The government favored community leaders who commanded outright authority and recognition, because it was easier for colonial authorities to exercise indirect authority through them. In this regard, Shaykh Abud was a failure and a likely impediment to the good administration expected by colonial authorities.

Generally, as has been discussed earlier herein, the colonial government supported individuals for positions of authority, anticipating that they would in turn uphold and exercise authority on behalf of colonial authorities. This explains why the government favored Abud as opposed to Shaykh Ibrahim. Nevertheless, signs of dissent against a particular official led the colonial government to review its appointments. As Shaykh Abud's authority was constantly challenged, his usefulness for the government weakened. Consequently, F.W. Issack thought it prudent for another official to be installed, and strongly recommended the dismissal of Shaykh Abud. However, the Principal Judge R. W. Hamilton did not concur with the reasons advanced, and thought the Kadhi had acted properly by deducting part of court fees for his remuneration.³⁰² Since there were also no fixed amounts for dowry in Islamic legal practice, Shaykh Abud was absolved of any wrongdoing. More importantly,

³⁰² R.W. Hamilton made reference to a rule published with the Mohammedan Marriage Divorce and Succession Ordinance, which allowed Kadhis who were not yet paid by government the authority to deduct part of the Court fees for their personal use. See also Official Gazette for 1906. p.510.

R.W. Hamilton was surprised that F.W. Issack did not consider the difficult position faced by Abud with regard to the Somali. The bottom line was that Abud's task was difficult as a result of ethnic rivalry. In R. W. Hamilton, Abud found a formidable supporter and sympathizer, and the recommendation for his dismissal was not considered.

R.W. Hamilton declined to take punitive measures against Shaykh Abud and held the government partly responsible for the situation. Had the government appointed Shaykh Abud and immediately bestowed upon him the authority to operate without obstacles, he would not have experienced any friction from his challengers.³⁰³ Hamilton pursued a conciliatory posture and sought the intervention of Somali elders to ease the tension. Consultations resulted in a guaranteed undertaking from the Somali to minimize their opposition to Shaykh Abud, but fell short of an undertaking to recognize his authority. Once R.W. Hamilton was assured of a reduced Somali opposition, he absolved Shaykh Abud of any wrongdoing, hinting towards a possibility that Shaykh Abud would be given fully-fledged Kadhi status.³⁰⁴

R. W. Hamilton's interventions enabled Shaykh Abud to hold onto his 'Kadhipship' for a while, but his troubles were not yet over. Towards late 1909, he had to survive a major challenge to his authority resulting from his bad *fiqh* and conduct. Perhaps Shaykh Abud should have taken the suggestion by the Shaykh al-Islām to improve his knowledge of the Shari'ah. If he had observed this counsel, he would not have made mistakes such as the

³⁰³ Sentiments expressed by the District Commissioner, Nairobi, on 2nd February 1909.

³⁰⁴ Principal Judge, R.W. Hamilton to Secretary to Administration, Nairobi, ref. no. 60 of 27th May 1909.

one involving one Haji Hussein and his marriage to Fatuma. In May 1909, Haji Hussein lodged a complaint about Shaykh Abud's competence and conduct as a 'Kadhi' accusing him of knowingly and wrongfully instituting *nikah* (marriage ceremony) between Haji Hussein and a Swahili woman named Fatuma, before she had completed her *iddāt*³⁰⁵ after being divorced from her estranged husband. Haji Hussein should have known about this himself, but he blamed the Kadhi when the marriage encountered problems.

The Kadhi's judgment caused a dispute in the community that cost him his job, not only because he flouted Islamic rules but because he infuriated the Swahili when he married one of their women to an Arab. There seems to have been an obvious ignorance of unwritten rules outlawing inter-ethnic marriages. However, the Kadhi was worried about flouting the *iddāt* requirements. Upon realizing his mistake Shaykh Abud retracted and ordered Fatuma to stay with her family until she had completed her *iddāt*, but ordered Haji Hussein to pay for Fatuma's upkeep. As the suitor, Haji Hussein obliged. However upon completion of her *iddāt*, Fatuma declined to return to Haji Hussein. Most Swahili accused Shaykh Abud of having conducted a secret marriage between Haji Hussein and Fatuma. Apparently, Lalli Ahmed, the leader of the Swahili, was not in favor of a Swahili woman marrying an Arab. Lalli used his influence to persuade Fatuma, who in turn declined to honor her marriage to Haji Hussein.

³⁰⁵ This is the waiting period that a Muslim woman is required to wait before she can legally remarry after she has been widowed or divorced.

On the other hand, an infuriated Haji Hussein complained about Lalli Ahmed's influence on Fatuma. Since Shaykh Abud had officiated in the ritual, Haji Hussein anticipated that he would invoke his authority and influence Fatuma to honor the marriage. To Haji Hussein's amazement, Shaykh Abud offered little assistance. Instead, he advised Haji Hussein to take up the matter in civil courts. While Haji Hussein followed this advice and sought the civil court's intervention, Shaykh Abud conspired with other Swahili men to render Haji Hussein's case null and void. The Kadhi arranged for and compelled Sharif Abd Allāh and one, 'Alī b. Sayyid, to give false evidence against Haji Hussein in the civil courts. The three of them thus conspired and misled the civil courts by giving false evidence in the form of a categorical denial that Shaykh Abud had instituted any marriage between Haji Hussein and Fatuma, let alone instituting a secret one. Consequently Haji Hussein lost a wife and his court case for lack of evidence. However, if Shaykh Abud had thought that his troubles with the community were over, he was mistaken. Frustrated and embarrassed, Haji Hussein swore vengeance and sued the Kadhi for improper conduct. His litigation did not raise the legalities and moral implications of Shaykh Abud's actions, but strove to recover expenses incurred while taking care of Fatuma and wished to inform the government of the Kadhi's unbecoming conduct.³⁰⁶

Haji Hussein aroused ethnic concerns by asking the government to seek proof of the misdeeds of the Kadhi from other ethnic communities. He anticipated the support of fellow Arabs and thought the Somali would support him against Shaykh Abud, considering that they had wanted to dislodge Shaykh Abud from the position of Kadhi in

³⁰⁶ This is from Haji Hussein's sworn statement before J.E. Stocker in civil case no. 27 of 1909 in KNA/AP/1/501.

the first place. Since Shaykh Abud was a Bajun who had influenced fellow Bajun to give false evidence, the other Swahili groups were equally embarrassed and were not likely to sympathize with him. Certainly, Haji Hussein took advantage of ethnic differences in the community and strategically included other ethnic groups in his dispute, hoping to prove Shaykh Abud unpopular. J.W. Barth, the Principal Judge, dismissed his queries considering the allegations against the 'Kadhi' a result of *fitina*, owing to the conglomeration of ethnic groups and diversity of interests in the Muslim community of Nairobi. He concluded that the 'Kadhi's' position had been difficult and that there were no grounds to take dismissive action against him.³⁰⁷

The government's actions in support of Shaykh Abud infuriated Muslims who sympathized with Haji Hussein and were aware that Shaykh Abud had transgressed Muslim law and questioned his moral standing for speaking falsehoods. Muslims demanded his removal and were infuriated when the government expressed confidence in the 'Kadhi.' In spite of ethnic diversity and differences they collectively defied the government's support of Shaykh Abud, accusing the government of imposing the Kadhi on them. To this effect, a joint petition was sent to the government accusing him of incompetence and unfamiliarity with the requirements of the Muslim law pertaining to marriage and divorce. Relying on Shaykh Abud's probationary appointment pending further proof of his competence, Muslims demanded that he produce an *ijāza*³⁰⁸ from the

³⁰⁷ Sentiments expressed by J.W. Barth to Provincial Commissioner, Nairobi on 5th November 1909 in KNA/AP/1/501.

³⁰⁸ This is a form of certificate that a Shaykh would normally issue to a student to authenticate the students knowledge of a particular discipline(s) in Islam.

Shaykh al-Islām to authenticate his knowledge. The Muslims of Nairobi did not agree with the government's view that opposition to Shaykh Abud was the result of *fitina*. Rather, they insisted that the manner in which Shaykh Abud had conducted his duties in the case involving Haji Hussein was proof of incompetence. Communities persistently objected and urged the government to relocate Abud to another area if it was the government's wish to continue engaging his services.³⁰⁹

In January 1910, the government instituted an inquiry into the conduct of Shaykh Abud. Under normal circumstances, Sharif Abd al-Rahman b. Ahmed, the Shaykh al-Islām, would have headed such an inquiry. Considering that both the Shaykh al-Islām and Shaykh Abud were from Lamu, it was thought inappropriate for him to head the inquiry. As a matter of fact Shaykh Abud had initially been recommended by the Shaykh al-Islām. Sharif Abd al-Rahman would be compromised or accused of ethnic sympathy and connivance in the event that Shaykh Abud was cleared of wrongdoing.³¹⁰ To avoid an embarrassing situation, 'Alī b. Şalim, the then Assistant Liwali for Mombasa, and G.H. Pickering conducted the inquiry.

The findings of the inquiry cast aspersions on Shaykh Abud's character and knowledge. He was found to have given substantial false evidence with the intention to protect

³⁰⁹ These were sentiments and demands by the Muslims in Nairobi sent to Town Magistrate, on 17th January 1910, under the leaderships of community representatives which included, Abdullah bin Salim (Arabs), Hussein bin Ali and Ibrahim Hassan (Somali), the Swahili were represented by one identified only as Maalim Swahili. See KNA/AP/1/501.

³¹⁰ Sentiments expressed by J.W. Barth when he made recommendations on the people to sit on the inquiry to investigate Shaykh Abud's conduct. See KNA/AP/1/501.

himself and mislead the court, and serious misconduct was proved against him. Ali bin Salim noted that Abud's actions were a very serious misconduct against Sharī'ah law. With this report, the judiciary department had no option but to recommend that Shaykh Abud be deprived of his position. Upon its implementation, a new Kadhi was to be appointed.³¹¹ The search for a Muslim official in Nairobi began by the government in 1906 lasted for only four years as Shaykh Abud was relieved of his duties. His sacking further intensified ethnic considerations in future appointments of Muslim officials to fill the vacant post.

6.7 A 'brief Somali interlude', July 1913-February 1914

In 1910 when Shaykh Abud was relieved of the post of 'Kadhi' no person was appointed to replace him until mid 1913, when Shaykh 'Alī b. Hassan was appointed. The Somali were elated and felt honored that one of them was appointed. Shaykh 'Alī b. Hassan was a capable official as his tenure reduced inter-ethnic *fitina* and minimized intra-Somali agitation. Unfortunately his tenure was short-lived. He passed away in early 1914.³¹² The short experience with Shaykh 'Ali b. Hassan indicated that if an acceptable individual was appointed to the position of Kadhi the likelihood of reducing inter-ethnic conflicts was greater. At least, Shaykh 'Ali b. Hassan's tenure had proved these sentiments and encouraged the government's attempts to find an effective successor to Shaykh

³¹¹ R.W. Hamilton, Principal Judge, to Secretary of Administration on 4th August 1910, in KNA/AP/1/501. It was realized that there was a need to get a suitable person for the position and to be achieved the holder should receive better pay. The search for a new Kadhi for Nairobi was again reactivated.

³¹² Sheikh Ali bin Hassan passed away on 14th February 1914.

