

‘Not quickly cleansed’
Bids for Freedom by Former Slaves in
Mombasa and the Coastal Strip of Kenya,
1895-1945

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Glossary

<i>Akidas</i>	Arab government officials, it will later be replaced by the term <i>Mudir</i>
<i>Arusi</i>	wedding
<i>Beni</i>	Band
<i>Beit-al-mal</i>	House of wealth
<i>Cheo</i>	Rank
<i>Dini</i>	religion
<i>Heshima</i>	Honour, Respect
<i>Ibadhi, Ibadi</i>	Islamic School of Jurisprudence
<i>Kafa'ah</i> Ar., <i>Kufuu</i> Sw. :	Social Equal in Marriage
<i>Kazi</i>	Job, Work, Profession
<i>Khaliss</i>	Purity/notion of freedom
<i>Kilemba</i>	Turban
<i>Liwali</i>	Governor of a province appointed by Omani Sultanate
<i>Mafundi</i>	Tradesmen
<i>Maulidi</i>	The Prophet's birthday celebration
<i>Mawla</i>	Patronage
<i>Mudir</i>	Arab third-Class Magistrates/Assistant District Officer
<i>Ndoa</i>	Marriage
<i>Nasaba</i>	Ancestry

Glossary

<i>Shaykh-ul-Islam</i>	Ottoman honorific title meaning supreme authority on Islam, it was letter changed to Chief <i>Kadhi</i> in Kenya
Shafi'i	Islamic School of Jurisprudence
<i>Shariah</i> Ar., <i>Sheria</i> Sw:	Islamic Law
<i>Takiah</i>	Legitimate Dissimulation
' <i>Urf</i> and ' <i>Ada</i>	<i>Shariah</i> and Tradition
<i>Vibarua</i>	General or day labourers
<i>Wakf</i>	Islamic Charitable Trust

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Abstract

My research deals with slavery and its legacies in Mombasa, Kenya. The ethnic tensions that exist today in Mombasa have their roots in two historical legacies, slavery and colonialism. Seeds of inequalities planted during those two periods still dictate social tensions on the coast of Kenya today, particularly the city of Mombasa. Since the coming of multiparty politics to Kenya in 1992, issues of ethnic identities and land issues have also come to the foreground, sometimes erupting into violent riots. Ethnic tensions in Mombasa are made complex by the presence of an underclass or under-caste, people with slave ancestry background. My research examines class, ethnic and racial tensions by examining the two legacies, slavery and the colonialism, and their impact on people with slave ancestry in Mombasa. Therefore, this research will explore the different mechanisms and strategies used by former masters to hold on to their privileges during the colonial period in Mombasa. Furthermore, it will examine how stigmatized status has survived to our present time. The thesis also shows another aspect of British colonialism when dealing with Islam in East Africa. The research will raise several questions. First, what is the impact of colonial racial, labour and tax policies on ex-slave communities in Mombasa? How did the elites use Islam to control their former slaves? What was the role of Swahili cultural hegemony in putting former slaves in “in their Place” during the colonial period? My research will demonstrate that the abolition of the legal status of slavery by the colonial rulers did not drastically alter the nature of dependency, power and authority of former Swahili and Arab slave-owners on the coast Kenya.

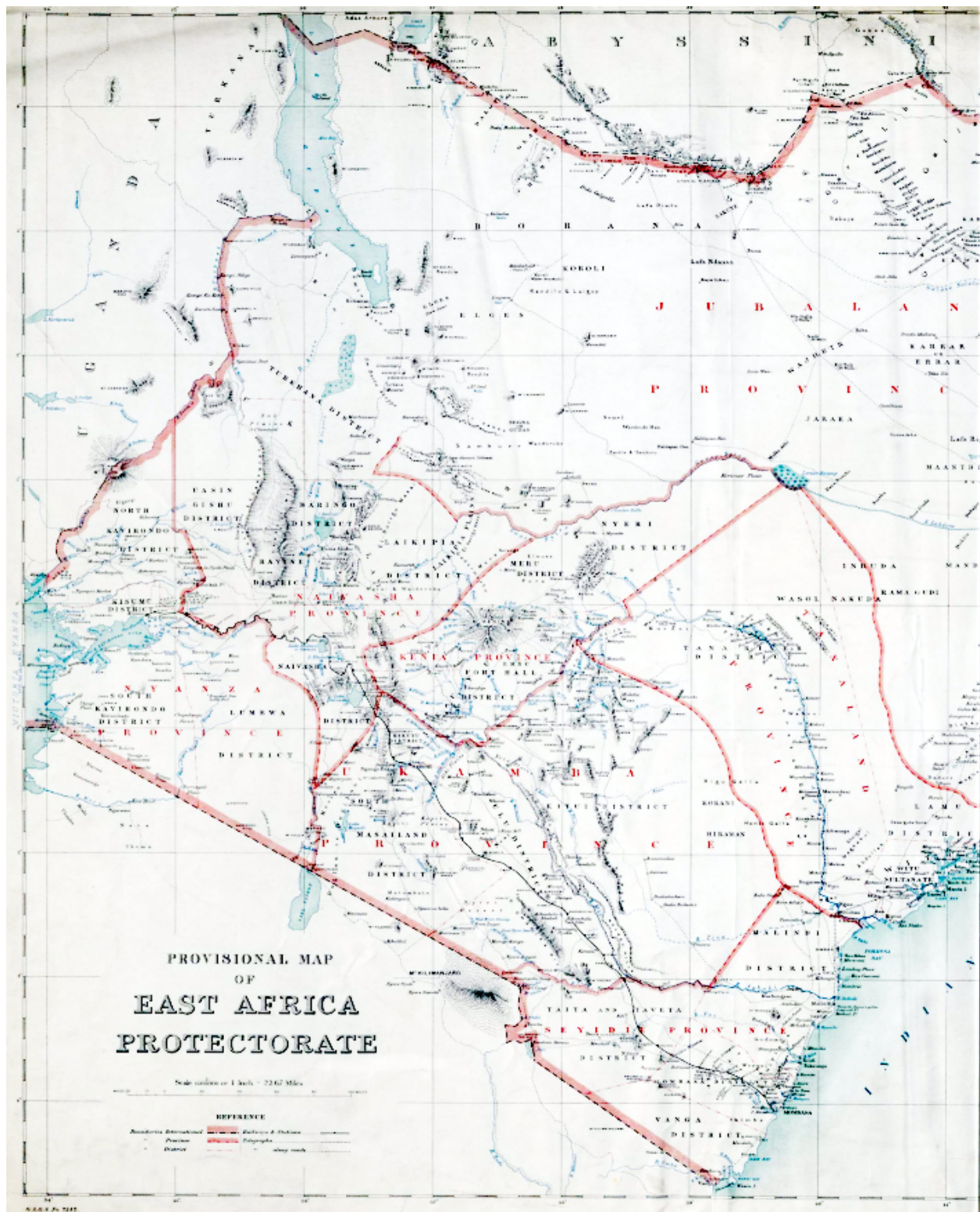


Figure 1: Provisional Map of East Africa Protectorate (Source: WO 300/234)

Chapter 1

Introduction to the Dissertation

1.1. Introduction

In 1907, the British colonial government officially abolished the legal status of slavery in Mombasa and the coastal strip ten year earlier under the Decree of 1897, slavery was abolished in Zanzibar and Pemba.⁽¹⁾ This meant that the courts of law under the Sultan's dominion would not recognize, by law, alleged rights over the body, service, or property of any person over another based on slavery.⁽²⁾ The Ordinance came into effect on October 1st, 1907. However, the ending of the legal status of abolition of slavery did not improve the material or the social lives of the former slaves.⁽³⁾ British colonial officials superimposed their rule over an existing structure in which Arabs and Swahili elites dominated the political and cultural landscape. The British Protectorate on the coastal strip resembles other protectorates in Africa. They

⁽¹⁾ J.W. Wilson (M.P.), question asked in the House of Commons to the Secretary of State for Foreign Affairs [Question Period] (1906). *Question on the number of slaves freed by the courts, under the Decree 1897, 24th May 1906*, TNA FO 367/24/1, The National Archives; Judge R.W. Hamilton [Memo] (1905). *Memorandum on Abolition of Slavery in East Africa, 17 May 1905*, TNA CO 533/35, The National Archives; *Abolition of Legal Status of Slavery Ordinance* (1907)[letter]. KNA AG/4/429, 17 May 1905, Kenya National Archives; see also TNA: CO 533/31/8. Conf. 49, (1907), The National Archives.

⁽²⁾ Mr. B. S. Cave, His Majesty's Agent and Consular-General in Zanzibar, to Foreign Secretary Sir . E. Grey (1908) [letter]. *Correspondence relating to the abolition of status of slavery 11th July 1908*, TNA: CO 533/50/29723/08, The National Archives; O. Okia, 'The Windmill of Slavery: The British and Foreign Antislavery Society and Bonded Labor in East Africa', *The Middle Ground Journal*, 3 (Fall 2011), 1-35.

⁽³⁾ Mr. B. S. Cave, His Majesty's Agent and Consular-General in Zanzibar, to Foreign Secretary Sir . E. Grey (1907) [Letter]. *Correspondence relating to a Memo sent to Collector of Zanzibar in regard to Abolition of Slavery on the (mainland) Protectorate, 21st October 1907*, TNA CO 533/35/ No. 219, The National Archives.

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allowed local officials to run the day to day affairs of the Protectorate, and thus, the colonial rulers “re-established Arab sub-imperial” rule which reinstituted and restored the privileges of the Arab and Swahili elites over their former slaves. These privileges ended with the detachment of Mombasa and the rest of the coastal strip in 1963 from Zanzibar.⁽⁴⁾ By abolishing slavery on the coast of Kenya, colonial officials were, on the one hand, claiming to uphold British ideals, while, on the other, they were sanctioning practices that allowed masters to preserve their social and traditional authority in Mombasa.⁽⁵⁾ Former slaves and their descendants were branded socially inferior, an under-caste who were “not quickly cleansed”.⁽⁶⁾ Therefore, much of the struggle, during the colonial period on the coastal strip, was a struggle between people of slave ancestry and their former master. The abolition of the legal status of slavery to the former enslaved peoples of Mombasa was, in reality, social fiction; it was an illusion in which ‘the slave went free; stood a brief moment in the sun.’ before being returned to a status resembling slavery.⁽⁷⁾

My research demonstrates that the abolition of the legal status of slavery did not drastically alter the nature of the power and authority of Swahili and Arab slave owners over their former slaves in Mombasa or the nature of the dependency of former slaves on their former masters.⁽⁸⁾ My study sheds light on the aftermath of slavery and its legacies in Mombasa and the East Africa Protectorate. This study examines class, ethnic and racial tensions by examining the two legacies, slavery and colonialism, and their impact on people with slave ancestry

⁽⁴⁾ B.A. Ogot, (ed.), ‘Kenya Under the British, 1895 to 1963’, in *Zamani: a Survey of East African History* (Nairobi: Longmans of Kenya, 1968), 251; P.E. Lovejoy & J. S. Hogendorn, *Slow Death for Slavery: The Course of Abolition in Northern Nigeria 1897-1936* (Cambridge: Cambridge University Press, 1993), 66–67; J.R. Brennan, ‘Lowering the Sultan’s flag: Sovereignty and Decolonization in Coastal Kenya’, *Comparative Studies in Society and History*, 50, 4 (2008), 831–861.

⁽⁵⁾ E. A. McDougall, ‘Living the Legacy of Slavery: Between Discourse and Reality (Les Ayants Droit De L’esclavage. Entre Discours Et Réalité)’, *Cahiers d’Études Africaines*, 45, 179/180 (January 1, 2005), 960–61; Lovejoy & Hogendorn, *Slow Death for Slavery*, 99.

⁽⁶⁾ F. Morton, *Children of Ham : Freed Slaves and Fugitive Slaves on the Kenya Coast 1873 to 1907* (Boulder, Westview Press, 1990), 1.

⁽⁷⁾ D. C. Penningroth, ‘The Claims of Slaves and Ex-Slaves to Family and Property: A Transatlantic Comparison’, *The American Historical Review*, 112, 4 (October 1, 2007), 1039–1040; M. Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2010), 20.

⁽⁸⁾ M. Strobel ‘Slavery and reproductive labor in Mombasa’, in C. Robertson & M. Klein (eds.), *Women and Slavery in Africa* (Madison: Heinemann, 1997), 111–129.

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in Mombasa. This study explores the different mechanisms and strategies used by former masters to control former slaves and their descendants.⁽⁹⁾ Furthermore, I examine how the stigmatized status of former slaves continued to survive well in the twentieth century. This research raises and several questions. What is the impact of colonial rule on the social structures of Mombasa? What was the impact of British policies on race, labour, and taxes on the ex-slave communities of Mombasa? What was the role of Swahili cultural hegemony in creating social boundaries and putting former slaves “in their place” during the colonial period?

Abolition, emancipation and post-emancipation have become major studies of history.⁽¹⁰⁾ Over the past decades, Scholars have focused on emancipation process, together with its aftermath and understanding of the meaning of freedom.⁽¹¹⁾ Among the questions asked by Frederick Cooper and others is what are the appropriate boundaries of the study of post-emancipation societies?⁽¹²⁾ Today many see emancipation as a ‘rupture’ with the past and post-slavery was seen as a period of uncertainty and ‘social upheavals’.⁽¹³⁾ However, Cooper argues that there was ‘no such radical break with the past,’ and in reality manumission has always been used as a tool to regulate slave labour.⁽¹⁴⁾ Therefore, Cooper asks a rhetorical question: ‘Why could emancipation not simply be manumission on a larger scale?’⁽¹⁵⁾

Several studies have examined effects of the abolition of slavery in East African coast. These studies explored the legacy of slavery in places such as Zanzibar.⁽¹⁶⁾ They looked at how

⁽⁹⁾ F. Cooper ‘Islam and Cultural Hegemony: The Ideology of Slaveowners on the East African Coast’, in P. Lovejoy (ed.) *The Ideology of Slavery in Africa*, (Beverly Hills, 1981), 271-307.

⁽¹⁰⁾ E. Foner and S. Hahn, *Nothing but Freedom: Emancipation and its Legacy* (Baton Rouge: Louisiana State University Press, 2007), 2.

⁽¹¹⁾ F. Cooper, *Africa in the World: Capitalism Empire Nation-State* (Cambridge, Massachusetts: Harvard University Press, 2014), 19.

⁽¹²⁾ Ibid.

⁽¹³⁾ Ibid.

⁽¹⁴⁾ Ibid., 49.

⁽¹⁵⁾ Ibid.

⁽¹⁶⁾ E. M. McMahon, *Becoming Pemban: Identity, social welfare and community during the Protectorate period*, PhD Thesis, (Indiana University, 2005); J. G. Deutsch, *Emancipation without Abolition in German East Africa, c.1884-1914*, (Athens, Ohio: James Currey Publishers 2006); F. Becker, ‘Female Seclusion in the Aftermath of Slavery on the Southern Swahili Coast: Transformations of Slavery in Unexpected Places’, *International Journal of African Historical Studies*, 48, 2 (2015), 209-230.

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former slaves negotiated and created their own identity using kadhi courts.⁽¹⁷⁾ It also shows, how the Kadhi court was used to demarcate social boundaries.⁽¹⁸⁾ The kadhi courts became an arena of struggle for the newly freed slaves and their descendants for 'citizenship'.⁽¹⁹⁾

This dissertation is a significant contribution to the scholarly work of Frederick Cooper, Fred Morton, and Margaret Strobel on East African slavery, abolition, and emancipation. While Cooper focused on plantation slavery in East Africa and Morton examined fugitive slaves on the coast of Kenya, the dissertation sheds light on the often-overlooked aspect of urban slavery prevalent in major towns like Mombasa. By thoroughly examining various sources and reading between the lines, the dissertation aims to provide a more comprehensive picture of urban slavery, its abolition, and emancipation in Mombasa and the East African Protectorate. In doing so, it addresses the lack of attention given to the struggles for freedom by former urban slaves compared to their rural counterparts.⁽²⁰⁾

The major issues and debates surrounding the nature of slavery on the coast revolve around whether it was benign or harsh. Frederick Cooper and Morton present contrasting interpretations of coastal slavery in their respective works. Cooper views coastal slavery as relatively benign and the society as static, while Morton challenges this perspective and presents a more critical view.

Morton's interpretation differs from Cooper's in several ways. Morton's focus includes the Church Missionary Society (CMS) in Frere Town and Rabai, examining both fugitive slaves and mateka slaves liberated at sea from dhows bound for Arabia by the British navy and settled on the mainland across from Mombasa Island in Frere town. He also explores the role of the Bombay Africans, who were earlier rescued from ships and later raised and educated in Bom-

⁽¹⁷⁾ *Kathi's Court Mombasa*, KNA/ MP/ no. 273/1915, Kenya National Archives.

⁽¹⁸⁾ N. A. Koenings, 'Islamic Law Gender and Social Change in Post-Abolition Zanzibar', *Northeast African studies*, 16, 2 (2016), 159-165.

⁽¹⁹⁾ E. Stockreiter, *Islamic Law, Gender and Social Change in Post-Abolition Zanzibar*, (New York, NY: Cambridge University Press, 2015).

⁽²⁰⁾ F. Cooper, *Plantation Slavery on the East Coast of Africa*, (Portsmouth, N.H: Heinemann; 1997); F. Cooper, *From Slaves to Squatters: Plantation Labor and Agriculture in Zanzibar and Coastal Kenya, 1890-1925* (New Haven, Conn.: Yale University Press, 1980); M Strobel, *Muslim Women in Mombasa, 1890-1975*. Yale University Press, 1979; McMahon, *Becoming Pemban*, 47; Becker, 'Female Seclusion', 209.

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bay before returning to Rabai, Kenya, to assist with the conversion of Africans. Many of these returnee Africans are involved in sheltering fugitive slaves and sometimes clash with their superiors.⁽²¹⁾

Morton's study covers the period from 1873 to 1907,⁽²²⁾ whereas Cooper's study primarily focuses on the plantation economy and takes the perspective of slaveowners. Cooper's comparative approach compares East African slavery with the slavery that existed in the antebellum South of the United States. While Cooper argues that slavery, though harsh, offered some opportunities for social mobility for slaves, Morton challenges this view by highlighting how masters intentionally placed roadblocks on the path of former slaves.

Cooper also challenges the notion of paternalism in slavery, suggesting that it was a system of give and take, rather than a one-sided power dynamic. This contradicts the prevailing belief that slaves were docile and masters had complete control. In contrast, Morton portrays coastal slavery as a benign, paternalistic system where slaves held a subordinate but protected position, based on reciprocal obligations between freeborn individuals and slaves, reinforced by Islamic values.

One critique of Morton's work is that it tends to create a monolithic image of slavery on the coast of Kenya, overlooking the variations and complexities present in the system.

This dissertation goes beyond the studies of Frederick Cooper and Fred Morton by delving into the neglected aspect of urban slavery, particularly in Mombasa. Cooper's focus on the exploitative plantation economy of Swahili/Arab slavery on the mainland and the Sultan of Zanzibar's dominion resulted in overlooking the urban and domestic slavery prevalent in Mombasa and the broader East African Protectorate. The role of Kadhi courts⁽²³⁾ and colonial

⁽²¹⁾ F. Morton, *'Children of Ham'*, 53.

⁽²²⁾ R.F. Morton, *Slaves, Fugitives, and Freedmen on the Kenya Coast, 1873-1907*. Ph.D. Thesis (Syracuse University, 1976).

⁽²³⁾ The Courts Ordinance (1921) [Letter]. *Correspondence relating to 'the jurisdiction of Cadis', 1928-1932*, KNA/AG 12/21, Kenya National Archives.

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officials' ambivalent attitudes towards slavery in Mombasa are vital aspects that this dissertation seeks to address.⁽²⁴⁾

Additionally, the dissertation extensively examines the issue of slave marriage,⁽²⁵⁾ wherein former masters continued to wield power over their former slaves long after the official abolition of slavery. The study also explores the resistance to change exhibited by Kadhi courts both culturally and legally after the abolition of slavery, shedding light on important debates among former slaves, Kadhis, and colonial officials.⁽²⁶⁾

While both Strobel and Cooper portrayed the relationship between former slaves and their former masters as harmonious, the dissertation aims to critically analyze colonial administrators' paternalism and racism, which contributed to their ambivalence when it came to addressing slavery in Muslim societies. The British authorities attempted to balance the demands of the colony and the metropole by downplaying the severity of slavery in Mombasa and the broader East African Protectorate. By addressing these gaps and complexities, the dissertation provides a deeper understanding of East African slavery and emancipation beyond the existing works of Cooper, Morton, and Strobel.

Sources

This dissertation was conducted in both Britain and Kenya. I conducted extensive research at the National Archives (Kew) and School of Oriental and African Studies (SOAS) in London. relevant documents from the Colonial Office (CO) and Foreign Office (FO) held at the National Archives were digitized. At SOAS, I digitized the Mackinnon Papers, which dealt with the Imperial British African Company (IBEACO).⁽²⁷⁾ These papers are important for understanding the history of the Kenyan coast just before the establishment of colonial rule and also the early years of colonialism. Although I was able to obtain materials dealing with different aspects

⁽²⁴⁾ Registration of marriage of Freed Slaves (1913) [Letter]. *'Registration of marriage of Freed Slaves & Attitude of Kathis towards Slavery'*, 1913, KNA/MP /no. 322/1913, Kenya National Archives.

⁽²⁵⁾ Ibid.

⁽²⁶⁾ Ibid.

⁽²⁷⁾ *IBEACo. FILE 1 A* (1888-89) [Letters]. Sir William Mackinnon Papers, 1888-1889, GB 102 PP MS 1/IBEACo/1/1A School of Oriental and African Studies (SOAS) Archives, University of London.

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of slavery, most of the materials dealt with the periods before the abolition or the early years of the abolition period. Therefore, to further my study, I had to travel to Kenya to conduct additional research to enrich and extend my existing archival source base, allowing me to fill important gaps in the evidence base relevant to my thesis. This eventually involved travelling and conducting research in both Nairobi and Mombasa.

British National Archives (TNA): CO 533 and FO 84 holds original colonial correspondence related to the coast of Kenya, which at that time was known as the East African Protectorate. Prior to 1905, Kenyan affairs came under the purview of the Foreign Office (FO) but it was later transferred to the Colonial Office. The CO series provided correspondence for example, on August 9th 1907, a Bill, Ordinance 1907, was passed by the East Africa Protectorate Governor, J. Hayes Sadler declared ‘...with the advice of the Legislative Council for the abolition of the Legal Status of slavery throughout the East African Protectorate’.⁽²⁸⁾ The Ordinance came into effect from the first day of October 1907, and all claims regarding masters and slaves were to be handled by a District Court or a Special Court depending on the circumstances on the ground.⁽²⁹⁾

TNA: CO 533 and TNA: FO 367 contained guidelines on payment of compensation⁽³⁰⁾ to slave masters. For example, TNA: FO 367 there is an opinion by Ali bin Salim, at that time the Assistant Liwali of Mombasa, who estimates the number of slaves in the Protectorate to be between 10, 00 and 12, 000, and that the average price for a slave was Rs. 60.⁽³¹⁾ In a paraphrased Telegraph of Mr. B. S. Cave, His Majesty’s Agent and Consular-General in Zanzibar,

⁽²⁸⁾ J. Hayes Sadler, Governor of East Africa Protectorate (1907) [letter]. *Correspondence relating to the abolition of the Legal Status of slavery throughout the East African Protectorate, August 9th, 1907*, TNA CO 533/31/Conf. 49/31/8.1907, The National Archives.

⁽²⁹⁾ C.E. Law, AG. Solicitor General to the DC of Lamu, through the Senior Commissioner, Mombasa (1923) [letter]. *Re: Legal Status of Slavery’ 21 August 1923*, KNA/M/225/23, Kenya National Archives.

⁽³⁰⁾ Guidelines regarding compensation payments (1908) [Memo]. TNA: CO 533/43.Disp. 142, 2 April 1908, The National Archives; Lord Elgin, Sect. of the Colonies to Frederick Jackson, Lieutenant-Governor of the East African Protectorate, (1907) [Telegraph]. *Regarding Abolition of slavery*, 22 April 1907, TNA CO 533/35/ No. 219, The National Archives. see also, Committee to deal with compensation, (1913) [letter] KNA/ MP/ No. 308/ 1913, Kenya National Archives.

⁽³¹⁾ C.R.W. Lane, His Majesty’s Sub-Commissioner (1905) [Memo]. Memorandum containing opinion of Ali bin Salim, at that time the Assistant Liwali of Mombasa, on abolition of slavery and Compensation to the owners. Mombasa 2 of June 1905, TNA FO 367/24/Inc. 5/ 1, The National Archives.

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explains the procedures to be followed when a slave either leaves or refuses to work for his master, then it is incumbent on the master to apply to the courts for compensation.⁽³²⁾ In the Islands of Zanzibar and Pemba, it is the slave who petitions the courts for their freedom.⁽³³⁾ In a letter signed by J.T. Last, shows that slaves in Mombasa do ‘... not claim his freedom—it is the owner who comes forward to claim compensation for loss of service and indirectly in this way the slave may be free...’⁽³⁴⁾ The archival material also touched on the issue of property. ‘Everything in the hands of a slave belongs to his master’,⁽³⁵⁾ it continues by stating that the passing of the Ordinance ‘will not affect the right of the master to resume possession at any time of what is his’.⁽³⁶⁾ However, there is an example of a master attempting to repossess property that belonged to their former slave. One case in point is that of Mshangama, a freed slave, whose former master took control of his small property. Mshangama had acquired this property during his time as a slave, purchasing it while under servitude and later faced the threat of repossession due to unpaid rent dues. This incident caught the attention of the Anti-Slavery Society in Zanzibar.⁽³⁷⁾ It also states that the ordinance will at the same time allow slaves to hold property in the future and the master would have no rights to this property. For example, a slave who is in ‘possession of a dhow belonging to his master’ and he dies within a year of the passing of the Ordinance, then the master has the right to take back the dhow, but any earnings that came after the passage of the Ordinance, will go to heirs of the slave; if he does not have any heir then the government inherits him.⁽³⁸⁾ An amendment to Ordinance for the abolition of the Legal Status of Slavery, further discusses the issue of inheriting from

⁽³²⁾ B.S. Cave His Majesty’s Agent and Consular-General in Zanzibar (1908) [Telegraph]. *Paraphrase of Mr. Cave’s telegraph No. 19 of February 17th 1908*, TNA CO 533/50/5680/08, The National Archives.

⁽³³⁾ Ibid.

⁽³⁴⁾ J.T. Last Collector of Zanzibar to Mr. Grain, Attorney-General and Acting First Minister (1908) [letter]. *Correspondence relating to compensation procedures in Zanzibar and Mombasa, March 3, 1908*, TNA FO 881/Conf.9331/Incl.2/no.8, The National Archives.

⁽³⁵⁾ Correspondences (1908) [letter]. *Correspondences relating to masters attempting to disposes their former slaves April 30th 1908*, TNA CO 543/4/Disp. 143/30.4.1908, The National Archives.

⁽³⁶⁾ Ibid.

⁽³⁷⁾ Anti-Slavery Reporter (1905) [Extract]. *Anti-Slavery Reporter discussing the case of Mshangama, a freed slave, whose former master repossessed his property on the grounds of unpaid rent, Jan.-Feb. 1905*, TNA FO 367/24/Inc. 1/ 2/05, The National Archives.

⁽³⁸⁾ Ibid.

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a former slave. In accordance with the Shariah (Islamic law), when a slave dies, his master inherits his properties. However, the Ordinance allows the master to only demand and claim property that was there before the Ordinance, 'any property accumulated by the slave after October 1st, 1907, belongs to the slave.'⁽³⁹⁾ This issue of inheriting from former slaves and the case of Juma Kiroboto are among the contributions this thesis will add to the history of slavery in the former East Africa Protectorate.⁽⁴⁰⁾

The TNA: CO 533 documents consulted at the National Archives also discussed master and servant ordinances.⁽⁴¹⁾ The Ordinance was introduced in the East Africa Protectorate to help secure labour, with the aim of turning former slaves into wage workers.⁽⁴²⁾ I argue that the master and servant ordinance was used to bind the former slaves to their former master and became an obstacle for many slaves to cut ties with their former masters.⁽⁴³⁾

1.2. Research at the Kenya National (KNA) Nairobi

The bulk of documents relating to Mombasa and the coast of Kenya were held at the Kenya National Archives (KNA) in Nairobi. While there, I was able to digitise various documents relating to my research. These documents had different classifications, dealing with various issues that were significantly relevant to the abolition of the legal status of slavery. For example, registration of slaves, Kadhis and their stand on the abolition of slavery, registration of freed slave marriages⁽⁴⁴⁾, law of inheritance, labour, crimes, and even child labour. Britain

⁽³⁹⁾ Amendment to the Ordinance of 1907 abolition of the Legal Status of Slavery [Memo] (1907). *Memorandum discusses the issue of inheriting from former slaves, October 11, 1907*, TNA CO 533/32 Memo/11.10.1907, The National Archives.

⁽⁴⁰⁾ Estate of Juma Kiroboto [Memo] (1907). *Memorandum discussing the case of Estate of Juma Kiroboto — Deceased Probate and Administration Cause no.102 of 1922 Ref. Your No. P. & A. 102/22 of the 4th inst.*, October 11th 1907, TNA CO 533/32 Memo/ 11 Oct. 1907, The National Archives.

⁽⁴¹⁾ B.S. Cave to Sir E. Grey (1906). [Memo]. *Memorandum, on the Proposed Abolition of Slavery in the Islands of Zanzibar and Pemba, 19th Oct. 1906*. TNA FO 367/24/Inc. 1/ Conf, 35249/3, The National Archives; see also, TNA CO 533/42/Disp. 138. 13729/08/28 Mar. 1908, The National Archives.

⁽⁴²⁾ Ibid.

⁽⁴³⁾ Ibid.

⁽⁴⁴⁾ *Registration of Mohammedan Marriage and Divorce*, KNA/ MP/ No. 89/ 1910-1914, Kenya National Archives.; see also; *Marriage of the freed slaves, 1912*, KNA/PC/Coast/1/3/18/S/1284/12, Kenya National Archives.

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officially abolished slavery on the coast of Kenya in 1907, and much documentation and correspondence were produced in response to it.

