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In The 21st Century:

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REFORM AND RESISTANCE: FATWA INSTITUTION IN KENYA BETWEEN TRADITIONAL TRENDS AND MODERN

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Abstract

Between mid nineteenth and twentieth centuries the East African coast was under the rule of the Sultans of Zanzibar. The Sultans appointed 'ulama' to take charge of Muslim affairs that included judicial and other religious matters. The 'ulama' were under the patronage of the Chief Qadi who was also called Sheikhu'l Islam by the British administrators when they declared British Protectorate in Zanzibar in 1890. For decades, the Chief Qadi enjoyed unchallenged recognition and authority in religious matters throughout the Sultanate. Religious opinions of the Chief Qadi, who took the role of the Mufit, were taken at their face value and followed without fail. The fact that 'ulama' were state appointed officials did not affect their status in the eyes of the public. Such 'ulama' were already intellectuals in their own right even before being recruited by the State. Their intellectual contribution in form of mosque-seminars (darsas) to the society was well recognized and assured them continuous support.

However, after the independence of Kenya in 1963 and Zanzibar revolution in 1964, role of the Chief Qadi in the region diminished gradually. Hence, centrality of fatwa making process was disintegrated. The Chief Qadi did not enjoy the privileges offered by the State and his status in the society gradually diminished. Ideological persuasion of 'ulama', including the Chief Qadi, influenced their fatwas and with time ideological affiliation was institutionalized resulting in two antagonistic groups: traditionalists represented by Saada'Alawiyya / ahl al tariqa and modernists represented by Salafi ahl sunna. In this paper, I will argue that although fatwa could be seen as an instrument to portray unity of Muslims in the region, it reflects sharp divergence of opinions among 'ulama', hence, causing division among Muslims. The paper will trace the history of fatwa in Kenya and highlight on the genesis of fatwa institutions. It will further explore contentious issues that have caused divergence of opinions among fatwa institutions in Kenya.

History of fatwa institutions in Kenya

I first propose to look at fatwa in its historical context and then deal with its modern implications. Until mid twentieth century the responsibility of issuing fatwa was the prerogative of the Chief Qadi. Moon sighting was among the prominent fatwas that Muslims in Kenya relied on the Chief Qadi’s office. Although the Chief Qadi was the sole authority to officially declare the sighting of the moon, as a protocol, he would consult reputable centers of knowledge before making the official announcement. Among the most recognized centers of knowledge in the mid twentieth century Kenya was
Riyada, a mosque-college institution established by the Saada 'Haram', Lamu archipelago.\(^1\)

Riyada mosque was recognized for its intellectual contribution at fatwas that were accepted along the Kenyan coast. Beside Riyada mosque, there were other scholars who held their independent opinions on religious matters. Among the famous figures seen to contest Riyada's authority was Sheikh Muhammad Omar Al-Amudy based in Shela, a neighbourhood near the town of Riyada. Sheikh Al-Amudy, a widely read scholar continued to uphold an Saada banner that had been earlier raised by his village mate, Sheikh Feisal Lamy. Sheikh Feisal who was earlier based in Lamu town, had to relocate Shela village due to difference of his opinions with Saada in Riyada.

Shela was viewed by Riyada as its rival in contesting religious authority (marji‘yya) particularly with regard to the sighting of the moon within Lamu islands. It was an obvious matter that Shela would always oppose Riyada during the seasons of moon sighting. Sheikh Al Amudy was firm in his views regarding moon sighting to the extent of even challenging the office of the Chief Qadi in cases where the latter would lean towards Riyada's opinion. In one case, the Qadi of Lamu summoned Sheikh Al Amudy in court disagreeing with the Chief Qadi on moon sighting. The matter attracted the attention of the whole island. With the interference of the then Chief Qadi, Sheikh Abdalla Farsy, the case was settled amicably.\(^2\)

Despite the divergence of opinions among 'ulama, there was an element of tolerance and recognition of the various centers of knowledge. Students were free to cross borders of the opposing groups to study under scholars of different ideological persuasion. For instance, Habib Saleh Jamal al lyli sent his son Ahmad Badawy to study under Sheikh Feisal al Lamy despite the divergent views the two held. Similarly, Seyyid Ali Badawy was sent by his father to study under Sheikh Al-Amin Mazrui. Due to this atmosphere each group had its own religious authority (marji‘yya) based on its own sectarian ideology. The Saada and their followers relied on the Sahib al maqam (authoritative person) in Riyadh, Lamu while the Salafī relied on Sheikh Abdalla Saleh Farsy.

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2. Interview with Sheikh Hammad Muhammad Kasim Mazrui, Chief Qadi of Kenya, Lamu, 4th June 2008
Parallel fatwas were issued and each group followed its own marji‘iyya but respect and tolerance was still prevalent.

In early seventies Riyada was challenged by another front. This time round was the office of the Chief Qadi itself. Riyada mosque was in cordial relationship with the office of the Chief Qadi. Most of the Chief Qadis were either from the Saada family or their supporters. Seyyid Abdurahman al-Saggaft famously known as Sheikhul Islam Mwinyi Abudu (D.1922) was among the pioneer Chief Qadis of Kenya from 1902 until his death in 1922. Being from the Saada himself, his loyalty to Riyada could be not be disputed. Sheikh Muhammad bin Omar Bakor born in Hadhramaut, was the next Chief Qadi of Kenya from 1922 until he resignation in 1932. Sheikh Bakor settled in Lamu and was appointed as a Qadi of Lamu from 1908 until he assumed the post of Chief Qadi of Kenya. Being a resident of Lamu, Sheikh Bakor relationship with Riyada seemed to be a cordial one. The post of Chief Qadi was then assumed by Sheikh Suleiman bin Ali Mazrui (D.1937) from 1932 to 1937. Sheikh Al-Amin bin Ali bin Mazrui (D.1947), a family member and student of Sheikh Suleiman bin Ali al-Mazrui, was appointed the next Chief Qadi from 1937 to 1947.

Sheikh Al-Amin Mazrui contributed widely in his writings that covered contemporary issues such as religion and politics. He founded two newspapers Suhfa (25th November 1930) published in Swahili using Arabic script. and al-Islah (29th February 1932) written in Swahili using Latin script and Arabic. Although he was critical on religious issues that were based on traditional practices, his relationship with the Saada, was not severed. Perhaps this was due to his tutelage under Seyyid Ahmad bin Sumayt (D.1925), a prolific religious figure in Zanzibar. Later Seyyid Ali Ahmad Badawi Jamal al-Lyl (D.1987) from Riyada took over the post from 1948 to around 1952. Seyyid Ali served as the last Chief Qadi from Saada family.