‘Ali b. Hassan. However, this initiative was not immediately realizable. An earlier suggestion to appoint someone from Mombasa was revisited when F.C. Hamilton thought it would minimize the ethnic antagonism and the *fitina* prevalent in Nairobi. An appointee from another place was expected to be neutral which would perhaps reduce the existing agitation and *fitina* between the Somali and Swahili.³¹³

An impression may be created by the above discussion that the government disapproved of the relevance of ethnicity in its nomination of Kadhi. In actual sense, the government followed the same policy of favoring the appointment of Arabs to official positions. With the anticipated appointment of a Kadhi from the Coast, the same policy seemed to have been followed. But when ever reservations were raised on the practicality of recruiting someone from the Coast who was ready to serve without direct remuneration from the government, it had no option but to search for a Kadhi from within Nairobi.³¹⁴

From May 1914 the Muslims of Nairobi prepared for another contest over Kadhiship, as aspirants wanted to win over individual *heshima* (honor/respect) and prestige (*hadhi*) for their respective ethnic groups. Anticipating the appointment of a new Kadhi, each ethnic group lined up prospective candidates. Sharif ‘Abd Allāh and Abdi Somad represented the Swahili, while the Somali clans were represented by Shaykh ‘Ali b. Hassan and

³¹³ F.C. Hamilton, District Commissioner, Nairobi, to Registrar High Court in ref. no.69/24/13 of 14th April 1914, in KNA/AP/1/892.

³¹⁴ R. W. Hamilton, Chief Justice to District Commissioner, Nairobi ref. DA. 330/14 of 16th May 1914, in KNA/AP/1/892.

Shaykh Ibrahim. This display of ethnic enthusiasm hampered attempts to secure a neutral candidate.

Once the candidates showed an interest, they were tested on their knowledge. The Shaykh al-Islām was asked to examine the candidates purely from the point of view of their knowledge of Islamic law. Because Abdi Somad, one of the candidates hailed from Lamu, the Shaykh al-Islām was cautioned against considering the ethnic origins of the candidates. In fact, other communities expressed a concern that Abdi Somad was likely to be favored and countered his inclusion amongst candidates eligible. They hinted that Abdi Somad was suffering from some sort of mental disability, and was incapable of holding the post of Kadhi.³¹⁵

Nevertheless, Abdi Somad and Shaykh Ibrahim were the first to make the trip to Mombasa. The Shaykh al-Islām reported that each one of them knew enough to perform marriages but neither was competent in other matters of Islamic law. On the other hand, Sharif Abd Allāh of the Swahili was not successful, as he was found to be “inferior” to the other two candidates.³¹⁶ Between the two candidates, the Bajun, Abdi Somad, and the Somali, Shaykh Ibrahim, the Shaykh al-Islām could not draw any distinction based on superiority of *‘ilm* (knowledge). He left the administration in Nairobi to pick either of the

³¹⁵ F.C. Hamilton, District Commissioner, Nairobi, to Registrar High Court, Mombasa for onward transmission to the Shaykh al-Islam, on ref. no.69/24/13 of 2nd July 1914, in KNA/AP/1/892.

³¹⁶ Registrar High Court to District Commissioner, Nairobi, ref. no. 608/14 of 2nd September 1914, reporting on the findings of the Shaykh al-Islam, see KNA/AP/1/892.

two for the position. This was poised to become another contest between the Somali and the Swahili.

The process of choosing between Abdi Somad and Shaykh Ibrahim revealed odd government practice. Initially, the administration asked the Shaykh al-Islām to test the competency of the candidates and cautioned him against considering the ethnic origins of the candidates. But when a clear distinction based on superiority of *‘ilm* between Abdi Somad and Shaykh Ibrahim was not possible, the colonial administrators relied on racial and ethnic consideration to pick the Kadhi. Shaykh Ibrahim, the Somali candidate, was ruled inappropriate because he belonged to the Habruwal clan, one of the ethnic groups of the Somali. The government feared that appointing a Somali to the position would cause endless *‘fitina’* amongst other rival Somali sub-groups who would be jealous of a member of the third group holding such an office.³¹⁷ The District Commissioner was aware that Kadhiship was based on the knowledge and expertise of the candidate. According to the District Commissioner, in fact, the Somali candidate was better educated than Abdi Somad and suitable for appointment. But there could be other objections against him by other sub-ethnic Somali groups, making his appointment undesirable and leaving the post open for Abdi Somad.³¹⁸

³¹⁷ Registrar High Court to District Commissioner, Nairobi ref. No. DR.600/14 of 28th August 1914 in KNA/AP/1/892.

³¹⁸ District Commissioner, Nairobi, to Acting Chief Secretary, ref. No.69/24/13 of 9th September 1914, in KNA/AG/51/205.

6.8 Pseudo-Kadhis and 'Registrars'

The culmination of debates about the appointment of 'Kadhi' of Nairobi occurred when Abdi Somad was favored at the expense of Shaykh Ibrahim. The Swahili had again won in round two. However, the matter was not completely closed. In 1906 when the appointment of 'Kadhi' for Nairobi was first discussed, the obstacle was the use of the title of 'Kadhi' in areas outside the dominions of the Sultanate of Zanzibar. This matter was revisited at this stage. In 1914, reference was made to the precedent as it became clear that Abdi Somad would be appointed. J.W. Barth, the Attorney General, raised reservations on the legality and permissibility of appointing Kadhis outside the Coast Province and cautioned that such appointments were a reversal of the policy applied by previous government officials. He reminded the administration that the *Mohammedan Marriage, Divorce and Succession Ordinance 1906* recognized the appointment of officials designated as 'Registrars' and not as 'Kadhi' for areas outside the Coast and suggested a continuance of this precedent.³¹⁹ J.W. Barth emphasized his objection and caution based on the legal interpretation of the title 'Kadhi', as the statutes under which these officials were recognized stated that they were Muslim officials whose authority was confined to the Coast of Kenya.

³¹⁹ J.W. Barth, Attorney General, to Acting Chief Secretary, ref. No. M. 252/12 of 9th September 1914, in KNA/AG/51/205.

Justice J.W. Barth's apprehensions were discussed and argued, but rejected by H.R. Tate, the District Commissioner in Nairobi who considered these reservations unnecessary. Though 'Kadhis' appointed in Nairobi were 'pseudo-Kadhi', H.R. Tate urged that there was already a precedent in the appointment of Shaykh 'Alī b. Ṣalīm as a 'Kadhi' in Nairobi and emphasized that the intention to appoint Abdi Somad was not a new invention, but rather an appointment to succeed Shaykh Hassan b. 'Alī.³²⁰ According to Tate, Kadhis could be appointed in areas outside the Coast without obliging the government to remunerate them. Accordingly, the administration in Nairobi was not asking the government to remunerate the Kadhi but rather to authorize his appointment.³²¹ Justice J.W. Barth emphasized that he based his decision on a previous government policy stipulated by Sir Percy Girouard, which did not allow the appointment of Kadhis outside the dominions of the Sultanate of Zanzibar. J.W. Barth argued that it did not matter whether the government was asked to remunerate the Kadhi when appointed. His concern was that in previous appointments of Shaykh Abud bin Shaykh Kale al-Bajun, and Shaykh Ali Hassan, "government policy had already been departed from and was not in favor of another lapse in implementing government policy".³²²

During September 1914 a consensus was reached between J.W. Barth and H.R. Tate, and Abdi Somad was accordingly appointed as 'Registrar' of Muslim marriages and divorces,

³²⁰ The District Commissioner cited the precedent of Sheikh Ali bin Hassan who was appointed Kadhi and Registrar in Nairobi district on 1st July 1913.

³²¹ Mr. H.R. Tate, District Commissioner, Nairobi to Acting Chief Secretary and Attorney General, ref. No. 69/24/13/ of 12th September 1914, in KNA/AG/51/205.

³²² J. W. Barth, Attorney General, to Acting Chief Secretary ref. No. M. 260/14 of 14th September 1914 in KNA/AG/51/205.

a pseudo-Kadhi post with responsibilities including conducting Muslim marriage rites and registering them. For the second time the appointment of Abdi Somad elevated the *heshima* of the Swahili at the expense of the Somali. However, the Swahili were not satisfied with the position of 'Registrar'. They wanted to assert their ethnic pride by having their clansman appointed as a fully-fledged Kadhi with both criminal and civil jurisdiction.

In mid-1915, Muslims in Nairobi revived demands for the appointment of a fully-fledged Kadhi. The government was sympathetic about this issue, especially when F.C. Hamilton, the District Commissioner in Nairobi, reported favorably that "the need for a Kadhi was greater now... that the Mohammedan population has increased."³²³ Hamilton had earlier supported the appointment of Abdi Somad in Nairobi when J.W. Barth, the Attorney General had raised objections. In fact, it was Hamilton who had argued that the appointment of Abdi Somad was not in any way contravening government policy as claimed by J.W. Barth.

Hamilton's sympathies could not influence a positive response for Muslims. Senior officers in the colonial administration e.g. the Attorney General and Provincial Commissioner, had the authority to do so, but they were opposed to the appointments, and Muslim grievances took a long time to be processed. From May 1915 when Muslims demanded a substantive Kadhi's appointment, the matter was revisited in the late 1930's. The initiative came from government as it reviewed the organization of native

³²³ F.C. Hamilton, District Commissioner, Nairobi to Registrar High Court ref. no. 69/24/15 of 15th July 1915 in KNA/AP/1/892.

subordinate courts in January 1939. In the process of the review the District Commissioner supported the establishment of a Kadhi's Court in Nairobi, and the Provincial Commissioner concurred that "these Courts should exercise authority over Mohammedan natives".³²⁴

Towards the end of 1939 the government was ready to discuss the precise changes required to establish fully fledged Kadhi Courts in the interior of Kenya. Two modalities were considered. First, was an attempt to circumvent the problem by amending the *Liwali, Cadis and Mudirs Courts' Ordinance 1931* to allow the establishment of Kadhi Courts outside the Coast. It was suggested to amend Section 7(1) of the Ordinance by adding a phrase to read "*a Kadhi Court within the limits of the District in which it is situated.*" It was anticipated that this would give government the necessary authority to establish Kadhi Courts and appoint Kadhi in any district of Kenya.³²⁵

The second opinion agreed that Kadhis courts should be established and that Kadhis should be appointed, but should not be granted criminal jurisdiction. The proposed proviso to be added to the *Liwali Cadis, and Mudirs Courts Ordinance 1931*, would read that, "*these courts will be set-up in the Kenya colony provided that no Kadhi Courts established outside the Coast districts shall exercise any criminal jurisdiction*".³²⁶ This proviso would have enabled Nairobi and other areas to have Kadhi Court's established,

³²⁴ Provincial Commissioner, Central Province to Registrar, High Supreme Court of Kenya, ref. No. L&O. 32/12/11 of 9th January 1939 in KNA/AP/1/892.

³²⁵ See Section 18 of the Courts Ordinance 1931 and Section 9 of the Criminal Procedure Code 1930.

³²⁶ H. C. Willan, Solicitor General to Chief Secretary ref. No. 5241 of 09-03-1939 in KNA/AG/12/21.

although the appointees would be pseudo Kadhi, exercising less authority compared to those appointed to serve at the Coast.