I digitalised various documents dealing with Muslim marriage, divorce, and succession.⁽⁴⁵⁾ These documents cover various dates. I came across issues involving individual divorces and documents on Zanzibar's marriage laws. In the archives, I digitised correspondence discussing the registration of the marriage of freed slaves under the abolition of the legal status of slavery.⁽⁴⁶⁾ Plus, the opinions of various Kadhis on the coast of Kenya on the sharia, their jurisdiction and especially their attitude towards the abolition of the legal status of slavery which was hotly debated in correspondence between the Provincial Commissioner, Attorney General and the Kadhis throughout the coast of Kenya.⁽⁴⁷⁾ It is clear from the documentation that Islamic courts took the side of former masters against former slaves on the issues of getting permission for marriage.⁽⁴⁸⁾ I have come across a correspondence where the Attorney General discusses the relationship between ex-slaves and their former masters, especially where the former masters felt that they had certain rights over their former slaves in such cases as marriage. In one correspondence, the Attorney General mentions how the Kadhis refused to conduct marriages among ex-slaves while siding with the former masters, thus undermining the legal status of the slavery ordinance of 1907. They forced former slaves to get permission from their former masters before they could marry themselves. The former slaves were forced to pay Rs.20 for permission, which was difficult for them to raise. In one case, a concubine who ran away to Mombasa from her former master, when caught, was not prosecuted for running away but for getting married without the consent of the former master. I came

⁽⁴⁵⁾ *Muslim marriage, divorce and succession, August 8th, 1913, (1913) [Letter]. KNA/MP 7/13/Ref. no.265/322/13, Kenya National Archives.*

⁽⁴⁶⁾ J.W. Barth to Acting Chief Secretary (1914) [Letter]. *Correspondence relating to registration of marriage of freed slaves under the abolition of the legal status of slavery, June 25th, 1914, KNA/MP 7/13/ Ref. no.S.6564/M/134/14, Kenya National Archives.*

⁽⁴⁷⁾ C.W. Hobley to the Chief Secretary of the Attorney (1914)[Letter]. *Correspondence relating to Kadhis' attitude towards the Abolition of the Legal Status of Slavery May 29, 1914, KNA/MP/ 7/13/Ref. no.172/322/ 13, Kenya National Archives.*

⁽⁴⁸⁾ *Registration of marriage of Freed Slaves (1913)[Letter]. 'Registration of marriage of Freed Slaves & Attitude of Kadhis towards Slavery', 1913, KNA/MP /no. 322/1913, Kenya National Archives.*

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across correspondence between the Kadhi of Mombasa, Mohamed bin Sheikh Kassim, and government officials.⁽⁴⁹⁾ Where the Kadhi asks for permission on behalf of a former master to be allowed to refund government compensation for his former slave, so that he can re-enslave him temporarily and then free him as an expiation for sin. This exchange occurred two decades after the abolition of slavery. In a conversation with the Chief Kadhi of Kenya, Sheikh al-Muhdar, he explained to me that freeing of slaves can take place if the following sins occur: (a) murder, (b) when one has fully divorced his wife and then wants to remarry her, and (c) when one commits manslaughter against a fellow Muslim.⁽⁵⁰⁾ When colonial officials complained that the Kadhi courts were not enforcing abolition laws, they were castigated by the Attorney General J. W. Barth, who defended the Kadhis from attacks by the District Commissioner, stating that the Kadhis were learned, as such, it was imprudent to “derogate” the authority of a Muslim judge in the midst of a Muslim population under a Muslim sultan. Laws of inheritance and succession also produced heated discussions regarding property rights and ownership and in most cases, slaves or people of slave ancestry are mentioned.

The laws of inheritance and succession are useful in understanding the conflicts between ex-masters and ex-slaves. These documents address property ownership and references to slaves or former slaves. I was able to digitize documents dealing with land disputes. Some documents discuss specific cases and, in some instances, dealt with people with a probable slave ancestry. For example, there are cases of unclaimed estates said to belong to deceased Muslims with no inheritors, a sign that the owner could have been a former slave. Some documents dealing with the laws of inheritance also mentioned Wakf funds (Islamic Trust), where disputes arose on property issues and between beneficiaries and trustees. Most documents

⁽⁴⁹⁾ Mohamed bin Sheikh Kassim, Kadhi of Mombasa(1924-1929)[Letter].*Correspondence relating to communication between Mohamed bin Sheikh Kassim, Kadhi of Mombasa and colonial officials regarding marriages of Ex-slave*, KNA /AP/1370, Kenya National Archives.

⁽⁵⁰⁾ Conversation with the Chief Kadhi of Kenya, Sheikh Ahmad Muhdar Hussein, in the presence of the Principal Kadhi of Mombasa, Sheikh Abdullahi Hussein Athman, and his deputy Kadhi, Sheikh Abdullah Mwidadi Salim, took place in the Chief Kadhi's office on August 26th, 2013.

on Wakf were official documents discussing the running of these institutions' committees.⁽⁵¹⁾ My research would not have been completed without visiting Mombasa. In the following sections, I will provide a synopsis of some of the documentation I found there.

1.2.1 Kadhi Court Mombasa

I was able to visit the Kadhi Courts in Mombasa, where I met with the Chief Kadhi of Kenya, Sheikh al-Muhdar, the principal Kadhi of Mombasa, Sheikh Abdul Halim Hussein Athman and deputy Kadhi of Mombasa, Sheikh Abdullah Mwidadi Salim. We had 20 minutes of discussion on slavery and Islam. I obtained permission to look at documents held in the courts. At the Kadhi court, I was able to obtain documents discussing the rights of slaves in selling property. In a document dated 1959, a case regarding a house, three ethnic groups were mentioned in the document. They are Makonde, Yao, and Mnyasa, and all are ethnic groups that were brought to Mombasa through slave trade from present-day Tanzania, Malawi, and Mozambique. I also found a document on a case dated 1955, where three heirs, Mwalimu bin Haji, Mohamed bin Ahmad and Fatuma binti Mohamed are fighting against a plaintiff Safiya Binti Salim bin Ali who declares herself "heir at law" or next of kin of the deceased, Menguso binti Ali Alias Tabasamu binti Nguzo. The defendants claim that the pedigree line of the plaintiff has no connection to the deceased, from the name and alias of the deceased it can be inferred that she was a former slave and the woman claiming to be her "heir in Law" could be from the family of her former owner.

1.2.2 High Court Mombasa

I was also granted permission to conduct research at the High Court of Mombasa. There, I found a civil case between Omar bin Shehe (plaintiff) versus Mwana Aisha Binti Abdulla and Wakf Commissioners of Kenya as defendants. While discussing the boundaries of the

⁽⁵¹⁾ *Documents discussing Administration of Wakf funds (1912-13)*[Letter]. KNA/ MP/ 1912-13, Kenya National Archives.

disputed property, one of the documents dated 1958 describes neighbouring properties and their owners. One of the owners is called Stajabu, who is described in the document as the freed slave of Omar bin Haji. A clear sign that slaves and ex-slaves owned property and that the former slaves were still referred to as slaves of so and so, half a century after abolition.

1.2.3 Fort Jesus Museum (Library)

At the Fort Jesus Museum Library, I found both primary and secondary materials. Some of the materials that I found and digitised were Esmond Bradly Martin and T. C. I. Ryan pp.71-91 "A Qualitative Assessment of the Arab Slave Trade of East Africa 1770-1896" in Kenya Historical Review, editors William R. Ochieng and Karim K. JanMohamed, Vol. 5 No. 1 1977. J.Maw and D. Parkin (eds) Swahili Language and Society, Beitrage Zur Afrikanistik, Band 23, Wien 1985. Cooper, Frederick "The treatment of Slaves on the Kenyan Coast in the 19th Century" Staff Seminar, University of Nairobi Department of History (November 1, 1972). Abdulkadir Hashim "Kadhis' "Intellectual Legacy in the East African Coast: The Contributions of Al-Amin bin Ali Al-Mazrui, Muhammad Kassim Al-Mazrui and Abdulla Saleh Farsy" presented at the International symposium on Islamic Civilization in East Africa Kampala, 15-17th December 2003 organised by The Research Centre of Islamic History, Art and Culture, Istanbul and the Islamic University in Uganda, Mbale, Uganda.

1.3. Conclusion

I was able to capture over 1, 500 digital images from both Nairobi and Mombasa. Some of the documents are in Kiswahili and some are in Arabic. All the images digitised in Nairobi and Mombasa were court documents, colonial correspondence, and surveys that describe the social life in Mombasa and the coast of Kenya in general. These documents are important in giving us insight into the minds of colonial officials and Arab administrators and, importantly, for my research, the reactions of the people in Mombasa to colonial laws during that period.

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This will help sharpen my argument that the abolition of the legal status of slavery did not eradicate the stigma of slavery. The documents also allude to this argument; they clearly show that the former masters struggled to control their former slaves in both the public and private spheres.

1.4. Dissertation Organization

The Introduction which is the first Chapter: 'Introduction to the Dissertation' consists of an overview of the thesis. It lays out the historical background of Mombasa and provides an overview of 'Slavery in Mombasa' by discussing the anatomy of slavery in East Africa with a specific reference to Mombasa. The chapter also outlines a short history of East African Slave Trade, discussing the Southern and Northern complexes of the East African slave trade. This chapter further discusses the sources of this dissertation and how it is organized. This is followed by an outline of the dissertation, a review of the current literature, and a discussion of the contribution of the thesis on the literature of slavery, abolition, and emancipation in East Africa.

The second Chapter discusses 'Swahili Slave Ideology in Mombasa', looks at the Swahili Cultural Hegemony, the Freeborn Institution, Slavery and Paternalism, and the treatment of enslaved people. This chapter focuses on the Swahili Slave Ideology in Mombasa, Swahili Cultural Hegemony, Freeborn Institution Slavery, and Paternalism and the Treatment of enslaved people in Mombasa. It discusses the ideology underpinning social relations along the coast of Kenya. The prevailing slave ideology that existed in Mombasa was based on two well-established ideologies underpinning most of the East African coastal slave-owning communities, which was predominantly based on Swahili cultural hegemony and paternalism.⁽⁵²⁾

⁽⁵²⁾ Allan Galloway, 'The Origins of Slaveholders' Paternalism: George Whitefield, the Bryan Family, and the Great Awakening in the South', *The Journal of Southern History*, 53, 3 (1987), 369; E. D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York: Vintage Books, 1976), xvii.

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The third Chapter: Slave Marriage in Islam and the Doctrine of Kafā'ah: Discusses slave marriages on the coast of Kenya, and in particular, the marriage of Sadiki.⁽⁵³⁾ The chapter examines how the kadhi courts working with the former master tried to control the marriage choices of former slaves. The chapter analyses British colonial officials' correspondence with the Kadhis regarding the abolition of legal status of slavery and the rights of former masters over their former slaves.⁽⁵⁴⁾ Most importantly, the rights of former slaves to marry without permission from their former master or descendants.

The fourth Chapter looks at the aftermath of the abolition of slavery in Mombasa and the institution of Walā'. This chapter examines the meaning of freedom for slaves within Islam. It explains the meaning of the term Walā' and how it was used on the Kenyan coast. This chapter discusses *Kadhis'* attitudes towards the abolition of slavery.⁽⁵⁵⁾ It focuses on the issue of inheritance from slaves in Islam and the estates of former heirless slaves. The chapter discusses in detail the case of Juma Kiroboto's descendants and their fight with their grandfather's former master's descendants' from inheriting their property.

The fifth Chapter discusses British Indirect rule and the coast of Kenya. It examines British dual mandate and colonial law in Mombasa. The chapter looks at colonial administrators, discusses legal pluralism, and the integration of Muslim institutions into colonial administration. It also discusses the incorporation and codification of *Shariah* into the colonial legal system. The chapter also pays attention to the role of Sir Arthur Hardinge's colonial administration, his opinion on slavery, and pro-Arab stance.⁽⁵⁶⁾

This chapter delves into how the implementation of indirect rule enabled Swahili and Arab elites to retain their favored positions well after the establishment of colonial authority in Mombasa and the wider Kenyan coastline. It explores the utilization of Islamic law by influ-

⁽⁵³⁾ *Marriage of Slaves freed under the Abolition of Legal status of slavery Ordinance*(1914)[Letter]. KNA/AP/1/893, 1914, Kenya National Archives.

⁽⁵⁴⁾ *The abolition of the Legal Status of slavery*(1933-1956) [Letter]. KNA/AG 1, /441, Kenya National Archives.

⁽⁵⁵⁾ *Registration of marriage of Freed Slaves & Attitude of Kathis towards Slavery*, (1913) [Letter]. KNA/MP /no. 322/13, Kenya National Archives.

⁽⁵⁶⁾ *J. Chamberlain*(1903)[Notes]. *Notes by the Right Honourable, J. Chamberlain, on Mombasa and East African Protectorate*, 23 June 1903, TNA FO 881/Conf. 7966, The National Archives.

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ential Islamic scholars, many of whom were linked to the slave-owning class, to solidify their privileges. Concurrently, these scholars employed Islamic courts to curtail the advancements made by former slaves.

Additionally, the chapter reveals that British colonial governance introduced a racial framework that superimposed a combined racial-and-class social hierarchy upon the Kenyan coast. This arrangement elevated Arab and Swahili elites to privileged echelons on the societal ladder, while relegating former slaves to the lowermost rungs. In numerous societies where slavery was abolished, the underlying beliefs and conventions that had sustained it often persisted well beyond its formal demise.

To a significant extent, the transition from the status of slavery to the advent of a 'new' colonial regime appeared to former slaves as nothing more than 'old wine in new bottles'.

The Seventh Chapter explores the impact of colonialism on social stratification in Mombasa, particularly focusing on the abolition of slavery and the introduction of taxation laws by the British colonial government. While the official abolition of slavery in 1907 was expected to bring change, the study reveals that the former slave-owning class maintained or even increased their power during colonial rule. The introduction of taxes played a significant role in creating a rigid social structure and reinforcing the position of the former elites. Taxation laws also created racial categories, with the designation of being "Swahili" leading to discrimination and limited access to resources and opportunities. The Arab-Swahili elites, taking advantage of their Arab identity, found favor with the British administration and secured influential positions. To escape the lower-class status associated with being labeled "native," some former Swahilis distanced themselves from their African heritage and embraced Arab ethnicity. Previously, wealth, lineage, and being part of the Swahili elite granted social status, but under colonialism, being Arab or non-native became an important category. Consequently, "Arabness" replaced the previous notion of "ungwana" (townsmen) as a symbol of sophistication and urbanity. Overall, colonial interventions such as slavery abolition and taxation laws in

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Mombasa had a profound impact on social stratification, perpetuating the influence of the former elites while entrenching racial distinctions.

Chapter eight Chapter explores the social stratification dynamics in Mombasa during colonial rule, with a focus on the abolition of slavery and the implementation of taxation laws by the British colonial government. Despite the official end of slavery, the lives of freed slaves showed minimal improvements, as their relationships with former masters remained intact and the power of the former slave-owning class persisted. Contrary to some scholarly claims of British colonialism weakening the elites, evidence suggests that they either maintained or even strengthened their influence during this period. However, the conditions for former slaves did not improve immediately. Taxation laws played a significant role in reinforcing the position of former slave owners and solidifying their elite status, while also establishing a rigid social structure. The introduction of racial categorization by British officials elevated the importance of Arab culture on the Kenyan coast. The appointment of Arthur Hardinge as Consul General facilitated the inclusion of junior civil servants from the Arab-Swahili elites in the new administration. The classification of residents as "natives" subjected them to discrimination, denying them access to better healthcare, improved jail conditions, political representation, trading licenses, and valuable agricultural lands. The abolition of slavery and the introduction of taxation laws had significant implications for social stratification in Mombasa under colonial rule, with former slave owners maintaining or strengthening their power and racial divisions being reinforced, perpetuating social inequalities.

The Ninth chapter functions as a conclusive summary of this thesis, highlighting the influence of British colonialism on the process of emancipation and its consequences. It illustrates how the reliance of the British on Arab/Swahili elites impacted the trajectories of those who were once enslaved along the Kenyan coast. The thesis sheds light on the challenges faced by formerly enslaved individuals as they strived to establish families and protect their possessions. Furthermore, it emphasizes how former masters endeavored to maintain their privileges long after the emancipation.

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The British colonial presence on the Kenyan coast parallels their influence in other colonies. Local Arab and Swahili elites were integrated into the new governing system, while British authority took precedence over Omani rule. Traditional powers were preserved and even strengthened, and the societal divisions present before colonization continued to shape the emerging order. For many, forms of bondage persisted in altered manifestations. All in all, British colonialism along the Kenyan coast introduced a novel system that overlaid the preexisting Islamic framework.

There exists a necessity to broaden this investigation to encompass additional regions of the Swahili coast, unveiling both commonalities and disparities in the realm of urban slavery. Furthermore, it would be advantageous to explore the approaches of diverse colonial powers, such as the German, Portuguese, and French administrations, in managing urban slavery and its eradication within their respective domains. A comparative analysis is indispensable to establish connections between the Swahili coast and to illustrate the various trajectories of urban slavery during the period of abolition and its aftermath.

Chapter 2

Historical Background of Mombasa

This Chapter provides an overview of the historical context of Mombasa, focusing on its existence as an independent city-state, a Portuguese occupied city, and its incorporation into the Omani empire. The presence of a pre-Islamic dynasty ruled by Queen Mwana Mkisi is mentioned, although the Shirazi dynasty did not acknowledge its existence. The Swahili community in Mombasa, like other Swahili communities along the East African coast, played a significant role in Indian Ocean trade, primarily through trade, intermarriage, and the establishment of a patrician institution called "waugwana." The Swahili society had a complex system of incorporating people, including slaves, into their society, with some slaves eventually gaining freedom and social mobility over generations.

The focus then shifts to slavery in Mombasa, emphasizing that Mombasa's economy relied heavily on trade rather than plantation agriculture. Slavery in Mombasa followed patriarchal Islamic traditions prevalent in the Swahili culture. Slaves were subordinated and incorporated into society, with their roles defined by their generalized subordination rather than specific tasks. Slavery in Mombasa was more urban than rural, linked to commercial links with the Indian Ocean region. The slave-master relationship was shaped by interaction between different social groups, including the slaves themselves. Slavery in Mombasa was influenced by Swahili cultural hegemony and had an ideology of dependency and patriarchy.

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The East African slave trade, particularly the northern and southern complexes, is discussed. The northern complex involved the export of slaves to Arabia, Persia, and India,⁽¹⁾ while the southern complex included the export of slaves to the Americas. Mombasa played a major role in the northern complex, acting as a distribution center for slaves imported from Zanzibar, Kilwa, and other areas. The number of slaves imported into Mombasa varied over time, and slaves were used in various sectors, including agriculture, households, and trade. The population of slaves in Mombasa is difficult to estimate due to limitations in historical records.

The chapter concludes by highlighting the need for further research on the East African slave trade, including the exploration of trade dimensions beyond importation, the fate of subsequent generations of slaves, forms of resistance, and the possibility of creating a comprehensive database similar to the one for the Atlantic slave trade.

2.1. Historical Background

Historically, Mombasa existed at times as an independent city-state, as a Portuguese occupied city, and at other times, it was part of the Omani empire on the coast of East Africa.⁽²⁾ Archaeological evidence points to the existence of a pre-Islamic and pre-Shirazi dynasty in Mombasa ruled by a queen named Mwana Mkisi. Mkisi's city was named Kongowea, and at times it has been called Gongwa.⁽³⁾ An area to the north of the Island of Mombasa still carries the name Kongowea; among some Swahilis, Mwana Mkisi's city was located at a place called Mzizima on

⁽¹⁾ B.S. Cave, 'The End of Slavery in Zanzibar and British East Africa'. *Journal of the Royal African Society*, 9, 33 (1909), 20-33.

⁽²⁾ C. Breen & P. J. Lane, 'Archaeological Approaches to East Africa's Changing Seascapes', *World Archaeology*, 35, 3 (Dec., 2003), 469-489; F. J. Berg, *Mombasa Under the Busaidi Sultanate: The City and Its Hinterlands in the Nineteenth Century*. PhD Thesis (University of Wisconsin 1971); F. J. Berg, 'The Swahili Community of Mombasa, 1500-1900', *The Journal of African History*, 9, 1 (1968), 35-56; K. M. Askew, 'Female Circles and Male Lines: Gender Dynamics along the Swahili Coast', *Africa Today*, 46, 3/4, Islam in Africa (Summer - autumn, 1999), 67-102; J. de V. Allen, *Swahili Origins: Swahili Culture & the Shungwaya phenomenon* (London: publisher 1993), 204-205; M. A. Hinawy, *Al-Akida and Fort Jesus, Mombasa: The life history of Muhammad Bin Abdallah Bin Mbarak Bakhashweini with the songs and poems of his time* (London: publisher, 1950).

⁽³⁾ Berg, *Mombasa under the Busaidi*, 1-2.

the northern part of Mombasa Island.⁽⁴⁾ The Shirazi did not acknowledge the existence of this pre-Islamic dynasty. Their traditions credit Shehe Mvita to the founding of Mombasa the city. At one time, Mombasa was called Mvita to honor Shehe Mvita, but some say it was named for the various wars that took place on the island.⁽⁵⁾ A section of the Mombasa is called the Mvita. Mombasa Swahilis, like their counterparts on the East African coast, claim Persian origins; scholars have concluded that this 'Shirazi' presence on the Swahili coast is an outcome of secondary migration from southern part of what is today Somalia.⁽⁶⁾ They contend that there is no evidence of direct arrival from Shiraz in present-day Iran. A century later, Mombasa would undergo major transformations; the island state came under different rulers, both local and foreign – Omani (Yarubi, Mazrui, and Busaidi), Portuguese, and British – and finally became part of the Kenyan Republic.⁽⁷⁾

The Mombasa Swahili community (like other Swahili communities dotted throughout the 'Swahili Coast' or East African littoral zone, an area spanning 3000 km from Somalia to the north and down to Mozambique in the south) has been influenced and has influenced Indian Ocean trade.⁽⁸⁾ The Swahili were able to dominate port towns not because of their 'superior military technology,' but through trade, intermarriage, and creation of a patrician institution (waugwana). They are defined as a free-born Muslim male elite,⁽⁹⁾ who was able to slowly dominate communities on the East African coast by grafting themselves onto the older patrician communities and replacing them with a new one without jeopardizing the system.

Among the earliest known Swahili groups to establish themselves in Mombasa as a community were the Thenashara Taifa and the Twelve Tribe, which were further subdivided into Thelatha Taifa and Tisa Taifa; the Three and Nine Tribes, respectively.⁽¹⁰⁾ These two groups

⁽⁴⁾ Ibid.

⁽⁵⁾ Ibid.

⁽⁶⁾ Ibid.

⁽⁷⁾ Ibid.

⁽⁸⁾ Allen, *Swahili Origins*, 199.

⁽⁹⁾ C. M. Eastman, 'Waungwana na Wanawake: Muslim ethnicity and sexual segregation in coastal Kenya,' *Journal of Multilingual and Multicultural Development*, 5, 2 (1984), 97-112.

⁽¹⁰⁾ L. Rolinger, *Originary syncretism and the construction of Swahili identity, 1890-1964: An experiment in history and theory*, M.A. Thesis (Albert: University of Alberta, 2002); M. J. Swartz, 'Politics, Ethnicity, and Social

have historically opposed each other. Thelatha Taifa being the earliest settlers of Mombasa saw the Tisa Taifa as 'Interlopers'; nevertheless, these two group of settlers were able to dominate other Swahili groups and became the elites. Later, other immigrant groups from Southern Arabia and Oman joined. ⁽¹¹⁾ These latter migrants were incorporated into Swahili society through marriage; wealthy migrants were admitted to the upper classes. An Islamic pedigree such as being a Sharif, a descendant of the Prophet, gave the claimant high social status and thus, access to marriageable women of the leading Swahili classes and, therefore, a foothold into the higher stratum of society.⁽¹²⁾ While slaves were also incorporated into Swahili society through the institution of slavery, it took generations for them to escape from the lower end of society.⁽¹³⁾

This 'two-tier' system of incorporating people into Swahili society has created an ambiguity about origins and identities.⁽¹⁴⁾ Scholars have argued about their Africanity and Arab origins, while some have identified them as Arabized Africans.⁽¹⁵⁾ They have also been seen as an 'intermediary' group, a group that is in the process of transformation from African to Arab peoples. They have also been defined as Muslims and other times are associated with their language.⁽¹⁶⁾ Francois Constantin has defined the Swahili as speakers of Kiswahili who can trace their ancestry on the East African coast for over a thousand years, with a direct connec-

Structure: The Decline of an Urban Community during the Twentieth Century', *Ethnology*, 35, 4, (autumn 1996), 233-248; Berg, 'Swahili Community', 38-56.

⁽¹¹⁾ Ibid.

⁽¹²⁾ K. Kresse, 'Knowledge and Intellectual Practice in a Swahili Context: 'Wisdom' and the Social Dimensions of Knowledge', *Africa*, 79, 1 (2009), 148-167; Allen, *Swahili Origins*, 215.

⁽¹³⁾ F. Constantin, 'Leadership, Muslim Identities and African Politics', in Louis Brenner (ed.) *Muslim Identity and social Change in Sub-Saharan Africa*, (Bloomington: Indiana University Press, 1993), 36 -58; Strobel, *Muslim Women*, 2-3; J.M Richie, *The History of the Mazrui Dynasty of Mombasa*, (Oxford: Oxford University Press, 1995), 14.

⁽¹⁴⁾ F. Constantin, 'Social Stratification on the Swahili Coast: From Race to Class?' *Africa*, 59, 2 (1989), 145-160; D. Nurse & T. Spear, *The Swahili : Reconstructing the history and language of an African society 800-1500* (Philadelphia: University of Pennsylvania Press, 1985), vii-01; Allen, *Swahili Origins*, 12-13.

⁽¹⁵⁾ Ibid.

⁽¹⁶⁾ Definition of coastal People by Abdilahi Nassir, as those 'of whatever colour or creed who have their roots [at the Coast] TNA CO/822/roots, 'An Open letter by Abdullahi Nassir to the constituents of Mombasa Central Area', Feb. 1961, in J. Prestholdt, 'Politics of the Soil: Separatism, Autochthony, and Decolonization at the Kenyan Coast', *Journal of African History*, 55 (2014), 249-70; Constantin, 'Social Stratification on the Swahili Coast', 145-160; Nurse & Spear, *The Swahili*, vii-01; Allen, *Swahili Origins*, 12-13.

tion to the builders of the monuments and historical sites such as Gedi on the Kenyan coast and Kilwa in Tanzania.⁽¹⁷⁾ Today, Swahili identity has been completely adopted by people with slave ancestry to whom Kiswahili has become their primary language and Islam their religion; nevertheless, their admission into the Swahili community is only 'symbolic'. Their lack of 'genealogical pedigree' has been a mark against their full membership; therefore, they and their ancestors are at best junior members.⁽¹⁸⁾

2.2. Slavery in Mombasa

Like other Swahili towns along the east coast of Africa, Mombasa was involved and played a major role in Indian Ocean trade.⁽¹⁹⁾ Therefore, by the early nineteenth century, Mombasa had grown into an important entreport; it was trading ivory with India and Arabia, which was by far the leading Swahili port at this time.⁽²⁰⁾ Mombasa's business expanded exponentially; dhows going to and from the East African coast made calls during their return to the north.⁽²¹⁾ Apart from Indian Ocean trade, Mombasa was also conducting business with the people of its hinterlands. It was receiving caravans from Ukambani, and Swahili caravans penetrated as far north as Marsabit.⁽²²⁾

Mombasa did not develop a flourishing plantation economy like its competitors, Malindi and Zanzibar; its economy mostly relied on trade with its hinterlands and other ports throughout the Indian Ocean.⁽²³⁾ Scholarly works dealing with slavery have described slaves as essential outsiders. Therefore, slavery can be defined as utter dependence on the master because

⁽¹⁷⁾ Ibid.

⁽¹⁸⁾ Ibid.

⁽¹⁹⁾ S. Hameer, 'The Rise and Development of the Coastal ports between Mombasa and Kilwa in the first half of the 19th century' Conference paper (n.d. and place); A.M. H. Sheriff, 'The Rise of Zanzibar as a commercial power, 1770-1828', M.A. African History Seminar, on the 18th January 1968.

⁽²⁰⁾ *Governor's Office, Nairobi to Principal Secretary of State for the Colonies, London (1908) [Letter]. Confidential Letter discussing importance of the port town of Mombasa, 9th Oct. 1908. TNA CO 533/47/Con.107/Incl.1/1908, The National Archives.*

⁽²¹⁾ Sheriff, 'The Rise of Zanzibar', 1.

⁽²²⁾ Ibid.

⁽²³⁾ Cooper, 'Islam and Cultural Hegemony', 279; M.N. Pearson, *The World of the Indian Ocean 1500-1800: Studies in Economic Social and Cultural History* (London: Routledge, 2005), 123-124.

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of the slave's lack of kin.⁽²⁴⁾ Kinship in many African societies, including the Swahilis, is an important axis in which a person's economic position, social relations, and legal protection are rotated.⁽²⁵⁾ Scholars of slavery and its institutions have mostly described it as top-down, smooth-running machinery, with fixed rules that are grafted onto a clearly circumscribed 'culture' in which slaves and slavery are described as rights and obligations; however, the institution of slavery in Mombasa, like many slave-owning societies, was shaped by the interaction between slaves and slave-owners.⁽²⁶⁾ Therefore, the slave-master relationship has to be interpreted not as an individual relationship determined by the 'invisible hand of reified cultural norms,' but as 'a by-product of interaction between different social groups, including the slaves themselves'. Therefore, one cannot analyze the relationship between the masters and slaves in isolation. To understand slaves and the institution of slavery, it is imperative that one understands the slave-owners and the complexities that shaped their societies.⁽²⁷⁾

Slavery in Mombasa followed entrenched Islamic patriarchal traditions popular on most of the Swahili coast. Patriarchy appears to be benevolent, and religion was used to rationalize the domination of slaves.⁽²⁸⁾ Social stratification on the Swahili coast is deeply embedded in Swahili culture, and people occupy different strata in society. Omani were the ruling class, followed by freeborn Swahili and slaves at the bottom.⁽²⁹⁾ The slaves born in Mombasa and at the very bottom were newly acquired. The only exception was the descendants of the Prophet, who transcended this social hierarchy regardless of their financial situation.⁽³⁰⁾ The prevalent slave ideology that existed in Mombasa was a well-established ideology underpinning East

⁽²⁴⁾ O. Patterson *Slavery and Social Death : A Comparative Study* (Cambridge, Mass: Harvard University Press, 1982).

⁽²⁵⁾ F. Cooper, 'The treatment of slaves on the Kenya Coast in the 19th century', *Kenya Historical Review*, 1, 2 (1973), 87-107; See also, J. Glassman, 'No words of their own', *Slavery and Abolition*, 16, 1 (1995), 131-145; F. Cooper, 'The problem of slavery in African studies', *The Journal of African History*, 20, 1 (1979), 103-125; Cooper 'Islam and Cultural Hegemony', 277-278.

⁽²⁶⁾ Glassman, 'No words of their own', 131-145; Cooper, 'The problem of slavery', 103-125.

⁽²⁷⁾ Glassman, 'No words of their own', 131-145.

⁽²⁸⁾ Cooper 'Islam and Cultural Hegemony', 275-276.

⁽²⁹⁾ Strobel, *Muslim Women*, 01.

⁽³⁰⁾ Ibid.