After Seyyid Ali Badawy, there was no chief Qadi for a period of time, although Sheikh Muhammad Qasim Mazrui (D.1982) acted as Chief Qadi. Sheikh Muhammad Qasim followed the reformist ideas and foot steps of his father in law and mentor Sheikh Al Amin Mazrui. He wrote widely against the traditional practices done by the Saada and gave individual fatwas in his writings Hukumu za Sharia (Rules of Sharia). His fatwas covered various challenging issues of the time such as birth control where he urged that companions of the Prophet Muhammad (PBUH) practiced 'azl (coitus interruptus). Other fatwas covered matters like going to the moon and legality of stunning of cattle before being slaughtered. Sheikh Muhammad Kasim was the Chief Editor of Sauti ya Haki (voice of truth) which was published after
every three months under the auspices of Anjuman Himayat Islam Nau since 1972. Articles in this newsletter covered a variety of social issues in politics. The newsletter was also vocal against traditional practices done by Saada such as Maulid al Nabawi (celebrating birthday of Prophet Muhammad) and Khitma (Quran recitation for the dead).

It was during this period that fatwa institution in Kenya was trained from the monopoly of Saada who were controlling traditional center knowledge such as Riyada. Sheikh Muhammad Qasim served as the Chief Qadi of Kenya from 1963 to 1968. Before leaving the office, he recommended his colleague Sheikh Abdalla Saleh Farsy from Zanzibar to take the post of Chief Qadi of Kenya. For Sheikh Muhammad Kasim, Sheikh Farsy did not only share his ideological thoughts, but the fact that Sheikh Farsy was a foreigner could advance the reformist agenda against innovative religious practices, particularly against Saada. Sheikh Farsy (D.1982) served as the Chief Qadi of Kenya from 1968 to 1982.

Sheikh Muhammad Kasim also appointed his colleague Sheikh Farsy in the Mufti of the newsletter Sauti ya Haki (voice of truth). Sheikh Farsy also the opportunity to air his anti-bid'a (innovative) views in responses to questions posed by the readers of the newsletter. Hence, Saada of Riyada regarded Sheikh Farsy as their main rival. Saada branded the rival such as Sheikh Farsy and Sheikh Muhammad Kasim Mazrui as Wahhabi (Salafi). With his eloquent and convincing speech, Sheikh Farsy managed to gain support of emerging young scholars particularly from the islands surrounding Lamu. Mosques schools (darsas) were polarized and used for attacking and counter attacking between the two antagonists groups: Saada and Salafi. Controversial issues formed the debates such as legality of Maulid al Nabawi (celebrating birthday of Prophet Muhammad) and Khitma (Quran recitation for the dead).

Attacks superseded controversial matters and were even directed at scholarly works. A case in point was the reaction of Riyada in rejecting commentary of the Quran written by Sheikh Farsy.

Although the relationship between the opposing trends was tense, due to the status of the 'ulama and their social standing, tolerance was still maintained. Kresse quoting Sheikh Abdillahi Nasir, a renowned scholar in Kenya, mentions an incident were Sheikh Al- Amin Mazrui and Seyyid Omar bin Sumur from Zanzibar "had been engaged in an intense intellectual argument yet despite their differing opinions they helped each other into their sandals before leaving."
The death of 'ulama such as Sheikh Muhammad Kasim and Seyyid Ali Badawy and the like caused a vacuum in marji'iyya for both groups: Sa'da and Salafi. This was coupled with internal struggles for leadership positions within both groups. As a result, the new 'ulama who assumed leadership roles of their respective groups were of different caliber. This led to lack of confidence and trust from the followers and even among 'ulama themselves. Controversial matters centering on bid'a and Sunna practices divided the followers further.

Due to weakness of the existing marji'iyya, fatwas were tuned along ethnic lines. People preferred to approach 'ulama of their own communities for fatwa. Hence, fatwas were ethnic oriented whereby each region or tribe would rely on 'ulama from their own ethnic group or region. Emerging vernacular FM stations selected scholars from their respective regions and ethnic groups to issue fatwas according to their ideological affiliations. Young emerging scholars took advantage of the marji'iyya vacuum to issue fatwas based on orthodox views such as prohibiting Muslims to work in non-Islamic government.

Fatwa institutions were attached to leadership role of Muslims in Kenya. It was from this angle that the office of the Chief Qadi was challenged. Opponents viewed the Chief Qadi as a state appointed person who is subjected to strings that could compromise his religious stand. The Chief Qadi was seen to be a judicial officer and therefore should not represent Muslims on religious matters. Opposition against the authority of the Chief Qadi in mid eighties was pioneered by young graduates from foreign Islamic universities particularly from Saudi Arabia. These young and modern 'ulama came with a Salafi orientation that was different from their home grown tradition. Most of them were from underprivileged communities that could not get easy access to either formal secular education or informal religious education. In addition to the local young Salafi scholars, Saudi Arabia sponsored foreign graduates from Islamic universities to work in Kenya. With the outbreak of civil war in Somalia in early nineties, an influx of Somali scholars sought refuge in Kenya. With all these reinforcements from within and abroad, the Salafi trend gained momentum in Kenya since early eighties. This resulted in a continuous confrontation between Salafi and Sa'da on one hand, and Salafi and Chief Qadi on the other hand.

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2 Interview with Sheikh Abubakar Abdo (Abu Hamza), Member of Majlis Ulama Kenya and Imam of Masjid Sakina Mombasa, Lukenya, 4th June 2008
Fatwa institutions in Kenya

Ideological affiliations of 'ulama and their followers influenced the establishment of Majalis al 'ulama (councils of scholars). From the formation of the various Majalis al 'ulama in Kenya since early nineties, it seems clear that ideological persuasion of the two antagonistic groups: Salafi and Saabi was entrenched in the minds of the founders of these institutions. In the discussion that follows, I will trace the establishment of the various fatwa institutions in Kenya in chorological manner and highlight the achievements and challenges facing them.

Lujnat al 'ulama (Committee of scholars) established by Jumiyatu Al-Duatu Ila Sunnat

The first initiative to establish a formalized council of scholars was pioneered by Jumiyatu Al-Duatu Ila Sunnat based in the island city of Mombasa in 1990. The organization with a Salafi support brought together prominent Muslim scholars and imams from all over the Kenyan coast. The gathering met at Madrasat al Munawwara, a famous Salafi institution in Mombasa. Top on the agenda was the need to unite 'ulama in order to speak one voice on religious matters. The Chief Guest who graced the occasion was the Religious Attaché of the Royal Embassy of Saudi Arabia. The scholarly gathering took place between 2nd and 3rd June 1990 and agreed to establish a committee of 'ulama (lujnat al 'ulama) consisting eleven members from the scholars who attended the function. Strikingly enough, the consortium opted to form a committee instead of a council of scholars. This could be due to limitation of the members invited who most of them belonged to the Salafi group or at least its sympathizers.