6.9 Books and Examinations

Concurrently with the above mentioned contemplations to establish a Kadhi's Court a possible appointee was sought, thereby reactivating ethnic competition and intrigue. Abdi Somad, the Registrar in Nairobi, viewed it an opportunity to have his status elevated and showed interest in the position. He was asked to have his knowledge of Islamic law tested by Shaykh Al-Amin b. 'Alī al-Mazrū'ī, the Chief Kadhi.³²⁷

To test Abdi Somad's competence Shaykh Al-Amin prepared what he termed simple questions of frequent occurrence in subjects including aspects of marriage, revocable divorce, inheritance and wills. In the time leading up to the test Abdi Somad complained of subtle ethnic favoritism, accusing the Chief Kadhi of giving him a difficult test and intending to fail him and eventually appoint his relative. On his own request, Abdi Somad was granted six days of study before attempting the examination. After six days, though, Abdi Somad was not ready and was allowed two more days of preparation.

³²⁷ Note that the title of this position had changed from that of Shaykh al-Islam to that of Chief Kadhi and the holder then was Shaykh al-Amin bin Ali Mazrui. For the role of Shaykh al-Amin in Muslim consciousness see, F.H. el-Masri, "Sheikh al-Amin bin Ali el-Mazrui and the Islamic Intellectual Tradition in East Africa," *Journal of Institute of Muslim Minority Affairs* 8 (2) July (1987): 229-237, R.L. Pouwels, "Sh. Al-Amin b. Ali Mazrui and Islamic Modernism in East Africa 1875-1947" *International Journal of Middle Eastern Studies* 13 (3) August (1981): 329-345.

Shaykh al-Amin thought Abdi Somad might feel intimidated if he supervised the examination and thus asked the District Commissioner of Mombasa to do so. Still, Abdi Somad could not take the examination within the allocated time. Instead, he requested to access books while writing the examination. Shaykh al-Amin did not grant this request and objected that “as an examiner, he would not be in a position to ascertain the answers furnished by him”.³²⁸ Meanwhile Abdi Somad accused Shaykh Al-Amin of “bias and prejudice” arguing that under such circumstances his chances for a favorable consideration were extremely remote.³²⁹

Disagreement between Abdi Somad and Shaykh Al-Amin meant that the first examination did not materialize. But the government insisted that Abdi Somad should be tested, and asked the Chief Kadhi to prepare another examination, a request that Shaykh Al-Amin considered impracticable, as he took great exception to Abdi Somad’s attitude.³³⁰ In an uncharacteristically harsh stand, Shaykh Al-Amin recorded his strongest objection and withdrew his participation in the process to find a Kadhi for Nairobi.³³¹ Infuriated by accusations of bias and prejudice against Abdi Somad, Shaykh Al-Amin was not entirely blameless in this matter. It was speculated that Shaykh Al-Amin was in favor of the appointment of his kinsman, one Sulaymān b. Surur, who had submitted his

³²⁸ Sheikh Al-Amin, the Chief Kadhi to District Commissioner, Mombasa on 1st July 1939 explaining why he could not give a favorable recommendation for Abdi Somad.

³²⁹ This information is gleaned from communication between Shaykh Al-Amin b. Ali Mazrū‘i who was Chief Kadhi, Justice Joseph Sheridan, the Chief Justice and D.C. Morgan, the District Commissioner in Mombasa. There is no communication emanating from Abdi Somad on this matter. See KNA/AP/1/892.

³³⁰ D.C. Morgan, District Commissioner, Mombasa to District Commissioner, Nairobi ref. L&O 1/7 of 15th July 1939, in KNA/AP/1/892.

³³¹ Sheikh Al-Amin expressed these sentiments in a letter to Sir Joseph Sheridan, the Chief Justice on 18th July 1939, in KNA/AP/1/892.

application to be considered for Kadhipship.³³² In fact, the administration in Nairobi accepted the suggestion that Shaykh al-Amin was in fact in favor of this candidate and that he therefore made matters difficult for Abdi Somad. On its part, the government stopped any possible appointment of Sulaymān recognizing his experience but arguing that he was more suitable to work at the Coast than in Nairobi.³³³

Shaykh Al-Amin's attitude paradoxically ignited a strong resolve from the government in favor of Abdi Somad's appointment. It also indicated a conflict of authority between the Chief Kadhi and European officers. As head of the Kadhi courts, Shaykh Al-Amin wanted to exercise his authority in deciding who qualified for and assumed posts of Kadhipship. On the other hand, some European officers wanted to have the final authority to decide which Muslim would be included in the government structures and institutions. This conflict also implied that the government used the position of Chief Kadhi as a functionary post rather than an independent Muslim leadership position. Of course these changes and challenges to the post of Chief Kadhi were evident during the first appointment of the Shaykh al-Islām when he was made answerable to the European administration. This policy continued until the 1940's as Shaykh Al-Amin was a government employee compelled to conform to orders from his superiors or risk disciplinary action. As he had no other choice, Shaykh Al-Amin prepared another

³³² Sulaymān b. Surur had been Court clerk and was promoted to acting Kadhi for Takaungu between 1937/38. Takaungu was the home of Shaykh Al-Amin.

³³³ Municipal Native Affairs Officer, Nairobi, in a memo of 28th December 1939 rejecting a possible appointment of Suleiman bin Surur in KNA/AP/1/892.

examination and Abdi Somad was allowed to make reference to books during the examination.

In processing the results of the test Shaykh Al-Amin was adamant that Abdi Somad did not qualify to be appointed Kadhi; he awarded him 100% marks, but declined to award him a pass necessary for the government to appoint. The administration insisted that Abdi Somad should be appointed as Kadhi for Nairobi, based on the consideration that he had worked satisfactorily for over twenty years and gained sufficient experience to be well versed in the law.³³⁴

Most of latter part of 1939 was characterized by government's attempts to have Abdi Somad appointed by circumventing the authority of the Chief Kadhi, including asking the Kadhi of Mombasa, Shaykh Muḥammad b. Qāsim, another Mazrū'ī kinsman, to mark the papers after convincing him that reference to books was allowable in the examination. This attempt did not materialize, either as Shaykh Muḥammad b. Qāsim also awarded Abdi Somad 100% marks, but declined to grant him a pass because "the candidate had used books and his answers were word for word from the books."³³⁵ By February 1940 the decision to award Abdi Somad a pass and appoint him was still being delayed, but J. P. MacKean, the District Commissioner for Mombasa, advised his counterparts in Nairobi to wait a little longer to enable the government to change the statutes before they

³³⁴ Municipal Native Affairs Officer, Nairobi, in a memo of 28th December 1939 rejecting a possible appointment of Suleiman bin Surur in KNA/AP/1/892.

³³⁵ Registrar Supreme Court to Chief Justice of 23rd February 1940, in KNA/AP/1/892.

could support the appointment of Kadhi in Nairobi.³³⁶ However, the administration in Nairobi was adamant and impressed upon MacKean to convince Shaykh Muḥammad b. Qāsim to declare that Abdi Somad had been successful in his examinations. At the same time, attempts were made to change the statutes to enable his appointment as a fully-fledged Kadhi, indicating determination amongst government officials in favor of Abdi Somad as Kadhi in Nairobi.

When the Chief Kadhi and Shaykh Muḥammad b. Qāsim declined to declare Abdi Somad competent, the administration went ahead to appoint Abdi Somad anyway. The District Commissioner of Nairobi, E.G. St. C. Tisdall dismissed the objection raised by Shaykh Al-Amin and Shaykh Muḥammad as untenable. He successfully influenced J. D. MacKean and shortly thereafter, the Chief Justice also discarded the objection against Abdi Somad and authorized his appointment.³³⁷

It is clear from the above that ultimately, instead of basing its appointments of Kadhi's on the learned opinions of senior Kadhi, colonial authority preferred the opinion of European officers. In the case of Abdi Somad it relied on the fact that he was highly recommended by his twenty years of service.³³⁸ Upon the wishes of the colonial officers and at the expense of the recommendation of senior Muslim officials, Abdi Somad was

³³⁶ Sentiments of Registrar of High Court to Chief Justice on 23rd February 1940 in KNA/AP/1/892.

³³⁷ See C. Tisdall to Chief Justice, ref. L&O 1/40 of 5th March 1940, in KNA/AG/51/205.

³³⁸ In 1926, Abdi Somad was recommended for the position of Kadhi or Mudir by Mr. Wendy, in 1933 Mr. C. H. Adams then DC, Nairobi had recommended him to Mr. Field Jones, PC, Coast who was later to recommend him for appointment as Mudir of Lamu. See C. Tisdall to Chief Secretary and PC, Central Province, ref. L&O 1/40 of 5th March 1940, in KNA/AG/51/205.

ready to be appointed as the first 'Kadhi' for Nairobi. In the end this did not materialize, as the statutes were not changed, thus leaving him content with the post of pseudo-Kadhi.

6.10 Conclusions

In Nairobi, the British did not favor establishing Kadhi courts that would include criminal jurisdiction. They defined the territorial applicability of Muslim laws, which was defined by the agreements entered into between them and the Sultan in the early twentieth century. It can be gleaned from this that the British were also wary of establishing other institutions to apply laws that would challenge their authority and create parallel structures of power and authority. Evidence has also shown that towards late 1930 and early 1940, the period characterized as the beginning of decolonization, individual colonial officers were in favor of allowing gradual changes, though still under their supervision. This accounts for the contradictory discussion on changes to the *Liwali Cadis and Mudirs Court Ordinance 1931* to incorporate Kadhis Courts in the interior. However a colonial bureaucracy created bottlenecks that lasted a long time and did not facilitate spontaneous changes. The general conclusions of this chapter is that Kadhis were recognizable Muslim representatives in the colonial power structure, and a sign of Muslim influence, despite occasional attempts by European officers to dominate the process of making decisions.

Theoretically this chapter qualifies Mamdani's arguments that forms of control and the exercise of power forged under colonial rule racialized and ethnicized institutionalized

authority. According to Mamdani, ethnically bound institutions of control were emphasized, and ethnicity became a form of colonial control.³³⁹ The discussion nuances this conclusion, realizing that ethnicity was not entirely a product of colonial policy. Colonial policies indeed racialized power but Muslim societies were also non-homogenous to an extent that even without colonial authorities emphasizing the boundaries of differences, Muslims from different ethnic communities recognized ethnically based leaders and competed for ritual leadership on foundations of ethnic belonging.

As a racialized post the pseudo-Kadhi of Nairobi enjoyed mixed blessings in his relationship with the colonial authorities. While Muslims identified their leaders as Kadhi and expected them to implement Islamic rules, the official Kadhi could not quite meet this expectation. They instituted Muslim marriages and interpreted legalistic practices, and colonial statutes duly recognized them, but the statutory basis of colonial administration recognized more limited roles. They were only authorized to enter entered records of marriage rituals or divorce hearings. They thus only instituted marriages by recording them in the government register and accomplished the tasks of a “Registrars”. When they demanded the right to hold court and pass sentences, they could not do so, for example, when a husband abdicated his duties and did not maintain his wife and children. Pseudo-Kadhis had no legal recourse to implement the rule of law. In such matters, the Kadhi of the interior were clearly ‘pseudo-Kadhi’, viz. Registrars of Muslim marriage and divorce. The irony of colonial rule was that, even with such seemingly powerless and

³³⁹ M. Mamdani, *Citizen and Subjects*, 24.

insignificant interlocutors of Islamic rituals, the state still insisted on exercising its authority in their appointment, thereby propelling them to realms of religious social significance and authority.