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African coastal slave-owning communities, which was mostly based on Swahili cultural hegemony.⁽³¹⁾

The role of slaves was defined less by the tasks they performed than by their generalized subordination.⁽³²⁾ Generally, slaves worked as household servants, artisans, and concubines. Slavery in Mombasa was more urban than a rural phenomenon related to the development of prosperous commercial links with both the hinterland and the Indian Ocean region as a whole. Therefore, the shaping of the slave-master bonds was a long process that slaves themselves had a hand in molding into what it was at the beginning of the twentieth century.⁽³³⁾

As stated earlier, the Swahili kinship structure incorporated various groups from all over the Indian Ocean into their society, but larger groups of settlers hailed from the southern parts of the Arabian Peninsula, Hadhramaut, and Oman being the principal areas. Slaves were incorporated into the Swahili culture. Although their status was inferior, they did not enjoy full equality and their social mobility was limited.⁽³⁴⁾ In most cases, slaves in Mombasa were incorporated into Swahili society at the bottom; therefore, they constituted a distinct social class.⁽³⁵⁾

Mombasa during the Busaidi dynastic rule was the northern distribution center of the slave trade.⁽³⁶⁾ In the late nineteenth century, Mombasa, like most of the Swahili coast, saw an expansion in agricultural production, fueled by demand from the Arabian Peninsula. This has resulted in an increase in the importation of slaves from East and Central Africa through Kilwa and Zanzibar. Over 700 slaves were imported directly from Zanzibar, increasing the slave population to nearly 5000.⁽³⁷⁾ Nevertheless, most of the slaves in Mombasa were not employed in the plantations but were used as domestic and petty traders with few working in

⁽³¹⁾ Genovese, *Roll, Jordan, roll*, xvii; K.K. Janmohamed, 'A History of Mombasa C. 1895 - 1939: Some Aspects of Economic and Social Life in an East African Port Town during Colonial Rule', PhD. Thesis, (Evanston Ill: Northwestern University, 1978), 327.

⁽³²⁾ Cooper, 'Islam and Cultural Hegemony', 279; Cooper, *Plantation Slavery*,

⁽³³⁾ Cooper, 'The Treatment of Slaves', 89; Glassman, 'No words of their own', 131-145.

⁽³⁴⁾ Berg, *Mombasa under the Busaidi*, 167-168.

⁽³⁵⁾ Cooper, 'The Treatment of Slaves', 87; Cooper, 'problem of slavery', 103-125.

⁽³⁶⁾ Berg, *Mombasa under the Busaidi*, 167-168.

⁽³⁷⁾ *Ibid.*, 341; Sheriff, *Slaves, Spices & Ivory in Zanzibar*, 226.

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small farms as sharecroppers, meaning that they gave a percentage of their produce to their masters. Therefore, the slaves in Mombasa were mainly employed in households and were predominantly female.⁽³⁸⁾

The Swahili society has always had people of slave origin or slaves among them; most of the slaves in Mombasa were imported from Zanzibar and Kilwa but a few were bought or obtained through pawnship from the Mijikenda groups living in the immediate hinterland of Mombasa.⁽³⁹⁾ There were two basic types of slaves: newly imported slaves and those born into slavery. However, the general name of the slaves was *watumwa*. Newly bought slaves were called *washamba*, meaning those from the hinterland; *washenzi*, meaning uncivilized; *m'ja*, meaning one who came; and *wajiga* (stupid people). The newly imported slaves were considered uncivilized, barbarians, raw, brutish, lacking 'culture,' uncouth, and boorish; they were, according to the Swahili, the opposite of everything that *ugwana* stood for. The slaves occupied the lowest position within Mombasan society.⁽⁴⁰⁾

Those born in Mombasa and raised in their masters' homes were called *wazalia*, meaning those born here; they possessed knowledge of Swahili culture and therefore spoke the language and also had a rudimentary understanding of Islam. Most of the *wazalia* were *mafundi*, skilled traders; they were employed as carpenters, fishermen, masons, porters, and tailors, and some were *vibarua*, general labourers.⁽⁴¹⁾

Another group of slaves was manumitted slaves, which were always in danger of being re-enslaved, although legally free in accordance with Islamic law. These slaves did not have strong family ties to protect them, nor did their freedom improve their social standing in the Swahilis. Therefore, slaves were incorporated into Swahili society through manumission and the offspring produced by sexual relations between masters and slave women. Children born

⁽³⁸⁾ C. M. Kusimba, 'Archaeology of Slavery in East Africa', *African Archaeological Review*, 21, 2 (June 2004), 62; Morton, *Children of Ham*, 2.

⁽³⁹⁾ J. Russell, *Communicative competence in a minority group: a sociolinguistic study of the Swahili-speaking community in the Old Town, Mombasa* (Leiden: Brill, 1981), 18-19.

⁽⁴⁰⁾ D. E. Ray, *The Christian Watoro of Fuladoyo: Competing Ideologies on the Swahili Coast*, B.A. Honors Project (Brigham Young University, 2006), 5-6.

⁽⁴¹⁾ Ibid.

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to masters by their concubines were considered free; nevertheless, 'a degree of slave ancestry was not a social asset in Swahili society'.⁽⁴²⁾ Female slaves in Mombasa, like elsewhere in the Islamic world, became petty traders and servants within the masters' households.⁽⁴³⁾ Female slaves were absorbed into the Swahili community through concubinage, a situation in which female slaves who bore children for their masters were able to gain some freedom.⁽⁴⁴⁾ Domestic slaves who were raised or born in Mombasa, like their counterparts in other Swahili societies along the East African coast, found it difficult to sever bonds with their former masters. In Zanzibar, for example, slaves worked in the households of their masters were treated as 'family'. In a letter from J.T. Last to Mr. Peter Grain explaining the procedure followed to obtain compensation for former slaves, he states '[i]t appears that in Mombasa, the slaves themselves do not come forward to claim freedom'.⁽⁴⁵⁾ It was more difficult for these slaves to claim freedom; most of them remained with their former masters long after the manumission and even after the abolition of slavery. Many remained junior members of the Swahili communities. Some even ended up being dependents of the offspring of their former owners.⁽⁴⁶⁾ Fear of being re-enslaved, being far from their lands of origin, and lacking strong family ties to protect them forced many slaves to choose to stay within the households of their former masters and their descendants.⁽⁴⁷⁾

The Swahili 'fragility of control' would later facilitate the subordination and incorporation of slaves into their communities, creating an ideology of dependency and patriarchy. There-

⁽⁴²⁾ G.N. Curzon Member of Parliament (1896) [Memo]. *Scheme for the Abolition of the Legal Status of Slavery in Zanzibar and Pemba*, 8 Dec. 1896. TNA FO 881/Conf. 6848, 8 Dec. 1896, The National Archives; G.A. Akinola, 'Slavery and slave revolts in the Sultanate of Zanzibar in the nineteenth century', *Journal of the Historical Society of Nigeria*, 1972, 6, 2, 216; J. Middleton, *The world of the Swahili: An African mercantile civilization* (New Haven: Yale University Press, 1992), 102; Morton, *Children of Ham*, 3.

⁽⁴³⁾ Ibid.

⁽⁴⁴⁾ Berg, 'Swahili Community of Mombasa', 168; P.E. Lovejoy, *Transformations in Slavery: A History of Slavery in Africa* (Cambridge, UK: Cambridge University Press, 2000), 32.

⁽⁴⁵⁾ J.T. Last, Collector of Zanzibar to Mr. Peter Grain, Acting First Minister Zanzibar (1908) [Letter]. *Correspondence in regards to the provisions of the Decree for the abolition of the Status of Slavery*, Zanzibar Mar. 3rd, 1908, TNA CO 533/50/191/08, The National Archives; see also, for further discussion on the abolition of the Status of Slavery Legal, TNA FO 881/Conf. 9331/N 1338, The National Archives.

⁽⁴⁶⁾ Akinola, 'Slavery and slave revolts', 217; Morton, *Children of Ham*, 2; Middleton, *The world of the Swahili*, 25.

⁽⁴⁷⁾ Morton, *Children of Ham*, 3.

fore, earlier European observers of the slave conditions in Mombasa and East Africa in general perceived slavery to be less cruel with slaves having 'civic and social rights,' although limited. To them, slaves appeared to be well treated compared to the 'industrialized freemen' of late nineteenth- and early twentieth-century Europe.⁽⁴⁸⁾

2.3. An Anatomy of Slavery in East Africa with Reference to Mombasa

The East African slave trade predated on and outlasted the Atlantic slave trade. Reginald Coupland, in his seminal work *East Africa and its Invaders* famously described the East African slave trade as a 'scarlet thread' that ran through the history of East Africa from ancient times to the late nineteenth century.⁽⁴⁹⁾ Unlike the transatlantic slave trade, little has been written about the volume and economic aspects of the East African slave trade.⁽⁵⁰⁾ The East African slave trade compared to the slave trade on the west coast has attracted fewer scholars, and this is attributed to the interest of Europeans, Africans, and African-Americans who are intimately connected to the Triangular Trade.⁽⁵¹⁾ The East African slave trade has not been measured, which is comparable to works by Philip Curtin, David Eltis, David Richardson, and Paul Lovejoy, among others, on Atlantic slave trade.⁽⁵²⁾ There is no 'pathbreaking' collection of data to stimulate scholarly debates. Nothing of the work undertaken by Eltis and Richardson exists for East African trade, especially that conducted by Arab and Swahili merchants. The only data collected, or where estimates can be made with some precision, concerns the European ships

⁽⁴⁸⁾ Cooper, 'Islam and Cultural Hegemony', 277-278.

⁽⁴⁹⁾ R. Coupland, *East Africa and Its Invaders: From the Earliest Times to the Death of Seyyid Said in 1856*, (Oxford: Clarendon Press, 1961), 17-18.

⁽⁵⁰⁾ W.G Clarence-Smith, *The Economics of the Indian Ocean Slave Trade in the Nineteenth Century*, (London: F. Cass, 1989); M.S. Hopper, 'Slaves of One Master: Globalization and the African Diaspora in Arabia in the Age of Empire', Proceedings of the 10th Annual Gilder Lehrman Center International Conference at Yale University, 7-8 November (2008), 1-33.

⁽⁵¹⁾ E. A. Alpers, *The East African Slave Trade* (Nairobi: East African Publishing House, 1977), 209.

⁽⁵²⁾ D. Richardson and S.D. Behrendt 'Inikori's Odyssey: Measuring the British Slave Trade, 1655-1807', *Cahiers d'Études Africaines*, 35, 138/139 (1995), 599-615; D. Eltis et al., *The trans-Atlantic slave trade: a database on CD-ROM*, (Cambridge: Cambridge University Press, 1999).

that traded in the southeast part of East Africa, where cargos were destined for the Americas or the French colony islands in the western Indian Ocean.⁽⁵³⁾

2.4. Short History of East African Slave Trade

The East African slave trade was divided into northern trade and southern trade.⁽⁵⁴⁾ The East African slave trade has been called by many names: the Indian Ocean slave trade, Arabian slave trade, Islamic slave trade, Zanzibar slave trade, French slave trade in East Africa, and Omani slave trade.⁽⁵⁵⁾ In general, it is divided into two: the northern complex and the southern complex. Trade in slaves on the east coast of Africa can be divided into several periods: the antiquity period, the eighteenth-century period, and the nineteenth century period. This study examines the final period. Thus, it focuses on the northern complex, specifically the slaves sent to Mombasa and its hinterlands. The East African slave trade, as alluded to by Coupland, has been going on for at least two millennia. Recent scholars have, however, refuted the claim that the volume of the slave trade can be comparable to the Atlantic slave trade. It was only in the nineteenth century when the Portuguese and the French entered trade that the volume could be comparable to its counterpart on the west coast of Africa.⁽⁵⁶⁾

The earliest work to discuss East Africa is Ptolemy's *Geography* which mentions ports on the coast around the fifth century A.D. and also mentioned the products that were exported from these shores, such as ivory and coconut oil, which were among the early goods traded with Arabia and the Indian subcontinent during that period. In that early account of the eastern coast of Africa, there was no mention of slaves and gold, although it revealed that slaves

⁽⁵³⁾ Ibid.

⁽⁵⁴⁾ Lovejoy, *Transformations in Slavery*, 155-156; Lovejoy has added another dimension to the trade that deals with Swahili plantations on the Swahili coast.

⁽⁵⁵⁾ A. Sheriff, *Slaves, Spices & Ivory in Zanzibar: Integration of an East African Commercial Empire into the World Economy, 1770-1873*, (Eastern African studies. Oxford: Currey, 1987), 33; M.D.E. Nwulia, *Britain and Slavery in East Africa*, (Three Continents Press, Washington: 1975), 271; E. A. Alpers, 'The French Slave Trade in East Africa (1721-1810)', *Cahiers d'Études Africaines*, 10, 37 (1970), 80-124; G. Campbell, 'The East African Slave Trade, 1861-1895: The 'Southern' Complex,' *The International Journal of African Historical Studies*, 22, 1 (1989), 1-26; G. Shepperson, 'The United States and East Africa', *Phylon* (1940-1956), 13, 1 (1952), 25-34.

⁽⁵⁶⁾ E. A. Alpers, *Ivory and Slaves: Changing Pattern of International Trade in East Central Africa to the later Nineteenth Century* (Berkeley: University of California Press, 1975), 211.

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were exported further north from the Horn of Africa. Nevertheless, it is probable that the slaves from the south were re-exported from this area.⁽⁵⁷⁾ A couple of centuries later, slaves were clearly exported from the Swahili littorals to Arabia and the Persian Gulf. For example, in the ninth century, A.D slaves working in the salt marshes of Basra revolted in what was called the Zanj Rebellion. The term “Zanj” was used by medieval Arab writers to mean the East African coast; therefore, it is presumed that the majority of participants in the revolt were originally from the East African region.⁽⁵⁸⁾

The sources of slaves for the East African slave trade were mostly the Lake Malawi region and as far as the eastern Congo.⁽⁵⁹⁾ Thousands of enslaved Africans ended up at Kilwa for export to Zanzibar. Slaves were imported to the islands of Lell la France and Bourbon, directly from Kilwa.⁽⁶⁰⁾ Zanzibar, on the other hand, was a redistribution center where slaves were sent to other parts of the Sultan of Zanzibar’s dominion on the coast of East Africa, and some were sent to Arabia and other parts of the Gulf and Indian Ocean regions.

One scholar divided the East African slave trade into three parts: northern trade to Arabia, Persia, and India; southern trade to the Americas; and Swahili coast trade to the islands of Zanzibar and Pemba, Mombasa, and Malindi, and as far north as Barawa on the Somali coast.⁽⁶¹⁾ According to Paul Lovejoy, the rise in the slave trade in East Africa saw up to 800, 000 slaves being exported to Arabia, the Indian Ocean Islands, and the Americas, while an equal amount of slaves was retained on the coast of East Africa. In the earlier part of the nineteenth century, out of 110, 000 slaves brought to the coast, one-third were retained on the plantation complexes of East Africa.⁽⁶²⁾

⁽⁵⁷⁾ J.E.G. Sutton, ‘The East African Coast: An Historical and Archaeological Review’, in J. M. Konczacki, & Z.A. Konczacki, Z.A. (eds.), *An Economic History of Tropical Africa* (Volume One): *The Pre-Colonial Period* (London, Frank Cass, 1977), 193-205.

⁽⁵⁸⁾ Ibid., 196; G.H. Talhami, ‘The Zanj rebellion reconsidered’, *The International Journal of African Historical Studies*, 10, 3 (1977), 443-461.

⁽⁵⁹⁾ R. Coupland, *The Exploitation of East Africa 1856-1890: The Slave Trade and the Scramble*, (London: Faber, 1968), 137-138.

⁽⁶⁰⁾ Ibid., 135-137.

⁽⁶¹⁾ Lovejoy, *Transformations in Slavery*, 155-156.

⁽⁶²⁾ Ibid.

2.5. Southern Complex

The Southern Complex East African slave trade expanded exponentially during the mid-to-late nineteenth century because of the demands from the French sugar islands in the western Indian Ocean. According to Campbell, reunion accounted for an increase in engagés/slaves from East Africa and Madagascar.⁽⁶³⁾ The high mortality rate among the slaves, natural disasters, and British restrictions on Indian coolies to the French created a labor shortage, and the void was filled by slaves 'directly supplied by Swahili/Arab traders' from the East African coast or East Africans, and Malagasy slaves rerouted through western Madagascar.⁽⁶⁴⁾ In David Geggus's analysis of the French slave trade using the Du Bois database, one can determine the number of slaves that left the eastern seaboard of Africa for the Americas. According to his analysis of ships leaving southeast Africa or the southern, complex around 2,000 slaves were exported around the Cape to the Americas for the period 1801-1825.⁽⁶⁵⁾ Edward Alpers reported that 10,442 slaves were shipped on 16 Brazilian slave ships from Mozambique to Rio de Janeiro and northeastern Brazil. According to him, in a period of 13 years, from 1818 to 1830, 68,063 slaves were exported from the shore of Mozambique to Brazil.⁽⁶⁶⁾ In the early nineteenth century, Cuban and American slave ships made port calls in Mozambique and Zanzibar to purchase slaves. The number of slaves from this region that ended in Cuba or the United States on the East African coast is still unknown. Another feature of the southern complex that has not been accounted for is the role of Arab and Swahili slave ships destined to the northwest shore of Madagascar.⁽⁶⁷⁾

⁽⁶³⁾ Campbell, 'The 'Southern' Complex', 4.

⁽⁶⁴⁾ Ibid.

⁽⁶⁵⁾ D. Geggus, 'The French Slave Trade: An Overview,' *The William and Mary Quarterly*, 58, 1 (2001), 119-138.

⁽⁶⁶⁾ Alpers, *The East African*, 211-213.

⁽⁶⁷⁾ Alpers, *Ivory and Slaves*, 214-215.

2.6. Northern Complex

The number of slaves bound for the Zanzibar and beyond markets is difficult to estimate. According to Sheriff, there is no accurate measure of the volume of slaves exported to Oman. He also states that 'we are fortunate to possess some very precise quantitative data about the slave trade ...collected by British officials' in Oman.⁽⁶⁸⁾ For example, Campbell estimated that around 20, 000 slaves were exported per year from the Malawi region from the early parts of the nineteenth century, and around 40, 000 slaves were exported per year from the Swahili Coast to Arabia from the 1850s to the 1880s. Campbell asserted that around two-thirds of the slaves procured from the interior of East Africa ended in plantation complexes on the Swahili coast and its immediate hinterlands.⁽⁶⁹⁾ According to Coupland, the population of Zanzibar in 1811 stood at 200, 000 and three-quarters of them were slaves; in the same year, around 6, 000 to 10, 000 slaves were shipped out of Zanzibar to Muscat, India, and the sugar islands of Mascarenes.⁽⁷⁰⁾ He estimated that in 1839, around 40, 000 to 45, 000 slaves were imported into Zanzibar, and around half of them were exported to the Red Sea, Persian Gulf regions, and as far as the Indian subcontinent.⁽⁷¹⁾ Zanzibar claimed that it imported 13, 000 slaves annually from Kilwa during the early part of the nineteenth century. In the 1840s, between 13, 000 and 15, 000 slaves were exported from Kilwa to Zanzibar. In 1850, J. L. Krapf reported that 10, 000–12, 000 slaves from Lake Nyasa and central Tanganyika were exported to Zanzibar from Kilwa. The average number of slaves imported into Zanzibar was 14, 000, but the number fluctuated from as low as 9, 000 slaves per year to as high as 20, 000 slaves. Alpers argues that not all slaves exported north ended in Zanzibar; some slave ships skirted Zanzibar and illegally exported human cargo directly to Arabia, in contrast to the ban on selling slaves to Arabia. During the 1860s, Zanzibar imported over 100, 000 slaves directly from Kilwa; some

⁽⁶⁸⁾ Sheriff, *Slaves, Spices & Ivory in Zanzibar*, 37-38.

⁽⁶⁹⁾ Campbell, 'The 'Southern' Complex', 4.

⁽⁷⁰⁾ Coupland, *East Africa and Its Invaders*, 183.

⁽⁷¹⁾ *Ibid.*, 500.

of these slaves were retained to work in the booming clove plantations in Zanzibar and Pemba, while others were re-exported further north to Mombasa, Malindi, and their hinterlands.⁽⁷²⁾

2.7. Slaves Imported into Mombasa

Most of the slaves in the northern section of the East African slave trade were retained in the plantation complexes of the Swahili coast. Mombasa, Malindi, Lamu, and their hinterlands were major recipients of slaves originating from Kilwa and reexported from Zanzibar. According to Sherriff, Swahili traders from Mombasa and as far north as Pate bought slaves directly from Kilwa and further south in the Portuguese territory in the early 1700s.⁽⁷³⁾ However, in the nineteenth century, there was a dramatic increase in the importation of slaves into the Swahili coast as plantation complexes began to mushroom throughout the coast. Restriction on the export of slaves to Arabia in the nineteenth century by the British forced slave traders to divert slaves to food production in the littorals of East Africa. Therefore, this intensification of agricultural production has led to the need for more slaves.⁽⁷⁴⁾

Mombasa in the nineteenth century was an economically vibrant town connected to commercial networks with its immediate hinterlands and deep into the interior, trading with Kamba. In earlier periods of the early nineteenth century, ivory was the most important commodity exported. However, by the late nineteenth century, Mombasa's economic dependency on ivory started to decline and was replaced with agricultural products such as 'millet, maize, beans, sesame, and copra, which were exported to Arabia.⁽⁷⁵⁾ According. Sheriff, by the early part of the nineteenth century, agriculture played a major role in the economy of Mombasa, as many of the residents of the island had farms on the mainland. Nevertheless, Mombasa's production cannot sustain its exports. Therefore, it acted as a collection center for regions to the south, north, and its hinterlands. Grain from Malindi to the north and as far south as Mrima,

⁽⁷²⁾ Alpers, *Ivory and Slaves*, 236-237.

⁽⁷³⁾ Sheriff, *Slaves, Spices & Ivory*, 42-43.

⁽⁷⁴⁾ A. M. Sheriff, 'The Slave Mode of Production along the East African Coast, 1810-1873', in J. R. Willis (ed.), *Slaves & Slavery in Muslim Africa*, (London: Frank Cass), 161-181.

⁽⁷⁵⁾ P. T. Zeleza, *Manufacturing African Studies and Crises*, (Senegal: African Books Collective, 1997), 407.

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present-day Tanzania, including their hinterlands, found their way to Kilwa and from the area around Mount Kilimanjaro, mostly from the Chagga, who were experiencing a civil war during that period.⁽⁷⁶⁾ In 1866, Mombasa imported 720 slaves, according to records kept in Zanzibar.⁽⁷⁷⁾ According to Sheriff, in the 1860s, approximately 700 slaves were imported into Mombasa and Malindi directly from Zanzibar. Mombasa also received slaves directly from Kilwa, but their numbers were unknown.⁽⁷⁸⁾ In the 1860s, Sherrieff estimated that over 1, 000 slaves were exported from Zanzibar and were shared by Mombasa, Takaungu, and Malindi.⁽⁷⁹⁾ In the 1870s, while visiting Mombasa, Frederic Holmwood, Zanzibar's consular, estimated that up to 500 slaves per year were being imported through land-based slave trade.⁽⁸⁰⁾ Berg estimated that between 1866-1872 just over 3, 000 slaves were imported from Zanzibar.⁽⁸¹⁾ He broke down the dates and numbers as follows: from 1865-1866 Mombasa imported 725 slaves; in 1870, Mombasa and Malindi imported 624 slaves combined; in 1871, Mombasa and Malindi imported from Zanzibar 1, 600 slaves, and the year before the abolition of the Arabian-bound slaves, 1872, saw a dramatic increase in slave importation to Mombasa, Malindi, and Lamu with a total of 5, 737 slaves.⁽⁸²⁾

According to Cooper, slave owners do not own many slaves. The largest slave-owners owned up to 40 slaves, but most owned fewer than 10 slaves.⁽⁸³⁾ Nevertheless, Cooper admits to the abundance of slaves in Mombasa and attributes it to the ban on slave exports to Arabia.⁽⁸⁴⁾ Hence, the claim by a missionary that a leader of the Nine Tribes, Khamis bin Kombo Mutafi, owned 500 slaves, is, according to him, an exaggeration; nevertheless, this shows that some of the landed families of Mombasa owned many slaves.⁽⁸⁵⁾ The nature of slave labor in

⁽⁷⁶⁾ Cooper, *Plantation Slavery*, 208.

⁽⁷⁷⁾ Ibid., 209.

⁽⁷⁸⁾ Sheriff, *Slaves, Spices & Ivory*, 71.

⁽⁷⁹⁾ Ibid., 228-229.

⁽⁸⁰⁾ Cooper, *Plantation Slavery*, 209.

⁽⁸¹⁾ Berg, *Mombasa under the Busaidi*, 341.

⁽⁸²⁾ Ibid.; Sheriff, *Slaves, Spices & Ivory*, 226.

⁽⁸³⁾ Cooper, *Plantation Slavery*, 213.

⁽⁸⁴⁾ Ibid., 208.

⁽⁸⁵⁾ Ibid., 220.

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Mombasa was determined by the absence of grain cultivation, large plots of land, and the high monetary value placed on fruit trees.⁽⁸⁶⁾ Cooper argues that it is impossible to have exact numbers of slaves in Mombasa because the population statistics taken prior to the twentieth century counted Swahilis and slaves as one group. According to an estimation performed in 1847, the city of Mombasa had a population of 3, 000, those identified as Arabs numbered around 220-230 and the rest were counted as slaves. Ten years later, Burton estimated the population to be 8, 000-9, 000 which included 350 Arabs. Holmwood's estimation in 1874 provided a population count of 12, 000 and identified most of them as Swahili. A population count conducted at the end of the century, which focused on the city of Mombasa, revealed a population breakdown of 496 Arabs, 14, 574 free Swahili, and 2, 667 slaves.⁽⁸⁷⁾

By 1873, Malindi to the north of Mombasa had a slave population of 6, 000 slaves and had to import 600 more slaves annually to maintain stock.⁽⁸⁸⁾ According to Brian Fagan, Mombasa is the principal port of the northern section of the East African coast.⁽⁸⁹⁾ Therefore, Mombasa became not only a hub for agricultural products, but also a distribution center for slaves imported from Zanzibar, Kilwa, and directly overland from the northern part of Tanzania to other Swahili towns further north.⁽⁹⁰⁾

By the 1840s, Mombasa and Malindi imported 700 slaves per year from Zanzibar, and simultaneously imported an unsubstantiated number of slaves directly from Kilwa.⁽⁹¹⁾ Krapf writes that at the end of 1848, Mombasa was flooded with slaves arriving from the interior of East Africa. Slaves in Mombasa, like the rest of the Swahili coast, came from a variety of ethnic groups: chagga, Kamba, and Taita; however, the majority of the slaves were referred to as *Wanyasa*, meaning they came from the areas of Nyasaland.⁽⁹²⁾ These slaves be-

⁽⁸⁶⁾ Ibid., 214.

⁽⁸⁷⁾ Ibid., 215; see, 'Report by Sir A. Hardinge on the Condition and progress of the East Africa protectorate from Its Establishment to the 20th of July 1897', 1898, LX, 199, 8. Also see, C. C Wrigley, 'Historicism in Africa Slavery and State Formation', *African Affairs*, 70, 279 (1971), 113-124.

⁽⁸⁸⁾ Sheriff, *Slaves, Spices & Ivory*, 70-71.

⁽⁸⁹⁾ Sutton, 'The East African Coast', 204.

⁽⁹⁰⁾ Sheriff, *Slaves, Spices & Ivory*, 42-43.

⁽⁹¹⁾ Ibid., 70-71.

⁽⁹²⁾ Cooper, *Plantation Slavery*, 239.

longed to the 'intra-African' diaspora, a subject scantily discussed when studying slavery in East Africa.⁽⁹³⁾ Although slaves from the immediate hinterlands of Mombasa were avoided, during the two major famines, one in the 1830s and the other in 1884, Mijikenda children were pawned to Swahilis at the coast. Some of these children ended up as domestic slaves in Mombasa and some of them were exported to Arabia.⁽⁹⁴⁾

2.8. Conclusion

The East African slave trade's historical significance has been examined, but certain trade aspects have been overlooked. Mombasa's pivotal economic role in the northern sector of the East African slave trade has been well-established, involving the importation and distribution of slaves from Zanzibar, Kilwa, and northern Tanzania to its neighboring hinterlands and other Swahili towns.⁽⁹⁵⁾ In Mombasa, slavery predominantly revolved around urban settings rather than rural areas. Slaves served various roles as household servants, artisans, and concubines, reflecting the city's prosperous commercial connections with the hinterlands and the broader Indian Ocean regions. Despite their urban roles, slaves also played a significant part in food production.⁽⁹⁶⁾ The ban on Arabian-bound slaves did not stop slavery but only redirected it to coastal plantation complexes. Therefore, instead of receiving slaves to work in date plantations or other domestic services, Arabia received agricultural goods produced by slave labor, a sort of East African 'legitimate trade.' This clearly shows that the eastern coast of Africa, like its counterpoint in the west, shares many similarities with the abolition of the seafaring-slave trade.⁽⁹⁷⁾ This study only looked at the importation of slaves in the nineteenth

⁽⁹³⁾ P.T. Zeleza, 'Rewriting the African Diaspora: Beyond the Black Atlantic', *African Affairs*, 104, 414 (2005), 35-68.

⁽⁹⁴⁾ Cooper, *Plantation Slavery*, 240.

⁽⁹⁵⁾ Coupland, *The Exploitation*, 221.

⁽⁹⁶⁾ Cooper, 'The Treatment of Slaves', 89; Glassman, 'No words of their own', 131-145.

⁽⁹⁷⁾ Colonel C.B. Euan-Smith, Her Majesty's Agent and Consul-General for the Dominions of the Sultan of Zanzibar (1889)[Memo]. *Memorandum on the Suppression of the Slave Trade in East Africa*, 4th Oct. 1889, TNA FO 881/6762/Conf. 5851, The National Archives; G.M. McSheffrey, 'Slavery, indentured servitude, legitimate trade and the impact of abolition in the Gold Coast, 1874-1901: a reappraisal', *The Journal of African History*, 24, 3 (1983), 349-368.

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century, but Mombasa, like other coastal towns, has had slaves in their midst for a long time. This led to questions regarding the percentage of slaves. What happened to second- or third-generation slaves? What happened to the manipulated slaves? What forms of resistance, such as rebellion, flight, and sabotage, occurred in Mombasa and its hinterlands?⁽⁹⁸⁾ Finally, can a slave trade database similar to the one for the Atlantic slavery trade be created for the East Africa slave trade's northern 'complex'?

⁽⁹⁸⁾ C.E. Orser Jr and P.P.A. Funari, 'Archaeology and slave resistance and rebellion', *World archaeology*, 33, 1 (2001), 61-72.

Chapter 3

Ideology of Slavery in Mombasa

This chapter discusses the slavery ideology in Mombasa. It looks at how Swahili hegemony was used to legitimize practices that allowed masters to preserve their social and traditional authority over their former slaves long after the abolition of slavery. It also discusses how former masters use hegemony to regulate social relations with their former slaves. Finally, the chapter shows how Swahili paternalism, culture, language, freeborn institutions, and Islam became instrumental in demarcating 'social boundaries' in Mombasa.

3.1. Introduction

On the East African coast and Mombasa in particular, slavery could not have been imposed using permanent coercion, 'it needed a degree of consent from those who were enslaved'.⁽¹⁾ Partly by convincing them to '...believe in the rectitude of their marginality,' the slave masters used things like upbringing, culture, and tradition as barriers to restrict the daily interactions between them and their former slaves. At the same time, former slaves were also given the chance and hope to potentially 'reduce their marginality'.⁽²⁾ According to Frederick Cooper, 'a major underpinning of the slave hegemony' was always the possibility for slaves or former

⁽¹⁾ Cooper, *Plantation Slavery on the East Coast of Africa*, 78.