Sheikh Ibrahim Muhammad Suheil was appointed as the Amir (chairman) of lujnat al 'ulama. Others included Sheikh Muhammad Omar Al-Amal, Sheikh Muhammad Ahamd Msallam and Sheikh Muhammad Shariif Fama reflecting the Salafi group from the Lamu Islands. To demonstrate impartiality of the process, 'ulama from non-Salafi group were appointed in the committee. This included Sheikh Hammad Muhammad Kassim Mazrui the current Chief Qadi of Kenya who by then had not joined the judiciary. Although the consortium did not represent Muslims of different affiliations, it sought to be the spokesman on their behalf in informing all Muslims on religious matters. Among the objectives of the meeting was "to have a special body of

1 Brief report on the Seminar of Ahli Sunna Scholars held on 2nd-3rd June 1990 at Mada'mun Munawwarah, Mombasa (in Kiswahili).
"specialists" whereby all 'ulama can come together to discuss, plan, give rulings, recommend and inform all Muslims and any other party on issues of religious nature or other matter connected to or affecting the welfare of Muslims”.¹

However, the initiative collapsed due to lack of management framework and administrative structures. Other reason that can be attributed to its failure was perhaps the lack of representation of other 'ulama from the non-Salafî groups particularly the Saada who could have seen the initiative not to be an all-inclusive process. Hence, the ideal hope of bringing together 'ulama under one forum did not materialize.

**Majlis 'Ulama established by Supreme Council of Kenya Muslims**

The idea of gathering 'ulama for the second time was revived by the Supreme Council of Kenya Muslims (SUPKEM) in 1994. SUPKEM was set up by Muslim organizations in Kenya and is regarded to be the national umbrella body representing Muslim organizations in the country. It also serves as a liaison between Muslims and the government. SUPKEM was established in 1973 by the generous efforts of Sheikh Mahmud Muhammad al Swawaf sent by the late King Fiesal bin Abdulaziz of the Kingdom of Saudi Arabia.

SUPKEM invited around 200 Muslim scholars from all over the country. The meeting was held on 10th August 1994 for one whole week at Huruma Muslim Secondary School in Nairobi. The gathering deliberated on various matters concerning Muslims in Kenya. Focus of the talks was on the issue of moon sighting. Organizers of the meeting engaged staff from the Kenya Meteorological Department to give a presentation on the impact of astronomical knowledge on moon sighting. A council of scholars (majlis 'ulama) was established with a fair representation of Muslims from various affiliations. This was reflected in the composition of the office bearers. Sheikh Harith Saleh, a renowned Muslim scholar, was appointed as the Chairman of the Majlis. Sheikh Ahmad Muhammad Msallam, who had earlier been appointed as a committee member of the unsuccessful Lujmat al 'ulama, this time, was elected as the Vice Chairman. The strategy of balancing membership of the committee from different affiliations was realized by appointing Sheikh Ali Shee as the Secretary to the majlis. Sheikh Ali Shee was serving as the Imam of Jamia mosque in Nairobi. SUPKEM and Jamia Mosque Association supported the newly established majlis 'ulama and offered to provide facilities

¹ Letter from the Chairman of Jumiyyatu Al-Duatu Ila Sunnat to the Acting Chairman, Supreme Council of Kenya Muslims dated 4th October 1990
to it. In a letter congratulating the chairman of the *Majlis ulama*, the Secretary General of Jamia Committee noted:

The *Jamia Majlis* has been very concerned about the various socio-economic problems affecting the Muslim community, especially the ever confusion of sighting the moon. *Alhamdulilah*, with the formation of your majlis al 'ulama, this particular problem will *inshallah* resolved once and for all.¹

The newly established *Majlis 'ulama* agreed to meet one month after the inauguration. This did never happen. For the second time, the idea of establishing an effective and efficient 'ulama body did not succeed. The Board of Professor El Busaidy "the Majlis' ulama was not dissolved but didn't function".² Another Muslim scholar mentioned that the *Majlis* "did not pass infancy" (*mata fi mahdihi*). Failure of this initiative was attributed to lack of cooperation for differing among themselves after the establishment of the *Majlis*. The main reason quoted was the lack of adequate plans to cater for executive and financial structures.

**Majlis 'Ulama established by Jamia Masjid Association**

Learning from the two previous attempts of establishing a broad level of 'ulama, the Jamia Mosque Association decided to establish in 2001 a large scale *Majlis 'ulama* that would be confined within its parameters. The Constitution of the *Jamia Masjid* provided that there shall be a Majlis Ulema (Council of scholars) to be appointed by the Jamia Mosque Association. Among the duties of the *Majlis Ulema* were: to advise the Association and the Jamia Mosque Association on Islamic matters, to ensure that all the activities of the Jamia Mosque Association shall be done in accordance with Islamic teachings, to guide the Jamia Mosque Association and *Umrah* in general matters of Islamic judgments. The Constitution also provided for the membership of the *Majlis Ulema* to be comprised of seven scholars who must be from *Ahl-e-sunnat-wal-Jamaa*.³

Although the *Majlis 'ulama* was mainly established to advise the Jamia Mosque Association on religious matters, the striking feature was the

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¹ Letter from Sectary General, Jamia Mosque Committee to the Chairman Majlis ulama, Ustadh Harith Swaleh, dated 17/8/1994
² Interview with Prof. Abdulghafur El-Busaidy, Chairman of the Supreme Council of Islamic Muslims, (SUPKEM), Nairobi, 19th June 2008
schooled in representing Muslims and "guide the Majlis and Ummah in general in matters of Islamic judgments". Speaking on behalf of the Ummah seems to be a recurrent phenomenon in establishing Majlis ulama (council of scholars). It is perhaps the limitation of its operation that has guaranteed the survival of the Majlis ulama of Jamia mosque. In addition, the control mechanism in appointing members of majlis has also assured maintenance of the desired category of ulama. Although fatwas of the majlis were confined to particular areas and mostly influenced by Salafi scholars, the majlis can be noted, so far, as the most functioning fatwa institution compared to the other initiatives. Success of the majlis can be noted through minutes of its frequent meetings that issue fatwa in response to arising questions. Among fatwas of the majlis was a response to a question on whether a non-Muslim would be allowed to contribute towards constructing a mosque. The case in point occurred when the then Vice President of Kenya Moody Awori was involved in a fund raising to construct a mosque in Majengo, a suburb area of Nairobi. The majlis referred to a fatwa of the Permanent Committee for Research and Verdict of Kingdom of Saudi Arabia signed by Sheikh Al Sheikh that stated "after studying the mater in depth the committee has concluded that it was allowed to seek financial assistance from Non-Muslims to construct a mosque or madrasa [because] the evil does not outweigh the good". Based on this fatwa, the majlis unanimously agreed on seeking assistance from Non-Muslims in order to construct a mosque.1

Despite success of the majlis, criticism was directed towards it. Critics blamed the Jamia Mosque Committee for thoroughly scrutinizing applications for membership of its Majlis ulama that gives the ultimate control to the committee to appoint members of Majlis without consulting other stakeholders. Other concern raised is the fact that the Majlis was established to protect the interests of the Jamia Mosque Committee.