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Chapter Seven

7.1 The Kadhiship of Sharif^cUmar b. Abd Allāh al-Mahdaly in Mumias

In his work *Islamic Law in Africa*, J.N.D. Anderson wrote about Islam and Muslims in Nyanza Province in the following terms:

There is an interesting pocket of Muslims in Mumias trading centre in Nyanza Province. The inhabitants of the town are almost all Muslims (Arabs, Somalis, Nubis and local converts); while there are a few Muslims also in the surrounding country. And in addition to the usual native tribunal a *qāḍī* has been gazetted-the only *qāḍī* in the Province, or indeed, in the whole colony.³⁴⁰

This statement was made in 1955 as recollections from a field survey of the nature and position of Islamic laws in Africa. However informative the statement, it suppresses two important factors, thus creating a degree of ambiguity. First, it identifies all the racial and ethnic identities that comprised the Muslim population of Mumias, but fails to be specific on the racial identities of the local converts. Second, it obscures the identity of the *qāḍī* even though it creates the impression that the author visited Mumias and probably held an interview with the *qāḍī*. In this Chapter, I will reveal the identity of the *qāḍī* as one Sharif Umar b. Abd Allāh al- Mahdaly (d. 1978) and the ‘converted’ local people as the Wanga community who inhabited Mumias as their ancestral land. Thereafter, I will discuss the relationship between the *qāḍī* and the Wanga. To begin the discussion I want to state that the phrase “indirect rule” and reference to racialized leadership have already

³⁴⁰ J. N. D Anderson, *Islamic Law in Africa*. (London: Frank Cass & Co. Ltd, 1970): 119.

been made familiar in previous chapters but their manifestations are emphasized in this Chapter with examples from the activities towards appointing a pseudo-Kadhi in Mumias. The administrative decisions made by colonial officers have also been cast in racial terms as have the subsequent social and political reactions from Muslims. While previous chapters argued on the process that institutionalized such leadership, we have also nuanced this principle by stating that Muslim societies have not always been homogenous and that the existence of multiple ethnic identities has emphasized competition. In this chapter, the nuanced behavior of the colonial power's appropriation of ethnicity is portrayed with regard to the forceful demands by the Wanga, a partial African Muslim aristocracy that existed in western Kenya in early twentieth century. The discussion is interfaced by the Wanga's opposition to the appointment of an "Arab outsider", Sharif 'Umar b. Abd Allāh al-Mahdaly to the post of Kadhi in Mumias and later in Nyanza against the wishes of the majority Wanga people who favored the appointment of someone who was *mwenyeji* (local person)

This chapter discusses the racially based tension that emerged as a result of conflicting aspirations by Wanga Muslims, but the discussion generally emphasizes the role of colonial states' negative impact. It is far from certain that the colonial administrative experience did in fact eradicate 'pre-colonial' political and social traditions rather than working through them. By means of a chronology of events which displayed ethnic conflicts and British influences, this chapter situates contradictory concerns amongst Muslims over who should be appointed Kadhi and practice authority amongst Muslims in Nyanza.

7.2 Mumias: Its Location and a brief History

Situated in the western part of Kenya, *Elureko*, the old name of Mumias, was the village commanding the ford over the Nzoia River and inhabited by a Bantu community calling themselves the Wanga. Mumias, the town on which this discussion is based, is presently located in the Western Province of Kenya though its administrative boundaries have changed over the years. It was Kavirondo District in the early 1900's and was part of Nyanza Province during the late colonial period 1940-1960's. Mumias used to be the seat of power of an African aristocracy, the Wanga kingdom which instituted itself around 1544-1652, but gained prominence under Nabongo Shiundu Wamukoya who ruled during 1841-1882.³⁴¹ Islam began to spread amongst the Wanga as a consequence of trading activities by Arab Swahili Muslims who arrived from the Coast of Kenya and Tanzania from 1878. By then the most prominent Muslims included Sudi a Nyamwezi from Pangani and Abd Allāh b. Ḥamid who is said to have originated from Mombasa.³⁴² It was during the reign of Nabongo Mumia (1882-1949) that Islam gained ground as he invited Muslim traders into the town and allowed them unlimited access to his kingdom. Thus, in the period that followed the arrival of the Swahili, Mumias and its inhabitants

³⁴¹ G.S. Were, *History of the Abaluyia of Western Kenya ca. 1500-1930*. (Nairobi, East African Publishing House, 1967): 116-117.

³⁴² A chronology of rulers of the Wanga Kingdom can be found in Simon S. S. Kenyanchui, *Nabongo Mumia* (Heinemann Kenya, 1992) : 17. J. Osogo, *A History of the Abaluyia* (Nairobi: Oxford University Press, 1966): 71.

experienced many changes, including the spread of Islam.³⁴³ From that time onwards it has been argued that some rulers titled, Nabongo and their families, practiced Islam. In fact Nabongo Mumia is said to have taken the name Muḥammad.³⁴⁴ In the 1870's Mumias was a resting place for caravans from the Coast heading towards Uganda. From 1894 onwards it developed as a British administrative town from which the entire Nyanza region was administered. Once the British had established the administrative station, the changes that the inhabitants experienced were further enhanced. Life in Mumias was negotiated between the interests and requirements of British officers, the religious concerns of the Arab and Swahili Muslims, and demands for a sense of belonging and leadership by the indigenous Wanga people. Revealed in various social interactions and concerns, this interplay is discussed in relation to the establishment and demands for official Muslim posts of Kadhiship.

7.3 Early 'Kadhiship' amongst the Wanga

Tensions associated with Kadhiship in Mumias followed a similar pattern to those in Nairobi where local Muslims instituted marriage rituals and were titled 'Kadhi' irrespective of the colonial requirements. Likewise the *Mohammedan Marriage, Divorce and Succession Ordinance 1906* was also applicable in Mumias, thence entailing a curtailing of titles, stipulating functions and geographical areas of jurisdiction. More

³⁴³ For a history of the spread of Islam amongst the Wanga see M.A. Abdalla "Some Aspects of Coastal and Islamic Influences in Mumias from the late 19th century to early 20th Century" BA Dissertation, (University of Nairobi, 1971).

³⁴⁴ Ibid., p. 19.

importantly, though, it emphasized and institutionalized the power and authority of hitherto locally based interlocutors of power.

As in Nairobi, Mumias required the attention of ‘*ulamā*’ with expert knowledge on how to conduct personal matters. When they existed and performed their roles, they were acknowledged accordingly and titled Kadhi. But the colonial government’s obsession with the institutionalization of social life through the application of Ordinances, led to a concerted effort to control the social behavior of communities, especially how they conducted marriage rituals. Through selective application of the *Mohammedan Marriage, Divorce and Succession Ordinance 1906* colonial authorities acquired control over how Kadhis were appointed, recognized and accorded authority. In the process, they continued displayed a policy of racial favoritism and Arabization of appointments.

7.4 Sharif Omar and the Colonial State in Nyanza

In 1912 the government attempt to institutionalize the Muslim conduct of marriage affairs in Mumias through applying the rule of the *Mohammedan Marriage, Divorce and Succession Ordinance of 1906*, leading to an official recognition of one Hadrami Arab, Sharif ‘Umar b. Abd Allāh al-Mahdaly as Registrar for North Kavirondo District.³⁴⁵

Though Sharif ‘Umar was the first person recognized by the government, it is also said

³⁴⁵ Sharif Omar was officially gazetted Registrar in 1912.

elsewhere that his brother Sharif Ḥaṣan b. Abd Allāh al-Mahdaly had been Kadhi in Mumias earlier.³⁴⁶

Oral recollections indicate that Sharif ʿUmar’s family including his elder brother, Sharif Ḥaṣan, traded in hides and skins and later took residence in Mumias.³⁴⁷ When appointed Registrar in 1912, Sharif ʿUmar was the recognized Kadhi. He had been also involved in Islamic *da’wa* (proselytization) and teaching amongst the Wanga from early 1902. From 1912 he served as registrar without any recognizable conflicts in the community. But in the early 1930’s, a wave of demands by Muslims to have a fully fledged Muslim Court changed his fortunes and put him at the centre of arguments over power, authority and influence. In a nutshell Muslims demanded from the government a fully instituted Kadhi’s Court to challenge the rising concerns over the power of the Native Tribunal. Demand for the appointment of a fully-fledged Kadhi and Kadhi’s Courts gained momentum as Sharif ʿUmar threatened to resign as Registrar. Like the Chief Kadhi, Shaykh Muḥammad b. Umar Bakore who in early 1923 accused the government of ignoring his services during the First World War, Sharif ʿUmar was equally demoralized when he was excluded from a list of recipients for government awards for services rendered during the War. He recalled having served as *askari* and Kadhi, describing his duties as a “... soldier arresting people and taking them to the station.”³⁴⁸

³⁴⁶ M.A. Abdulla, "Some Aspects of Coastal and Islamic Influences in Mumias from the late 19th Century to early 20th Century" BA Dissertation (University of Nairobi 1971) : 36.

³⁴⁷ Muhammad Wangara, Personal interview, Mumias, September 18, 1998.

Sharif ‘Umar’s accusations were alarming but true, as he had indeed served in different capacities from 1912 when he was appointed Registrar. It was not until 1926 that he was gazetted as unsalaried Registrar.³⁴⁹ Ultimately the government agreed to compensate him ex-gratia for his services to them.³⁵⁰ In 1937, Sharif ‘Umar was paid a gratuity in recognition of his loyal services, having served about five thousand Mohammedans in North Kavirondo. But he was still denied a war medal.³⁵¹

7.5 From the Wanga's demands to Nyanza's demands

Sharif ‘Umar’s indications that he would resign ignited racial tensions between him, the Wanga, some Arab-Swahili communities and officials of the colonial state. Mumias was the ancestral home of the Islamicised Wanga community who formed the majority of the Muslim population and wanted to dominate its leadership. As an African aristocracy, the Wanga recognized paramount chiefs who envied and sometimes resented the position of Kadhi held by Sharif ‘Umar. When Sharif ‘Umar indicated his intention to resign from Kadhipship, the Wanga demanded the appointment of a member of their group in the post.

³⁴⁸ Sharif ‘Umar to District Commissioner North Kavirondo on 4th January 1937 in KNA/PC/NZA/3/18/29.

³⁴⁹ Government Notice no. 751 of 19th November 1929.

³⁵⁰ Provincial Commissioner, Nyanza to District Commissioner, North Kavirondo Ref. no. MDS 2/3/3 of 12th January 1937 in KNA/PC/NZA/3/18/29.

³⁵¹ Provincial Commissioner, Nyanza to Colonial Secretary. Ref. no. MDA. 2/3/3 of 13th March 1937 in KNA/PC/NZA/3/18/29.

In 1937 the Wanga consolidated their demand to have their kinsman appointed Kadhi by forming the *Baraza la Waislamu wa North Kavirondo* (Muslim Council of North Kavirondo). At one such meetings a resolution was passed recognizing one Mzee Athuman bin Seif as their choice of Kadhi. They defined his role as *kufundisha dini ya Kiislamu, na kuwaoza wake wetu* (to teach the religion of Islam and institute our marriage rituals).³⁵² Through this pronouncement the Wanga indicated their unwillingness to have non-Wanga people hold such an important position.