⁽²⁾ Ibid.

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slaves to improve their 'personal autonomy,' while still depending on their owners for their protection.⁽³⁾ For centuries, communities along the Swahili coast have maintained a system of social stratification using slavery as one of the pillars to sustain this class division. The class divisions were cultural and social. Prominent Swahili concubines were the most privileged class, followed by poor freeborn Swahilis, slaves born in Mombasa, and newly acquired slaves at the bottom.⁽⁴⁾ The prevailing slave ideology that existed in Mombasa was based on Swahili hegemony, a deep-rooted ideology at the foundations of most Swahili coast slave-owning communities. Using paternalism, culture, language, free-born institutions, and Islam, the masters were able to control their slaves.⁽⁵⁾ Slavery in Mombasa was supported by an ideology that saw slaves as inferior and demanded slave deference. This slave ideology on the Swahili coast was comparable to Western concepts of savagery and civilization. In Mombasa, slaves were seen as 'naturally inferior, uneducated, uncivilized, and religiously polluted'.⁽⁶⁾ Cooper defines ideology as an integrated system of beliefs, assumptions, and values, which reflects the needs and interests of a group or class at a particular time in history.⁽⁷⁾

The Swahili cultural notions of 'purity' and 'impurity' was important in demarcating social relations between the former slaves and former masters.⁽⁸⁾ For the purposes of this chapter, the word 'freeborn' will be used broadly in place of *waungwana* to describe the master class. Freeborn in Swahili society embodied values that were more than just an institution. It was the ruling class, the elite of Swahili society. In reality, only a small minority of freeborn Swahili owned slaves. Therefore, this chapter discusses the elite Swahili group. A group that possessed 'hegemonic' powers and used the same to obtain consent from the people they

⁽³⁾ Ibid.

⁽⁴⁾ Strobel, *Muslim Women*, 1.

⁽⁵⁾ A. Gallay, 'The Origins of Slaveholders' Paternalism: George Whitefield, the Bryan Family, and the Great Awakening in the South', *The Journal of Southern History*, 53, 3 (Aug., 1987), 369-394; Genovese, *Roll, Jordan, roll*, xvii; D.B. Davis, *The Problem of Slavery in the Age of Revolution 1770-1823* (Ithaca, New York: New York: Cornell University Press, 1975), 14; Cooper, 'Islam and Cultural Hegemony', 277.

⁽⁶⁾ Strobel, *Muslim Women*, 45; B. Buchan, and M. Heath, 'Savagery and civilization: from Terra nullius to the 'Tide of History', *Ethnicities*, 6, 1 (2006), 5-26.

⁽⁷⁾ Strobel, *Muslim Women*, 1.

⁽⁸⁾ A.H.M. el Zein. *The Sacred Meadows : A Structural Analysis of Religious Symbolism in an East African Town*, (Evanston Ill: Northwestern University Press, 1974), xx, 202, 204, 219.

dominated, the slaves in Mombasa. The Swahili elites could not unilaterally impose their wills on others. Although they had economic and social powers, they needed support from other freeborn Swahili and also the very people they were dominating, their slaves, to respond to their mores and their expectations.⁽⁹⁾ They argue that the master class created an ideology that stressed the incorporation of slaves into their new community and reciprocal obligations of slaves and slave-owners'.⁽¹⁰⁾ According to them, their masters were constrained. They further opined that because the masters were constrained, this led slave masters' patriarchy to 'appear to be benevolent, an action of a superior person. Cooper argues that religion, Islam in this case, was used not only to define slavery but also to legitimize slave masters' control over their slaves.⁽¹¹⁾ Islamic concepts of slavery were not isolated or existed only on the East African coast. According to Finley, '...part of a wider pattern of ideologies, one that stresses the slave's inferiority as a consequence of his being an outsider, a person without culture.'⁽¹²⁾ Therefore, according to Cooper, slaves on the Swahili coast were '...not just outsiders in reference to kinship groups or a village but to a worldwide community. Islam did not cause slaves to be assimilated or assigned to a fixed social status, in the context of a universal religious system.'⁽¹³⁾ Cooper argued that slave masters were better positioned because of their power to ideologically mold their slaves to their worldview using Islam. Nevertheless, the slaves could use 'tenets and symbols' of Islam to challenge the master class.⁽¹⁴⁾ Therefore, Cooper argues that ideology was as effective as whips or social 'dependence'. It forced the slaves to find other means of resisting domination that were not confined to the traditional 'flight or rebellion' but to fight masters' cultural and religious domination by struggling to create self-awareness and cultural and religious space within the dominant view.⁽¹⁵⁾ According to Cooper, slave masters

⁽⁹⁾ E. Fox-Genovese and E.D. Genovese, *The Mind of the Master Class : History and Faith in the Southern Slaveholders' Worldview* (Cambridge: Cambridge University Press, 2005), 5.

⁽¹⁰⁾ Ibid., 5-9.

⁽¹¹⁾ Cooper 'Islam and Cultural Hegemony', 277-278;

⁽¹²⁾ M.I. Finley, 'Slavery,' *International encyclopedia of the social sciences*, 14 (1968), 307-313.

⁽¹³⁾ Cooper, 'Islam and Cultural Hegemony', 277-278.

⁽¹⁴⁾ Ibid.

⁽¹⁵⁾ Ibid.

in Mombasa did not establish a state that was able to have better control over slaves, nor did it create a direct relationship between the individual and the state. In Mombasa, Cooper argues, 'communal groups' and 'class solidarity' played a central role in the individual's survival and access to political power.⁽¹⁶⁾

At the beginning of the twentieth century, Mombasa was a highly stratified, prosperous, and urban society. Like many Swahili coastal towns, its society is divided into two classes: the elites, represented by the freeborn, and the slaves. This research examines the cruelty, exploitation, and injustice faced by slaves on the coastal strip. It examines the institution of slavery and how it is shaped by interactions between slaves and slave owners. This research looks at what it meant to be a slave, including a slave's rights and obligations. It also considers what it meant to own a slave in the coastal strip, 'especially its conveyance of a sense of wealth and prestige...'⁽¹⁷⁾ Therefore, the research analyzes masters and slaves' relations to understand slaves and the institution of slavery. It is imperative to understand the slave-owners and complexities that have shaped their societies. It is also important to examine the prevailing slave ideology in the coastal strip and to understand the ideology that sustained most of the East African coastal slave-owning communities, especially the role of Swahili cultural hegemony.

3.2. Swahili Paternalism

Slave ideology was an instrument used with skill by the Arab and Swahili elites to get subordinate groups to agree to 'a worldview created by the elites to perpetuate their dominance'. It was an ideology that justified Arab and Swahili hegemonies. It has become as important as whips and other forms of coercive tactics in pacifying the slave population. On the other hand, paternalism was 'key to the ideology' of Arab and Swahili masters. It was a tool often used in

⁽¹⁶⁾ Ibid.

⁽¹⁷⁾ F. Farah, 'The Metamorphosis of Slavery in Colonial Mombasa, 1907-1963', in O. Ojo & N. Hunt (eds.), *Slavery in Africa and the Caribbean: A History of Enslavement and Identity since the 18th Century*. (London, New York: I.B. Tauris), 2012, 121-143.

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Mombasa to justify slavery, 'an ideology that stressed the reciprocal obligations of slaves and slave owners'. Therefore, this research contends that although the British abolished slavery in 1907, Arab and Swahili elites were able to 'retain their claim to high birth and moral authority' through cultural hegemony and the ideology of paternalism. The elites used Arab and Swahili culture and Islam to mold their slaves and at the same time created 'long-term conceptions of the social order'. This allowed former slave masters to influence and control the lives of their former slaves long after the abolition of the slavery. The legacy of slavery has continued to influence social relations in Mombasa, where people of slave ancestry continue to be stigmatized and marginalized on the coast of Kenya. This chapter uses Antonio Gramsci's concept of 'hegemony, ' to analyze slave-master relations in Mombasa and the coastal strip of Kenya in general in order to show how Swahili elites used paternalism, Swahili culture, hegemony, language, freeborn institution and Islam to impose their worldview on slaves and their descendants to the present time.

Gramsci defined hegemony as a system that both internally and externally shapes and influences people's behavior by imposing dominant social behaviors as the norm. Paternalism refers to how historians have described slavery on Mombasa and the Swahili coast. Like other parts of the world where slavery existed, paternalism 'succeeded astonishingly well in welding together all the elements of the system, especially masters and slaves'.⁽¹⁸⁾ In Eugene Genovese's seminal work, *Roll, Jordan, Roll*, and paternalism are defined as exploitative Janus-faced systems that, on the one hand, encourage kindness and affection and cruelty and hatred.

In Mombasa, paternalism is used to exploit slaves. The masters treat the slaves as family on the one hand and use their labor on the other.⁽¹⁹⁾ As suggested by Meillasoux, in his study of West African slavery, many slave societies in Africa lacked the complete power to dominate their slaves. Therefore, slave masters use various practices to control their slaves. Paternalism was one form of deception the master used to bind their slaves, making them feel thankful

⁽¹⁸⁾ Genovese, *Roll, Jordan, roll*, xvii.

⁽¹⁹⁾ Ibid., 4

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to their master, who acted and looked generous towards his lowly slaves. These supposed acts of kindness reinforced these mutual obligations: the master, because of his 'generosity,' was depicted as a superior person and the slave as obedient and dutiful. The master's household is where many slaves are taught the Swahili codes of conduct and their place within the household and Swahili society in general.⁽²⁰⁾

Most slaves in Mombasa lived within or around the master's household. This close living encouraged paternalism to develop in Mombasa and many Swahili towns along the East African littoral. Paternalism in Mombasa shares similarities with that of other slave societies. Just like the former slaveholding states of the USA, paternalism in the Swahili coast was accepted by both the master and the slave, but with radically different interpretations. Paternalism defined the involuntary labor of the slave as a legitimate return to their masters for protection and direction. In Mombasa, like the Old South, 'paternalism's insistence upon mutual obligations — duties, responsibilities, and ultimately even rights — implicitly recognized the slave's humanity'.⁽²¹⁾ Paternalism in Mombasa undermined the resistance of the slaves. Like their counterparts in Antebellum South, slaves in Mombasa were caught in 'a web of paternalistic relationships' that divided them and bound them to individual masters, who acted as providers and protectors. Paternalism in Mombasa also undermined unity and social cohesion among slaves, as slaves were more likely to identify with their master and community than fellow slaves. The lack of solidarity among the slaves in Mombasa and their status as kinless outsiders forced them to look to their owners for protection and support, and many slaves were gradually absorbed into the Swahili community structures. Therefore, slaves found it difficult to claim their freedom; most of the domestic slaves remained with their former masters long after the manumission and even after the abolition of slavery. Many remained junior members of the Swahili communities. Some even became dependants of the offspring of their former owners. Fear of being re-enslaved, being far from their lands of origin, and lacking

⁽²⁰⁾ Constantin, 'Social Stratification', 149.

⁽²¹⁾ Genovese, Roll, Jordan Roll, 5.

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strong family ties to protect them forced many slaves to choose to stay within the households of their former masters and their descendants. Religion was one-way Swahili masters rationalized dominating their slaves as outsiders. In Mombasa, a slave was seen as 'uncultured and irreligious, and he was expected to acquire them only through his master'.⁽²²⁾

Slavery was not an institution peculiar to Mombasa or the Swahili coast. It is a global phenomenon that transcends culture, religion, geographical boundaries, and time. According to Cooper, weaker outsiders have always been compelled through whip, other social pressures, and even ideology to work for more powerful groups. Cooper argues that one of the 'peculiar institutions' to evolve out of these forced labor regimes is slavery. Slavery, Cooper adds Islamic slavery, is the only labor regime that 'recognized the humanity of the slave' and at the same time made slaves dependent on their masters for upkeep in exchange for their labor.⁽²³⁾

Tannenbaum argued that there is 'no institutional difference' between slave systems in the Americas and the world in general. According to him, the institution of slavery had a 'logic of its own' and 'wherever it existed....it worked its way into the social structure and modified the total society'. Tannenbaum maintains that the slave system was broader in its impact and therefore it is proper to discuss 'the total pattern as a slave society' instead of breaking it into geographical spheres or cultural spheres. He sees slavery as encompassing everything with which it comes into contact. Therefore, for him, 'Nothing escapes, nothing was beyond or above or outside the slave institution, the institution was the society in all of its manifestation'.⁽²⁴⁾

3.3. The Freeborn Institution

Most slaves in Mombasa lived within or around their master's households. This close living encouraged paternalism to develop in Mombasa and many Swahili towns along the East African littoral. Paternalism in Mombasa shares similarities with that of other slave societies. Just like

⁽²²⁾ Cooper, 'Islam and Cultural Hegemony', 275-276.

⁽²³⁾ Cooper, *Plantation Slavery*, 200.

⁽²⁴⁾ F. Tannenbaum, *Slave and Citizen*, (Boston: Beacon Press, 1992), 116-117.

the former slaveholding states of the USA, paternalism in the Swahili coast was accepted by both the master and the slave, but with radically different interpretations'. Paternalism defined the involuntary labor of the slave as a legitimate return to their masters for protection and direction. In Mombasa, like the Old South 'paternalism's insistence upon mutual obligations — duties, responsibilities, and ultimately even rights — implicitly recognized the slave's humanity'. Paternalism in Mombasa undermined the resistance of the slaves. Like their counterparts in Antebellum South, slaves in Mombasa were caught in 'a web of paternalistic relationships' that divided them and bound them to individual masters, who acted as providers and protectors. Paternalism in Mombasa undermined unity and social cohesion among slaves; thus, slaves were more likely to identify with their master and community than fellow slaves.

The Swahili Freeborn embodied the definition of Gramsci's 'historical bloc'. By the late nineteenth century they had developed all the ingredients needed to create cultural hegemony: "spontaneous philosophy' and a 'world view, ' and they also possessed both cultural and economic solidarity'.⁽²⁵⁾ As a group, they enjoyed unrivalled influence in shaping the values and worldviews of society.⁽²⁶⁾ Swahili developed a worldview inspired by Islam, and culturally rooted in Africa with 'references, beyond their immediate society and lifestyle, and the structural flexibility necessary to accommodate what could be seen as otherness'.⁽²⁷⁾ The Swahili worldview is supported by three pillars: History, language, and Islam. These three components determine a common framework of reference where beliefs, norms, and values are contested. In other words, it is a point of reference that has been shaped by over a thousand years of interaction between Bantu-African culture and language on the one hand and Islam and the Muslim world on the coast of East Africa on the other.⁽²⁸⁾ Swahili culture is pre-

⁽²⁵⁾ T.J.J. Lears, 'The concept of cultural hegemony: Problems and possibilities', *The American Historical Review*, 90, 3 (1985), 567-593.

⁽²⁶⁾ Fox-Genovese et.al. *The Mind of the Master Class*, 2.

⁽²⁷⁾ K. Larsen, *Knowledge Renewal and Religion : Repositioning and Changing Ideological and Material Circumstances among the Swahili on the East African Coast*, (Uppsala: Nordiska Afrikainstitutet; 2009), 15.

⁽²⁸⁾ K. Kresse, 'Practising an Anthropology of Philosophy: General Reflections and the Swahili Context', in Mark Harris (ed.) *Ways of knowing: Anthropological approaches to crafting experience and knowledge* (New York: Berghahn Books. 2007), 51.

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dominantly African, but at the same time, Swahilis were able to integrate different lifestyles, cosmologies, and practices that migrated people from southern Arabia brought with them.⁽²⁹⁾

By the late nineteenth century, Mombasa was a highly stratified and prosperous urban society. Like many Swahili coastal towns, society was dominated by freeborn.⁽³⁰⁾ Prior to the abolition of legal status of slavery, the word 'freeborn' meant nobility, the opposite of a slave. After the abolition, the word was contrasted with barbarism.⁽³¹⁾ The slave masters called themselves freeborn, which came to mean urbane, cultured, and civilized.⁽³²⁾ Therefore, they occupy the highest level of the Mombasa hierarchy. These former slave masters belonged to long-established families with significant social and economic standing. They saw themselves as founding people of the city of Mombasa, or patricians. They were known as *wenyeji*, the 'real owners' of the town, and this status was acquired through intermarriage, which allowed them to acquire family and clan links, important qualities in the 'Swahili culture orbit'. To be freeborn also meant to have mastery of the Swahili language, to have an Islamic heritage, and to belong to the townsfolk. Therefore, a freeborn was to be civilized and to belong to a culture unique to the coast of East Africa.⁽³³⁾ This Swahili culture spread down the length of the East African mainland coast and on the islands as far into the Indian Ocean as the Islands of Comoros. The Swahili of Mombasa have close ties with other members of their ethnic groups along the coast, but they are a proud and distinctive community. Immigrants from the Arabian Peninsula, especially Oman and Yemen, had a profound influence on the culture of

⁽²⁹⁾ F. A. Chami, 'Kilwa and the Swahili towns: Reflections from an archaeological perspective' in K. Larsen (ed.) *Knowledge, Renewal and Religion Repositioning and changing ideological and material circumstances among the Swahili on the East African Coast* (Uppsala : Nordiska Afrikainstitutet, 2009), 38-56.

⁽³⁰⁾ D.V. Allen and T.H. Wilson, 'The Swahili House: Cultural and Ritual Concepts Underlying its Plan and Structure', in J. d. V. Allen, T.H. Wilson (eds.) *Swahili Houses and Tombs of the Coast of Kenya* (London: Art and Archaeology Research Papers 1979), 1-32.

⁽³¹⁾ Eastman, 'Waungwana na Wanawake', 97-112.

⁽³²⁾ Cooper, *Plantation Slavery*, 264.

⁽³³⁾ A. H. J. Prins, *The Swahili-speaking peoples of Zanzibar and the East African Coast: Arabs, Shirazi and Swahili*, (London: International African Institute, 1967), 1; Allen, *Swahili Origins*, 14-15; M.J. Swartz, 'Illness and morality in the Mombasa Swahili community: A metaphorical model in an Islamic culture', *Culture, Medicine and Psychiatry*, 21, 1 (1997), 89-114; M. A. Franken, *Anyone can Dance: A survey and Analysis of Swahili Ngoma, Past and Present*, PHD Thesis, (University of California Riverside, 1986), 69; Ray, *The Christian Watoro of Fuladoyo*, 2.

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the Swahilis, including those in Mombasa, particularly religion. Islam, principally the Shafi'i (school of law) of the Sunni Islam brought about by a large migration of Sharifs (descendants of Prophet Mohammed), played a leading role in the culture of the Swahilis as opposed to people who came from the interior of East Africa.⁽³⁴⁾

The freeborn in Mombasa considered themselves people who embodied *Utu*, which meant that as people, they possessed civilization, humanity, culture, pedigree, and a common language.⁽³⁵⁾ Marc J. Swartz says that 'no term is more laden with emotion' than freeborn, which denotes nobility and has no slave ancestors. A freeborn is judged by a code of conduct, but bad behavior does not disqualify him from membership in the group.⁽³⁶⁾ Therefore, a freeborn person always shows civility or refinement and avoids brashness, loudness, and gossip, always behaving with restraint.⁽³⁷⁾ For a free birth to attain civility and refinement, he had to attain honor. However, being freeborn did not automatically make you honorable. To gain honor, a freeborn person needs to attain the respect of the elders of the community by engaging in positive behavior. Respect can be gained by achieving accomplishments in fields such as religious studies, secular education, business, and other professions. Most importantly, honor is demonstrated through personal character and demeanor.⁽³⁸⁾ No major study of the Mombasa Freeborn institution has been conducted yet. However, the phenomenon in Lamu, a town on the northern coast of Swahili, has been studied. Abdul Hamid el Zein's anthropological work, *The Sacred Meadows*, opened a window into a free-born institution. According to this study, the freeborn claimed to be members of the Qureishi tribe to which Prophet Mohammed belonged.⁽³⁹⁾ They also believed they were descendants of Sam, as opposed to the children of the 'curse of Ham'.⁽⁴⁰⁾ They considered themselves civilized and not tainted with

⁽³⁴⁾ M. J. Swartz, *The way the world is: cultural processes and social relations among the Mombasa Swahili* (Berkeley: University of California Press, 1991), x-42.

⁽³⁵⁾ Swartz, *The way the world is*, xi.

⁽³⁶⁾ Ibid., 104-105.

⁽³⁷⁾ Ibid.

⁽³⁸⁾ Ibid.

⁽³⁹⁾ el Zein, *The Sacred Meadows*, 202-204.

⁽⁴⁰⁾ The biblical story of Ham (Gen. 9.18-27), one of the sons of Noah has been used by the followers of Judaism, Christianity and Islam to justify the enslavement of Africans.

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slave blood.⁽⁴¹⁾ Freeborn believed that their purity was inherited through birth and could not be attained by any other means.⁽⁴²⁾

They also believed they were descendants of Sam as opposed to that of the children of the 'curse of Ham,' considered themselves civilized and not tainted with slave blood. Freeborn believed that their purity was inherited through birth and could not be attained by any other means. Therefore, the concept of 'purity' and 'impurity' played a pivotal role in cementing social relations between the freeborn and slaves in Lamu.⁽⁴³⁾ Slaves occupied the lowest rung in Lamu society; nevertheless, they played an important role in the rituals and symbols of Lamu society. The freeborn were obsessed with maintaining their 'purity' and were in constant fear of losing their social power and claim to superiority by contamination by the slaves.⁽⁴⁴⁾

Therefore, the freeborn in Mombasa had views similar to their Lamu counterparts in relation to their slaves. They saw slaves as children of Ham. 'The curse of Ham, According to Humphrey J. Fisher, the curse of Ham has been used to justify the enslavement of blacks or descendants of Ham. Ahmad Baba, the great Islamic scholar of West Africa, rejected the 'the curse of Ham' as a justification for enslaving a person. To him, not accepting Islam 'unbelief' was the only justification for enslavement, regardless of ethnicity or race. In Mombasa, slavery 'was brand transmitted as a birthmark, the slave was considered cursed and uncivilized, *hayawan*, an animal'. They were regarded as et 'a brute beast, an enemy of God, and the Prophet.⁽⁴⁵⁾ Therefore, slaves on the Swahili coast and Mombasa in particular were seen as people who were naturally inferior, lacked lineage and history, obscene, and honourless. To Swahilis in Mombasa, slaves were seen as possessing neither religion nor culture. They were considered 'voiceless, godless, and kinless' and their place in society was defined by their re-

⁽⁴¹⁾ el Zein, *The Sacred Meadows*, 202-204; E. M. Mbiafu, 'Mongo Beti and 'Curse' of Ham : Myth and History in Africa', *Research in African Literature*, 33, 2 (Summer 2002), 9-33; D. M. Goldenberg, *The curse of Ham race and slavery in early Judaism, Christianity, and Islam* (Princeton, N.J.: Princeton University Press 2003), 2.

⁽⁴²⁾ el Zein, *The Sacred Meadows*, 219.

⁽⁴³⁾ Ibid., 202-204

⁽⁴⁴⁾ Ibid.

⁽⁴⁵⁾ Morton, *Children of Ham*, xiv.

lationship to their masters.⁽⁴⁶⁾ Therefore, the onus was on slave-owners as transmitters of civilization. In Mombasa, they are characterized as uncivilized, animals, brutes, born with a curse, and without words of their own.⁽⁴⁷⁾

3.4. Swahili Culture

Gramsci's notion of hegemony has been used in various slave studies. Gramsci shows how hegemony is used by elites to '...seek to obtain the spontaneous' consent of the masses. According to him, the elites shape the cultural and moral norms of society to reflect their worldview.⁽⁴⁸⁾ Cooper contends that the elites continuously use economic power and coercion to instill their 'hegemonic ideology' on slaves.⁽⁴⁹⁾ For example, Genovese shows that slave-owners relied on the law to '...define a set of obligations and rules that slaves could not violate. By invoking the authority and symbolism of state institutions, slave-owners tried to emphasize that rules were not merely a matter of personal power, but a set of principles.'⁽⁵⁰⁾

Gramsci defines hegemony as the creation of 'spontaneous consent given by the great masses of the population to the general direction imposed on social life by the dominant fundamental group'. Dagmar Engels and Shula Marks think that 'the term "hegemony" was developed by Gramsci in order to account for the predominance of a class achieved through the consent or acquiescence of other classes or groups'. What is important in the context of Mombasa is the analysis of its subordination and domination. Historians have defined Gramsci's idea of 'hegemony' as the ability of the elite class to put a lid on discontent by lower classes and also convince lower classes of their legitimacy. David Arnold notes that the use of the word 'spontaneity' by Gramsci can be misconstrued as something 'voluntaristic and emulative'. He argues that Gramsci shows that hegemony grows naturally out of 'prestige and power' and is

⁽⁴⁶⁾ Ibid.

⁽⁴⁷⁾ Glassman, 'No words of their own', 131-145;

⁽⁴⁸⁾ Cooper, 'Islam and Cultural Hegemony', 282.

⁽⁴⁹⁾ Ibid.; Lears, 'The Concept of Cultural Hegemony', 571.

⁽⁵⁰⁾ Cooper 'Islam and Cultural Hegemony', 277-278; Genovese, *Roll, Jordan, Roll*, 4.

not primarily a product of ‘manipulation or indoctrination’. Arnold concludes that hegemony is a practice, expectation, meaning, and value that shapes our perceptions of the world.⁽⁵¹⁾

The Swahili cultural hegemony connects appropriately with Gramsci’s definition of hegemony, which to him was ‘a system of beliefs that reflects specific class interest’. Nevertheless, Gramsci’s definition provides us with ‘an open-ended system that is in constant flux and a society that is not static’. The Swahili cultural hegemony, like the hegemonic concept put forward by Gramsci, was a ‘process of continuous creation’ where different groups were integrated into the Swahili community. Therefore, Swahili’s cultural hegemony was constantly invented and reinvented. Gramsci does not have a ‘precise definition of cultural hegemony,’ but his discussion of how elites ‘manipulatively persuaded’ lower classes to follow a social life imposed by them is important for the study of master and slave relations in Mombasa before and after colonialism.

3.4.1 Language

In Mombasa, Swahili has been used as a tool for linguistic and cultural domination.⁽⁵²⁾ This ideology was transmitted within and through Swahili.⁽⁵³⁾ Michel Foucault’s emphasis is on the role of ‘discursive practice’ in reinforcing domination. Gramsci also realized that ‘every language contains the elements of a conception of the world’.⁽⁵⁴⁾ According to Lears, vocabulary helps mark the boundaries of permissible discourse, in the case of the Swahili, between the master and his slave, making it difficult for the slaves or the dispossessed to be able to articulate or even fight for their rights.⁽⁵⁵⁾

⁽⁵¹⁾ D. Arnold, ‘Public Health and Public Power: Medicine and Hegemony in Colonial India’, in D. Engels and S. Marks (eds) *Contesting Colonial Hegemony* (London and New York: British Academic Press 1994), 131–151.

⁽⁵²⁾ Margie Berns et. al., ‘Re-experiencing Hegemony: The Linguistic Imperialism of Robert Phillipson’, *International Journal of Applied Linguistics*, 8, 2 (1998), 271-282.

⁽⁵³⁾ Berns et. al., ‘Re-experiencing Hegemony’, 272.

⁽⁵⁴⁾ Lears, ‘The Concept of Cultural Hegemony’, 569.

⁽⁵⁵⁾ Ibid.

3.4.2 Islam in Mombasa

Islamic religious symbolism played an important role in helping maintain the hierarchy in Mombasa, similar to Lamu and other parts of the East African coast. The hierarchy created in Mombasa was perpetuated by notions of 'purity' and 'impurity,' where rituals and symbols were instrumental. Thus, religion, just like culture and society, never remained static; it had undergone a series of changes to its cosmology to include or exclude certain groups. Therefore, 'the deep or unconscious religious' belief systems in Mombasa, like many other parts of the Swahili coast, have been, and are still being, interpreted and reinterpreted by different levels of society.⁽⁵⁶⁾ Religion or ritual in Mombasan society was an instrument to 'articulate structural tensions and contradiction;' myth and ritual was the language of argument, instead of a language of 'chorus of harmony'. For example, masters and slaves used similar Kiswahili myths to articulate different meanings, thus interpreting myths according to their social status.⁽⁵⁷⁾

Prior to colonialism, masters used the various venues and mechanisms provided by Islam to free their slaves. For example, it was considered a pious act for masters to voluntarily emancipate their slaves. Freeing a slave was also a gesture of thanksgiving, and sometimes masters freed their slaves as an atonement or expiation for a minor sin. In a bizarre case, 8 years after the abolition, a former Arab master inquired if he could enslave his former slave and free him to expiate crime or sin by the hypothetical freeing of a slave".⁽⁵⁸⁾ Often, slaves were freed upon the master's death through wills.⁽⁵⁹⁾ On many occasions, when masters freed their slaves, they were often provided for them. Some slaves had received farms, often those they had worked on, or masters allowed the slaves to continue working on the farms and benefit

⁽⁵⁶⁾ el Zein, *The Sacred Meadows*, xvi.

⁽⁵⁷⁾ Ibid., xx-xxi.

⁽⁵⁸⁾ A.C. Hollis, Commissioner of Native Affairs to M. Beech (1915) [Letter]. *Correspondence relating to Liwali's Proposal to Hypothetically freeing of a former slave for expiation of sins*. Mombasa Record Centre, Reports on Conditions of Freed Slaves, , November 3rd, 1915, KNA/AG/1/438/20/14/15, Kenya National Archives; see also, Mohamed bin Sheikh Kassim (1924-1929) [letter]. *Correspondence relating to 'using former slaves for expiation of sins....'* KNA/AP/1/1370/289/44, Kenya National Archives.

⁽⁵⁹⁾ Cooper, 'The Treatment of Slaves', 87-103.

from the fruits of their labor. The masters often put the farms and lands under trusteeship, guaranteeing security for the former slaves to live without being harassed by future creditors or inheritors.⁽⁶⁰⁾ In some instances, slaves were able to own property and even buy their own farms; the slave-owners did not object to their slaves owning property because they knew that if the slaves died, they had the right to inherit their property in accordance with Islamic jurisprudence.⁽⁶¹⁾ Nevertheless, former slaves retained close ties with the families of their former masters, returning to the master's house for festivities or in times of trouble. Masters who acted in leniency and paternal fashion towards their slaves were able to have longer relationships with them; many of these relationships lasted long after the abolition of slavery. Many slaves would later be referred to as *Uledi*, freed slaves of so and so, which implies that while legally free and often financially independent, they still remained part of their masters' 'people.' Therefore, when slaves needed protection, they returned to their former masters' homes, where the masters acted as their protector. This enhanced the masters' self-image within Swahili society.⁽⁶²⁾

Cooper maintains that slave owners on the Swahili coast used Islam to legitimize their hegemony. Islamic scholars and *Kadhis* (Islamic judges) on the Swahili coast embodied the role of Gramsci's intellectuals.⁽⁶³⁾ Cooper shows how the 'learned classes: ' wealthy traders, slave owners, and the ruling class used Islamic court systems to their advantage. Most scholars on the Swahili coast were either connected to trading and slave-owning families or sponsored by them. Cooper stresses that the scholars provided '...a common religious and cultural framework' that also provided an 'ideological network'.⁽⁶⁴⁾ Cooper remarks further that work arrangement between slave owners and slaves was 'less rigid' and the rules that come out of these arrangements were given legitimacy by the *Kadhis* by dressing these rules in reli-

⁽⁶⁰⁾ Ibid., 99.