Majlis Ulama established by Nairobi Joint Masajid Programme

A third attempt to bring ulama under one national forum was undertaken by the Nairobi Joint masjid Programme towards the end of 2004. The task to quote a weekly Muslim newsletter "was not in any way easier as various attempts had been made in the last ten years to bring Muslims together but unfortunately all ended up hitting a dead end".2 To guarantee success of the

1 Majlis ulama Jamia Masjid meeting dated 5/9/2006 on Pumwani Mosque fund raising
2 Friday Bulletin Rabi al awal, 13, 1426/ April 22, 2005, Issue No.104
anticipated national ‘ulama body, adequate arrangements were made of structures laid. Eleven Muslim professionals from the Nairobi joint hands Programme visited South Africa from 9th to 21st August 2003 “to assure themselves with the extraordinary success which their brothers in the father nation have undergone”. The group toured the Majlis ulama Tana Province and was impressed by “the successful organization of the informal structures which have in essence contributed to the growth of the Muslim community in South Africa”.

On their return to Kenya, the Muslim professionals called for and meetings consisting of Muslim scholars, businessmen and professionals to discuss modalities for the establishment of the Majlis ulama. A number of retreats were organized. The first was held at Makindu Jamia Masjid (Makindu I) in Machakos District from 3rd to 5th September 2004. A total of 40 participants from various Muslim organizations attended. After a meeting another meeting (Makindu II) was held at the same venue from 8th to 9th October 2004 with 43 members representing all Muslim originations. The latter meeting agreed to establish a Majlis ‘ulama and a Technical Committee composed of administrators, lawyers and businessmen.

The Technical Committee laid the structure of the Majlis and a tentative constitution that was be subjected to approval of the ‘ulama. Other duties of the committee were to lay down the functions of the Majlis, legal framework of the secretariat and structure to source funds for the Majlis. The Technical Committee constituted sub committees to dwell on specific areas that included finance, administration, and data collection. The financial structure to be the Majlis were prepared Mr. Abdulatif Essajee while Sheikh Abdalla Kher handled the administrative structures. Lawyer Ibrahim Lethome prepared the draft constitution. Sheikh Abdulatif Abdulkarim was consulted to identify and prepare data of ulama across the country. By March 2005 ‘ulama were identified from all the eight provinces of Kenya. North Eastern had 7, Coast 26, Nairobi 25, Western/Nyanza 23, Upper Eastern 21, Central/Lower Eastern 18 and North and South Rift valley 18.

2 Interview with Sheik Abdalla Kher and Ibrahim Lethome, members of the Technical Committee, Lukenya, 5th June 2008.
3 Interview with Sheikh Abdulatif Abdulkarim, ember of Majlis Ulama-Kenya, Ofaa Kenya council of Imams and Ulamaa (KCIU) Lukenya, 5th June 2008
Other meetings were held in Naivasha, a town near by Nairobi. In the first meeting (Naivasha I) the Technical Committee met to brainstorm on drafting the constitution, laying funding and administrative structures. Next followed Naivasha II for presentation of drafts. The final retreat was Naivasha III where scholars and Muslim organizations gave their input. Efforts of the Technical Committee culminated in organizing a meeting that brought together more than 300 Muslim scholars at the Nairobi Muslim Academy from 15th to 17th April 2005.

Members of Majlis 'ulama were elected from eight provinces with two representatives from each province. These members formed the National Executive Committee (NEC) of the Majlis. The newly elected NEC thereafter went into seclusion and held elections supervised by the Chief Qadi Sheikh Hamnad Kassim, Sheikh Khalfan Khamis was appointed as the Amir of Majlis 'ulama-Kenya and Seyyid Abdulkadir Adnan as his vice.¹

Several Muslim dignitaries that included the Chief Qadi of Kenya and Muslim Members of Parliament attended the inauguration of the Majlis ulamaa-Kenya on Sunday 17th April 2005. In his speech, the Chief Qadi said:

"It is my hope that the Majlis 'Ulama-Kenya will be the unifying vehicle for Muslims in the country. We as Muslims need to come together and set aside the petty differences that have contributed to our state of disunity. All along it has been my dream that Muslims in this country would finally be united and it is my hope that through the Majlis 'Ulama-Kenya, this aspiration would be fulfilled.²"

Although the office of the Chief Qadi was initially proposed to be part of the Majlis, it was later agreed by the 'ulama that it should not be included due to the fact that it was a government appointed organ.

In a pre-recorded message during the inauguration of the Majlis, the Chairman of the Supreme Council of Kenya Muslims, Prof. Abdulghafur El-Busaidy pointed out that Majlis 'Ulama-Kenya needed to have a specific role and avoid having various departments. He said "It is as if they are taking over already what is there and done by other Muslim organizations" and that "The most important forum they can have is to bring all the Muslims together by issuing fatwa that will be accepted and respected by all Muslims and will

¹ The Majlis journal, a quarterly publication of Majlis ulamaa-Kenya, Rajab-Ramadhan
² Ibid

126th September-November 2005 pp.1
consider the divergent madh habs". He further warned that "if the intention of establishing Majlis 'Ulama- Kenya is to seek leadership position then it will fail." He concluded by saying, "Majlis 'Ulama- Kenya should be confined to its specific role and unless Muslims will agree to accommodate one another, there will be no unity".

Among the persons delighted for this inauguration was the Chairman of the Nairobi Joint Masajid Programme, the driving force behind this initiative. The challenge that faced Majlis 'Ulama-Kenya after its inauguration was to ensure that it would work together with other Muslim organizations in the country. In a letter to the Chairman of the Supreme Council of Kenya Muslims, the Chairman of Nairobi Joint Masajid Programme stated:

We hope and pray that the newly formed Majlis 'Ulama- Kenya will bring together Muslim scholars toward a sustained unification program and work with you and the Chief Qadi toward reflecting the unity of Muslims in this country.