Three months later during October 1937 the Wanga further asserted their regionally based opposition to Sharif Omar in a stronger resolution that emphasized their choice of Mzee Athuman bin Seif as follows:

*"...huyu Mzee Athuman bin Seif ni mwalimu wa dini ya Islamu, wenyeji wa inchi wamekubali afundishe dini ya Islamu katika inchi yetu ya North Kavirondo, yaani Kisumu, Nakuru, Nairobi na Kisii, kutembea pasipo watu kumdarau, na mtu atakae mdharau ataweza kupata adhabu mbele ya serikali..."*³⁵³

Mzee Athuman bin Seif is a teacher of the religion of Islam; the residents have accepted him to teach the religion of Islam in the whole of North Kavirondo to include Kisumu, Nakuru, Nairobi and Kisii. He should visit these places and anyone who shows disdain shall be liable for punishment.

The above meant that, as the Wanga people, they recognized Mzee Athuman b. Seif as a teacher of Islam, and that the residents of North Kavirondo were in agreement that he conduct marriages amongst them. To emphasize the seriousness of Mzee Athuman b. Seif's authority, they further indicated that his power and authority should apply to any

³⁵² This resolution was passed and signed by nineteen Muslim representatives of the Wanga chiefs of Mumias in North Kavirondo on 21st May 1937.

³⁵³ This further resolution was signed by representatives of various chiefdoms of the Wanga in the Courtyard of the Paramount Chief Mumia on 13th October 1937 in KNA/PC/NZA/3/18/29.

Wanga resident of North Kavirondo including those residing in Kisumu, Nakuru, Nairobi, Mombasa and Kisii. The memorandum further acknowledged Mzee Athuman's freedom to conduct *da'wa* without being scorned, as council warned of dire consequences. These regional, ethnic and sectionally based authoritative sentiments were strongly supported by Mzee Athuman b. Seif in a personal initiative as well. Demanded access to the registers of marriage to enable him to undertake the responsibilities that his community wished him to perform.

The 1937 memorandum of the Wanga did not give access to Mzee Athuman bin Seif to the Register, nor recognition from the government. However, in 1941 K.L. Hunter, the District Commissioner in North Kavirondo, noted that the Islamic Wanga community around Mumias was anxious to have a Kadhi of their tribe appointed.³⁵⁴ Against earlier concerns from other colonial officers, Hunter supported the idea and advised that the request be granted.³⁵⁵ This did not materialize however, because the idea was opposed by most other colonial officers.

Despite Hunter's support, on the Wanga realized that it was not easy for the government to agree to their ethnic and racially based demands. But this did not mean that the colonial government did not consider race or ethnicity for posts in the community. Instead, it only confirmed that the Wanga were the wrong race and ethnic group to demand the appointment. The government officially objected to the demands by the

³⁵⁴ K. L. Hunter, District Commissioner, North Kavirondo to Provincial Commissioner, Coast. Ref. no. MDS. 17/5 of 2nd September 1941 in KNA/PC/NZA/3/18/29.

³⁵⁵ Ibid.

Wanga to create the assumption that it did not consider ethno-racial representation in the appointments of 'Kadhi'. This perceived assumption enabled Hodge, the Provincial Commissioner at the Coast to issue a simple rejection claiming that Sharif 'Umar was already appointed as Registrar at Mumias and that there was no reason for an additional appointment.³⁵⁶ The Wanga were demanding the replacement of Sharif 'Umar who was an Arab with Mzee Athuman b. Seif who was a Wanga. Certainly the government wanted to be silent on the ethnicity that was the basis of the contestation. In fact, when responding to Mzee Athuman's personal claim, the government argued that a decision had already been made not to appoint another Registrar of Muslim Marriages.³⁵⁷

The intensity of racial and ethnic conflicts was enhanced when Sharif 'Umar abandoned his initial intentions to resign and became embroiled in the ensuing intrigue which elevated ethno-racial factors and considerations as the central factors in the choice of the "Kadhi". This process revealed both the governments and the community's emphasis on racial favors and concerns, with the government inclined towards favoring the Arab, while the Wanga clung to notions that a Wanga Kadhi was ideal for Mumias and Nyanza. As a matter of policy, it will become clear, the government supported the Arabs against the Wanga.

In mid-1941, Sharif 'Umar's role in the ethno-racial conflicts and intrigue included organizing non-Wanga Muslim residents of Mumias and adjacent areas to garner support

³⁵⁶ Hodge, Provincial Commissioner, Coast to K. L. Hunter, District Commissioner, North Kavirondo, ref. MDS. 17/5 of 2nd September 1941 in KNA/PC/NZA/3/18/29.

³⁵⁷ Ibid.

for his candidature. Most importantly he took the opportunity to petition the government, demanding the elevation of his status from the Registrar to fully-fledged Kadhi. Before the Wanga issue was resolved to the satisfaction of the indigenous people, Sharif ‘Umar expressed a more formidable concern, that of establishing a fully fledged Kadhis Courts in Nyanza. He only included the non-Wanga communities of Nyanza to support his candidature and pressurized the government to appoint him Kadhi, further enhancing racial concerns and widening the scope of the communities included in the conflicts.

In June 1941 two petitions by a cross-section of Muslims from Nyanza were sent to the government expressing support for Sharif ‘Umar’s demand for elevation to fully-fledged Kadhi for Nyanza Province. They stated unequivocally that Nyanza province did not have a Kadhi and that they would be grateful if Sharif ‘Umar were appointed for all Districts of Nyanza and allowed to exercise his power in matters of Islam, with or without disputes.³⁵⁸

The government’s response to the demands by the general Muslim public in Nyanza, and the Muslim conduct in the process reveals a visible racial conflict. Race was the prism through which government policy on the appointment of Muslim officials in the interior of Kenya became practical and applicable. R.L. Hunter, the District Commissioner of Mombasa certainly was aware that the jurisdiction of such officials was specifically confined to districts of the Coast. Unlike D.L. Hunter, the District Commissioner of North Kavirondo, who supported the demands for a Wanga “Kadhi”, he requested for

³⁵⁸ Two groups of Muslims petitioned the Provincial Commissioner Nyanza on 23rd June 1941. One was by a group comprised of ninety-seven Muslims and another had the names of forty-one Muslim people. However all these petition bore the signature of Sharif Omar alone as a representative of the communities raising the petition. See KNA/PC/NZA/3/18/29.

reasons and justifications for the residents' demands for a Kadhi. In spite of the statutory obstacles, disagreements amongst colonial officers persisted. K.L. Hunter was sympathetic and viewed the demands by Muslims as an attempt to institute a religious leadership. He did not concur with the statutory limitations that others referred to. He understood the functions of a Kadhi to include, amongst others, the interpretation of Muslim religious laws. Accordingly, a Kadhi would have roles to play in any district where Muslims lived.

However, yet another official, the Acting Provincial Commissioner of Nyanza was not in favor of the appointment of a Kadhi in Nyanza. He cited financial concerns, cautioning that such an appointment would require added expenditure by the government. But this objection seemed another ruse, as Sharif 'Umar was appointed Registrar of Muslim marriage without necessarily committing the government financially. K.L. Hunter was even making suggestion to change the law because the "Muslim community was vigorously growing and Muslims had constructed a permanent mosque and a school which justified demands for the appointment of a Kadhi. It was becoming increasingly difficult to carry on with a Registrar only."³⁵⁹

Differences between government officers delayed decision to the demands by Muslims but it was also suggested that the Muslim population of Nyanza was influential, law-abiding and comparatively well-to-do.³⁶⁰ In such circumstances it was irresponsible of the

³⁵⁹ Ibid.

³⁶⁰ Ibid.

government to allow such a community to be held back in its development by obsolete laws.³⁶¹ Despite such positive acclimations, in the period 1906-1945 Nyanza did not have a Kadhi on account of the existing statutes.

7.6 'The Kadhi comes to town' ca. 1945

From 1910 the Muslim community of Nyanza demanded the appointment of a Kadhi in their region, beginning with the demands by the Wanga. Conflicting and contradictory sentiments and opinions of colonial officials however delayed responses to and implementation of the demands. In early 1945 changes in the attitudes of colonial officers were noticed. This period is in fact the beginning of attempts by colonial rulers to include a colonized community in the general affairs of the state.³⁶² Largely identified as the beginning of a gradual process of decolonization in Africa, changes were visible in the attitudes of colonial officers towards Muslim communities of the interior of Kenya. In July 1945 F.D. Hislop, the District Commissioner for Kakamega asked for advice from the Chief Kadhi in Mombasa on the suitability of appointing a Kadhi for Nyanza and inquired as to what changes needed to be initiated in the statutes to accommodate such an appointment.³⁶³

³⁶¹ Ibid.

³⁶² John Springhall, *Decolonization since 1945*. (New York: Palgrave, 2001): 1-12.

³⁶³ F. D. Hislop, District Commissioner, Kakamega to Provincial Commissioner, Nyanza. Ref. No. MDS 18/1/3/37 of 14th July 1945 in KNA/CA/20/31.

F.D. Hislop's queries were responded to by the new Liwali, Mbarak Ali Hinawy, and by Shaykh Al-Amin b. Alī, the Chief Kadhi. They were in favor of the appointment and suggested that a proviso be incorporated in sections of the *Liwali Cadis and Mudirs Courts Ordinance 1931*, to cover the authority of the Kadhi in a district outside the Coast. Mbarak Ali Hinawy emphasized the desirability of establishing a Kadhiship for Nyanza, but cautioned that times had changed and that Muslims should not just demand the appointment of a Kadhi, but that, more importantly it was necessary that the appointee espouse a depth of knowledge of civil and criminal procedure codes.³⁶⁴ Another important issue was that the appointees should also be able to adapt to government machinery in addition to being knowledgeable on Islamic laws³⁶⁵ Muslim officials gave a positive recommendation, but the decision to implement government policy did not depend entirely on their sentiments. British colonial officers exercised an overwhelming influence on decisions, suggestions and recommendations that could be implemented. In view of their concerns about losing authority to the Muslim courts the suggestion to establish a Kadhis Court in Nyanza did not augur well with other administrators.

Principally, colonial officers argued that it was not necessary to establish a specific subordinate Court in Nyanza to administer the penal code.³⁶⁶ For example the Acting

³⁶⁴ Mbarak Ali Hinawy was warning Muslims on the demands and expectation of the colonial government on the roles and procedures of the Kadhi and their Courts. This warning was made in response to an already difficult position that most Kadhi faced in the Coast due to their inability to conform to Court Procedures.

³⁶⁵ Mbarak Ali Hinawy, Liwali for Coast, to Provincial Commissioner, Coast on 9th August 1945 in KNA/CA/20/31.

³⁶⁶ Acting Provincial Commissioner, Coast to District Commissioner, Mombasa. Ref. ST. 4/3 of 9th August 1945 in KNA/CA/31.

Provincial Commissioner at the Coast was not in favor of the establishment of Kadhi Court in Nyanza and categorically instructed that;

Irrespective of the religious affiliation of some communities in Nyanza, they were mainly natives of Africa, and as such did not have special claim to be tried other than by ordinary Subordinate Courts of the colony.³⁶⁷

Such opinions were in total disregard of the religious concerns of the Muslim communities who demanded the appointment of a Kadhi but more concerned with the government's position of having its rules observed.