⁽⁶¹⁾ Ibid.

⁽⁶²⁾ Ibid., 99-101.

⁽⁶³⁾ Cooper 'Islam and Cultural Hegemony', 283.

⁽⁶⁴⁾ Ibid.

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gious garbs.⁽⁶⁵⁾ For him, 'the hegemonic ideology' that existed on the Swahili coast grew out of strongly held traditions and was not a plot between the slave-owning elites and Muslim scholars to exploit slave labor. At the core of this ideology, Cooper explains Islamic paternalism, which justified the enslavement of non-Muslims because they were civilizing 'heathens'.⁽⁶⁶⁾ The Swahili elites, like the elites elsewhere, need to use traditions. This gave them a sense of belonging and understanding of the world in which they lived and sought to dominate. Therefore, their ideology divided the world into two parts: the world of Islam and the world outside Islam. Taking a slave from outside the world of Islam and making him Muslim was saving him from the hellfire. Cooper describes how, 'a master's property rights coexisted with a community interest — that slaves be converted to Islam and not treated cruelly'.⁽⁶⁷⁾ The ideology revolved around the central image of a Muslim patriarch, where, according to Cooper, he brings '...his slaves out of heathenness into civilization, generously looking after their welfare, freeing them of his own volition to be members of a Muslim community. The ideology did not try to deal directly with plantation agriculture — justifying slavery in terms of the need for labor; instead, it assimilated the plantation to older forms of dependence, putting it in the context of a system of social relations between superior and inferior'.⁽⁶⁸⁾ Islamic law has played an important role in Mombasa's hegemonic ideology. A fixed reference point was established for whatever was to be done. Cooper's study of East African slaves concentrated mostly on plantation complexes; he did not consider domestic use of slaves as exploitative or dehumanizing as the plantation use of slaves. Sharia legislators insisted on the proper treatment of slaves and set down parameters for their punishment. It had much to say about slaves' rights to control or use property, the inadmissibility of their testimony in court, their ability to marry, and so on. However, it provided little guidance on the most important questions facing masters and slaves regarding work and supervision. Slaves in Mombasa, like their counter-

⁽⁶⁵⁾ Ibid., 284.

⁽⁶⁶⁾ Ibid., 283-4

⁽⁶⁷⁾ Ibid.

⁽⁶⁸⁾ Ibid.

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parts on the Swahili coast, faced this, as a British official investigating Zanzibari law found: 'Save for the general prohibition...of ill treatment or cruelty, there is no legal limitation to the amount of work which a master may impose on his slave, whether the latter be a man, woman, or child'.⁽⁶⁹⁾

Islam is a hegemonic force in the Mombasa. It was the intellectual and moral leadership of religious leaders as 'organic intellectuals' because of their role in the construction and organization of domination.⁽⁷⁰⁾ Therefore, it is imperative to study the interplay between religion and social structures to understand the history of slavery on Mombasa and the Swahili coast.⁽⁷¹⁾ The Swahili used 'traditional religious authority, ' as defined by Max Weber, which rests on history, myth, and ritual to justify their position.⁽⁷²⁾

Until the mid-nineteenth century, Islam dominated the Swahili coast, resulting in a 'cultural hegemony'.⁽⁷³⁾ The Swahili elites, who were also slave owners, used Islam to create social stratification. The freeborn were able to control and restrict slaves from gaining access to sophisticated values of the world of Islam. By creating a two-tier system of Islam, one for the elites that embodied respectability (*heshima*) and the other a lower status associated with savages (*washenzi*) occupied by slaves.⁽⁷⁴⁾ The Swahili possess a worldview that has been influenced by Islam. This worldview, as defined by Clifford Geertz, provided reasonable 'models of the world — perception that makes sense of events and experiences — and sensible models of acting in the world'.⁽⁷⁵⁾ It provided the slave owners with a 'world view' and an 'ethos' that had a history and a 'correct practice. '⁽⁷⁶⁾

⁽⁶⁹⁾ Ibid.

⁽⁷⁰⁾ J. Fulton, 'Religion and Politics in Gramsci: An Introduction', *Sociological Analysis*, (1987), 197–216; J. V. Femia, *Gramsci's Political Thought: Hegemony Consciousness and the Revolutionary Process* (London: Clarendon Press, 1981), 24. .

⁽⁷¹⁾ Fulton, 'Religion and Politics in Gramsci', 197.

⁽⁷²⁾ E. W. Waugh, 'The Popular Muhammad: Models in the Interpretation of an Islamic Paradigm', in R. C. Martin (ed.) *Approaches to Islam in Religious Studies* (Tucson: University of Arizona Press, 1985), 41–61.

⁽⁷³⁾ Constantin, 'Leadership, Muslim Identities', 36–58.

⁽⁷⁴⁾ Ibid., 36–58.

⁽⁷⁵⁾ Larsen, 'Knowledge, Renewal and Religion Repositioning', 14.

⁽⁷⁶⁾ O.L. Manger, *Muslim Diversity: Local Islam in Global Contexts*, (Surrey: Curzon.1999), 9.

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Slave owners' use of Islamic laws in Mombasa allowed them to dominate every aspect of social life. Among them were highly regarded Muslim scholars who had 'textual authority' and were in control of the interpretation of the Quran and the prophetic traditions.⁽⁷⁷⁾ The elites had a stronger sense of identity with a 'pristine past'. They faithfully remembered the *silsila*, also known as spiritual lineage. For example, the celebration of the Prophet's birthday (*maulidi*) is an elite area.⁽⁷⁸⁾ Originally, *maulidi* was a private ritual performance reserved for the freeborn of Lamu, but it later came to be popularized by Sayyid Habib Saleh (1844-1935), the founder of the Riyadhha Mosque in Lamu. Habib Saleh was a pious, charismatic leader who reached out to the underclass of Lamu, mostly slaves, and gave them an opportunity to practice their 'Islam' within Lamu society.⁽⁷⁹⁾ *Maulidi* provided 'social prestige' to mostly elites who wanted to boast about their wealth to gain a 'position of influence, power, and authority' among members of the communities.⁽⁸⁰⁾ The authority of the *Maulidi* scholars such as Sharif Khitamy, who was Habib Saleh's son, is not only based on Quran, Hadith, but also 'intellectual genealogy' rooted on the Swahili coast. In addition, *Maulidi* scholars have a spiritual genealogical connection to the prophet.⁽⁸¹⁾ After abolishing the legal status of slavery, the freeborn in Mombasa and other Swahili communities along the Kenyan coast used religion as a form of social control.

Islamic scholars undertook an intellectual and moral reformation, 'a revolution of the mind and heart, worked on painstakingly by the party faithful through educational and political means'.⁽⁸²⁾ At the forefront of these reforms was Sheikh al-Amin Mazrui, who popularized Islamic knowledge by making it accessible to ordinary people through his numerous publications in Kiswahili. He started making the 'rules of faith' accessible to the masses and averting

⁽⁷⁷⁾ M. Lambek, *Knowledge and Practice in Mayotte Local Discourses of Islam, Sorcery and Spirit Possession* (Toronto: University of Toronto Press, 1993), 136.

⁽⁷⁸⁾ Waugh, 'The Popular Muhammad', 41.

⁽⁷⁹⁾ Kai Kresse, *Philosophising in Mombasa Knowledge, Islam and Intellectual Practice on the Swahili Coast* (Edinburgh: Edinburgh University Press for the International African 2007), 88; el Zein, *The Sacred Meadows*, 40.

⁽⁸⁰⁾ Kresse, *Philosophising in Mombasa*, 85.

⁽⁸¹⁾ Waugh, 'The Popular Muhammad', 41; Kresse, *Philosophising in Mombasa*, 94-100.

⁽⁸²⁾ Fulton, 'Religion and Politics in Gramsci', 199.

a monopoly for 'religious specialists'.⁽⁸³⁾ Therefore, a number of *Ulama* (scholars) led by the Mazrui tried to control subordinate groups including slaves through 'rules'.⁽⁸⁴⁾ The religious leaders in Mombasa engaged in textual interpretation, which was not confined only to the Quran and prophetic traditions for their legitimacy. They went further by incorporating the sacred text in the 'oral tradition' of the Prophet's history and its local interpretation together with local 'cosmological' beliefs.⁽⁸⁵⁾ During colonialism, Islam in Mombasa and the Swahili coast experienced a form of 'intellectual and moral reforms'.⁽⁸⁶⁾ When the British abolished the legal status of slavery in 1907, the slave owners in Mombasa, like their counterparts in the Old South, used religion as a 'primary means of social control'.⁽⁸⁷⁾ Two decades after the abolition of slavery in Mombasa and the coast of Kenya, former slave owners were still holding on to their former slaves and claiming their inheritance in accordance with Islamic law.⁽⁸⁸⁾ Marriage was one area which produced a lot of contestation after the abolition. Before abolition, when a slave wanted to marry, he or she had to ask for permission from their master. When the master sanctioned the marriage, a token amount of money was usually paid to the master out of respect by the slave. However, after the abolition, the former slaves felt that it was not necessary to ask their former owners for permission to marry because they were free. When the slaves went to the Kadhi courts, the courts refused to marry the former slaves because their former owners did not grant permission. The Kadhi courts did not recognize the legitimacy of the abolition of slavery by the British and, therefore, still regarded the slaves as belonging to their former masters.⁽⁸⁹⁾

⁽⁸³⁾ Lambek, *Knowledge and Practice in Mayotte*, 173.

⁽⁸⁴⁾ M. Marable 'The Meaning of Faith in the Black Mind in Slavery', *Rocky Mountain Review of Language and Literature* Vol.30, No.4 (1976), 248-264.

⁽⁸⁵⁾ J. R. Bowen, *Muslims through Discourse: Religion and Ritual in Gayo Society* (Princeton, N.J.: Princeton University Press 1993), 10; Lambek, *Knowledge and Practice in Mayotte*, 137.

⁽⁸⁶⁾ Fulton, 'Religion and Politics in Gramsci', 199.

⁽⁸⁷⁾ A. Galloway, 'The Origins of Slaveholders' Paternalism: George Whitefield, the Bryan Family, and the Great Awakening in the South', *The Journal of Southern History*, 53, .3 (1987), 369-394.

⁽⁸⁸⁾ Strobel, *Muslim Women*, 52.

⁽⁸⁹⁾ Ibid.

3.5. Conclusion

Colonialism brought changes to the institution of slavery in Mombasa, as elsewhere in Africa, but the ideology that supported slavery remained resilient and outlasted colonialism. Furthermore, 'vestiges of slavery' were not completely eliminated, as former slaves who were not able to migrate, get access to land or even employment and women especially had 'limited choices' and were forced to accept certain restrictions to maintain certain rights. Although colonial governments abolished slavery in many parts of Africa, the social structure of dependency and discrimination against people of slave ancestry has continued to the present time. In Mombasa, the abolition of slavery did not remove slaves' 'disabling status' and although people of slave descent partook in important areas of community activities, identified themselves as *Waswahili* and adopted cultural trappings of their former masters, they were still not complete members of the community. Swahili cultural hegemony, using paternalism, marginalized slaves both prior to colonialism and after. The Swahili, using culturally framed Muslim practices which defined what was a 'proper' or not, what was Islamic or not, were able to put these practices to control their slaves. Gramsci suggested that hegemony 'is attained through myriad ways' and in the case of the Swahili elites every tool available to them was used to shape, directly or indirectly, the social reality of their slaves in Mombasa and the coast of Kenya.

Chapter 4

Slave Marriage in Islam and the Doctrine of *Kafā'ah*

Chapter four looks at marriage arrangements and law. In 1913, Sadiki, a former slave, came to the *Kadhi* of Mombasa to register his marriage with a former slave.⁽¹⁾ The *Kadhi* of Mombasa refused to register the marriage because Sadiki had neither asked for permission from his former master's family nor had he paid the customary token fee usually paid to a master or a manumitter by male slaves before their impending marriages. Sadiki declined to ask for permission or pay the fee, as he claimed that he was freed by the legal abolition of the status of slavery in 1907.⁽²⁾ The case created an avalanche of correspondence between colonial officials, *Kadhis*, and other Muslim officials. Sadiki's story is one account that highlights the plight of former slaves along the Swahili coast. The case of Sadiki clearly illustrates the struggle that took place between former masters and former slaves after the abolition of slavery. On one hand, the former masters wanted to hold on to their former privileges over their former slaves, while on the other, the slaves were fighting to remove the last vestiges of slavery.⁽³⁾ Elizabeth McMahon has noted how marriages between Arab women and non-Arab men

⁽¹⁾ *Refusal by Kadhi of Mombasa to register the marriage Sadiki to Mgeni , two former slaves* (1913)[Letter]. KNA/AP/1/893, 1914, Kenya National Archives.

⁽²⁾ Ibid.

⁽³⁾ Ibid.

created 'markers of stress,' particularly among male elites, after the legal abolition of slavery. Arab men began to express 'their concern about their declining power by trying to rein in their female relatives who had married beneath their social status'. In exploring how they sought to control such marriages, this chapter discusses the doctrine of *kafā'ah*, then slave marriage in Islam and on the coast of Kenya, and finally the case of Sadiki and his attempts to register his marriage. This chapter also looks at the cultural and religious barriers placed on former slaves who wanted to marry without the approval of their former masters. It also discusses the doctrine of *kafā'ah* and how it was used to control former slaves from marrying free-born women. Finally, the chapter discusses slave marriages in Islam, particularly in Mombasa and the Swahili coast in general.

4.1. Introduction

In the early period of abolition, former slaves acquired a degree of social acceptance but still had a dependent relationship with their former masters, even when they were legally recognised as free.⁽⁴⁾ As in many Islamic societies, the testing ground for social distinction is marriage. *Kafā'ah* (social pedigree) was the principle of marriage to a woman of equal status. This principle played an important part in social stratification in Muslim societies, especially in Mombasa, where it helped to prevent people of slave ancestry from getting marriage partners.⁽⁵⁾ So strong was this rule that Cooper explained that decades after the abolition of slavery on the Kenyan coast there were 'few marriages that violated it'.⁽⁶⁾

This was especially so when the *Kadhi* courts continued to deal with the vestiges of slavery, such as allowing the continuation of the taking of concubines, charging fees on ex-slaves' marriages, and allowing the inheritance of property by masters from slaves who did not have heirs. The *Kadhi* court played a crucial role in legitimizing the subordination of former slaves.

⁽⁴⁾ Cooper, *Plantation Slavery*, 251.

⁽⁵⁾ K. Al-Azri, 'Change and conflict in contemporary Omani society: The case of Kafa'a in marriage', *British Journal of Middle Eastern Studies*, 37, 2 (2010), 121-137; F.J. Ziadeh, 'Equality (Kafā'ah) in the Muslim Law of Marriage', *The American Journal of Comparative Law*, 6, 4 (1957), 503- 517.

⁽⁶⁾ Cooper, *Plantation Slavery*, 264.

Descendants of slaves, though freed by the ordinance of 1907, were still considered slaves by *Kadhi* courts. The courts gave free reins to the master class to acquire concubines from among people of slave origin and at the same time discouraged ex-slaves from marriage by placing obstacles in their way, such as the requirement to obtain permission from their ex-masters in order to marry and thus legitimize their children.⁽⁷⁾

Slave family formation is not unique to Islam. Slave social reality, for example, in the antebellum South, was manipulated to serve the interests of the master.⁽⁸⁾ Unlike Islam, the slave family in the American South was created outside the laws governing family relations. Slaves were denied being 'an organic unit — each slave stood as an individual unit of property, and never as a submerged partner in a marriage or family'.⁽⁹⁾ Thus, slaves cannot be permanently linked to interdependent individuals. In comparing slave law and family law in American slavery, Margret A. Burnham writes that the courts wrote slaves out of family law by declaring them unfit for marriage and family ties, and thus not legally marriageable.⁽¹⁰⁾ According to Burnham, the southern jurists justified the denial of marriage to slaves on the grounds that marriage was considered a civil contract, and therefore slaves could not marry, since they could not contract.⁽¹¹⁾ Nevertheless, in the southern slavocracy, Burnham argues, promoted slave marriages among slaves for two reasons: economic and social stability. In the first instance, they were interested in producing crops and reproducing more slaves, which translated into capital. Second, she notes that marriage was considered to have a pacifying effect and was used to control restless slaves.⁽¹²⁾ Burnham argues that, although slaves were able to choose their spouses with the approval of their masters and, at times, masters chose marital partners and, on occasion, even forced unions among slaves. In all slave marriages, the master had to give his consent for marriage to take place.⁽¹³⁾ However, in other parts of the

⁽⁷⁾ W. G. Clarence-Smith, *Islam and the Abolition of Slavery* (Oxford: Oxford University Press 2006), 147.

⁽⁸⁾ M.A. Burnham, 'An Impossible Marriage: Slave Law and Family Law', *Law and Inequality*, 5 (1987), 187-225.

⁽⁹⁾ *Ibid.*

⁽¹⁰⁾ *Ibid.*, 189.

⁽¹¹⁾ *Ibid.*, 207-8.

⁽¹²⁾ *Ibid.*, 188-200.

⁽¹³⁾ *Ibid.*, 195-6.

Americas, like Brazil, the Catholic Church recognized slave marriages, although Flávio dos Santos Gomes argued that the union between slaves was considered absent in eighteenth-century Rio de Janeiro.⁽¹⁴⁾ Although the Catholic Church affirmed the legitimacy of marriages between slaves, Gomes argued that slave marriages were few, if not non-existent. This was because of the gender imbalance caused by the disproportionate number of enslaved men transported from Africa compared to women. He also maintains that slave masters were not interested in marrying off their slaves because it prevented them from selling one of the partners.⁽¹⁵⁾ This barrier arose from the Primary Constitution laid out by the Church, under which masters could neither separate slaves from spouses once they married nor stop them from getting married.⁽¹⁶⁾ Thus, Gomes argues that slave masters did not abide by the 'divine right' of slaves to marry, since it was not in the interest of the masters to see their slaves form stable partnerships or to get married in the Church.⁽¹⁷⁾ One can extrapolate from Gomes' study that slaves in Brazil faced demographic constraints and restrictions from their masters, who did not encourage them to marry. Hence, the masters attempted to control their slaves by creating family units. These restrictions did not stop the slaves from legitimizing unions, consensually, or otherwise, through the Christian Sacrament.⁽¹⁸⁾ In his *Travels in Brazil*, Henry Koster narrated that slaves of Brazil were married through the Catholic Church, and the masters encouraged these unions because they increased the number of slaves. According to Koster, slaves had to get the consent of their masters if they wanted to get married, and the Church could not 'publish the *banns* of marriage without this sanction'.⁽¹⁹⁾ Like their counterparts in Mombasa, slave masters had to give their stamp of approval whenever they wanted to marry.

Islam allowed slaves to marry Islam, but they had to obtain the consent of their master. Slave marrying without permission was considered a fornicator. However, opinions are di-

⁽¹⁴⁾ F. S. Gomes, 'Africans and Slave Marriages in Eighteenth-Century Rio De Janeiro', *The Americas*, 67, 2 (2010), 153-184.

⁽¹⁵⁾ Ibid., 154.

⁽¹⁶⁾ Ibid., 155.

⁽¹⁷⁾ Ibid.

⁽¹⁸⁾ Ibid., 181.

⁽¹⁹⁾ H. Koster, *Travels in Brazil* (London: Longman, 1816), 412.

vided on whether a master can force his slave to marry. Nevertheless, it was at the discretion of the master to give permission to the slave to marry.⁽²⁰⁾ In Reuben Levy's 'Social Structure of Islam,' it is noted that although slaves were permitted to marry, they nevertheless needed permission from their master.⁽²¹⁾ He further notes that 'views differ as to whether a master may compel his slave to marry. It is agreed, however, that he in turn, cannot be compelled to give consent to his slave's marriage.'⁽²²⁾ Reuben explained that a slave cannot contract a marriage without the permission of his master. Without this, the contract is considered a void.⁽²³⁾ Kecia Ali wrote that Muslim scholars unanimously agreed that a slave needed permission from his master to marry.⁽²⁴⁾ Quoting Muhammad ibn Idris al Shafi'i (d.820), the founder of the Shafi'i School of Law,⁽²⁵⁾ Ali notes that a male slave '... could not marry without his master's permission, but they could not be compelled to marry.'⁽²⁶⁾ According to Standish Grove Grady and W. H. Macnaghten, 'Marriage cannot be contracted with a person who is the slave of the party, but the union of a freeman with a slave, not being his property, with the consent of the master of such slave, is admissible, provided he be not already married to a free woman.'⁽²⁷⁾ In his study on the aftermath of slavery in Morocco, Chouki el-Hamel wrote:

The Qur'an insists that slave owners have a moral obligation to marry off their slave's male or female: 'And marry the single from among you, as we as such of your male and female slaves who are fit for marriage (24:32). Thus, the Qur'an maintains that marriage is the legal basis of sexual relations.'⁽²⁸⁾

⁽²⁰⁾ R. Levy, *The Social Structure of Islam*(Cambridge: Cambridge Univ. Press, 1962), 79.

⁽²¹⁾ There is a 'tradition' to the effect that without consent a slave's marriage is no more than fornication.

⁽²²⁾ Levy, *The social structure*, 79.

⁽²³⁾ Ibid., 124.

⁽²⁴⁾ K. Ali, *Marriage and Slavery in early Islam*(Cambridge, Mass: Harvard University Press, 2010), 154-155.

⁽²⁵⁾ Shafi'i School of Islamic jurisprudence is the popular Islamic school of law on the coast of East Africa.

⁽²⁶⁾ Ali, *Marriage and Slavery*, 40.

⁽²⁷⁾ S. G. Grady & W. H. Macnaghten, *A manual of the Mohammedan law of inheritance and contract: Comprising the doctrines of the Soonee and Sheea Schools and based upon the text of W. H. Macnaghten's Principles and precedents*(London: Allen 1869), 239.

⁽²⁸⁾ C. el Hamel, 'Surviving Slavery: Sexuality and Female Agency in Late Nineteenth and Early Twentieth-Century Morocco', *Historical Reflections*, 34, 1, (2008), 73-88.

The quote above shows that the Qur'an commands that sexual relations should be in a marriage context. However, el-Hamel argues that Qur'anic admonitions were never strictly applied to slave marriages in Islam.⁽²⁹⁾ There was a clear marginalization of freed slaves in Muslim societies. They were consigned to the lowest rung of the social ladder and were denied avenues for improving their social standing. Ennaji argues that there is a clear demarcation between former and former masters. The people of slave ancestry were kept at a distance from the freeborn. Marriage between former slaves and the freeborn was discouraged to preserve the pure lineage of the elites from the impurities of the former slaves and, on the other hand, keep the slaves 'pure' in their servitude.⁽³⁰⁾ As a result, marriage to people of servile origin was frowned. Ennaji writes that masters who married their slaves were ridiculed by their peers, and such unions were largely disapproved of. This was especially true of marriages with blacks, which resulted in masters being stigmatized as social outcasts and even segregated into social ghettos.⁽³¹⁾ Slave women and women of slave ancestry are considered intrinsically bad, repugnant, disheveled, prostitutes, and animals.⁽³²⁾ Subsequently, *kafā'ah* or pedigree marriage became the mechanism by which freeborn people regulated the marriage of people of slave ancestry. The dominant social class appropriated it as a tool to draw a demarcation between former masters and their former slaves.⁽³³⁾

4.2. The Doctrine of *Kafā'ah*

Although Islam theoretically does not put barriers on marriages between the freeborn and slaves, in practice, this rule is frequently disregarded.⁽³⁴⁾ The notion of *Kafā'ah* existed before Islam, where Arab tribal customs demanded that a husband and wife be socially equal. *Kafā'ah* was contrary to the spirit of the Qur'an, and in Bernard Lewis's *Race and Slavery in the Middle*

⁽²⁹⁾ Ibid., 78.

⁽³⁰⁾ M. Ennaji, *Slavery, the state, and Islam* (Cambridge: Cambridge University Press, 2013), 29-30.

⁽³¹⁾ Ibid.

⁽³²⁾ Ibid. 32-33.

⁽³³⁾ Ibid.

⁽³⁴⁾ D. Bukay, *From Muhammad to Bin Laden* (New Brunswick, N.J.: Transaction Publishers, 2008), 135.

East, 'it survived into Islamic times and became part of the holy law of Islam'.⁽³⁵⁾ Lewis argues that *kafā'ah* might have been influenced by the 'social hierarchies of pre-Islamic Iran,' where a person's status such as character, wealth, and profession determined their social standing. Later, three other categories were added: freedom, Islam, and descent, which were used to determine a person's social status and marriageability.⁽³⁶⁾ It was mostly used to protect Arabs from being contaminated by people of slave origin, particularly men of African descent.⁽³⁷⁾

Although Islam allows slaves to marry, all marriages are undergirded by social stratification, which according to Ziadeh, 'is reflected in the doctrine of *kafā'ah* in the Muslim law of marriage'.⁽³⁸⁾ Quoting ibn Manzur, the famous lexicographer of the Arabic language, who according to Ziadeh, defines '*...kafā'ah* in marriage as the situation in which the husband is equal to the wife in nobility (*hasab*), piety (*din*), lineage (*nasab*), family (*bayt*)'.⁽³⁹⁾ Ziadeh divides *kafā'ah* into six parts: lineage or nobility, Islam, freedom, religious piety, wealth, and occupation.⁽⁴⁰⁾ All these criteria precluded slaves from marrying outside their groups. The first code of *kafā'ah* is lineage, which, according to Ziadeh, is tribal affiliation or ancestry. He states that this rule originated from Arab tribal pride. Ziadeh cites the Hanafi Scholar Al-Kasani (d.587/1191), who states, '...Arabs are co-equals—mawalis (clients) are co-equals...'⁽⁴¹⁾ Although the term *mawālī* has been used to describe people with slave ancestry who have been incorporated into Islamic societies, this quote does not deal with former slaves but deals with non-Arab tribes or socially cohesive groups who had converted to Islam in Syria, Iraq, and other places. Thus, slaves are restricted in terms of who they can marry. Because the tribal pedigree was highly valued, people of Arab ancestry were at the top of the hierarchical pyramid.⁽⁴²⁾ The second criterion for *kafā'ah* is Islam. According to Ziadeh, '...a third-generation

⁽³⁵⁾ B. Lewis, *Race and Slavery in the Middle East: An Historical Enquiry* (New York: Oxford University Press, 1992).

⁽³⁶⁾ Lewis, *Race and Slavery in the Middle East*, 87.

⁽³⁷⁾ Ibid.

⁽³⁸⁾ Ziadeh, 'Equality (*kafā'ah*)', 503.

⁽³⁹⁾ Ibid., 512.

⁽⁴⁰⁾ Ibid., 512-513.

⁽⁴¹⁾ Ibid., 510.

⁽⁴²⁾ E. Urban, *The Early Islamic Mawālī: A Window onto Processes of Identity Formation and Social Change*, PhD thesis (The University of Chicago, 2012), 5-6, 71.

Muslim is equal to the daughter of any non-Arab whose family has been Muslims for generations'.⁽⁴³⁾ According to him, it takes three generations to become Arab. Kasani limits this rule to areas where Islam has had a long presence and where being a new convert can be seen as a defect or blemish.⁽⁴⁴⁾

The third rule of *kafā'ah* is freedom. As explained by Ziadeh, 'in view of the existence of slavery — and its comparative recent abolition — [a] freedman is not the same as a woman whose grandfather was free'. He argues that a man freed by a poor master is not equal to '...a maid freed by a nobleman'.⁽⁴⁵⁾ Therefore, it is difficult for a recently freed slave to find a wife other than one from his own station; that is, a former slave.

The fourth standard of *kafā'ah* is piety, which includes moral conduct. Ziadeh argues that jurists in dealing with this criterion are '...primarily concerned with the overt act, the outward forms of piety are the more important'.⁽⁴⁶⁾ This could mean acts of devotion that could '...inspire awe in people, they are considered equals'.⁽⁴⁷⁾ The fifth rule of *kafā'ah* is wealth or means. Ziadeh noted that this rule applies to both people of Arab descent and other Muslims. He writes '...that a poor man is not the same as a rich girl'. Nevertheless, he argues that as long as a suitor can pay the dowry demanded by the family and can provide maintenance that could be considered as fulfilment of the above rule.⁽⁴⁸⁾ The sixth standard of *kafā'ah* is trade and occupation. Ziadeh writes that '...weaving, cupping, or tanning'⁽⁴⁹⁾ or any form of manual labor were considered degrading occupations. Thus, former slaves usually fall under these low occupations and are therefore not considered suitable suitors. Notwithstanding *kafā'ah* and other restrictions, marriage is not prohibited for slaves in Islam.

According to Nathaniel Mathews, *kafā'ah* was used as a mechanism of regulating marriage where women, on the one hand, could only marry their social equals and, on the other, Arab

⁽⁴³⁾ Ziadeh, 'Equality (*kafā'ah*)', 511.

⁽⁴⁴⁾ Ibid.

⁽⁴⁵⁾ Ibid., 512.

⁽⁴⁶⁾ Ibid.

⁽⁴⁷⁾ Ibid.

⁽⁴⁸⁾ Ibid.

⁽⁴⁹⁾ Ibid., 515.

men could use it as a social reproduction mechanism of incorporating 'less prestigious groups into their social networks using the mechanism of patrilineal descent'.⁽⁵⁰⁾ Mathews argues that '*kafā'ah* preserved Arab genealogy while keeping porous the boundaries of hierarchy and belonging'.⁽⁵¹⁾ He writes that '*kafā'ah* was the glue cementing the bonds of social reproduction — based on a recognized hierarchy — a path through which diverse populations could be civilized' and be brought out of barbarism to civility.⁽⁵²⁾ Mathews noted that among the champions and proponents of *kafā'ah* in Mombasa and the Kenyan coast was Sheikh al-Amin b. Ali b. Abdullah b. Nafi al-Mazrui, the most prominent scholar and founder of *al-Islah*, a news chapter printed both in Arabic and English, advocating Islamic reform.⁽⁵³⁾ Sheikh al-Amin al-Mazrui (1891-1947) was appointed as the *kadhi* of Mombasa in 1910 and later became the Chief *kadhi* in 1932.⁽⁵⁴⁾ Mathews noted that 'Sheikh al-Amin had written on the importance of *kafā'ah* in a treatise on marriage, in which he stressed the importance of social equality between husband and wife'.⁽⁵⁵⁾ According to Mathews, in Shafi'i law, 'a marriage is invalid if a woman is married by her guardian to someone below her social status'.⁽⁵⁶⁾ According to Shafi'i law, '*kafā'ah* impacted the social reputation of both the bride and her guardian, and flouting its guidelines would lead to social chaos and the collapse of the patrilineal prestige of the family unit'.⁽⁵⁷⁾ According to Mohamed S. Mraja, Shaykh al-Amin endorsed the doctrine of social equality (*kufuu*, Ar. *Kafa'a*) in relation to religion (*dini*), ancestry (*nasaba*), profession (*kazi*), rank (*cheo*), and avoidance of bad deeds as a condition for the validity of marriage. In line with classical Shafi'i law, he regards *kafa'a* as 'the right of both the bride and her guardian,

⁽⁵⁰⁾ N. Mathews, 'Imagining Arab Communities: Colonialism, Islamic Reform, and Arab Identity in Mombasa, Kenya, 1897-1933', *Islamic Africa*, 4, 2 (2013), 135-163.

