Sudanic Africa

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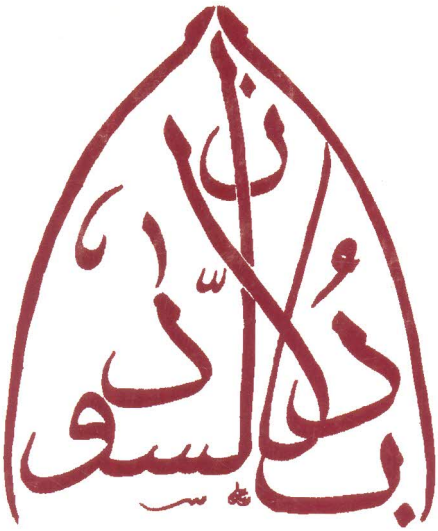

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SERVANTS OF SHARĪ'A: *QĀḌĪS* AND THE POLITICS OF ACCOMMODATION IN EAST AFRICA

ABDULKADIR HASHIM

*Qāḍī*s have a long history in East Africa. This article attempts to explore the existence of *qāḍī*s in Eastern Africa and examine the extent to which such popular figures have been accommodated within the state and society. In addition, to their role as judicial officers, *qāḍī*s made tremendous contributions on the East African coast.[1] They played the role of jurist-consultants in their respective communities and even served as consultants to the state in religious matters at various capacities. Hirsch has noted that *qāḍī*s' courts were used by Muslim women as venues to achieve justice and that '*qāḍī*s are held more accountable than elders or family members who assist in resolving disputes in more informal settings'.[2]

Inheriting the existing legal structures was among the dilemmas that faced the post-colonial states. The *qāḍī*'s court system was not an exception to this predicament. The states managed to get rid of some court structures such as the native customary courts but for political reasons could not dare to change the *qāḍī*'s courts system. Native institutions were maintained so as to strengthen the indirect rule policy observed by the British. The argument of this article

1 On *qāḍī*s contributions see Abdulkadir Hashim, 'Kadhis' Intellectual Legacy in the East African Coast', International Symposium on Islamic Civilisation in Eastern Africa, Kampala 2003.

2 S.F. Hirsch, *Pronouncing and Persevering: Gender and the Discourses of Disputing in an African Islamic Court*, Chicago 1998, 11.

Sudanic Africa, 16, 2005, 27-51

is that the policy from colonial rule was to accommodate the religious leadership, including the *qāḍīs*, within the ambit of the state apparatus so as to effect control on their operations. This seems to be the case with the sultans who employed the *ᶜulamāᵓ* to consolidate their rule. The trend was not only confined to the legal arena but included other areas such like Islamic education and the administration of *waqf* properties. *Qāḍīs* were instrumental in the functioning of these 'essential' areas and their presence was quite significant in the commissions that were established by the state as was the case in Kenya and Zanzibar.

Historical background

The history of Islamic Law in Kenya before independence dates back to 1889 when the sultan of Zanzibar granted concessions to the Imperial British East Africa Company (IBEA) to administer the sultan's dominions according to the Sharīᶜa. *Qāḍī*'s courts were retained under such agreements and continued to exist even after the period of independence. In addition to the *qāḍīs*, other Muslim judicial personnel such as the *liwalis* and *mudirs* were operating, although with a quasi-judicial role including administrative powers. In successive concessions between the sultan of Zanzibar and the British companies *qāḍīs* were nominated by the sultan and operated under his authority. In the Tanzania (mainland) formerly known as Tanganyika, the sultan of Zanzibar ruled the coastal part of Tanganyika during the reign of Sayyid Saᶜīd. In this period Muslim judicial institutions were established. The Germans retained the institutions established by the sultan without any substantial interference. Later the British took over from the Germans retaining the existing judicial bodies. By a gradual process, the British enacted legislation that encroached on both Sharīᶜa and customary law. Sharīᶜa was applied in matters of personal status subject to the repugnancy clause