The Amir of the Majlis 'Ulama-Kenya in his speech reiterated the same message by maintaining that the functions of the Majlis would not in any way conflict with those of other established Muslim organizations but instead they would all work together to spearhead development in the Muslim community. Despite of all these hopes and assurances, critics questioned the rationale of establishing another institution beside the existing ones. Their argument was that there were already in existence Muslim organizations that could cater to the spiritual leadership instead of establishing a new one.

After the establishment of the Majlis 'Ulamaa-Kenya high hopes were pinned on the embryonic 'ulama body. However, with the lapse of three years since its inception, little has been done to realize these expectations. The Majlis was active during the first six months during which its initial goal to support the Nairobi Joint Masajid Programme, pledged to support it with a view to sustaining itself after six months. After the end of six months, financial support was stopped in order to give independence and autonomy to the Majlis. Although this was a strong argument from the sponsors' opinion, it served as a drawback to the Majlis. Sheikh Badru Jaafar,..., rightly stated that "when

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1 Supra Note 7
2 Letter from Chairman of Nairobi Joint Masajid Programme to the Chairman of the Supreme Council of Kenya Muslims dated 28/4/2005
3 Friday bulletin Rabi' al awal, 27, 1426/ May 6, 2005, Issue No.106
4 A letter signed by the Chairman, Nyeri Muslim Association, Chairman, Marajat
Majlis was established there was a lot of ‘jadhibiya’ (fascination) but with time people lost tempo and vision and did not take the matter seriously” 1

One of the most challenging issues that faced Majlis ‘Ulamaa-Kenya since its inception was the competition between the two rival ideologies: Salafi and Saada.Saada group who also referred to themselves as the ahli al tariqa (people of the path) claimed that they were misinformed on the agenda of the election. According to them, the invitation to attend the gathering was to discuss unity of scholars instead of holding elections.

To prove their case the Saada stated that the election was purposely set during the month of Rabi al Awal (third month of the Islamic calendar) when most of their supporters were engaged in Maulid celebrations (birthday of Prophet Muhammad). Hence, they were not given the opportunity to mobilize their supporters during the election time. Conversely, the Salafi group took the advantage to recruit their sympathizers from to vote. However, during the election of the Majlis, there was an attempt to strike balance between the two opposing groups: Salafi and Saada. It was agreed that the Amir of the Majlis would be appointed from the former while his deputy from the latter.

The mode on how the elections were conducted is particularly telling. From the sixteen executive members of the Majlis almost two thirds belonged to the Salafi group. This figure reflects perhaps Saada’s argument that there was an element of campaigning and lobbying done by their competitors before and during the elections. The Saada further claimed that technical grounds were employed to eliminate them. One of these grounds was the definition of ‘alim provided by the draft constitution of the Majlis. The Constitution defines ‘Alim to mean "a Sunni Muslim holding at least a first degree or its equivalent in Islamic studies from a recognizable institution or one who has gone through a traditional Islamic institution or Halaqat and has been recognized by the Majlis as a Scholar".

The definition acted like a double-edged sword against the Saada. On one side they could be disqualified for lacking of formal training. On the other side, being trained informally, the Saada could be subjected to the discretion of the Majlis of which majority are their rivals. Perhaps it could have been prudent for the drafters of the Constitution to have borrowed Prof Bakari’s definition of ‘ulama when he stated that "within the Kenyan context, the

1 Interview: Sheikh Badru Jaafar, Head of Fatawa Department of Majlis ‘Ulamaa-Kenya, Nairobi, 16th June 2008
‘ulama can be defined as that collective body of individuals who have been schooled, either formally or informally in the Islamic disciplines and who have completed their studies, have pursued careers or keep an interest in Islamic studies.¹

The process of elimination that took place in the elections of Majlis Ulama-Kenya resulted in a counter reaction. Saada group felt that they were positioned in the periphery of what they saw as the dominant Salafis. Shortly after the establishment of Majlis Ulamaa-Kenya, Saada established their own Majlis ‘ulama al-Tariqa in the Coast province in 2005. Such a majlis could not compete with its counter part due to the fact that the Majlis Ulama-Kenya was privileged with more facilities and access to the media. In addition, Majlis ulamaa al-tariqa is confined within parts of the Coast province. Due to lack of publicity, Saada’s majlis remains to be the least known and heard in the country.

It seems clear that ideological persuasion was a dominant factor in the election process of the Majlis Ulama-Kenya. Ideological dominance seems to be the influential feature across Muslim organizations. Scholars were spared from this phenomenon. Scholars of the same ideology donate to institutions and in some instances wear a number of hats. This seems to be the case whereby some scholars are members of various organizations concerned with such the Majlis Ulamaa Kenya, Majlis Ulama Jamia Mosque and the Kenyan Board of Halal Certification. It shows a clear sign of monopoly and control of one ideology at the expense of another. The aspect of ‘ulama of a particular ideology assuming dual roles in organizations raises a concern on whether other ideological groups lack equally qualified and competent scholars.

Similar to other religious organizations, Majlis Ulamaa-Kenya declares to represent the Muslim Ummah. The Preamble of its Constitution states: “We, Ulama of Kenya commit ourselves to serving the Ummah and maintain through this Majlis”. Objectives of the Majlis were too ambitious and include the following:

i. to foster unity amongst the Muslim Ummah;

ii. to provide religious leadership and guidance to the Muslim Ummah on all matters affecting it;

iii. to co-operate with other organizations in the promotion of Islamic and other principles and ethics among the Muslim community;

iv. to protect the Muslim Ummah and the rights of the Muslim minority;

v. to protect, preserve and promote the language, culture and religion of the Muslim Ummah;

vi. to co-operate with Muslim organizations in the achievement of those objectives both within and outside Kenya.

Despite limited facilities and resources, the major organization of various activities. The lack of resources has largely contributed in disunity and its various weaknesses. The Majlis, during the elections on 21st November 2005, was the only group in Kenya to win the voice of numbers. Although the policy of Janatul Mada had managed to win the voice of numbers due to the fact that other organizations were particular the Jamia Mosque (2004).

Although the policy of Janatul Mada was one that the Referendum was an effort to oppose the proposed new Constitution. Among the burning issues was the exclusion of the Qadi courts. The Majlis argued for the exclusion of the Qadi courts and not to be part of the new Constitution. The Referendum campaign was a loss for Kenyan voters with a high percentage of Kenyans voting against the new Constitution.

However, during the general elections, Ulama-Kenya did not give a clear position. The Majlis argued that Muslim interests should be respected and the fact that Muslim parliamentarians were political parties. The stand of the Majlis was that Muslim interests be supported irrespective of the political parties. The stand of the Majlis was that Muslim interests be supported irrespective of the political parties.