⁽⁵¹⁾ Ibid., 139.

⁽⁵²⁾ Ibid., 153.

⁽⁵³⁾ Ibid., 135-163.

⁽⁵⁴⁾ Sheikh el-Amin bin Ali, Acting kadhi of Mombasa (1924-1941) [Letters]. Correspondence *relating to* the appointment of the Kadhi of Mombasa, KNA/AP/1/1395, Kenya National Archives; M. S. Mraja, 'Sheikh al-Amin Mazrui (1891-1947) and the Dilemma of Islamic Law in the Kenyan Legal System in the 21st Century', *Journal for Islamic Studies*, 31, 1 (2011), 60-74; F.H. Elmasri, 'Shiekh al-Amin bin Ali al-Mazrui and the Islamic Intellectual Tradition in East Africa', *Institute of Muslim Minority Affairs Journal*, 8, 2 (1987), 229-237.

⁽⁵⁵⁾ Mathews, 'Imagining Arab Communities', 153.

⁽⁵⁶⁾ Ibid.

⁽⁵⁷⁾ Ibid., 153-4.

' since 'the shame associated with a woman marrying a man below her social status affects both the guardian and the woman herself'. According to Shaykh al-Amin, a marriage (*ndoa*) contracted by a guardian who disregards the interest of his ward and gives her marriage to a person below her status and without her consent is invalid (*haiwi sahihi*).⁽⁵⁸⁾

Mraja argues that Sheikh Abdallah Salih al-Farsi 'highlights piety as the key consideration in the selection of a husband.'⁽⁵⁹⁾ In contrast, al-Amina highlights criteria such as 'profession or ancestry'.⁽⁶⁰⁾ Nevertheless, scholars, teachers, and students were decidedly conservative and agreed that parents had the right to choose suitable spouses from those of their social class.⁽⁶¹⁾ In her study of scholarly exchanges of ideas between Southern Arabia and East Africa scholars, Bang has pointed out that the Arabs were strict in the application of *kafā'ah*, their primary aim being to ensure the suitability of the two to be married.⁽⁶²⁾ This meant, among other things, ensuring that persons of slave ancestry did not contaminate the purity of their bloodline, thereby making it difficult for former slaves to intermarry the freeborn.

This obsession with the pedigree in the Swahili context promoted marriages within specific ethnic, class, and social groups. According to John Middleton, Swahili marriages are based on certain rules of endogamy and of preferred and prohibited degrees of marriage: the first involves a system of intergroup relations, the latter one of interpersonal relations. Endogamy concerns those relations expressed in terms of the notions of *kufu* [*kafā'ah*].⁽⁶³⁾ Middleton defines *kufu* or *kafā'ah* as 'rank' or 'social level,' and states '*Fulani si kufu wetu*,' which translates to: so and so is not our social equal.⁽⁶⁴⁾ Middleton argues that among the Arab and Swahili on the coast of Kenya a 'proper or lawful wedding (*arusi ya rasmi*) should take place only between those of the same *kufu*'.⁽⁶⁵⁾ This implies that a marriage without proper *kafā'ah* is not

⁽⁵⁸⁾ M.S. Mraja, 'The Reform Ideas of Shaykh 'Abdallāh Ṣāliḥ al-Farsī and the Transformation of Marital Practices among Digo Muslims of Kenya', *Islamic Law and Society*, 17, 1 (2010), 245-278, 269.

⁽⁵⁹⁾ Mraja, 'The Reform Ideas', 269-277.

⁽⁶⁰⁾ Ibid.

⁽⁶¹⁾ Ibid., pp. 269-270.

⁽⁶²⁾ A. K. Bang, *Sufis and Scholars of the Sea* (London: Routledge Curzon, 2003), 17.

⁽⁶³⁾ Middleton, *The world of the Swahili*, 121-122.

⁽⁶⁴⁾ Ibid.

⁽⁶⁵⁾ Ibid.

considered valid by Arab and Swahili elites. The term *kafā'ah* or *kufu*, Middleton argues, is 'the distinction between free and slave, between patrician and non-patrician'.⁽⁶⁶⁾ One incident that relayed the importance of *kafā'ah* to the coastal elites was a letter written to the British colonial official J.R.W. Pigott from Mbarak bin Rashid Mazrui⁽⁶⁷⁾, a onetime rebel leader against the British.⁽⁶⁸⁾ In it, he stated that 'if any Mazrui woman either free or slave comes to you to tell that she is going to get married or slave comes to you to tell that she is going to get married to a man other than her own caste, you will please not allow this'.⁽⁶⁹⁾ In the Swahili of Mombasa, the doctrine of *kufuu* or *kafā'ah* is maintained even in the realm of supernatural beings. Swahilis believes that jinn (a possessing spirit), like humans, has free people and slaves, and that when a jinni decides to marry or cohabit with a human, they ensure that the social boundaries are not breached, implying that a free jinni marries a free-born person and a slave jinni marries a human counterpart.⁽⁷⁰⁾

Although slaves on the Swahili Coast faced restriction through *kafā'ah*, they nevertheless could marry if their master gave permission but only to their equal; that is, to a slave or former slave. *Kafā'ah* was used as a tool to demarcate social boundaries, and to make sure the social hierarchies that existed on the Swahili Coast were not contaminated and their purity breached by people of slave ancestry. Furthermore, *kufu* or *kafā'ah* made sure that the former masters had access to both the freeborn and women of slave origin, while at the same time limiting the former slaves access to only women of slave ancestry.⁽⁷¹⁾ Therefore, most former masters had relationships with their former concubines without restrictions from colonial officials or challenges from their former slaves. The colonial official believed because of the abolition of

⁽⁶⁶⁾ Ibid.

⁽⁶⁷⁾ Mbarak bin Rashid Mazrui to J.R.W. Pigott [Letter]. *Correspondence relating to ex-Slave of Mbarak bin Rashid and marriage*, KNA/PC/Coast/1/1/320, Kenya National Archives.

⁽⁶⁸⁾ F. Lugard (1895) [Memo]. *Lugard's Papers Summary of Memo re-non-Precognition of slavery in Courts of Law' August 1895*, KNA/MSS Brit. Emp. S.71, Kenya National Archives.

⁽⁶⁹⁾ Strobel, *Muslim Women*, 45.

⁽⁷⁰⁾ E. Faki, & E. M. Kasiera 'The Belief and Practice of Divination among the Swahili Muslims in Mombasa District, Kenya', *International Journal of Sociology and Anthropology*, 2, 9, (2010), 213-223.

⁽⁷¹⁾ E. McMahon, 'The Value of a Marriage: Missionaries, Ex-slaves, and the Legal Debates over Marriage in Colonial Pemba Island', in E.E. Stiles & K.D. Thompson (eds.), *Gendered Lives in the Western Indian Ocean: Islam, Marriage, and Sexuality on the Swahili Coast* (Athens: Ohio University Press, 2015), 60-84.

slavery and the lack of new slaves, former masters would not be able to 'convert' their female slaves into concubines.⁽⁷²⁾

4.3. Slave Marriages in Islam

Before the legal abolition of slavery, when a slave wanted to marry, he or she had to ask for permission from his master. When the master sanctioned the marriage, the slave was usually expected to pay a token amount of money to the master out of respect. However, after the abolition, the former slaves felt that it was not necessary to ask their former owners for permission to marry because they were free. When former owners objected and the erstwhile slaves complained to the Kadhi courts (Islamic courts), the courts refused to allow the former slaves to marry on the grounds that their masters had not given permission. The Kadhi courts did not recognize the legitimacy of the abolition of slavery by the British and therefore regarded the slaves as still belonging to their former masters.⁽⁷³⁾ In Mombasa, like many Islamic slave societies, slave 'marriage and family formation were not simply ways of breeding slaves, but a way of placing personal relationships among slaves in the context of the master-slave tie'.⁽⁷⁴⁾ The master within the shariah was seen as the guardian of his slave; therefore, as a guardian, his permission was required for marriage. In most cases, masters conducted marriages for their slaves, and in some cases, where a slave failed to get a suitable mate, the master customarily found a mate for him even if he had to buy for him a slave girl. In return, the grateful male slave paid a token fee to his master to fulfill his duties as a guardian. This was a symbolic gesture of respect and deference for his master.⁽⁷⁵⁾ In the case of female slaves, the master receives dowry payments or fees if their female slave is married.⁽⁷⁶⁾ For manumitted slaves,

⁽⁷²⁾ B. S. Cave, His Majesty's Agent and Consular-General in Zanzibar, to Foreign Secretary Sir. E. Grey (1908) [Letter]. *Correspondence relating to Letter discussing turning slaves into concubines 11th July 1908*, TNA CO 533/50/29723/08, The National Archives.

⁽⁷³⁾ Strobel, *Muslim Women*, 52.

⁽⁷⁴⁾ Cooper, *Plantation Slavery*, 223–224.

⁽⁷⁵⁾ J. Hayes Sadler, Governor of East Africa Protectorate to Lord Elgin (1908) [Letter]. *Correspondence relating to slave marriages*, TNA CO543/43/Disp. 143, April 30th, 1908, The National Archives; Cooper, *Plantation Slavery*, 223–224.

⁽⁷⁶⁾ Ibid.

the former master acted as a protector by finding them a suitable marriage partner, caring for them when sick and old, arranging for their funerals when they died, and even inherited from their former slaves if they did not leave inheritors.⁽⁷⁷⁾

Although free, former slaves were still tied to their former masters. They still depended on their former masters for their financial assistance and guidance. Frederick Cooper defined the relationship between the former master and the former slave as clientage.⁽⁷⁸⁾ According to him, guardianship relations between former slaves and their former masters were stronger than the client-patron relationship because unlike the latter, it could not be terminated even if the slaves wanted it. After the death of the master, responsibility for the former slaves fell on the heirs of the master.⁽⁷⁹⁾ This relationship between masters and former slaves resembled the relationship between a former master and his manumitted slave during medieval Islam in Arabia, where former slaves maintained a special relationship with their former masters. This relationship was defined by 'patronage,' which signified both rights and claims over each other and duties of one towards the other.⁽⁸⁰⁾ The idea of guardianship over former slaves was embedded in the culture of slave owners and survived well after the abolition of slavery in Kenya, with the result that ex-masters often expected their ex-slaves to consult them on their impending marriages and also expected to pay the customary marriage fee. The Kadhis, even after the abolition, believed that the masters were owed this fee and regarded the payment as part of the marriage ritual.⁽⁸¹⁾

4.4. Slave Marriage on the Coast of Kenya

In Mombasa, like many Islamic slave societies, slave 'marriage and family formation were not simply ways of breeding slaves, but a way of placing personal relationships among slaves in

⁽⁷⁷⁾Cooper, *Plantation Slavery*, 248.

⁽⁷⁸⁾Ibid.

⁽⁷⁹⁾Ibid., 243.

⁽⁸⁰⁾P. G. Forand, 'The Relation of the Slave and the Client to the Master or Patron in Medieval Islam', *International Journal of Middle East Studies*, 2, 1 (1971), 59-66.

⁽⁸¹⁾Cooper, *Plantation Slavery*, 223-224.

the context of the master-slave tie'.⁽⁸²⁾ There is no evidence on the Swahili coast that the children of the masters paid their fathers a fee for finding them spouses, but the slaves did. The symbolic aspect of this payment by slaves is the token fee through which a slave acknowledges [by himself] his condition while he is performing one of the most sacred rites of passage: marriage. In other parts of Islamic Africa, masters have the power to dissolve slave marriages.⁽⁸³⁾

Margaret Strobel, in her *Muslim Women in Mombasa*, writes that when the master sanctioned marriages, the slave usually paid a token amount of money to the master. However, after the abolition, former slaves felt that it was not necessary to ask their former masters for permission to marry because they were free. The Khadi courts refused to accept this assumption. The kadhi courts did not recognize the legitimacy of the abolition of slavery by the British, and for that reason, regarded the slaves as still belonging to their former masters. According to Strobel, the cases rested on the former masters' legal rights under *shariah* law to authorize the marriage of their male or female slaves.⁽⁸⁴⁾ On receiving permission, J. S. Trimingham explains that a male slave gave his master a gift of two rupees called *kilambe* (turban), a gift of respect to a superior'.⁽⁸⁵⁾ As mentioned earlier, within Shariah law, a master was seen as the *wali* or patron/guardian of his former slave. Therefore, the former slave sought permission from the former master when he wanted to marry. Prior to the abolition of slavery, slaves depended on their masters to conduct marriages and even find spouses. On fulfilling his duty as a *wali* the slave rewarded his guardian with a small fee, a symbol of respect to his master, and for a female slave, the master received a dowry just like a father would receive a dowry for his daughter.⁽⁸⁶⁾

⁽⁸²⁾ Ibid.

⁽⁸³⁾ M.G. Smith, 'The Hausa System of Social Status, ', *Africa*, 29, 3 (1959), 242.

⁽⁸⁴⁾ Strobel, *Muslim Women*, 52.

⁽⁸⁵⁾ J. S. Trimingham, *Islam in East Africa* (Oxford: Clarendon Press, 1964), 148.

⁽⁸⁶⁾ J. Hayes Sadler, Governor of East Africa Protectorate to Lord Elgin (1908) [Letter]. *Correspondence in regardsslave marriages*, TNA CO543/43/Disp. 143, April 30th 1908, The National Archives; Cooper, Plantation slavery, 223-4.

In most cases along the Swahili coast, before the abolition of legal slavery, female slaves usually ended up in relationships with their owners as concubines.⁽⁸⁷⁾ Female slaves were acquired for sexual pleasure and valued for their ability to reproduce.⁽⁸⁸⁾ The relationship between a master and female slave was sanctioned by the Qur'an. This allowed masters to have sexual relations with 'what your right hands own, ' meaning their female slaves. The verse makes slave women lawful sexual partners with their wives.⁽⁸⁹⁾ For example, a slave master cannot simultaneously marry the same female slave. As a rule, the master had to free his concubine or slave before marrying him.⁽⁹⁰⁾ The relationship between the master and his female slave is highly regulated and takes time to develop. Special attention was paid to the rules that were used to determine the paternity or ownership of children born to a female slave.⁽⁹¹⁾

A child born with a relationship between master and slave is considered free.⁽⁹²⁾ If a concubine bore a son, she attains the title of *umm walad* (lit. mother of a child). According to Kristina Richardson, becoming an *umm walad* during the Abbasid period shielded the enslaved women from being sold, and her child acquired the status of his father, thus free and freedom upon her master's death.⁽⁹³⁾ In the case of the Sokoto Caliphate, Paul E. Lovejoy explains that male children of concubines were considered free and had the same opportunities as those of freeborn mothers.⁽⁹⁴⁾ Strobel explained that the offspring of a relationship between a master and his concubine were considered free and legitimate. The children born out of this relationship shared the same status as any children born by his free-born wife.⁽⁹⁵⁾

⁽⁸⁷⁾ Strobel, *Muslim Women*, 53.

⁽⁸⁸⁾ P.E. Lovejoy, 'Concubinage in the Sokoto Caliphate 1804–1903', *Slavery & Abolition*, 11, 2 (1990), 159-189.

⁽⁸⁹⁾ Qur'an 4:25

⁽⁹⁰⁾ K. Ali, 'Beyond Slavery : Overcoming Its Religious and Sexual Legacies', in B.J. Broten (ed.) *Slavery and Sexual Ethics in Islam* (New York: Palgrave Macmillan US, 2010), 107-122.

⁽⁹¹⁾ Ibid., 113.

⁽⁹²⁾ G.N. Curzon Member of Parliament (1896) [Memo]. *Scheme for the Abolition of the Legal Status of Slavery in Zanzibar and Pemba*, 8 Dec. 1896. TNA FO 881/Conf. 6848, 8 Dec. 1896, The National Archives

⁽⁹³⁾ K. Richardson, 'Singing Slaves Girls (Qiyān) of the 'Abassid Court in the Ninth and Tenth Centuries', in G. Campbell, S. Miers, and J.C. Miller (eds) *Children in Slavery through the Ages*, (Athens: Ohio University Press, 2009), 105-119.

⁽⁹⁴⁾ Lovejoy, 'Concubinage', 171.

⁽⁹⁵⁾ Strobel, *Muslim Women*, 52-53.

On the coast of Kenya, daughters born to concubines were at times afforded social mobility by marrying well-respected families.⁽⁹⁶⁾ In his study of concubinage in the Sokoto Caliphate, Lovejoy alludes to the paucity of information regarding female children born to concubines, noting 'little is known about the fate of the female offspring of concubines'. It appears from his study that the fate of daughters born to concubines depended on the pedigree of their fathers. If the father was an aristocrat in the Sokoto Caliphate, for example, her chances of getting married to respected families were high, and many, according to Lovejoy, were married to wealthy families.⁽⁹⁷⁾

In Islam, a slave master can either take his female slave as a concubine, using her sexually himself, or marry her off to another freeborn person, thus renouncing his own sexual access to her while holding on to the right to have her work for him. Both situations have a specific effect on the status of a child, which is a product of these relationships. For instance, when a female slave is married to another person and has children from that marriage, the children are considered slaves; they inherit their mother's status and thus belong to the mother's owner, although the husband of the female is legally acknowledged to be the legal father of her offspring.⁽⁹⁸⁾ The story of Salama clearly highlights the problems encountered by children born to free-born men and slave mothers belonging to another master, where the children are considered slaves even when their father is free-born.⁽⁹⁹⁾ In 1908, an exchange of letters between Judge R.W. Hamilton and the ADC of Lamu discussed the plight of a sixteen-year-old bride. The case of Salama has a twist to it because her mother's owner was a female. According to Strobel, Salama was the daughter of a slave mother and free father. Her father acknowledged her as his daughter, but because Salama's mother did not belong to her father and to another slave owner, she was a slave to her mother's owner. Strobel explains that 'The child of a free

⁽⁹⁶⁾ P. R. Curtin, 'Laboratory for the Oral History of Slavery: The Island of Lamu on the Kenya Coast', *The American Historical Review*, 88, 4 (1983), 858-882.

⁽⁹⁷⁾ Lovejoy, *Concubinage in the Sokoto Caliphate*, 172.

⁽⁹⁸⁾ Ali, 'Slavery and sexual ethics in Islam', 113.

⁽⁹⁹⁾ Strobel, *Muslim Women*, 52-53; KNA Jud 1/402, 16.5.08.

man and a slave, not his own, was the property of the concubine's owner'.⁽¹⁰⁰⁾ This means that if a free man married a slave woman belonging to someone else, the children born in that union would technically belong to the slave's master. Despite the fact that Salama's father was freeborn, she was still considered a slave because she was born to a slave mother. Hence, when Salama wanted to marry after the abolition of slavery, she, like many other slaves, had to ask permission from her legal guardian, the son of her mother's former deceased owner who had inherited the responsibility, the *walā'*, for his mother's slaves.⁽¹⁰¹⁾ The 'owner' of Salama believed that the ordinance of 1907 did not affect the *walā'* relationship, because Salama's mother's mistress had voluntarily freed all her slaves without getting any compensation from the colonial government. Thus, as a manumitted slave or like any other slave on the coast of Kenya, Salama had to ask the descendants of her slave owner for permission to marry. They were also entitled to her own dowries. Salama refused to ask permission from her former mistress' family when she wanted to marry, 'declaring that she was "a free woman" and such a request would "damage her hismah" (dignity)'.⁽¹⁰²⁾

It was a duty prior to abolition for masters to conduct marriages for their slaves, and in some instances, the master went out of his way to find a suitable mate for his slave. There have been reported cases in which the master bought a slave girl for his male slave. In return, the male slave paid a token fee to his master to fulfill his duties as a guardian. This token fee is a symbolic gesture of respect and deference for his master.⁽¹⁰³⁾ For female slaves, the master receives dowry or fee payments if their female slave is married. Former masters often expected their former slaves to consult them on their impending marriages, and they were also expected to pay customary marriage fees.⁽¹⁰⁴⁾ This phenomenon is not confined to Muslim society. This occurred in other slave societies, for example, in the Americas. In David Stark's

⁽¹⁰⁰⁾ Strobel, *Muslim Women*, 53.

⁽¹⁰¹⁾ Ibid.

⁽¹⁰²⁾ Ibid.

⁽¹⁰³⁾ Cooper, *Plantation Slavery*, 223-224.

⁽¹⁰⁴⁾ J. Hayes Sadler, Governor of East Africa Protectorate to Lord Elgin (1908) [Letter]. *Correspondence in regards to slave marriages*, TNA CO 543/43/Disp. 143, April 30th, 1908, The National Archives.

study of marriages among slaves in Puerto Rico in the eighteenth century, he found that when a slave wanted to marry a slave belonging to another master, his master was required under the slave marriage law to buy slave women and her infant offspring for his slave. If the master failed to buy the wife for his slave, the female master was obligated to buy the husband of his female slave.⁽¹⁰⁵⁾ When it came to managed slaves in Mombasa, the former master acted as a protector by finding them a suitable marriage partner, caring for them when sick and old, and even arranging for their funerals.⁽¹⁰⁶⁾ Therefore, in Mombasa, former masters often expected their former slaves to consult them on their impending marriages, and they were also expected to pay customary marriage fees.⁽¹⁰⁷⁾

The *kadhis*, Even after the abolition, the *kadhis* believed that the masters owed this symbolic fee and regarded the payment as part of the marriage ritual. According to tradition, any marriage of a slave or a former slave without the consent of their master, their former master, or their heirs, if either of the first two was deceased, was considered to be an act of fornication.⁽¹⁰⁸⁾ When the *kadhi* of Mombasa, Suleiman bin Ali, was asked if he could allow former slaves to marry without the consent of their former masters, he retorted, "er > I cannot marry them—[I will not]—be the person to open the way of committing adultery, ' and if the colonial government ordered him to do that and in violation of the *shariah*, he would not obey the order.⁽¹⁰⁹⁾ Control over the former slave's marriage was deeply embedded in the culture of the former masters, and it endured well after the abolition of slavery on the coast of East Africa.⁽¹¹⁰⁾ Abdulkadir noted that the *shariah* forced the former slave to obtain consent from his former master. Consequently, obtaining permission from a former master became

⁽¹⁰⁵⁾ D. Stark, 'The Family Tree Is Not Cut: Marriage Among Slaves In Eighteenth-Century Puerto Rico', *New West Indian Guide / Nieuwe West-Indische Gids*, 76, 1-2 (2002), 23-46; D. Stark, 'Marriage Strategies among the Eighteenth Century Puerto Rican Slave Population: Demographic Evidence from the Pre-Plantation Period', *Caribbean Studies*, 29, 2 (1996), 185-212.

⁽¹⁰⁶⁾ Cooper, *Plantation Slavery*, 248.

⁽¹⁰⁷⁾ J. Hayes Sadler, Governor of East Africa Protectorate to Lord Elgin (1908) [letter]. *Correspondence in to regards slave marriages*, TNA CO 543/43/Disp. 143, April 30th, 1908, The National Archives.

⁽¹⁰⁸⁾ Cooper, *Plantation Slavery*, 243.

⁽¹⁰⁹⁾ Strobel, *Muslim Women*, 52.

⁽¹¹⁰⁾ *Ibid.*, 53.

an obligation and rule for former slaves when they wanted to marry. Abdulkadir argued that under *shariah* rules, the master-slave relations continued after emancipation, and that it was not unusual for bonds between a former slave and his former master to become even tighter after slavery. Even after the abolition, former masters on the coast of Kenya had the power to arrange or approve marriages with their former slaves.⁽¹¹¹⁾

Historian Gervais Clarence-Smith in *Islam and the Abolition of Slavery* state that former masters' control over their former slaves continued well after abolition. He argues that 'one of the areas where masters and their former slaves had a bitter struggle was on the issue of slave-owners' rights in giving a stamp of approval to marriage between people of slave background'.⁽¹¹²⁾ According to Clarence-Smith, the *kadhi* courts upheld the tradition where former slaves asked for consent by the payment of a small fee 'as an act of deference' to their former masters. He explains that 'Islamic scholars and former slave-owners' claim that the colonial government did not have the legitimacy of freeing slaves, only slave-owners were accorded this power by Islamic Law'.⁽¹¹³⁾ Four years after the abolition of the legal status of slavery, a *kadhi* in Mombasa declared 'that no government could free a slave without the owner's consent, an opinion endorsed by Kenya's Shaykh al-Islam and a qadi of Lamu'.⁽¹¹⁴⁾ Accordingly, these scholars felt that as long as the abolition of slavery contradicted *shariah* law, new British laws, in their opinion, did not change the relations between the former masters and their former slaves. Former masters with the support of *kadhis* insisted that only masters could free slaves in Islam. As a result, any former slave who married without paying the token fee and had not been granted permission by their former master was deemed to be in an 'adulterous' relationship, in accordance with *shariah* law.⁽¹¹⁵⁾ Therefore, Clarence-Smith concluded that *kadhi* courts continued to sanction slavery, allowing former masters the right to

⁽¹¹¹⁾ A.H. Abdulkadir, *Reforming and Retreating: British Policies on Transforming the Administration of Islamic Law and Its Institutions in the Busa'idi Sultanate 1890-1963*, PhD thesis (University of the Western Cape, 2010), 413.

⁽¹¹²⁾ Clarence-Smith, *Islam and Abolition*, 125.

⁽¹¹³⁾ Ibid.

⁽¹¹⁴⁾ Ibid., 146.

⁽¹¹⁵⁾ Ibid., 125; Strobel, *Muslim Women*, 52.

authorize marriages in return for a fee, taking concubines from servile families, and inheriting from former slaves. He argues that religious laws supported the social distinction favoring former masters over slaves. Therefore, although free according to British law, former slaves and their descendants were still deemed slaves according to *shariah* law, and hence subject to disabilities when in a *kadhi* court, where freedom was only understood through the process of manumission. This forced former slaves to get the blessing from their former masters and descendants when contracting marriages. If former slaves married without the approval of their former masters or the sanction of the *kadhi* court, their offspring would be deemed illegitimate.⁽¹¹⁶⁾

The right to marry without the consent of their former masters figured prominently among the bundle of rights that former slaves on the Swahili Coast held dear after the abolition of the legal status of slavery.⁽¹¹⁷⁾ Accordingly, some slaves refused to ask their former masters for permission to marry because they did not want to damage their dignity by admitting it to slave ancestry.⁽¹¹⁸⁾ Strobel indicated that marriage on the coast of Kenya became a focal point of struggle for slaves freed by the 1907 Ordinance.⁽¹¹⁹⁾ Indeed, the marriage of former slaves in many slave-owning societies was a controversial issue and had wide-reaching implications for larger struggles over the meaning of freedom.⁽¹²⁰⁾

Marriage is not only about love, sex, and companionship; it is also about power, property, and social status.⁽¹²¹⁾ Consequently, the demands of former slaves to marry without oversight or permission from their patrons was seen as a threat to the power, economic well-being, and prestige of the former masters. Among the powers under threat were those pertaining to unfettered access to sexual partners by servile women, including those freed by British law

⁽¹¹⁶⁾ Clarence-Smith, *Islam and Abolition*, 147.

⁽¹¹⁷⁾ K. M. Franke, 'Becoming a Citizen: Reconstruction Era Regulation of African American Marriages', *Yale Journal of Law & the Humanities*, 11, 2 (1999), 251-309.

⁽¹¹⁸⁾ Strobel, *Muslim Women*, 52.

⁽¹¹⁹⁾ *Ibid.*, 51.

⁽¹²⁰⁾ L. F. Edwards, 'The Marriage Covenant Is at the Foundation of All Our Rights': The Politics of Slave Marriages in North Carolina after Emancipation', *Law and History Review*, 14, 1 (1996), 81-124.

⁽¹²¹⁾ A.B. François, 'To Go into Battle with Space and Time: Emancipated Slave Marriage, Interracial Marriage, and Same-Sex Marriage', *The Journal of Gender Race and Justice*, 13 (2009), 105-151.

in 1907. In most Muslim slave societies, including Mombasa, slave subordination has sexual dimensions. In many instances along the coast of Kenya, slavery and male dominance coalesced.⁽¹²²⁾ Sex plays an important role in slavery. It should be noted that on the Swahili coast, like in other Muslim slave societies, slave women were sexually exploited, although we cannot deny that slave women's labor went beyond the reproduction of future slaves or offspring for their masters. They are involved in economic, biological, and cultural reproduction. They are involved in both productive and reproductive labor.⁽¹²³⁾ They contributed financially through their economic activities inside and outside their master's households. Strobel points out that within the household, female slaves worked as nannies, cooks, and food buyers, while outside the household, female slaves were hired as food sellers, cooks, or at times even porters.⁽¹²⁴⁾ All of these economic activities were greatly welcome, but reproductive work was valued more in Mombasa. Having children increased the master's family, which similarly contributed to the regeneration of the master's culture.⁽¹²⁵⁾ The strobel breaks down the reproduction into three sections. The first was biological reproduction, which increased the number of master's slaves or, if born of a master, his children. The second was daily reproduction, including household chores, food production, and cooking and so forth. The third was the reproduction of the relationships of production, meaning in practice the reproduction and transmission of the Swahili ideology that perpetuated the dominance of the Swahili male elites.⁽¹²⁶⁾

The idea that former slaves, both male and female, could choose their partners without the control of the former masters was thus seen as a threat to the moral fabric of Swahili civilization. The fight for the right to marry without permission became a struggle over the refusal of former masters, aided by *kadhis*, to create equal social space for the newly emancipated ex-slaves. However, for those ex-slaves, as we shall see in the case study of Sadiki below, insistence on marrying without permission was a way for them in general and, in particular,

⁽¹²²⁾ Lovejoy, 'Concubinage', 159-60; Cooper, *Plantation Slavery*, 195; Strobel, *Muslim Women*, 48.

⁽¹²³⁾ Strobel, 'Slavery and reproductive labor', 111-129.

⁽¹²⁴⁾ *Ibid.*, 116-117.

⁽¹²⁵⁾ *Ibid.*, 118; Lovejoy, 'Concubinage', 161.