Irrespective of the negative sentiments expressed by some officers, the winds of change in colonial policy were beginning to blow. The opinions of a few officers could not prevent the general changes in colonial practice. Clearly, colonized communities had to be incorporated into the hierarchies of power. In this case the demands by Muslims for the establishment of a Kadhis Court were appropriate. By August 1945, further consultations had been concluded out and a decision to find a suitable candidate to be appointed as Kadhi for Nyanza was made.³⁶⁸

Priority for appointment was given to the serving Registrar, Sharif 'Umar. The Chief Kadhi, who knew him personally, attested to Sharif 'Umar's popularity as a respected leader in Mumias and acknowledged the fact that he was proposed as the most likely candidate for the post. However, the Chief Kadhi was not in a position to authenticate

³⁶⁷ Ibid.

³⁶⁸ V.M. McKeag, Acting Provincial Commissioner, Coast, ref. No. S/1/4/3 of August 9th 1945 KNA/CA/20/31.

Sharif ‘Umar’s knowledge and competency for the task.³⁶⁹ In August 1945, there was a unanimous agreement that a Kadhi would have to be appointed and that the prospective candidate, Sharif ‘Umar, was eminently suitable because he was well known and had considerable prestige in the area.³⁷⁰ With exact information on his qualification not available, his service as a Registrar strongly supported the assumption that he was a man of standing and considerable *heshima* (respect) in the community. In fact, the *heshima* was a far greater asset in Kadhiship than merely being a learned *faqih* (jurist).³⁷¹ Once it was agreed that Nyanza did in fact require the services of a Kadhi, the process of appointing one depended entirely on the matter being debated in the Legislative Council.

7.7 Debating the Kadhis Court and the Native Tribunal: Muslims and Others in the Legislative Council debates

One of the most characteristic features of colonial rule as understood by the proponents of indirect rule, was the existence of a system of Native Tribunals which formed an integral part of the colonial administrative machinery. It is in Native Tribunals that elders, Chiefs and traditional rulers practiced an effective authority during the inter-War period. To colonial administrators of the inter-War period, with their enthusiasm for indigenous institutions as vehicles for indirect administration, Native Tribunals had a particular appeal. Here there existed a traditional institution which vitally affected the lives of the whole African population, for it was in these Tribunals that the vast bulk of

³⁶⁹ Ibid.

³⁷⁰ District Commissioner, Mombasa to Provincial Commissioner, Coast on 9th August 1945 in KNA/CA/20/31.

³⁷¹ V. M Mckeag, Acting Provincial Commissioner, Coast to Provincial Commissioner, Nyanza ref. No. ST/4/5 of 9th August 1945 in KNA/CA/20/31.

native litigation was disposed of, mainly under customary laws. Such institutions, felt colonial officers, must clearly be preserved, and in this context demands for establishment of a Muslim Court in areas where Native Tribunals existed, was an arbitrary dualism of instituted structures of authority. While being discussed V.M McKeag and Arch Deacon L.J. Beecher contributed to the debate with these concerns in mind.

In 1945, the demands for the establishment of a Kadhi's Courts were hampered by a competing demand to enhance the authority of Native Tribunals at Mumias. At the same time was exercised as Muslim Courts at the Coast were experiencing difficulties associated with inadequate staff, general laxity in record-keeping and incompetence of its officials. These two facts influenced the decision to appoint a fully-fledged Kadhi as well as to establish a Court for the appointee. Irrespective of sentimental agreements between officials, instituting Kadhi's Courts necessarily had to conform to colonial court structures. As its perceived role was the institutionalization of Islamic codes, a racially defined court hierarchy confined the jurisdiction of Kadhi's Courts to Arab people. In the minds of colonial officers, a Muslim was synonymous to an Arab, hence Muslim law was rightfully applicable to Arabs who also had to be appointed at its helm. Confronted by the Wanga demands some colonial officers were perplexed as to why a native African community would wish to fall under the jurisdiction of a court system meant for Arabs. One of these was V.M. McKeag, quoted earlier, who was perplexed about how a religious identity would be used to demand exemption from the authority of Native

Courts.³⁷² Some thought the Wanga Muslims did not hold a justifiable claim, but I assume they were mainly concerned about the existence of parallel legal structures within the same population of colonized communities. Another reason to demand Kadhi's Courts in Mumias, was because Muslims in Nyanza had to travel all the way to the Coast to be attended to by properly constituted Kadhi's Courts or alternatively Kadhis from the Coast had to travel to Nyanza to arbitrate on matters. To ease this practical difficulty it was seen as desirable to appoint a Kadhi. Another important reason was that the appointee was expected to inculcate and uphold high moral standards in the community.³⁷³

Representing the government in the debate, V.M. McKeag sought a delay in the decision to await the final decision on how to improve the functions of Kadhi's Courts at the Coast. Mbarak Ali Hinawy wanted the Courts to be established for Muslims every where in Kenya, irrespective of their geographical location, while L. J Beecher, representing native interests, was concerned and opposed to such a proposal it would hinder and interfere with the functions of an already existing Native Tribunal. Consistent in his opposition, Beecher received assurances from the government that, once established the Kadhi Courts would not interfere with the operation of the Native Tribunals. In the follow-up process these assurances were however an obstacle, as the thought of appointing a Kadhi became undesirable and Beecher's concerns came closely to derailing the progress made so far towards instituting Kadhiship and Muslim Courts in Nyanza.

³⁷² See quote and footnote no. 365 above.

³⁷³ V. M. Mckeag, Acting Provincial Commissioner, Coast, ref. No. S 1/4/3 of 9th August 1945 in KNA/CA/20/31.

In December 1946, a compromise was sought to allay Beecher's apprehensions and to please Muslim sensibilities. Sharif 'Umar was financially enticed with a lower appointment in lieu of a substantive fully-fledged Kadhipship. If accepted, Sharif 'Umar would not be allowed to have criminal jurisdiction over Muslims who could however seek recourse in the Native Tribunal at Mumias, on which Sharif 'Umar would sit as an assessor.³⁷⁴

Ultimately it was accepted that Sharif 'Umar was a Registrar and not Kadhi, and would sit on the Tribunal as an assessor as opposed to a judge. This action weakened his influence on the conduct of matters in the Tribunal. The proposal was not accepted by Muslims either. They would have preferred a bench of Muslim jurists under the auspices of a Kadhi Court. Because members of the tribunal were tribal elders who did not understand Islamic rules, inevitably a general feeling of distrust developed towards the abilities and capabilities of the Tribunal to properly arbitrate on Islamic disputes. Muslims felt disappointed and accused the elders at the tribunal of being inefficient, unprocedural and ignorant.

On the basis that Mumias was predominantly Muslim, its residents wanted the Tribunal to be reconstituted to reflect the Muslim character of the town; like having the Tribunal deliberate on the basis of Islamic tenets and laws invariably turned the Tribunal to into a

³⁷⁴ K.L Hunter, Provincial Commissioner, Nyanza to District Commissioner, North Kavirondo ref. No. MDS 2/4/2/51 of 11th December 1946 in KNA/PC/NZA/3/18/29.

quasi Kadhi Court. The government became wary of this suggestion, considering the guarantees previously made to Beecher.³⁷⁵ Nevertheless, the bottom line was that native customary law and Islamic codes were in conflict and that neither the Kadhi's Court nor the Native Tribunal would countenance. Consequently, to better serve Muslims the establishment of a Kadhi's Court was the most obvious and best solution if only government's legal officers would concur.³⁷⁶

During May 1947, H.E. Stacey, the judicial advisor in the Attorney General's Office categorically indicated that the government favored separate jurisdiction between the Kadhi's Courts and the Native Tribunal. Avoiding action that could be *ultra-vires* when the Tribunal was reconstituted into a Kadhi's Court, Stacey thought the suggestion was sinister and explicitly argued against it in that, "attempts to establish a court with powers to treat as criminal offences, offences against Mohammedan religion should be regarded with gravest suspicion".³⁷⁷ Stacey's jargon aside he clearly espoused the government's unwillingness to allow Muslim officials' viz. the pseudo-Kadhi to institute Islamic criminal jurisdiction and practice.

³⁷⁵ District Commissioner, Kavirondo to Provincial Commissioner, Nyanza, ref. MDS 1/3 of 24th April 1947 in KNA/PC/NZA/3/18/29.

³⁷⁶ Acting Provincial Commissioner, Nyanza to District Commissioner, North Kavirondo. ref. L&O 1/1/3/1/169 of 1st May 1947 in KNA/PC/NZA/3/18/29.

³⁷⁷ H.E. Stacey, Judicial Advisor, to G.R. A Davies, Provincial Commissioner, Nyanza. Ref. No. L/LA/12 of 26th July 1947 in KNA/PC/NZA/3/18/29.

In the final analysis, attempts' to establish Kadhi's Courts with both criminal and civil jurisdiction, were indirectly thwarted as Stacey continued to argue in explicitly opposing terms that,

No matter how useful the body of men who acted as assessors in Mohammedan disputes, the Tribunal had no powers in cases involving Mohammedan civil laws and neither could it legally impose sentence for offences against Mohammedan religion'.³⁷⁸

Instead, and as was expected of the government's position, Kadhis appointed in the interior would have to be pseudo-Kadhi holding a watered-down authority and jurisdiction confined to personal matters of marriage, divorce and succession. When appointed, the Kadhi for Nyanza had to conform with these rules, as Beecher was further assured of minimized conflict of laws where a Kadhi was appointed.³⁷⁹ Satisfied, Beecher consented and affirmed to the effect that establishing a Kadhi Court in Nyanza would not breach any prior undertakings given.³⁸⁰

7.8 A final Wanga racial onslaught

In October 1947, demands to have a Kadhi appointed at Mumias were finally accepted and approval to appoint Sharif 'Umar was given. Sentiments espousing the racialization and Arabization of Kadhiship continued to manifest as J.W.P. Forster Sutton insisted that Sharif 'Umar was only liable for appointment "on the assumption of limited doubt

³⁷⁸ Provincial Commissioner, Nyanza to District Commissioner, North Kavirondo ref. No 1/1/3/1/173 of 21st July 1947 in KNA/PC/NZA/3/18/29.

³⁷⁹ District Commissioner, North Kavirondo to Acting Provincial Commissioner, Nyanza ref. MDS 1/3/77 of 24th July 1947 in KNA/PC/3/18/29.

³⁸⁰ J.W. P. Forster-Sutton, Member for Law and Order, to Provincial Commissioner, Nyanza, on 9th October 1947 in KNA/PC/NZA/3/18/29.

regarding his race as an Arab”.³⁸¹ Invariably the Wanga embarked on another racially based opposition to express their dissatisfaction with the government’s favoritism towards Arabs and their disenfranchisement. Taking their cue from Mzee Athuman b. Seif in the 1940’s, more specifically in October 1947, Maalim Athuman Wangara spearheaded the next campaign to have a Wanga person appointed Kadhi with an explicit racial condemnation accusing the government of colluding with Arabs from the Coast to “deny the people of Kavirondo their legitimate right to choose who was going to institute marriage amongst them.”³⁸² In April 1948, Maalim Wangara’s efforts were complemented by those of Abd Allāh b. ‘Umar who viewed the appointment of Sharif ‘Umar as an encroachment of traditional community leadership by a foreigner, an aspect that they had objected to during the reign of their paramount Chief Mumia. Accusing the government of colluding with outsiders to deny the Wanga their rightful leadership post, Abd Allāh b. ‘Umar reminded them of the past when the government declined to hand over the registries of marriage and divorce to Mzee Athuman b. Seif. Perplexed by this denial, he was also confused about the titles of the post when he wondered “how is it that an outsider has been made the Chief Kadhi while the local Mzee Seif deserved the appointment because he was quit fit, while Sharif ‘Umar was a foreigner.”³⁸³ In actual sense there was no Chief Kadhi in Nyanza rather a pseudo-Kadhi appointment of Sharif ‘Umar.