¹ The Constitution of Majlis al-Ulama
² Abdulkadir Hashim, “Muslim-Stamping the Constitution”, African Association for Islamic Studies, pp. 21-27
³ Interview with Sheikh Khalifan Kariuki, June 2008.
iii. to co-operate with other bodies, individuals, groups and the Government of Kenya without prejudice, provided that the Islamic principles and ethics are not compromised.

iv. to advise the Muslim Umrah on what is halaal and what is haram.

v. to protect, preserve and promote religious rights of Muslims in Kenya.

vi. to co-operate with Muslim Organizations and Institutions with similar objectives both within and outside the country.¹

Despite limited facilities and human resource, the Council engaged itself in various activities. The lack of focusing on specific matters like fatwa issuing has largely contributed in disabling the institution. This could perhaps account to be among the main drawbacks that has resulted to the inefficiency of the Majlis. During the Referendum on the Constitution of Kenya on 21st November 2005, when the momentum of the Majlis was high, it managed to win the voice of majority Muslims across the country. This was possible due to the fact that other Muslim organizations joined hands with it particularly the Jamia Mosque Committee.

Although the policy of Jamia Mosque was to keep politics far from the pulpit, the Referendum was an exception. Muslims were mobilized across the country to oppose the proposed Constitution due to the fact it was against their interests. Among the burning issues raised in the proposed Constitution was the exclusion of the Qadi courts from the existing constitution. This gave the Majlis unchallenged support. The Council joined hands with other Muslim organizations and came out with a clear stand of opposing the proposed Constitution. The Referendum was rejected by a margin of 57% of the total Kenyan voters with a high percentage in the Muslims dominated areas.²

However, during the general elections in December 2007, the Majlis Ulama-Kenya did not give a clear guidance to the Muslims as expected. The Majlis argued that Muslim interests were diverse in the general elections due to the fact that Muslim parliamentarian contestants were engaged in almost all political parties. The stand of the Majlis was that Muslims contestants should be supported irrespective of their party.³ Although the Majlis withdrew from the elections for the benefit of Muslims in the various political parties, critics

¹ The Constitution of Majlis al-Ulama–Kenya (ahlul-sunnah-wal-jamaah)
blamed it for not coming out with a clear guidance as to whom they should vote for, as was the case in the Referendum. Other Muslim organizations such as the National Muslim Leaders Forum (NAMLEF) utilized Jamia Masjid and other platforms to take the lead. Pulpit of Jamia Masjid created a canvas and authoritative platform to mobilize Muslim support. NAMLEF endorsed a Memorandum of Understating with the opposition party Orange Democratic Party to secure Muslim interests. However, Majlis 'Ulama-Kenya was not consulted, despite being an affiliate member of NAMLEF.

After the general elections tempo of the Majlis declined and its momentum was not felt as before. A number of criticisms were directed against them. Much of the criticism was against the Majlis was its leadership. The responses from interviews I had conducted with Muslim scholars was that the leadership skills of executive members of the Majlis accounted for the weakness of the institution. Lack of sincerity among scholars and the need to seek leadership roles within the Majlis was also pointed out as a cause towards inefficiency of the scholarly body. Critics argued that the Interim National Executive Committee of the Majlis was holding office beyond its tenure.

According to the Constitution, the time frame for the Interim National Executive Committee was to be a maximum of one year. It was agreed that the elected interim office was to arrange for a meeting of the General Assembly after a period of one year and hand over to a permanent elected Interim National Executive Committee. However, three years have passed with such a meeting being held. Hence no permanent National Executive Committee was appointed. Despite all these criticisms, members of the Interim Committee felt that there was a need for a running secretariat before appointing a permanent committee.

Other weakness of the Majlis was its inability to source funds to run its activities. Although the Technical Committee laid firm structures for funds, the Majlis, there was no implementation of such structures. The Constitution clearly provided for sources of funding that included the establishment of a Halal Certification Board. But due to inefficiency of the Majlis the tender was taken over by another Muslim organization. Since its establishment, Majlis has been able to register itself and occupy a furnished office though not functioning.

Muslims in Kenya had high expectations on Majlis 'Ulama-Kenya, particularly on fatwa related matters. However, the Fatwa Department of the Majlis has not been able to meet such expectations. Inefficiency of
implementation is reflected in the lack of consultation and coordination between the scholars when issuing fatwas.

This is partly due to the fact that scholars do not meet regularly to deliberate on issuing of fatwas. Individual scholars issue fatwas in the name of the ulema. Sheikh Badru Jaafar pointed out that the Majlis proposed to establish a fatwa committee that included a number of renowned scholars from all over the country but due to logistical problems it was not constituted. He further mentioned that most of the members in the Majlis were working on voluntary basis while attending their duties elsewhere. Accordingly, there is a need to have fully employed staff for giving fatwa like the case in other Muslim countries.

Fatwas and its influence on Muslims in Kenya

Fatwa institutions have contributed in advancing Muslim discourses in Kenya. Fatwas in Kenya, similar to other Islamic societies, have been employed in diverse social and political contexts that served as useful instruments to mobilize the Muslim populace. I will argue that fatwas have been used as instruments of struggle for power and leadership within Muslim society in Kenya. More important is that fatwas cannot be separated from the context of the ulama who issue them. When looking at them closely, fatwas reveal the underlying rivalry between two antagonistic trends: the rationalists represented by Saada and modernists represented by Salafi. In Kenya, fatwas were influenced by social and ideological context of the time that issued them. In the discussion to follow, I will explore significant areas of fatwas that have generated debates among Muslim scholars in Kenya. The first part is the historical context represented by traditional fatwas. The second area is the modern context represented by fatwas on emerging issues.

Traditional fatwas

Innovative traditions (bid 'ah) have occupied a substantial space of debate that has engaged a long period the two antagonists groups: Saada and Salafi. Interpretations of the texts were employed to justify the stand of each group. Saada validate practices such as birthday of the prophet (Maulid al
that is celebrated in the month of Rabi al-Awwal (third month of Islamic calendar) and recitation of Quran (Khitma) to the dead persons. The argument is the fact that these rituals were not practiced during Prophet Muhammad’s period does not render them innovations (bid’ah). No less important than the ritualistic aspect, Saada have exploited these practices to gain support of their followers and establish authority. On the other hand, Salafi scholars regard such practices as innovative (bid’ah) and therefore challenge religious legitimacy. This atmosphere has led to the issuing of fatwas to counter fatwas for decades.

Other area that has generated controversy was the debate on whether Muslim children should be allowed to receive secular Western education. Riyadh, the stronghold of Saada, opposed secular education because it was considered, at the time, as a ploy by the Christians colonial administration to alienate Muslims from their heritage. Riyadh considered secular education haram (prohibited).