⁽¹²⁶⁾ Strobel, 'Slavery and reproductive labor', 118.

to assert and demonstrate newly granted freedom. This included the right to form families and homes independently. Islam has not, of course, prohibited slave marriages. However, as domestic slaves, women were especially commonly involved in rearing children belonging to their masters, in the process of denying the time and space to form their own family and home. From 1907, freedom provided opportunities, as the ex-slaves saw, to develop their own independent family life. It was an idea found beyond East African Muslim society.⁽¹²⁷⁾ As elsewhere, in East Africa, including Mombasa, the idea of marrying without asking permission from former masters was for former slaves not only a symbol of freedom, but also a symbol of family autonomy, civic rights, and social respect.⁽¹²⁸⁾ Marriage, therefore, became a means to assert and construct new identities and communities on the Swahili coast during the post-emancipation period. As Elisabeth McMahon's work on post-abolition, Pemba Island, suggests, former slaves negotiated and constructed new identities after emancipation.⁽¹²⁹⁾ *Heshima*, which connotes respect and honor or respectability, became a critical component of former slaves in Swahili society during their transition from slavery to freedom.⁽¹³⁰⁾ McMahon defines *heshima* as honor and according to her, 'there was no single way to earn *heshima* and no single person who bestowed it on others.'⁽¹³¹⁾ *Heshima* was a social status won by a person from the community over time and through a good character. Although wealth and pedigree were reflected in a person's *heshima*, this was not the only requirement for gaining it. McMahon argues that 'only the members of a community could impart this status, which was constantly renegotiated as people moved, married, and progressed through life'.⁽¹³²⁾ *Heshima* allowed former slaves to assume and adopt existing social norms as a means of integration into the Swahili community. In scholarly discussions, 'belonging' was the opposite of outsider

⁽¹²⁷⁾ François, 'To Go into Battle with Space and Time', 111.

⁽¹²⁸⁾ Ibid., 112.

⁽¹²⁹⁾ McMahon, *Becoming Pemban*, 1-12.

⁽¹³⁰⁾ Ibid., 93.

⁽¹³¹⁾ E. McMahon, 'A Solitary Tree Builds Not': *Heshima*, Community, and Shifting Identity in Postemancipation Pemba Island', *The International journal of African historical studies*, 39, 2 (2006), 197-219.

⁽¹³²⁾ Ibid., 198.

or slave, but it did not entail freedom itself, which required wider social acceptance.⁽¹³³⁾ *Heshima* was one means by which former slaves struggled to define themselves as 'belonging' to the Swahili community, even though some scholars see belonging as being as much oppressing as liberation.⁽¹³⁴⁾ In contrast, McMahon suggested that *heshima* allowed former slaves to belong and live with respect and without oppression in their local communities.⁽¹³⁵⁾ Thus, marriage became one of the instruments used by former slaves to gain social respect or *heshima* in Mombasa. To support this argument, the next section examines one of the cases widely discussed by colonial officials. It involves the story of Sadiki, a former slave, who refused to ask permission or to pay the traditional fee to the descendants of his former masters in order to marry.

4.5. The Marriage of Sadiki

When an ex-slave named Sadiki came to the Kadhi of Mombasa, Shaykh Suleman bin Ali bin Khamis Mazrui (1867-1937), on August 2, 1913, six years after the abolition of the legal status of slavery, to register his marriage to another ex-slave, Mgeni binti Faraji, he was asked to pay a customary fee to Rehelani bin Mohamedi, the son of his former, but now deceased, master, Mohamedi bin Khalfan. Sadiki refused to pay the token to the family of his former master, claiming that the act of 1907 had freed him. The customary fee that was usually paid to the former master was around Rs. 8/- to Rs.10/-, whereas Sadiki's former master, Mohamedi bin Khalfan, according to government records, had been paid Rs. 100/- as compensation for the freeing of his former slave. Financially, therefore, the customary fee was only a nominal sum but carried huge ideological and social significance.⁽¹³⁶⁾

⁽¹³³⁾ S. Miers, and I. Kopytoff, *Slavery in Africa: historical and anthropological perspectives*(Madison: University of Wisconsin Press, 1977), 17-18.

⁽¹³⁴⁾ F. Cooper et al., *Beyond Slavery : Explorations of Race Labor and Citizenship in Postemancipation Societies*(University of North Carolina Press, 2014), 5-7.

⁽¹³⁵⁾ McMahon, 'A Solitary Tree', 200.

⁽¹³⁶⁾ C.W. Hobley to T.S. Thomas, Chief Secretary (1913) [letter]. *Correspondence relating to the former slave marriages* August 8th, 1913, KNA/MP/7/13/Ref. no.265/322/13, Kenya National Archives.

The refusal to solemnize ex-slave marriages was not confined to the *Kadhi* of Mombasa; it was a regular occurrence throughout the coast. When the *Kadhi* of Mombasa declared in 1911 that slaves could not be freed without the consent of their masters, his decree was endorsed by the first colonially appointed Shaykh al-Islam,⁽¹³⁷⁾ Sayyid Abdul-Rahman bin Ahmed Saggaf (1844-1922) also known as Mwenye Abudu, former *Kadhi* of Siyu.⁽¹³⁸⁾ This is a clear indication that *Kadhi* did not recognize the abolition of slavery by the British. Sadiki's case opened a corresponding debate among colonial administrators: the *Kadhi* of Mombasa and *Kadhi* of Zanzibar.⁽¹³⁹⁾

Shaykh Suleman, the *Khadi* of Mombasa, defended his decision not to grant permission to Sadiki to marry Mgeni on the grounds that he was following the Shariah law. He argued:

The dowry is payable when a marriage takes place because that is what has been commanded in the Sheria. It is said in the Tuhfa chapter of dowry that the dowry is payable on an account of the marriage contract; this is in the book (Koran), Sunah (tradition of the Prophet Mohamed), and authorities of all law doctrine ended. [A]dultery is prohibited in the Sheria and [a] person committing the same is liable to punishment; therefore, there is a distinction between what the law allows in marriage and what prevents it, namely, adultery.⁽¹⁴⁰⁾

According to a letter from C.W. Hobley, the Provincial Commissioner, the *Kadhi* of Mombasa, did not recognize Ordinance No. 7 of 1907, which abolished slavery, because it contradicted Islamic law recognizing the institution of slavery. Therefore, *Kadhi*, following Islamic law, believed that ex-slaves should pay a customary fee to their former masters to gain permission to marry. In his correspondence, Hobley states that this was not the first case of its kind,

⁽¹³⁷⁾ R.W. Hamilton to Acting PC, Nairobi (1907)[letter]. *Correspondence relating to the appointed of Shaykh al-Islam* 22nd March 1907, KNA/AP/1/368/ ref.no.1 04/07, Kenya National Archives.

⁽¹³⁸⁾ W.H. Brown, *History of Siyu: The Development and Decline of a Swahili Town on the Northern Kenya Coast*, PhD Thesis (Indian University 1985), 96; R. Pouwels, *Islam and Islamic Leadership in the Coastal Communities of Eastern Africa 1700 to 1914*, PhD Thesis (University of California 1979), 462.

⁽¹³⁹⁾ Clarence-Smith, *Islam and Abolition*, 146; H. Mwakimako, 'Conflicts and Tensions in the Appointment of Chief *Kadhi* in Colonial Kenya,' in S. Jeppie, E. Moosa & R. L Roberts *Muslim Family Law in Sub-Saharan Africa : Colonial Legacies and Post-Colonial Challenges*(Amsterdam: Amsterdam University Press, 2010), 109-134.

⁽¹⁴⁰⁾ LC.W. Hobley to T.S. Thomas, Chief Secretary (1913)[Letter].*Correspondence relating to former slave marriages* August 8th, 1913, KNA/MP/7/13/Ref. no.265/322/13, Kenya National Archives.

in which an ex-slave refused permission to marry. Other cases were brought to court, but no action was taken because the government believed that granting or refusal of permission was a dying practice. According to Hobley, however, the practice was not dying, but was common, and many former slaves were not happy with the continuation. Accordingly, Hobley requested that the government ask the *Kadhis* to stop demanding fees when conducting marriages of ex-slaves and to refund money paid by ex-slaves to register their marriages. Hobley states that if 'section 2 of the Ordinance 7 of 1907' did not protect the ex-slaves then an 'amending Ordinance' should be introduced without delay.⁽¹⁴¹⁾

Sadiki's case was not peculiar to Mombasa: as Hobley inferred, ex-slaves throughout the Kenyan coast faced the same demands from their former masters. For example, in a confidential letter dated March 26, 1928, from the District Commissioner of Lamu, S.V. Cooke, to the Provincial Commissioner in Mombasa, Cooke stated that a 'state of affairs, which in my opinion amounts to semi-slavery ... prevails here and I understand throughout your province'. According to Cooke, ex-masters in his district and throughout the coast demanded that their male and female slaves pay a sum of money to the master or his heirs if they want permission to marry. Cooke told the story of one of his trips to a place called Ungu, located in the Lamu District, where he met and had a conversation with an ex-slave who was single. Cooke asked him why he had not yet married, and the ex-slave replied that the son of his late master forbade him from marrying until Shs. 40/- was paid for permission to marry him. On his return to Lamu, Cooke was able to trace the son of the former master of the slave and question him on the validity of the story told by the ex-slave. The son confirmed that the story told by the former slave was true. Cooke later contacted the *Kadhi*, who in turn confirmed that it was customary for former masters to demand payments from their former slaves when they wanted to get married, and the *Kadhi* courts enforced this payment. In a letter dated October 9, 1912, from the Assistant District Commissioner of Takaungu, H.R. Tate had an appended note from the *Kadhi* of Takaungu. which demanded that a former concubine named Mlisho

⁽¹⁴¹⁾ Ibid.

be either returned to her former master or that she seek permission from him for marriage to another slave. Her former master, Khamis bin Said, filed a complaint with the Kadhi Court in Takaungu through his lawyer Mjahidi bin Lali, claiming that his concubine had run away and married another ex-slave in Mombasa. The *Kadhi*, Khalfan bin Abdalla wrote a note to the Provincial Commissioner in Mombasa seeking his help in tracking down the runaway concubine so that she could be prosecuted for not obtaining consent from her former master before marrying in contravention of Islamic law, under which, in the view of the Kadhi of Takaungu, the former master is technically the guardian of the concubine.⁽¹⁴²⁾

In a letter to the then Acting Chief Secretary, the Attorney General, J.W. Barth, explained that the function of the *Kadhi* was as a 'judge administering' Islamic law in matters relating to marriage, inheritance, and divorce. Therefore, according to Barth, the *Kadhi* were right not to follow the government's orders, where they contradicted Islamic law. At the heart of the issue for Barth was whether Islamic law considered slaves freed by the 1907 Ordinance, and whether owners were to be compensated by the British. According to Barth, the Crown Advocate, R.M. Combe had 'misinterpreted' the 1907 Ordinance by assuming that a slave freed by it was automatically freed under shariah law. Barth further explained in his discussion with the Kadhi of Mombasa that a slave is still bound to his former master through the institution of *walā'*.⁽¹⁴³⁾ Barth, in his correspondence, further explained that he was able to obtain legal opinions from two prominent Muslim scholars. First, the Kadhi of Mombasa, Sheikh al-Amin al-Mazrui, was a Sunni scholar and an expert at the Shafi'ite School of Jurisprudence, and the Chief Kadhi of Zanzibar, Shaiykh Ali b. Muhammad al-Mundhiri, was an Ibadhi legal expert. Chief Kadhi of Zanzibar stated that the colonial government could order the Kadhi of Mombasa to treat slaves as free people, where owners had been compensated by the colonial

⁽¹⁴²⁾ H.R Tate, Assistant District Commissioner of Takaungu to C.W. Hobley, Provincial Commissioner (1912) [Note]. *Note relating to Marriage of the freed slaves, a note from Kadhi of Takaungu appended to a letter dated 9th of October 1912*, KNA/PC/Coast/1/3/18/S/1284/12, Kenya National Archives.

⁽¹⁴³⁾ C.W. Hobley, Provincial Commissioner to the Chief Secretary of the Attorney (1914) [letter]. *Correspondence relating to how former slaves were bound to their former masters, May 29, 1914*, KNA/MP/7/13, Ref. no.172/322/13, Kenya National Archives. .

government.⁽¹⁴⁴⁾ Barth admitted that the Kadhi of Mombasa were not convinced to accept as free those slaves whose masters had been compensated. Barth argued that if 'a concrete case [arose]' it might force the *Kadhi* to change his opinion, and then went on to outline the points covered by the Abolition of the Legal Status of Slavery Ordinance 1907, pointing out that 'Sections 2 and 3 abolish (1) the legal status of slavery, and (2) the rights claimed by anyone over the body, service, or property of any person on the ground that such person is a slave'.⁽¹⁴⁵⁾ According to Barth, 'the ordinance is silent on the relations and rights existing between an ex-owner and a freed slave and as I construe it such relations and rights are not affected by it'.⁽¹⁴⁶⁾ In principle, Barth agreed with the opinion of the Chief Justice of Kenya that former slave owners could inherit from their former slaves in the absence of heirs in accordance with Islamic law. However, for those freed by the ordinance of 1907, he argued that the government, because it paid compensation to their owners, could 'fictively' be seen as owners of the former slaves and, therefore, could inherit from the slaves following Islamic law. Barth continued by saying that the 'Kathi [Kadhi] of Mombasa is perfectly within his right and judgement in acting as he has done'.⁽¹⁴⁷⁾ In a letter to Hobley, Barth stated his belief that he had misunderstood the stance of the *Kadhi* on the question of ex-slave marriage. According to Barth, *Kadhi* believed that they were right, according to law. In his view, under Islamic law the 'emancipator of a slave or the heir of such emancipator is the guardian of the ex-slave for the purposes of Marriage. ' ⁽¹⁴⁸⁾ *Kadhi* From the perspective of Barth, the Kadhi did not believe that Sadiki was a slave, but that he was following the rules that guided marriages of slaves or ex-slaves who had been emancipated by a master either before or after the Abolition of Slavery Ordinance, where the former master was the slave's legal guardian. The Attorney General stated that the Abolition of the Slavery Ordinance of 1907 prohibited courts from enforcing claims of masters

⁽¹⁴⁴⁾ Ibid.

⁽¹⁴⁵⁾ Ibid.

⁽¹⁴⁶⁾ Ibid.

⁽¹⁴⁷⁾ Ibid.

⁽¹⁴⁸⁾ J.W. Barth to Acting Chief Secretary (1914) [letter]. *Correspondence relating to Islamic Law and slave emancipation June 25th, 1914*, KNA/MP/7/13, Ref. no.S.6564/ M/134/14, Kenya National Archives.

over their slaves.⁽¹⁴⁹⁾ The other question raised was whether the ordinance also abolished the relations between former slaves and their former masters. Were slaves freed before the ordinance under Islamic law covered by the provisions of the ordinance? The Attorney General pointed out that because the government was the emancipator in such a case, no former master could claim the right to hold guardianship over a slave for which compensation had been paid; therefore, it was the government that became the guardian of the freed slave.⁽¹⁵⁰⁾ In the case of Sadiki, Barth stated that the *Kadhi* should register his marriage without waiting for consent from the family of his former master on the grounds of non-payment of a fee, and that the government, being the emancipator, gave consent for his marriage. Therefore, Barth ordered *Kadhi* as a government employee to be the official guardian of all persons emancipated by the Abolition of Slavery Ordinance, but not to take or receive dowry or other payments for their service. In a colonial government circular, the *Kadhis* were ordered to marry ex-slaves that had been freed under the Abolition of the Legal Status of Slavery Ordinance 1907 and for whom the master had been compensated.⁽¹⁵¹⁾ Also, for any woman who wanted to get married 'at her own request,' the *Kadhi* as a government employee would stand in as the guardian. Consent should not be required from anyone as long as the ex-slave was an adult with a sound mind and was competent to marry.⁽¹⁵²⁾

The Provincial Commissioner, through the highest Arab colonial official, the *Liwali* of Mombasa, Sheikh Ali bin Salim, contacted the Chief Kadhi of Zanzibar to obtain a legal opinion on the issue of consent for marriage of ex-slaves.⁽¹⁵³⁾ In a reply to the *Liwali* of Mombasa's question, the Chief Kadhi of Zanzibar, Shaiykh Ali b. Muhammad al-Mundhiri, outlined the reasons why the Kadhi of Mombasa could marry ex-slaves. In the first instance, the *Kadhi* tackled

⁽¹⁴⁹⁾ Ibid.

⁽¹⁵⁰⁾ Ibid.

⁽¹⁵¹⁾ Chief Secretary in Office of the Attorney General (1914) [Circular]. Circular to Muslim Subordinate Courts in Coast Province, July 3rd, 1914, KNA/MP/7/13, Ref.S.Cir.no.57, Kenya National Archives.

⁽¹⁵²⁾ Ibid.

⁽¹⁵³⁾ Ali bin Mohamed el Manthiri, Kadhi of Zanzibar to Sheikh Ali bin Salim, Liwali of Mombasa (1914) [Letter]. Correspondence relating to obtain legal opinion on the issue of consent for marriage of ex-slaves, March 8th, 1914, KNA/MP/7/13, Kenya National Archives.

the legality of non-Muslims, especially Christians, by giving slave owners compensation and then freeing the slaves. Using Islamic law and quoting from both the scripture and opinions of learned Muslim jurists, the Kadhi of Zanzibar showed that it was lawful for a non-Muslim to buy and free a slave.⁽¹⁵⁴⁾ Therefore, the British colonial government's act of compensating owners, willingly or unwillingly, for their slaves, was valid as long as the owners were satisfied with the amount of compensation.⁽¹⁵⁵⁾ Furthermore, once the slaves were freed, no further obstacles should have been placed on their way to becoming full members of the free community, including the facilitation of their marriages.⁽¹⁵⁶⁾ The Chief Kadhi of Zanzibar pointed out that marriage could be conducted by anyone with knowledge of Islam and not necessarily a *Kadhi*. He stated that the colonial government could order the Kadhi of Mombasa to treat former slaves as free people as long as compensation had been paid to their former masters by the colonial government.⁽¹⁵⁷⁾ According to Attorney General J.W. Barth, the Kadhi of Mombasa did not recognize slaves whose masters had been compensated by the British as free. The only way a Kadhi could be forced to change his opinion was if 'a concrete case arises' in British courts.⁽¹⁵⁸⁾ Barth noted that the Abolition of the Legal Status of Slavery Ordinance 1907, especially sections 2 and 3, abolished the following: 'The legal status of slavery and the rights claimed by anyone over the body, service, or property of any person on the ground that such a person is a slave.'⁽¹⁵⁹⁾

According to Barth, 'The ordinance is silent on the relations and rights existing between an ex-owner and a freed slave and as I construe it such relations and rights are not affected by it.'⁽¹⁶⁰⁾ This clearly shows that colonial officials found it difficult to legislate in social relations. Barth continued by saying, 'The Kadhi of Mombasa is perfectly within his right and judgement

⁽¹⁵⁴⁾ Ibid.

⁽¹⁵⁵⁾ Ibid.

⁽¹⁵⁶⁾ Ibid.

⁽¹⁵⁷⁾ Ibid.

⁽¹⁵⁸⁾ J.W. Barth to Acting Chief Secretary (1914) [Letter]. *Correspondence relating to Islamic Law and slave emancipation June 25th, 1914*, KNA/MP/7/13, Ref. no.S.6564/ M/134/14, Kenya National Archives.

⁽¹⁵⁹⁾ Ibid.

⁽¹⁶⁰⁾ Ibid.

in acting as—he has done, ' ⁽¹⁶¹⁾ meaning that the *Kadhi*, as a Muslim judge, followed the commands of the shariah. In a letter to Barth, Provincial Commissioner (PC), Hobley believed that he had misunderstood Kadhi's opinion regarding the marriages of former slaves. ⁽¹⁶²⁾ *Kadhis* and Hobley argued that they were right according to law. Hence all the *Kadhis* on the coast of Kenya believed that under Islamic law the 'emancipator of a slave or the heir of such emancipator is the guardian of the ex-slave for the purposes of marriage. ' ⁽¹⁶³⁾ The *Kadhi*, In Barth's opinion, the Kadhi was aware that Sadiki had been freed and was no longer a slave, but that the *Kadhi* was only following rules that guided marriages of slaves or former slaves who had been emancipated by their former master. When former masters manumitted their former slaves, they automatically became legal guardians. ⁽¹⁶⁴⁾ Barth argues that the Abolition of Slavery Ordinance of 1907 prohibited courts from enforcing the claims of former masters over their former slaves. ⁽¹⁶⁵⁾ The question that arose out of the above dilemma was the following: Did the ordinance that abolished slavery also abolish relations between former slaves and their former masters? Barth argued that no former master could claim right of *walā'* because the British government had compensated the former masters for their slaves and thus, the government was technically the guardian of the freed slaves. ⁽¹⁶⁶⁾

Barth ordered *Kadhi* to register for Sadiki's marriage without waiting for consent from the family of his former master. He suggested that because the government was his emancipator, it could 'fictively' be seen as his guardian and thus had the right to give consent for his marriage. ⁽¹⁶⁷⁾ In a circular emanating from the Office of the Attorney General dated July 3, 1914, *Kadhis* were ordered to marry former slaves who had been freed under the 1907 Ordi-

⁽¹⁶¹⁾ Ibid.

⁽¹⁶²⁾ C.W. Hobley to the Chief Secretary of the Attorney (1914) [Letter] *Correspondence relating to how former slaves were bound to their former masters*, May 29, 1914, KNA/MP/7/13, Ref. no.172/322/13, Kenya National Archives.

⁽¹⁶³⁾ Ibid.

⁽¹⁶⁴⁾ Ibid.

⁽¹⁶⁵⁾ J.W. Barth to Acting Chief Secretary (1914) [Letter]. *Correspondence relating to Islamic Law and slave emancipation June 25th, 1914*, KNA/MP/7/13, Ref. no.S.6564/ M/134/14, Kenya National Archives.

⁽¹⁶⁶⁾ Ibid.

⁽¹⁶⁷⁾ Ibid.

nance and for whom the master had been compensated.⁽¹⁶⁸⁾ In the case of a woman wanting to get married 'at her own request,' the *Kadhi* as a government employee would stand in as the guardian. The circular continued by stating that consent should not be required from anyone, as long as the former slave was an adult of sound mind and was competent to marry.⁽¹⁶⁹⁾ Therefore, Barth ordered *Kadhi*, as a government employee, to be the official guardian of all persons emancipated by the Abolition of Slavery Ordinances. They were also told not to take down or receive dowries or other payments for their services.⁽¹⁷⁰⁾ Former masters' efforts to maintain their control over their former slaves in post-abolition Mombasa through *walā'* were not confined to the right to give consent and receive token fees for marriages with their former slaves. These efforts also manifested themselves through the masters' struggles to maintain their rights to inherit their former slaves' estates, as discussed in Chapter four.

4.6. Conclusion

The stories of Salama and Sadiki encapsulate the struggle faced by former slaves in Mombasa and along the coast of Kenya. The end of slavery on the Swahili coast mirrored the abolition of slavery in other parts of the continent. The ties between dependence and interdependence continued long after slavery. There was no major exodus of slaves from their place of bondage, especially domestic slaves who remained in the vicinity of their former masters. Most of the remaining slaves had limited choices for employment and were consequently forced to accept certain restrictions to survive.⁽¹⁷¹⁾ In Mombasa, the social structure that divided people into free-born and people of slave ancestry was maintained and survived the abolition of slavery.⁽¹⁷²⁾ Former masters resisted social change and decades after the abolition and emanci-

⁽¹⁶⁸⁾ Ibid.

⁽¹⁶⁹⁾ Chief Secretary in Office of the Attorney General (1914) [Circular] *Circular relating to Muslim Subordinate Courts in Coast Province*, July 3rd, 1914, KNA/MP/7/13, Ref.S.Cir.no.57, Kenya National Archives.

⁽¹⁷⁰⁾ J.W. Barth to Acting Chief Secretary (1914)[Letter]. Letter discussing Islamic Law and slave emancipation June 25th, 1914, KNA/MP/7/13, Ref. no.S.6564/ M/134/14, Kenya National Archives.

⁽¹⁷¹⁾ A.F. Clark, 'The ties that bind': servility and dependency among the Fulbe of Bundu (Senegambia), C.1930s to 1980s, ' in S. Miers & M.A. Klein, *Slavery and Colonial Rule in Africa*(Portland, OR: Frank Cass, 1999), 91.

⁽¹⁷²⁾ Ibid., 91-2.

pation of the slaves, it was not a surprise to hear terms like, 'She is my slave' uttered in a court of law in Mombasa by a former master.⁽¹⁷³⁾

This chapter has demonstrated that former masters used local culture and Islam to help legitimize practices that allowed masters to preserve their claim to social and traditional authority over their former slaves in Mombasa.⁽¹⁷⁴⁾ This shows how former masters used the *Kadhi* courts as an instrument to demarcate social boundaries against their former slaves.

In this Chapter, the former master used the principle *kafā'ah* to make sure that the slaves knew their place. It was a form of the *Code Noir* or the Black Code of Islamic society, but it did more than regulate the lives of slaves during slavery and also regulated them after they were emancipated. The institution of *kafā'ah* was used to bind slaves closer to their masters. *kafā'ah* favored former masters rather than former slaves. The manumission of slaves did not break the bonds or bring the asymmetric relationship between the former master and former slave to the end. Instead, *kafā'ah* encouraged the continuation of a dependency relationship between the former slaves and their former masters. Former slaves were forced to remain in the households of their former masters or were attached to them for social and economic reasons. In exchange, the former slaves were at the beck and call of their former master and family. Even when former slaves had left the household of their former master, the ties of *kafā'ah* continued to be maintained.⁽¹⁷⁵⁾ The ties did not end with former slaves; their children were also permanently bound to their father's former masters and their descendants.⁽¹⁷⁶⁾ Once the institution of *kafā'ah* was embedded in Islamic society, it remained the same throughout the history of Islam. The institution remained unchanged and a constant feature of many Muslim slave-owning societies today.⁽¹⁷⁷⁾

⁽¹⁷³⁾ Bidoda binti Abdalla v. Rex, Criminal Appeal 1/1922, EALR 9, pp. 16-18.

⁽¹⁷⁴⁾ Ibid., p. 1.

⁽¹⁷⁵⁾ R. Shaham, 'Masters, their friend slaves, and the Waqf in Egypt (eighteenth–twentieth centuries)', *Journal of the Economic and Social History of the Orient*, 43, 2 (2000), 162–188; E.R. Toledano, *Slavery and abolition in the Ottoman Middle East* (University of Washington Press, 1998), 66-67.

⁽¹⁷⁶⁾ U. Mitter, 'Unconditional manumission of slaves in early Islamic law: a *ḥadīth* analysis', *Der Islam*, 78, 1 (2001), 35-72.

⁽¹⁷⁷⁾ D. Pipes, 'Mawlas: Freed Slaves and Coverts in Early Islam', *Slavery and Abolition*, 1, 2, (1980), . 132-177.

In contrast, *kafā'ah* was used to demarcate social boundaries. This ensured that former slaves did not marry into elite families. Furthermore, a former slave can only marry the consent of his former master. A slave intended to marry had to seek permission whatever his age, and his master made sure the slave married his social equality. According to Islamic law, marriage partners should have an equal social status.⁽¹⁷⁸⁾ Masters with the help of *Kadhis* ensured that the rules of marriage were firmly applied, elite families ensured that their pedigree was preserved, and people with slave ancestry were filtered out. Thus, former slaves remained marked people, social pariahs, and a social underclass in Mombasa and other Swahili communities on the coast.

The following chapters discuss how colonial officials worked hand-in-hand with the elites and thus helped in the subjugation of the former slaves. Among the casualties of the ordinance abolishing slavery were slave women; their exclusion from the ordinance was intended to appease and pacify Arab and Swahili communities from rebelling.⁽¹⁷⁹⁾ Colonial desires differed significantly from anti-slavery attitudes. For instance, the Anti-Slavery Committee of the Society of Friends based in Zanzibar expressed their 'grievously disappointed' regarding the persistence of slavery in the Islands of Zanzibar and Pemba, even nine years after its abolition.⁽¹⁸⁰⁾ For example, a report by Vice-Consul O'Sullivan, paints a picture of "Slaves by Choice' or 'Utopia in Slaveland', he states '...[slaves] appear to be content with their existing status'.⁽¹⁸¹⁾ Like Zanzibar, the abolition of slavery did not lead to racial equality to enslaved

⁽¹⁷⁸⁾ S. Bangstad, 'When Muslims marry non-Muslims: marriage as incorporation in a Cape Muslim community', *Islam and Christian--Muslim Relations*, 15, 3 (2004), 349-364; A. Sheriff, 'Concubinage, law, and the family Suria: Concubine or Secondary slave wife? the case of Zanzibar in the nineteenth century', in G. Campbell & E. Elbourne, *Sex, Power, and Slavery* (Athens: Ohio University Press, 2014), 99-120.

⁽¹⁷⁹⁾ A.I. Salim, *Swahili Speaking Peoples of Kenya's Coast 1895-1965* (Nairobi: East African: Pub. House, 1973), 109-111.

⁽¹⁸⁰⁾ Mr. E. W. Brooks to Sir Edward Grey (1906)[Letter]. *Letter from Mr. E. W. Brooks on behalf of the Anti-Slavery Committee of the Society of Friends based in Zanzibar to Sir Edward Grey, Secretary of State for Foreign Affairs, 5th June 1906*, TNA FO 367/24/Conf. 19332/ 1, The National Archives.

⁽¹⁸¹⁾ Vice-Consul O'Sullivan (1904)[Letter]. Extract from a Report on slavery in Zanzibar and Pemba by Vice-Consul O'Sullivan, Pemba, 6th Apr. 1904, TNA FO 367/24/2/3, The National Archives.

peoples of Mombasa.⁽¹⁸²⁾ British colonial officials took pain to assure the Arab and Swahili elites in Mombasa that their religion and customs would be respected and preserved. With the establishment of the protectorate, anti-slavery voices were raised in London but missionaries⁽¹⁸³⁾ 'on the spot' were not as enthusiastic and thus, Salim argues, being realists, these missionaries cautioned against 'wholesale and hasty abolition' because the slaves were not ready for freedom.⁽¹⁸⁴⁾

European colonial officials worked alongside their Arab counterparts in administering justice to the African population, settling disputes and minor political matters, and becoming intermediaries between the Muslim population and the colonial administration. Therefore, Arab officials have influenced colonial government decisions.⁽¹⁸⁵⁾ For the former, the intermediaries between them and their colonial masters were their former masters or relatives. Immediately after declaring the coastal strip a protectorate, the British re-established what Kenyan historian Bethwell Ogot called an 'Arab sub-imperial rule.' Thus, much of the story of the struggle during colonialism on the coastal strip is succinctly described by Ogot as a struggle between marginalized Swahilis, the Mijikenda, and people of slave ancestry, on the one hand, and on the other, by Arab elites who acted as agents of British imperialism.⁽¹⁸⁶⁾ How the British protected and extended former masters' and other coastal elites' privileges during colonialism will be discussed. Some of the entitlements they tried to protect were the supremacy of Shariah law, local elite control over land, labor, and government jobs that came about through their association with the Sultan of Zanzibar.⁽¹⁸⁷⁾

⁽¹⁸²⁾ F. A. Nussbaum, 'Slavery, blackness and Islam: The Arabian Nights in the eighteenth century', in B. Carey & J. Kitson (eds.), *Slavery and the Cultures of Abolition: Essays Marking the Bicentennial of the British Abolition Act of 1807* (Woodbridge, UK: D.S. Brewer, 2007), 154.

⁽¹⁸³⁾ Lord Fitzmaurice [Minute] (1906). Minute discussing a deputation of the Anti-Slavery Committee of the Society of Friends, 10th July 1906, TNA FO 367/conf.24591/1/4/06, The National Archives.

⁽¹⁸⁴⁾ Salim, *Swahili Speaking*, 108.