³⁸¹ Director of Establishment to Provincial Commissioner, Nyanza ref. no S/E 19/2/3884/6 of 7th January 1948 in KNA/PC/NZA/1/1/3/1/173.

³⁸² Maalim Athuman Wangara to Sir Phillip Mitchell, Governor of Kenya on 25th October 1947 in KNA/PC/NZA/1/1/3/1/173.

³⁸³ Ibid.

Abd Allāh b. ‘Umar blamed the Wanga who previously allowed Sharif ‘Umar to work amongst them; he was certain that they accepted him as a teacher but not as a Kadhi. Recommending the passing over of religious authority in a similar fashion as traditional chieftaincy, he supported Mzee Athuman b. Seif to be made the Kadhi, because he thought he was the “right person”.³⁸⁴ Abd Allāh b. ‘Umar raised pertinent issues of religious leadership in a multi-ethnic and multi-racial Muslim community. However, in total disregard to the issues raised by Abd Allāh b. ‘Umar on behalf of the Wanga, the government disagreed with him, arguing that Sharif ‘Umar had the support of a great majority of Muslims in the district.³⁸⁵ On the basis of the District Commissioner’s support, the Chief Native Commissioner not only responded to Abd Allāh b. ‘Umar’s and the Wanga community’s concern in the negative, but the District Commissioner also indulged in unnecessary deception. Contrary to the common practice he insisted that the appointment of Kadhi was the responsibility of the government and that the government did not intend to consider the race of a person appointed to such an office, but only on their suitability.³⁸⁶

The Wanga resented Sharif ‘Umar’s dominance of the post of Kadhiship because he was an Arab and an ‘outsider,’ and yet his appointment was a precedent that other Muslim

³⁸⁴ Ibid.

³⁸⁵ District Commissioner, Kavirondo, to Provincial Commissioner, Nyanza in ref.: no. MDS. 1/3/88 of 10th March 1948 in KNA/PC/NZA/3/18/29.

³⁸⁶ Chief Native Commissioner to Provincial Commissioner, Nyanza for onward response to Abdullah bin Omar. Ref. no. CNC. J&L 12/5/98 of 14th April 1948 in KNA/PC/NZA/3/18/29.

communities around Mumias used to demand similar appointments. In 1948, Muslims in Kisumu thought the Registrar Shaykh Abd Allāh was too old to carry on his duties with vigor and suggested that a Kadhi be appointed; ironically they recommended another Arab, one Shaykh Aḥmad b. ʿUmar al-Kindy. Likewise, the residents of Nubian village in Kisii petitioned the District Commissioner, demanding the appointment of a Kadhi to serve them, as they had doubts about the knowledge and understanding of the Qurʾān and the process of marriage and divorce by Shaykh Sulaymān b. Abd Allāh, the incumbent Registrar.³⁸⁷ Most likely the difference between the Nubi community and the Kadhi occurred because the Nubi follow the Malik school of thought while Shaykh Sulaymān, an Hadrami Arab of the Shafiʿi sect. Nevertheless, the government concurred with this demand to the effect that the knowledge of the registrar was questioned and Shaykh Sulaymān b. Abd Allāh had failed to retain the confidence of his people. It recommended his replacement but was silent on the appointment of a fully-fledged Kadhi.³⁸⁸

7.9 The Kadhi and the Colonial State

While other Muslim communities within Nyanza used the appointment of Sharif ʿUmar to demand similar appointments in their own locations, the government was already

³⁸⁷ Sulaymān b. Abd Allāh had been the Registrar since 1935. See Government Notice No. 783 Official Gazette 1935 in page 1186 but in 1948 sixteen residents of the Nubian Village in Kisii petitioned the District Commissioner, North Kavirondo demanding his removal. See KNA/PC/NZA/3/18/29.

³⁸⁸ Provincial Commissioner, Nyanza, to District Commissioner, North Kavirondo ref. no. MDS 2/4/2/97 of 1st September 1948 in KNA/PC/NZA/3/18/29.

questioning his performance barely a year after his appointment. As a Kadhi, Sharif ‘Umar was charged with responsibilities equivalent with those of a second-class magistrate but sub-ordinate to European Magistrates who had powers to oversee operations his operations by way of inspections. In December 1948, a routine inspection by C. Campbell, the District Officer indicated that Sharif ‘Umar did not follow the procedures laid down by law in his duties, leading Campbell to recommend his temporary suspension and thereby ushering conflicts between Sharif ‘Umar and other administrators.³⁸⁹

In February 1949 Sharif ‘Umar’s post in the judiciary was queried again, this time over the inadequate volume of work which allegedly could not justify its existence. On the other hand, Muslims thought the queries were excuses by the government to justify limiting the operations of Islamic Laws, especially when Sharif ‘Umar was ordered to stop exercising jurisdiction on offences committed against *shari‘ah*.³⁹⁰ Like Shaykh Abud, his counterpart in Nairobi, Sharif ‘Umar was also accused of financial impropriety and eventually C. Campbell concluded that “the Kadhi’s court as constituted was a failure, and because of the low volume of work performed, the Court should be abolished”.³⁹¹ It is recalled that this decision was harsh, its implementation hasty and taken without the government considering the prolonged agitations that had led to the

³⁸⁹ C. Campbell, District Commissioner, North Kavirondo, to Provincial Commissioner, Nyanza. Ref. no. MDS 1/3 of 28th December 1948 in KNA/PC/NZA/3/18/29.

³⁹⁰ Provincial Native Courts Officer, Nyanza, to District Commissioner, North Kavirondo, ref. No MDS 2/4/2/103 of 16th February 1949 in KNA/PC/3/18/29.

³⁹¹ C. Campbell, District Commissioner, North Nyanza to Provincial Commissioner, Nyanza ref. No. MDS 1/3 of 16th August 1949 in KNA/PC/NZA/3/18/29.

establishment of the Court.³⁹² Perhaps the Kadhi should have been given an opportunity to conform to strict bureaucratic standards, or another Kadhi, possibly with higher qualifications than Sharif ‘Umar engaged to manage the Courts, otherwise C. Campbell’s suggestion to abolish the courts was not viewed with sympathy by Muslims.³⁹³

There were similarities between Nairobi and Nyanza, as the saga of Sharif ‘Umar involved personality clashes between European colonial officials and their Muslim counterparts. For example, P.H. Brown’s criticism of the conduct of Sharif ‘Umar was countered by the Provincial Commissioner who thought Sharif ‘Umar was competent in matters of Muslim personal law. P.H. Brown did not observe the counsel insisting on his conviction that Sharif ‘Umar did not espouse sufficient knowledge for the onerous duty of a Kadhi. Not convinced of the possibility for improvement, P.H. Brown harshly recommended permanent closure of the Kadhi’s Court due to unsatisfactory services.³⁹⁴

Irrespective of P.H. Brown’s uncompromising stance, the reasons for Sharif ‘Umar’s troubles as outlined by the District Commissioner included prevalent ethno-racial differences involving the Wangas, some Somali and other vocal Arab-Swahili communities who declined to recognize Sharif ‘Umar’s authority. Occasionally these Muslim ethno-racial groups conspicuously failed to work together, and disrupted the peaceful management of Muslim affairs, thus affecting the volume of cases brought

³⁹² Mzee Manyara, Personal interview. Mumias, 12th September, 2001.

³⁹³ Ibid.

³⁹⁴ P.H. Brown, Second Class Magistrate, Kakamega to District Commissioner, North Nyanza ref. no MDS 2/4/2/11 of 22nd August 1949 in KNA/PC/NZA/3/18/29.

before the Kadhi.³⁹⁵ Similar to the inquiry held in Nairobi, the government wished to invite capable Muslim Officers from the Coast to visit Nyanza, report on the ability of the Kadhi and make other observations with a view to improving the efficiency of the Courts.

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The Kadhi, Sharif ‘Umar, had a different opinion of his troubles, espousing the view that P. H. Brown’s recommendations, orchestration and campaign for closure of the Kadhi’s Court were a personal vendetta. Resulting from P.H. Brown’s visit to Sharif ‘Umar’s residence outside normal office decorum, the Kadhi lodged a complaint, accusing Brown of disrespecting his post and duties. In fact this visit gave rise to an exchange of unpleasantness as Sharif ‘Umar complained of Brown’s neglect of his *heshima*, (respect) by going to his house during a time when he [Sharif ‘Umar] was off duty, where P. H. Brown shouted and used unsuitable language to Sharif ‘Umar [in the presence] of his family.³⁹⁷

In early 1950, Muslims were concerned that the government might implement Brown’s recommendation, but nevertheless countered with a demand that the Kadhi should in fact be allowed to cover a wider area of Nyanza Province instead of confining his jurisdiction to Mumias alone. Under the auspices of the *Nyanza Muslim Social Service League*

³⁹⁵ District Commissioner, North Kavirondo to Provincial Native Courts Officer, Nyanza in Conf. Ref. no. MDS 1/3 of 30th August 1949 in KNA/PC/NZA/3/18/29.

³⁹⁶ *Ibid.*

³⁹⁷ Sharif Omar to Chief Kadhi, Provincial Commissioner, Nyanza and District Commissioner, North Kavirondo on 21st October 1949 in KNA/PC/NZA/3/18/29.

(NMSSL) they elaborated on the qualities and knowledge of the Kadhi preferring a “scholarly person”, one versed in Muslim law. The NMSSL wanted the Kadhi to be appointed from amongst all Muslim communities including Arab, Swahili, African Muslim and the Somali instead, of giving preference to Arabs. While the NMSSL made these recommendations, they also acknowledged that competent individuals were difficult to find and suggested that the appointment be held in abeyance to give Muslims the opportunity to request the Chief Kadhi, a reason they referred to as the Muslim ‘high priest’ to recommend a suitable candidate for appointment.³⁹⁸

In January 1950 efforts by the NMSSL were complemented by the Swahili Muslim Association (SMA), who defended Sharif ‘Umar by arguing that *fitina* was responsible for attempts to dismiss him. Aligning themselves to ethno-racial sentiments, the SMA argued against the removal of Sharif ‘Umar, describing such action as being *kudharauliwa taifa la Kiswahili*, (demeaning of the Swahili people).³⁹⁹ Muslims thus concurred on the relevance of Kadhiship in Nyanza but disagreed on the actual appointment. Government’s wishes to abolish Kadhiship were rescinded to avoid a joint Muslim backlash against the government.⁴⁰⁰ Instead Sharif ‘Umar was transferred from Mumias to the District headquarters in Kisumu.

³⁹⁸ See Secretary, Nyanza Muslim Social Service League to Provincial Commissioner, Nyanza, in KNA/PC/NZA/3/18/29.