Beside Saada’s orthodox opinions on secular Western education, the moderate fatwas related to secular education were issued. For instance, Sheikh Muhammad Adnan al Ahdal in Lamu regarded secular Western education prohibited for children who had no foundation in Islamic teachings. Otherwise, he encouraged children with basic knowledge of Islam to join secular schools in Lamu.

**Sighting of the moon**

Sighting of the moon to determine beginning of fasting in Ramadan reflected overtime a sign of unity and as well as disunity of Muslims in East Africa. In early sixties Chief Qadis and Muftis of the East African countries were united on moon sighting. Muslim leaders consulted among themselves and agreed to follow sighting of the moon in any of the three countries Kenya, Uganda, and Tanzania including Zanzibar. Muslims of the East African regions used to fast Ramadan and celebrate Eid al Fitr on the same day, but independence of East African countries, political factors influenced Muslim affairs and affected their unity. Moreover, collapse of the East Africa community made communication between the three countries difficult.
Regional disintegration and local divergences created continuous controversies among Muslim scholars on moon sighting in the region. Debates on moon sighting were even more complicated where disagreements occurred within the centers of religious authority such as Riyadh in Lamu. As mentioned earlier, it was a protocol that the Chief Qadi of Kenya would consult Riyadh before making the official announcement of the moon sighting. In one case, the Chief Qadi had consulted Riyadh and it was agreed to announce the sighting of the moon. Despite this agreement, a renowned scholar within Riyadh rejected the moon sighting.

Moon sighting has been a major reference point for debates that has continuously engaged Muslim scholars in Kenya. The main controversy regarding moon sighting was whether to adopt local sighting of the moon (nuzha) or to follow other countries particularly Saudi Arabia. Hidden underneath the controversy on moon sighting was the question of ideological affiliation. Saada, representing the local tradition, adopted local sighting of the moon Salafi scholars, representing foreign and reformist influence followed Saudi Arabia.

A recent editorial has reflected this attitude that is still prevalent by stating that some Muslims blame to what they called "rebel imams of certain mosques who tow the Saudi line" and that they urged these Imams to stop following the Saudis blindly and also desist from diving the Muslims in Kenya.¹

Despite the ideological divergence, Sheikh Farsy who propagated reformist thoughts issued an interesting fatwa on moon sighting in early seventies. This was in response to question regarding the difference among Muslims to start fasting Ramadan. Sheikh Farsy who was the Chief Qadi and Mufti of Sauti ya Haki (voice of truth) stated that "the rule in this case is the one mentioned by our master (sayyidna) Abdullah Ibn Abass that people should follow sighting of the moon of their place".²

Sighting of the moon has proved to be a challenge in uniting Muslims in Kenya. It has become a norm to find one town or village differing with another in starting the fasting of Ramadan and celebrating of Eid. Difference of days could range from one to three, a custom that was never witnessed before. To quote Kresse, "...such a disagreement about the beginning of Ramadan would not have occurred in Mombasa. The disagreement was the outcome of

¹ The Friday bulletin Issue no.9 February 4th 2000 29th Shawal 1420 pp.1
² Sauti ya Haki No.176 January 1976 Muharram 1396 pp.7
important social and religious changes that took place during the twentieth century”.

Appeals were made by various religious organizations to solicit for a uniform approach to the issue of moon sighting. The Editorial of Muslim newsletter echoed this by writing "It is imperative that the issue of moon sighting which has been a constant point of debate should be thoroughly addressed so as to realize the dream of unity among Muslims”. In a joint venture between the office of the Chief Qadi and Jamia Mosque Committee, efforts were made to settle the controversy on moon sighting. After a number of meetings, the two parties agreed that local sight shall be adopted during Ramadan and *Eid al Fitr* and to follow Saudi Arabia in *Eid al Adha*. It was further agreed "Jamia mosque shall not make any announcement as regards moon sighting of the moon but shall relay the information to the Chief Qadi Haram who shall then make appropriate announcement”.

Another initiative was undertaken by Majlis Ulamaa Kenya together with the Chief Qadi who agreed to set up a joint committee to oversee moon sighting and communicate to Muslims on the commencement and ending of Ramadan. Fruits of this joint effort in 2007 gave Muslims in Kenya an opportunity to fast Ramadan and celebrate *Eid al Fitr* together all over the country. However, this celebration did not long last and Muslims in Kenya were taken back to the era of controversies on moon sighting.

**Modern fatwas**

Beside traditional fatwas on moon sighting that recurred annually, emerging issues occupied a space in fatwa institutions. *Majlis ulamaa-Kenya* and *Majlis Ulama Jamia Masjid* were in the forefront of issuing modern fatwas. These two fatwa institutions had the advantage over other religious institutions due to the fact that they are situated within the metropolitan city of Nairobi. In addition, most of Muslim scholars acquainted with modern fatwas are stationed in the City and engaged in the two institutions.

Among the modern fatwas issued by *Majlis ulamaa Kenya* was the one related to Muslims buying shares in companies operating in non-Islamic environment. A public company in Kenya called KENGEN that generates power offered shares to the Kenyan market. KENGEN’s core business activities

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1. Supra Note 3 pp.176
2. The Friday bulletin Issue no.83 November 19, 2004 Shawal 07, 1425 pp.2
among others is to develop, manage and operate power generation plants to supply electric power to the Kenyan market and East African region. KENGEN capital structure includes short and long-term interest based loans secured from local and international sources that attract interest.

A fatwa was issued by the Head of Fatawa Department of Majlis ulamaa Kenya to the effect that it was prohibited to for Muslims in Kenya to buy such shares due to the fact capital of the company would attract interest.1 Another fatwa was issued by the Chairman of Majlis ‘Ulama Kenya that prohibited Muslims in Kenya to buy shares of a mobile phone company (Safaricom) on similar grounds.

Other modern fatwa issued by Majlis ‘ulama-Kenya was related to test tube babies. The fatwa gave an Islamic position regarding In-Vitro Fertilization (IVF) procedure and stated that it should be conducted as a last resort and only applicable between a husband and wife of whom both of must be alive.2 This notwithstanding, the fatwa pointed out that (IVF) was not allowed by Sheikh Ibn Jibrin from the Department of Scientific Research and Fatwas and Da’wah in the Kingdom of Saudi Arabia on the ground that ” it involves uncovering women’s ‘awrah, touching the private parts and tampering with the uterus, even if the sperm used is that of the woman’s husband”.