³⁹⁹ Minutes of Swahili Muslim Association of 28th January 1950 in KNA/PC/NZA/3/18/29.

⁴⁰⁰ Muhammad Wangara, Personal interview. Mumias, 30 September, 2001.

7.10 'Not qualified but capable': Confirming Sharif 'Umar

Before Sharif 'Umar was transferred from Mumias to Kisumu, T.A. Watts instructed the Chief Kadhi, Sayyid 'Alī b. Aḥmad Badawy to test his ability to administer Islamic laws.⁴⁰¹ During the process Sayyid 'Ali Badawy indicated that he was not particularly impressed with Sharif 'Umar and that the candidate had “not mastered extensive learning though he had sufficient knowledge to undertake Kadhi's duties without serious mistakes”.⁴⁰²

Yet Sayyid 'Alī Aḥmad Badawy recommended Sharif 'Umar's appointment, but was concerned that his duties required competency in the workings of a bureaucratic system and familiarity with procedures. The Chief Kadhi thought that Sharif 'Umar's handicap with bureaucratic procedures was not unique, as some Kadhis at the Coast also had no knowledge of the procedures which were based on English Common law. Moreover, instructions were written in English and most Kadhis had not mastered the language.⁴⁰³

The Chief Kadhi's sentiments inspired little confidence in Sharif 'Umar, but also warned of a complicated judicial process that brought elements of English common law and

⁴⁰¹ T. A. Watts, Provincial Commissioner, Nyanza to District Commissioner, North Nyanza ref. 2/4/2/130 of 10th March 1950 in KNA/PC/NZA/3/18/29.

⁴⁰² Sayyid Ali Ahmad Badawy, Chief Kadhi to District Commissioner, Mombasa on 17th June, 1950 in KNA/PC/NZA/3/18/29.

⁴⁰³ Sayyid 'Ali b. Aḥmad Badawy, Chief Kadhi to District Commissioner, Mombasa on 17th June 1950 in KNA/PC/NZA/3/18/29.

Muslim law together. Muslims suspected that such attempts hindered the implementation of Muslim law in personal matters. Nevertheless, Sharif ‘Umar was posted to Kisumu and his duties included conducting visits to all Districts of Nyanza to arbitrate in dispute involving matters of Muslim personal status.

When Sharif ‘Umar was relocated to Kisumu, the Wanga immediately re-invigorated their campaign for a kinsman Abu Bakr b. Juma’s appointment. But Sharif ‘Umar nominated his son Sharif Muḥammad b. Sharif ‘Umar al-Mahdaly to succeed him. The Wanga objected furiously and held meetings to mobilize their community against possible appointment. For his part Sharif ‘Umar castigated the Wanga for being ungrateful for his services in teaching them Islam for so many years. He was concerned that the Wanga were holding “*baraza*(meeting)after *baraza*” to try to stop his son from taking up the post of Registrar at Mumias. He defended his action on the fact that “Sharif Muḥammad understood more about Islamic laws and custom than any other person in Mumias.”⁴⁰⁴ He warned the Wanga not to consider the position of a registrar to be that of a tribal chief as the post was a religious one and ought to be taken seriously.

In April 1951 the government invited the Nyanza Muslim Social Service League (NMSSL) to seek the opinion of the entire Muslim population on the appointment to replace Sharif ‘Umar at Mumias. The Wanga lost again as the NMSSL sought a compromise candidate in Shaykh Ishaq b. Muḥammad from the Somali community, who

⁴⁰⁴ Sharif Omar to District Commissioner, North Nyanza, in ref. MDS 2/4/2 of 30th January 1951 in KNA/PC/NZA/3/18/29.

was appointed on the strength of his previous service in the same capacity in the Uasin Gishu district of Nyanza Province.⁴⁰⁵

7.11 Conclusions

The contest over Kadhipship between all the Wanga communities against one Arab individual epitomized the racially defined struggles for leadership in an Islamic polity, but also emphasized the dominance of the preferences by colonial officials on the choice of Kadhis. This has been an illustration that the ultimate power that accorded authority to the Kadhi during the colonial period was the colonial state and that its preference was always to accord coastal communities the power and authority to rule over *indigenous* communities. Indirect rule seemed to employ coastal community members in the interior. In the case discussed, Sharif Umar b. Abd Allāh al-Mahdaly could not have had a chance to exercise the authority of a Kadhi were it not for the fact that colonial authorities preferred him on the basis of his Arab identity.

⁴⁰⁵ Nyanza Muslim Social Service League to T. Watts, District Commissioner, Central Nyanza on 16th April 1951 in KNA/PC/NZA/3/18/29.

Chapter Eight

8.0 General Conclusions

I have made detailed conclusions at the ends of chapters Four, Five, Six and Seven, which constitute the major discussions and findings of this study. However, in this chapter, I will summarize the findings in a generalized form based on the objectives set for this study.

Kenyan Muslim demography of the period covered by this study comprised a non-homogenous population of diverse ethnic and racial groups. Contrary to the common understanding that puts the geographical 'home' of Islam within the expansive Coastal regions of Eastern African, Kenyan Islam belongs to the interior as much as it does to the Coast. Islam thus has extended its influences into places like Mumias and Nairobi and their surrounded areas to create a distinctive and indigenous interior or *Bara*-based Muslim demography. Thus, the Muslim demography of Kenya comprises the Arabs, Mijikenda and their Swahili neighbors at the Coast, but it is incomplete if the Kikuyu, Kamba, Luhya and Luo Muslims are not included in defining the *ummah*.

The existence of race, ethnic group identities and regional balances brings us to other conclusions, based on our analysis of more recent attempts to consolidate a unitary form of political leadership for all Muslim communities of Kenya. This was a difficult task

because, Muslims could not and did not entirely agree on the forms of leadership or the composition of leading interlocutors in the political and ritual arena. Contrary to the notion that there was no priesthood in Islam, distinguishable forms of leadership do actually exist in Islamic societies. In Kenya the ‘*ulamā*’ was such a form that mostly exercised leadership in ritual practices. In spite of an almost common reverence for the authority of the ‘*ulamā*’, however, most of them failed to gain unquestionable acceptance outside their specific racial, ethnic or residential identities. Muslim interest groups always negotiated power and authority around race and ethnicity. Every segment of the Muslim population of Kenya demanded a role in the emerging leadership institutions, especially within the structures of power established by the colonial authorities. In fact communities demanded the right to exercise not just any role, but a leadership role in Mumias in opposition to the position accorded to an Arab ‘outsider’. While demanding the opportunity to lead other Muslims, the Wanga were prone to use their Wanga identity and regionalism to claim and assert exclusiveness. So too did the Mijikenda when they argued with their Swahili neighbors. It is in this sense that we concluded that the emergence of political forms of leadership, as forms of civil society in Mombasa, did not occur within parameters other than those of race, identity politics and colonial power.

Even overtly political groups that championed political leadership and interests confined to racial identity and exclusivity. The Central Arab Association (CAA) was for Arabs and the Afro-Asian Association (AAA) reserved membership to members of mixed descent. The African Muslim Society made it clear that Arab members were not welcome. In this state of communal fragmentation, colonial rule played its most significant role of

institutionalizing race as a factor in according the scarce resource of leadership. With its ideas of civilization that debunked the political aspiration of “native” communities, colonial power, embarked on a process to exercise control. Such control was exercised by limiting indigenous institutions of power, and creating new models of authority. Colonized African communities had no choice but accept such structures and their conditions as a matter of political expediency and means of survival. The Islamic figures of authority, the Shaykh al-Islām and other lower Kadhis were an instance of this broader system. Whilst apparently continuing earlier forms of religious control, the colonial Kadhis were never delineated from the colonial system. Even institutions of political representation, like the Legislative Council that manifested the colonial idea of civilized articulation of power and authority, did not escape the racial pre-eminence. The colonial rulers’ major predicament was how to incorporate the diverse interests of such a wide variety of non-homogenous populations. In its responses to this predicament colonial power formulated the policy of indirect rule, by deliberately setting apart for favors one section of the population to the detriment of other sub-groups. The process of selecting leaders exclusively from a particular ethnic and racial group was not only objected to by the majority of the population affected by the exclusion, but one of its major effects was the consolidation of race as a determining factor in leadership evaluation. Amongst the Muslims of Kenya, racially inclined and ethnically defined values of leadership in its political and religious forms were grounded during colonial rule. This study concurs with Mamdani’s notion that places post-colonial forms of leadership in African societies within the discourses of the effects of colonial policies. Colonial forms of leadership continued in Islamic societies within the divisions of race and ethnic identity.

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List of Oral Informants (cont'd)

- Haider Ali Matano
The son of Mombasa political reformer and one of the strongest supporters of the political activities of the Thelatha Taifa community. His father was a founder member of the Afro-Asian Association (AAA).
- Haji Mwishame
A Tisa Taifa Swahili patriot and resident of Jomvu Kuu.
- Juma Bakari Gari
A Giryama Muslim and resident of Kisauni in Mombasa
- Juma Keke
A Digo elder and resident of Mwabungo, Kwale. A herbalists of repute and very informative on the social histories of the Digo.
- Mohammed Omar. M. Dzimba
A Digo resident of Nyali Mombasa, municipal worker during the 1940's to early 1960. Had useful knowledge of the political atmosphere of Mombasa during the 1960's.
- Munir Mazrū'ī
A member of the prominent Mazrū'ī family in Mombasa.
- Ramadhani Matano
A Tisa Taifa Swahili, resident of Mtongwe, Mombasa and useful for his pictorial memory of political events during the 1940's
- Rashid Salim Mwaneke
A Digo Muslims and resident of Kisauni, Mombasa. Useful in locating and placing local historical incidents in their social perspectives.
- Rajab Sumba
A former Mayor of Mombasa and a reliable source of inter-ethnic politics during the 1940 to the 1980's

List of Oral Informants (cont'd)

- Salim wa Katwa A Mijikenda Muslim, resident of Mtwapa to the north of Mombasa, useful with information on early local histories of Mombasa and social interactions especially in the early 1920's and 1930's
- Salim Gakweli A Mijikenda-Digo elder and resident of Mkomani, Mombasa, instrumental in narrations of social interactions between Swahili families and the Mijikenda.
- Shekue Ali A Digo from Kwale but a long time resident of Mombasa, participated in the formation of various nationalistic political organizations in Mombasa during the early 1950's, was instrumental in the histories of African Muslims participation in politics in Mombasa.
- Sulaymān, Shaykh Munyi Was the Registrar of Muslim Marriages in the Majengo area of Nairobi. His father was amongst the first Kikuyu Muslim and his knowledge of the local histories of Islam in Nairobi was useful.
- Swaleh, Ustadh Harith A prominent Mombasa based 'alim who hails from Lamu. Well known in Mombasa for his philosophical darsa. He was appointed the interim Chairman of the proposed Majlis al-'Ulamā. I was impressed by his collection of books on Islam and other subjects in his home library in Mombasa.
- 'Umar Sulaymān Mwajambia A Muslim elder in Nairobi with considerable respect and active in the community. He has been a local comedian and recently started to tell stories with Islamic moral teachings in an FM Radio station in Nairobi. He considers himself a second generation of upcountry Muslim being the son of a local Kikuyu woman and a Digo Muslim who immigrated from Tanga and settled in Nairobi during early twentieth century.