Borrowing of fatwas from Saudi scholars appeared again during the Kenyan elections in 2007. The Chairman of the Kenya Council of Imams and Ulamaa (KCIU) urged his fellow Muslims in Kenya to take part in the elections. To support his case, he presented a fatwa issued in 2002 by scholars in Saudi Arabia that allows Muslim minorities to participate in electoral processes.3 In another incident, Majlis ‘Ulama-Kenya was challenged to give a verdict on a special package for Hajj that was introduced by a local insurance company. Sheikh Badru Jaafar, the Head of the Fatawa Department stated that all conventional insurance polices had an element of riba (interest) and there was no way it could be compatible with Islamic teachings. Additionally, he said other features that made the premium to be haram (unlawfully) were gharar (deception) and gambling.4

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1 Friday Bulletin Safar 30, 1427/ March 31, 2006 Issue no. 153 pp.2
2 Ibid. Rabi al Thani 21, 1427/ May 19, 2006 Issue no. 160 pp.1
3 Ibid. Jumada al-Thani 06, 1428/June 22, 2007 Issue No. 217 pp.1
ii) *Fatwa institutions and Islamic banking in Kenya*

The dream of establishing a fully-fledged Islamic bank in Kenya was realized in mid-2007 when the Central Bank of Kenya approved the First Community Bank to operate as an interest-free financial institution by numerous efforts to convince the Kenyan Government to accept the establishment of an Islamic bank.

In 2005 officials of the Treasury and the Central Bank of Kenya were engaged to visit Britain and United Arab Emirates and determine the variance of Islamic banking. Such efforts did not spare the State House that provided green light to this new financial venture.

After the establishment of Islamic banking in Kenya, the Government vowed to support the growth of Islamic Banking in the country. Speaking during the launch of First Community Bank (FCB), Vice-President Kalonzo Musyoka said “The government is committed to put in place an enabling environment for the growth of Islamic banking in the country”.

The main obstacle to Islamic banking in Kenya was Section 4 of the Banking Act that limited banking services to interest-based financial institutions. However, after concerted efforts, policy makers agreed to table the section and pave a way for Islamic banking in Kenya. Amended Section 4 of the Banking Act sent a message to warn the conventional banks of the emergence of Islamic banks. The idea of establishing fully-fledged Islamic banks in Kenya threatened conventional banks of losing customers, particularly the Muslim community. Hence, several conventional banks embarked on opening windows offering interest-free-based accounts to retain their customers.

To ensure that financial products offered by the conventional banks are Sharia compliant, Muslim scholars were engaged as members of the bank advisory boards. Various conventional banks have offered a number of Sharia compliant products. To name a few: *La Riba Account* (Barclays Bank), *Jama'ah Account* (Kenya Commercial Bank), *Al-Mu'min Account* (National Bank of Kenya), and *Al-Hasanat Account* (Dubai Bank).

Muslim scholars in Kenya differed on legality of Islamic windows established by the conventional banks. The contention was whether Islamic windows would be allowed when fully fledged Islamic banks existed.


2. *Ibid.* Dhul-Qa’d
hand, some scholars stated that it is not allowed to have Islamic windows within the conventional banks when fully-fledged Islamic banks were available such as First Community Bank and Gulf African Bank. This opinion stressed that Islamic windows would be treated as a necessity (dhurara) and will be allowed only in the absence of fully-fledged Islamic banks. Another argument put forward by supporters of prohibiting Islamic windows is that whereas fully-fledged Islamic banks find it difficult to adhere to some of the strict Sharia rules then it would even be more difficult to control Islamic windows in conventional banks that operate in a non-Islamic environment. On the other hand, other scholars maintained a lenient opinion in allowing the operation of Islamic windows within conventional banks as a matter of necessity (dhurara) considering that Muslims in Kenya were living under a non-Islamic regime.

Conventional banks have exploited this divergence of opinions between 'ulama and engaged selectively Muslim scholars to sit on its Sharia advisory boards. In some cases, conventional banks would engage prominent Muslims in the society to serve as an advisor irrespective of their Sharia knowledge. One of the major challenges facing Muslim scholars engaged in Islamic banking sector is the need to have a joint Sharia advisory board.

Various forums have advocated this challenge. Majlis 'Ulama Kenya was taken to task and told to take responsibility of vetting scholars to serve on Shariah advisory boards. Mr. Abdullatif Essajee, Lecturer at the University of Nairobi, suggested that Majlis Ulamaa Kenya should take up the responsibility of appointing and regulating scholars who sit on the various sharia advisory boards. He added that this will "ensure that only credible scholars were appointed to the boards". Dubai Bank has also communicated to Jamia Mosque Committee to establish a central sharia supervisory board.

Responding to these requests, the Chairman of Majlis 'Ulama-Kenya, said that "any bank claiming to offer Islamic products has to produce a certificate from Majlis Ulamaa-Kenya and also a certificate from the Sharia advisory members to certify that it has been approved by Ulama". However, efforts to establish such a joint sharia advisory board under one umbrella have not been successful. Banks approach Muslim scholars individually without seeking the approval of any Islamic institution. This in turn results in having one scholar engaged in various sharia advisory boards without the blessings of Majlis Ulama-Kenya. Muslim scholars prefer working
independently far from Islamic institutions. Their fear emanates from the possibility of being eliminated by such institutions on the basis of ideological differences.

Struggle for legitimacy transcended Fatwa institutions to include the two newly established Islamic banks in Kenya, First Community Bank and Gulf African Bank. Competition to win customers has led each bank to persuade the Muslim community that its services and products were fully Sharia compliant. The banks embarked what could be termed as a “battle of recognition” to prove that each one was a full-fledged Islamic bank. Fingers were pointed to each other in disclosing deficiencies that disqualifies them to be fully Sharia compliant. Of these allegations is the suggestion of the shareholders were institutions engaged in non-Islamic transactions.

Conclusion

Fatwa institutions have demonstrated hierarchies of authority within the Muslim community representing two opposing traditions: Sa'id dusta representing the traditionalists and Salafi, representing the modernists. These traditions have overtime competed to establish authority and legitimacy on the entire community under the concept of Ummah. Fatwas have been instrumentalized to establish basis for religious authority (marji‘iyat). I have argued that despite the potentiality of fatwa being used a catalyst in uniting Muslims in Kenya, on the contrary, it has been employed by the competing traditions to promote its own ideologies and guarantee hierarchical authorities within its institutions. Sacred places were utilized as platforms for contestations and competitions and fatwas and counter fatwas were issued to support one’s own group stand and portray being the rightful tradition of Islam. Fatwas were imported from abroad to reinforce the local stand. Rivalry between the two competing groups has become a major obstacle in bringing Muslim unity in Kenya. Despite of all the initiatives to bring Muslim together, “it became virtually impossible for the two groups to agree on any issue, indeed the expectation was for one group to automatically disagree with a position that the other group held”.

References


1 Supra Note 27 pp.16