⁽¹⁸⁵⁾ *Ibid.*, 78-79.

⁽¹⁸⁶⁾ Ogot, 'Kenya under the British', 251.

⁽¹⁸⁷⁾ Brennan, 'Lowering the Sultan's flag', 832.

Chapter 5

Aftermath of Abolition of Slavery in Mombasa: Institution of Walā'

Happy is the slave who, until the moment of drawing his last breath, remains close to his master...He creates thereby a reason for living, a knot of attachment with his place and his people. He clears the ways to come, to take advantage of their origin.... For worst and the greatest of solitudes, is to be from nowhere [Ennaji 1994, 211].

In 1922, Amani wa Hamadi and Umar wa Hamadi, grandsons of a former slave, Juma Kiroboto, went to the *kadhi* (Islamic judge) to claim inheritance. The *kadhi* refuse to claim. Instead the *kadhi* awarded the estate to Ahmad bin Abdalla bin Hafidhi, the former master and manumitter of Kiroboto, in accordance with *shariah* law.⁽¹⁾ This case is emblematic of the obstacles placed on the path of former slaves on the coast of Kenya. When the British abolished slavery and compensated for their former masters, a legal battle over the meanings of freedom ensued. For the *kadhis* the emancipated slaves were seen as manumitted slaves, whereby slaves were never free as freeborn. There was always a relationship of patronage (*walā'*) between the former masters and their former slaves. When a Muslim master freed his slave, he asserted his

⁽¹⁾ Ahmed bin Abdulla v Admin. Natives Estates (1925), 10 K.L.R.136-139 Ahmed bin Abdulla v Admin. Natives Estates (1925), 10 K.L.R. 136-139.

right to *walā'*, which permanently bound his former slave.⁽²⁾ This chapter analyzes the Islamic institution of patronage (*walā'*) on the Kenya Coast and Mombasa and discusses how former masters and their descendants were able to inherit from the estates of their former deceased slaves, long after the abolition of slavery on the coast of Kenya.⁽³⁾ This chapter also casts some light on how little had changed in the social conditions of former slaves after their emancipation. In Mombasa, former slaves were never free, and ties to their former masters were never completely severed. This chapter equally shows how former masters with help from *kadhis* used the institution of *walā'* to control their former slaves long after the abolition of the legal status of slavery in 1907. At the heart of the chapter is the need to show that former slaves in Mombasa and along the coast of Kenya were ensnared in a complex web of plural legalistic systems of law (Islamic and British) with ambiguous jurisdictions that made their journeys to freedom more difficult. Kadhi courts and British colonial courts became major arenas for the struggle between former slaves and their former masters.⁽⁴⁾ The case mentioned above clearly illustrates the complex implications of the structures of legal authority that challenged the notion that British colonial power was all-embracing on the coast of Kenya.⁽⁵⁾

5.1. Introduction

Colonial rule on the coast of Kenya was established 'through local intermediaries' that 'meant giving them judicial powers and recognizing customary' or religious courts such as the Kadhi court.⁽⁶⁾ Although the British when establishing colonial rule promised to 'respect' and not in-

⁽²⁾ A. Sikainga, 'Slavery and Muslim Jurisprudence in Morocco', *Slavery & Abolition*, 19, .2 (1998), 57-72.

⁽³⁾ S. Miers, 'Slavery and the slave trade in Saudi Arabia and the Arab states on the Persian Gulf, 1921-63', in Gwyn, Campbell (ed.) *Abolition and its Aftermath in Indian Ocean Africa and Asia* (London: Routledge, 2005), 120-136; Mitter, 'Unconditional manumission', 35-72.

⁽⁴⁾ Sikainga, 'Slavery and Muslim', 57-72.

⁽⁵⁾ T. Spear, 'Neo-Traditionalism and the limits of invention in British Colonial Africa', *Journal of African History*, 44, 1 (2003), 3-27; S. Berry, *No Condition Is Permanent: The Social Dynamics of Agrarian Change in Sub-Saharan Africa* (Madison: University of Wisconsin Press 1993), 24-40; A. E. Afigbo, *The Warrant Chiefs: Indirect Rule in Southeastern Nigeria, 1891-1929* (London: Longman, 1972).

⁽⁶⁾ H. Mwakimako, 'The Historical Development of Muslim courts: the Kadhi, Mudir and Liwali courts and the Civil Procedure Code and Criminal Procedure Ordinance, c. 1963' *Journal of Eastern African Studies*, 5, 2 (2011), 329-43.

terfere with them, on occasion, they sought to influence or alter the judgements passed down by these 'courts'.⁽⁷⁾ Colonialism, in trying to incorporate Muslim administrators into the colonial bureaucracy, made them even more powerful by allowing them to serve in various official positions, such as *Kadhis*, *Shaykh-al-Islam* and Chief *Kadhi*.⁽⁸⁾ Apart from creating efficiencies in streamlining Islamic courts, the colonial agenda was to subordinate the *kadhi* courts under secular law, hoping that the courts would become an instrument that the colonial government would use to stamp its authority on Muslims on the coast of Kenya.⁽⁹⁾ Instead, the outcome was the creation of a parallel institution that allowed Muslim elites to continue running institutions of governance and the judiciary.⁽¹⁰⁾ Hence, the Kadhi Court became an institution that former slave masters used to place obstacles in the path of the newly freed slaves.

One assistant district commissioner described the *Kadhi* as similar to those of the 'President of the Probate and Divorce Court in England' in that it was limited to adjudication of suits in matters relating to marriage, divorce, and inheritance.⁽¹¹⁾ Kadhi courts were the key to understanding the history of social relations in Mombasa and their 'control of the legal matters' was instrumental in demarcating these 'social boundaries'. Kadhi courts have played an important role in maintaining the distinctiveness of the Swahili throughout much of their history. By controlling these courts, the Swahili elites were able to have a direct influence over the areas of life that their members looked upon as central to the community's proper 'function'.⁽¹²⁾ Although the courts were open to all Muslim ethnicities in Kenya, they were dominated by the Arab and Swahili, who were both petitioners to the courts and the majority of

⁽⁷⁾ Ibid., 333.

⁽⁸⁾ *Sheikh al-Islam* (1904/1910) [Letter]. *Correspondence relating to sick Leave and salary increase for Sheikh al-Islam*, KNA/AP/1/210/04; KNA/AP/1/606/10, Kenya National Archives.

⁽⁹⁾ Ibid., 329.

⁽¹⁰⁾ Ibid., 331; Mwakimako, 'Conflicts and Tensions', 111-112.

⁽¹¹⁾ An extract from a correspondence from Assistant District Commissioner to the Secretariat dated 27th October 1922. File No. 56/21. Vol. 1.

⁽¹²⁾ Mwakimako, 'The Historical Development of Muslim courts', 331.

their jurists. Therefore, the use of the courts by the Arab and Swahili community was '...itself an assertion of group ' membership'.⁽¹³⁾

Historian Thomas Spear maintains that the hegemonic power of British colonial rule in inventing and manipulating African customs and institutions has been highly exaggerated.⁽¹⁴⁾ Colonial rule is a more complex process, and many scholarly works have shown that it has been intensely challenged.⁽¹⁵⁾ This researcher agrees with Spear's argument and contends that the belief of some scholars of East Africa that British colonial rule was able to completely transform *shariah* law and other traditional institutions on the coast of Kenya is an overstatement.⁽¹⁶⁾ One of the main proponents and contributors to 'Invented Tradition Theory', Terence Ranger, argues that British administrators set about inventing African traditions for Africans. Their own respect for 'tradition' disposed them to look with favor upon what they took to be traditional in Africa. They set about to codify and promulgate these traditions, thereby transforming flexible custom into hard 'prescription'.⁽¹⁷⁾ Like many other colonial societies, people in Mombasa were able to use traditions, customs, and religion as important tools to limit colonial powers. Thus, institutions such as *kadhi* courts and other bureaucracies established prior to British colonialism ensured societal stability by maintaining legitimacy, on which colonial authorities would come to rely.⁽¹⁸⁾ Spear contends that colonial rule was not a one-sided event; the process was influenced by, and responded to, local agents and situations. Thus, colonial rule was forced to assimilate old and established institutions within the areas of their influence.⁽¹⁹⁾ Hence, British colonial rule in Mombasa, like elsewhere in Africa, depended on local

⁽¹³⁾ M.J. Swartz, 'Religious Courts, Community, and Ethnicity among the Swahili of Mombasa: An Historical Study of Social Boundaries', *Africa: Journal of the International African Institute*, 49, 1 (1979), 29-41.

⁽¹⁴⁾ T. Spear, 'Neo-Traditionalism and the limits of invention in British Colonial Africa', *Journal of African History*, 44, 1 (2003), 3-27.

⁽¹⁵⁾ T. Ranger, 'The Invention of Tradition Revisited: The Case of Colonial Africa', In T. Ranger and O. Vaughan (eds) *Legitimacy and the State in Twentieth Century Africa: Essays in Honour of A.H.M. Kirk-Green*, (London: Macmillan, 1993), 62-111.

⁽¹⁶⁾ Abdulkadir, *Reforming and Retreating*, p. xiv.

⁽¹⁷⁾ T.O. Ranger, 'The Invention of Tradition in Africa', in E. Hobsbawm and T.O. Ranger (eds) *The Invention of Tradition* (Cambridge: Cambridge University Press, 1983), 212.

⁽¹⁸⁾ Spear, 'Neo-Traditionalism', 4.

⁽¹⁹⁾ *Ibid.*

rulers and local norms.⁽²⁰⁾ In Mombasa and the coast of Kenya, British officials had established what historian Sara Berry describes as 'hegemony on a shoestring' and thus they were forced to rule indirectly using an Omani created administration, *shariah* law, and traditional authority, to maintain their rule.⁽²¹⁾

Sikainga, in his study of slavery in Morocco, contended that European colonialism established a model of abolition that was contrary to the Islamic concept of slavery and freedom.⁽²²⁾ He explained that Muslim scholars played an important role in bolstering the position of the slave master over slaves and former slaves. The scholars justified the social hierarchy that existed in society by providing an ideological framework that allowed the masters to continue their control over their slaves and former slaves.⁽²³⁾ Thus, Muslim scholars on the coast of East Africa, like their counterparts in other Muslim societies where colonial rule had abolished slavery, found themselves in a similar predicament regarding how to maintain the legitimacy of the former master after the abolition. Like their counterparts in Morocco, they struggled to provide new interpretations for slave owners so that they could continue controlling their slaves within this new colonial dispensation. Subsequently, they provided an ideological framework that allowed former masters to control their former slaves using the *Shariah* law. This religious interpretation provided a mechanism for dealing with this new colonial reality.⁽²⁴⁾

As seen earlier, the British Protectorate on the coast of Kenya, which included the city of Mombasa, incorporated a bureaucracy built on a foundation laid earlier by their Omani predecessors. Thus, the British inherited an Omani bureaucracy that was established based on local traditions and governed by the *shariah*. The notion that the British unilaterally dislodged native laws, in this case, *Shariah* law, and replacing it with British law, Ebrahim Moosa argues,

⁽²⁰⁾ Ibid.

⁽²¹⁾ Berry, 'No Condition is Permanent', 9-10.

⁽²²⁾ Sikainga, 'Slavery and Muslim', 57-72.

⁽²³⁾ Ibid., 57-72.

⁽²⁴⁾ Ibid., 70.

is an oversimplification of a complex sequence of events.⁽²⁵⁾ According to him, the law is part of a 'cultural matrix' that colonial rule used as a way of establishing its hegemony. As a result, the colonial government, for example, in Mombasa or on the coast of East Africa, 'found counterpoints in Muslim institutions and 'traditions'. Counterpoint, Moosa argues, is the 'play of illusion and power in the making and unmaking of cultural formations.'⁽²⁶⁾ However, in the case of Shariah law, British attempts to replace it were met with resistance, and they were forced to accommodate and incorporate it into the colonial bureaucracy in the colonies, and ironically, these laws found their way back to the metropolises.⁽²⁷⁾ British courts in Mombasa, as in India, were forced to hire Muslim religious scholars as assessors in court.⁽²⁸⁾ This method has a wider application. According to Anderson, in the Aden Protectorate, the British organized and established *shariah* courts. There, Anderson argues, the *shariah* law 'finds its widest application in the whole region of East Africa, ' for appeals from courts in Aden were heard in the Court of Appeal for Eastern Africa.⁽²⁹⁾

Therefore, *kadhis* in Mombasa, kadhis understood the abolition of slavery as merely a manumission of slaves, whereby slaves were never free as freeborn. There was always the right of *walā'* between former masters and former slaves.⁽³⁰⁾ The institution of *walā'* was used by the former masters to curtail the 'freedoms' attained by the former slaves through the abolition of the legal status of slavery. In slave-owning Muslim societies, scholars have played an important role in ensuring that Islamic law is adhered to. Thus, when it came to slavery and its abolition in Mombasa, freedom was a mirage rather than a reality.

⁽²⁵⁾ E. Moosa, 'Colonialism and Islamic Law', in M. K. Masud et al. (eds.) *Islam and Modernity. Key Issues and Debates* (Edinburgh University Press, 2009), 158-181.

⁽²⁶⁾ Moosa, 'Colonialism', 158.

⁽²⁷⁾ *Ibid.*, 159.

⁽²⁸⁾ *Ibid.*

⁽²⁹⁾ J.N.D. Anderson, *Islamic law in Africa* (New York: Routledge, 2013), 11.

⁽³⁰⁾ *Ibid.*, 22.

5.2. Meaning of Freedom for Former Slaves Within Islam

Sharifa M. Zawawi writes that 'no two languages come into contact without having influence upon the other'.⁽³¹⁾ The Swahili word *huru* is a loanword from the Arabic *al-hurr*, meaning *free*.⁽³²⁾ In Arabic, and thus in Islam, freedom refers to two realities that explain Mohamed Ennaji. The first reality is freedom from ancestry tainted with slave origins. The first reality is completely free: a person who is dependent on no one.⁽³³⁾ Purity is an essential representation of freedom. He argues that the Arabic word *khaliss* encompasses the meaning and reality of freedom, and coincidentally he argues that it also means *white*.⁽³⁴⁾ Consequently, Ennaji defined freedom as having Arab ancestry. Being an Arab bestowed you with a noble origin and thus freedom. Ennaji argued that elites in Muslim slave-owning societies were obsessed with the need to prove their Arab genealogies to hold on to their social advantages.⁽³⁵⁾ This preoccupation with Arabic ancestry is not confined to Morocco and Ennaji's primary concern. Abdul Hamid el Zein, in his study of religious symbols on the coast of Kenya, showed how the master class gained leadership through claims of ancestral links with Arabia. Some have claimed fictitious as direct descendants of the Prophet.⁽³⁶⁾ Many acquired 'Arabness' and thus pedigrees by inverting traditions that connected them to an Arabian homeland.⁽³⁷⁾

The second reality is that of a freed slave. Collective memory argues Ennaji diligently retained these meanings in the public mind.⁽³⁸⁾ Thus, a freed slaves are socially compromised and reduced to servility. If purity and nobility were Arab and white, then black and African would be markers of servility. According to Ennaji, in Islam, the paradigm of slavery or servi-

⁽³¹⁾ S. Zawawi, *Loan Words and Their Effect on the Classification of Swahili Nominals* (Brill, 1979), 1.

⁽³²⁾ T. C. Schadeberg, 'Loanwords in Swahili', in M. Haspelmath and T. Uri (eds.) *Loanwords in the World's Languages A Comparative Handbook* (Berlin, Germany: De Gruyter Mouton, 2009).

⁽³³⁾ Ennaji, *Slavery*, 39.

⁽³⁴⁾ Ibid.

⁽³⁵⁾ Ibid., 43.

⁽³⁶⁾ el Zein, *The Sacred Meadows*, 202-204.

⁽³⁷⁾ H. J. Sharkey, 'Arab Identity and Ideology in Sudan: The Politics of Language, Ethnicity, and Race', *African Affairs*, 107, 426 (2008), 21-43.

⁽³⁸⁾ Ennaji, *Slavery*, 38-39.

tude is permanent.⁽³⁹⁾ On the Kenyan coast, slaves and their descendants were considered cursed people. They were seen as the descendants of Ham, and thus they were marked with the 'the curse of Ham,' which justified the enslavement of Africans.⁽⁴⁰⁾ In Mombasa, slaves and their descendants were uncivilized and cursed.⁽⁴¹⁾ They were regarded as people who lacked pedigree, were inferior, and were without honor.⁽⁴²⁾

5.3. The Institution of the *walā'* (Patronage)

In Mombasa and the coast of East Africa *walā'* played an important role in binding former slaves to their former masters. The term *walā'*, Paul G. Forand writes, has its origins in medieval Islam, and it is generally assumed to be of Arabian origin.⁽⁴³⁾ In her monograph, *Roman Provincial and Islamic Law*, Patricia Crone argues that the institution of *walā'* was heavily influenced by non-Roman law practiced in the Roman Empire's provinces, especially in Syria today.⁽⁴⁴⁾ Nevertheless, a number of scholars have challenged Crone's thesis of Roman influence on the *Walā'* institution of *walā'*. Most scholars have pointed to pre-Islamic Arabia as its origin, where *walā'* was a tool used to incorporate outsiders into Arabian tribes.⁽⁴⁵⁾ Consequently, with the emergence of Islam, many pre-Islamic traditions and customs were retained. Among the traditions incorporated, later modified, and adopted by Islam was the institution of *walā'*. The institution of *walā'* or patronate in Islam is divided into two forms: *walā' al-muwālāt* and *walā' al-ʿitq* (a legal tie arising from manumission).⁽⁴⁶⁾ The first dealt with contractual clientage, mostly with converts in areas that were conquered during the expansion of Islam. The

⁽³⁹⁾ Ibid., 43.

⁽⁴⁰⁾ A.G.B. Fisher, *Slavery and Muslim Society in Africa*, (London: Hurst. (1970), 26.

⁽⁴¹⁾ Morton, *Children of Ham*, xiv.

⁽⁴²⁾ J. Glassman, 'The bondsman's new clothes: the contradictory consciousness of slave resistance on the Swahili coast', *The Journal of African History*, 32, 2 (1991), 277-312.

⁽⁴³⁾ Forand, 'The Relation of the Slave', 59-66.

⁽⁴⁴⁾ W. B. Hallaq, 'The Use and Abuse of Evidence: The Question of Provincial and Roman influences on Early Islamic Law', *Journal of the American Oriental Society*, 110, 1 (1990), 79-91.

⁽⁴⁵⁾ P. Crone, *Roman, Provincial, and Islamic Law: The Origins of the Islamic Patronate* (Cambridge shire: Cambridge University Press, 1987), 40.

⁽⁴⁶⁾ Hallaq 'The Use and Abuse of Evidence', 79-91.

second dealt mostly with legal ties arising from the mission.⁽⁴⁷⁾ The latter, which is exclusively the focus of this chapter, is the institution of *walā' al-ʿitq* or in short *walā'*. Thus, this chapter shows how it was used to bind former slaves to their former masters in Mombasa and on the coast of Swahili.

5.4. Meaning of the Term *Walā'*

In Arabic, *walā'* is defined literally as loyalty, and it has been used to define the continual relationship between a former slave and his former master.⁽⁴⁸⁾ Forand explains that the word *mawālī* (plural) is divided into two categories: superior *mawlā (al-mawlā al-aʿlā)* and inferior (*al-mawlā al-asfal*). The first category belongs to the former master and the second category is reserved for the former slave. According to him, the term *walā'*, according to him, usually refers to patronage. It expresses both rights and claims as well as the duties and obligations of one towards the other, an institution of mutual alliance.⁽⁴⁹⁾ *The Encyclopaedia of Islam* defines *walā'* as a contractual clientage (syn. *muwalāt*). So *walā'* was a system of incorporating outsiders into a tribal society. In its earlier form, *walā'* meant an egalitarian relationship, but with slavery, this equitable institution would evolve into an unequal one, where the master stood on one side and the freedman on the other. It has evolved from an institution of mutual help to exploitation and oppression.⁽⁵⁰⁾

In the biographical dictionary, *Kitāb wafayāt al-aʿyān*, of Ibn Khallikān, which is translated by William MacGuckin Slane, the term *mawlā*, a derivative of the verb *walā'*, is defined as both master and slave, as well as patron and client.⁽⁵¹⁾ The word *walā'* has also been defined in English as patron-client and patronage. The patron-client relationship can generally be characterized as an unequal relationship between a former master, a superior (the patron), and his former slave, the client. The relationship is based on an asymmetric exchange of ser-

⁽⁴⁷⁾ Ibid.

⁽⁴⁸⁾ Ziadeh, 'Equality (kafā'ah)', 511.

⁽⁴⁹⁾ Forand, 'The Relation of the Slave', 59-66.

⁽⁵⁰⁾ See article on 'Walā' in *the encyclopedia of Islam* 6, 6 (Leiden: Brill, 1991), 874.

⁽⁵¹⁾ W.M.G. Slane and Ibn Khallikān, *Ibn Khallikan's Biographical Dictionary* (New York: Cosimo Classics; 2010).

vices, where the client, in this case, a former slave, depends on his patron or his former master for both social and economic protection.⁽⁵²⁾

In pre-Islamic Arabia, individuals were related through ancestral ties or, at times, through fictive blood ties; the only other kin arrangement was relationship through slavery.⁽⁵³⁾ Hence, slaves were part of the nomadic social organization, although they were non-kin. They attached themselves to the Arab clans for protection.⁽⁵⁴⁾ The city of Mecca was a major trading hub with a thriving slave market, with slaves arriving from Africa, Persia, and Roman, near the eastern provinces.⁽⁵⁵⁾ Slaves and former slaves, including outlaws and refugees, were all seeking protection attached to a patron clan.⁽⁵⁶⁾ Daniel Pipes argues that although Islam curbed many traditions that had their roots in pre-Islamic Arabia, the institution of *walā'* was retained as a mechanism for incorporating freed slaves into society, and the tradition continued as Islam spread out of Arabia.⁽⁵⁷⁾ Islam, as in pre-Islamic Arabia, allowed for the manumission of slaves without any conditions attached to their freedom. For example, in Ulrike Mitter's *Unconditional Manumission of Slaves in Early Islamic Law*, she argues that slaves were unconditionally managed in pre-Islamic Arabia, where *walā'* was seen as a kinship tie and a residue of ownership.⁽⁵⁸⁾ During that period *walā'*, like property, could be inherited but it could also be withdrawn and even renounced. The former master is usually not regarded as an agnatic heir. The relatives of the former slave had the right to inherit more from their kin than his former master and his descendants. Therefore, during the pre-Islamic era, the slave master was excluded from the succession process and could not inherit from his former slave if he had living relatives close to him or otherwise.⁽⁵⁹⁾ This practice was carried over into the early

⁽⁵²⁾ C. Pelras, 'Patron-Client Ties among the Bugis and Makassarese of South Sulawesi', *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia*, 156, 3 (2000), 393–432.

⁽⁵³⁾ E. R. Wolf, 'The Social Organization of Mecca and the Origins of Islam', *Southwestern Journal of Anthropology*, 7, 4 (1951), 329–356.

⁽⁵⁴⁾ Ibid.

⁽⁵⁵⁾ Ibid., 337.

⁽⁵⁶⁾ Ibid., 335.

⁽⁵⁷⁾ Pipes, 'Mawlas' 137.

⁽⁵⁸⁾ Mitter, 'Unconditional manumission of slaves', 35–72.

⁽⁵⁹⁾ Crone, Roman, *Provincial, and Islamic Law*, 40; Mitter, 'Unconditional manumission', 42.

Islamic period, according to Mitter, with some former masters renouncing their *walā'* over their former slaves and others freeing their former slaves with conditions. Therefore, during pre-Islamic times and earlier periods, Islamic masters manumitted their slaves without claiming *walā'*.⁽⁶⁰⁾ In her study of early Islamic *walā'*, Elizabeth Urban explains that manumission of a slave was the primary means for forging a *walā'* bond with former slaves, and the system had survived from the pre-Islamic Arabian period through decades after the abolition of slavery on the Swahili coast.⁽⁶¹⁾

Early and later Muslim societies were not hospitable to freed slaves who lacked *walā'*. Islamic scholars rejected some pre-Islamic *walā'* practices such as unconditional manumission.⁽⁶²⁾ Muslim jurists used a verse in the Quran which prohibited freeing camels without restraints, and a Prophetic Tradition (hadith) which states that the '*walā'* belongs to the manumitter' as justification for *walā'*.⁽⁶³⁾ The Quranic verse (5:103) forbidding freeing camels without restraint was interpreted by Muslim scholars as meaning that slaves should not be unconditionally manumitted, a common practice in pre-Islamic Arabia. Therefore, Islam encouraged *walā'* using Quranic injunction that condemns the pre-Islamic practice of releasing a female camel as a sign of piety and devotion: 'And Allah hath not appointed any bahira, saiba, wasila, or hami, those who have disbelieved devise falsehood against Allah, the most of them not having 'intelligence'.⁽⁶⁴⁾

Like camels, slaves in pre-Islamic Arabia could go unfettered if their master decreed it. He became like animals unfettered with no constraints, a free man in the full meaning of the term.⁽⁶⁵⁾ The juxtaposition of camels and slaves is a common theme of Islamic slavery. Islamic law does not regard slaves as objects but rather classifies them as livestock.⁽⁶⁶⁾ The slaves were

⁽⁶⁰⁾ Mitter, 'Unconditional manumission', 66.

⁽⁶¹⁾ E. Urban 'The Identity Crisis of Abū Bakra: Mawlā of the Prophet, or Polemical Tool?', in Paul M. Cobb (ed.) *The Lineaments of Islam: Studies in Honor of Fred McGraw Donner* (Leiden and Boston: Brill, 2012), 121-149.

⁽⁶²⁾ Mitter, 'Unconditional manumission', 66.

⁽⁶³⁾ Ibid., 65.

⁽⁶⁴⁾ Quran Chapter 5 verse 103.

⁽⁶⁵⁾ Ennaji, *Slavery*, 18.

⁽⁶⁶⁾ E. R. Toledano, 'Representing the Slave's Body in Ottoman Society', *Slavery & Abolition*, 23, 2 (2002), 57-74.

classified as camels, cows, or donkeys. Like a beast of burden, a slave, Ennaji argues, was 'recognizable physically by his branding, like an animal, proclaiming his anchoring in servitude.'⁽⁶⁷⁾ The 'unbridled slave,' Ennaji writes, was the embodiment of the highest degree of emancipation in the Muslim world, where a slave attained complete freedom, with no *walā'* over him nor did his former master have a right to inherit his property.⁽⁶⁸⁾ Islam eliminated this form of unfettered freedom for slaves and instead every freed slave was now bound to their former master through the institution of *walā'*. Their new dispensation was, in many ways, very similar to the old slavery situation.⁽⁶⁹⁾

Apart from the Qur'anic verse mentioned earlier, the story of Barirah was used as a justification of *walā'*.⁽⁷⁰⁾ The following is an interesting episode told as part of the Hagiography of 'Ā'ishah, the wife of the Prophet. The story begins when Barirah, a female slave who desired liberty, requested ishah—the wife of the Prophet—to purchase her from her master. ishah paid 360 dirhams to Barirah's owners for freedom. Some traditions mention 'Utbah ibn Abū Lahab, the paternal cousin of the Prophet, as a purported master. Barirah's owner agreed to sell her to the Prophet's wife on the condition that they retain the *walā'*.⁽⁷¹⁾ The Prophet was upset by the conditions stipulated by Barirah's owners and he decreed that *walā'* belonged to the manumitter and thus, in this case, the *walā'* rightfully belonged to 'Ā'isha.⁽⁷²⁾ Former masters who manumit their slaves will later use Islamic traditions to gain tighter control over their former slaves.⁽⁷³⁾

The Prophet's edict that *walā'* belongs to the manumitter allowed 'Ā'isha to purchase and manumit Barirah; this act of emancipation automatically created a relationship akin to blood

⁽⁶⁷⁾ Ennaji, *Slavery*, 53.

⁽⁶⁸⁾ Ibid., 19.

⁽⁶⁹⁾ Ibid.

⁽⁷⁰⁾ Mitter, 'Unconditional manumission', 50.

⁽⁷¹⁾ Crone, Roman, *Provincial, and Islamic Law*, p. 88; I. Al. Shatibi, *Reconciliation of the Fundamentals of Islamic Law*, (Reading: Garnet Press, 2014).

⁽⁷²⁾ Crone, Roman, *Provincial*, 154, [footnote 139]; M. Bernards & J. Nawas, *Patronate and Patronage in Early and Classical Islam* (Leiden: BRILL, 2005), 125; Mitter, 'Unconditional manumission of slaves', 57; A. Y. Al-Hibri, 'An Islamic perspective on domestic violence', *Fordham Int'l LJ*, 27 (2003), 195-224.

⁽⁷³⁾ Mitter, 'Unconditional manumission of slaves', 57; Al-Hibri, 'An Islamic perspective', 210.

relations, a permanent and non-transferable relationship.⁽⁷⁴⁾ The initial aim of *walā'* was to provide family bonds, a pact of mutual defense, and protection. Theoretically, the manumitter and his tribe defended and protected the former slave from being recaptured and sold into slavery. Thus, the slave's liberty is protected, and technically, all oppressive ties should stop when the person is a slave.⁽⁷⁵⁾ However, in practice, the manumitted slave does not acquire all the rights of freedom enjoyed by the freeborn slave.⁽⁷⁶⁾

Some Muslim scholars today maintain that the relationship between a former master and former slave, under *walā'*, was of mutual benefit and equal relationship. Other scholars have compared *walā'* with familial relations or kinship. Farhat J. Ziadeh, for example, believes *walā'* to be similar to lineage, which, according to him, shows that slaves in Muslim societies were treated better; they were seen as members of the family.⁽⁷⁷⁾ Azizah al-Hibri corroborates this by telling us that former slaves, because of *walā'*, enjoyed a special and close relationship with their former masters and families; they were as close as consanguine relations.⁽⁷⁸⁾ This benign image of slavery in Islam hides a system that is difficult to untangle from and permanently disables and marks its victim. Daddi Addoun argues that this notion of equality is due to the interchangeability of the word *walā'*, where at times, it can connote either patron or client, and at other times a former master and his former slave. Subsequently, modern Muslim scholars asserted that slaves and former slaves are seen as equal both socially and legally. For this reason, Daddi Addoun explains that some contemporary Muslim scholars viewed *walā'* as a notion that brought about equality between a former master and his former slave. He argues that most of these scholars tended to see slavery as a problem of the past, and as far as they were concerned, discrimination did not exist in Islam. Hence, he maintains that under the seemingly symmetrical term, *walā'* is a perpetuation of an insidious patron and client re-

⁽⁷⁴⁾ A. al-Hibri, 'The Nature of the Islamic Marriage: Sacramental, Covenantal, or Contractual?' in John Witte & Eliza Ellison(eds.) *Covenant Marriage in Comparative Perspective* (Grand Rapids, MI: Eerdmans, 2005), 182-216.

⁽⁷⁵⁾ Ibid., 191.

⁽⁷⁶⁾ Ibid.

⁽⁷⁷⁾ Ziadeh, 'Equality (kafā'ah)', 512.

⁽⁷⁸⁾ al-Hibri, 'The Nature of the Islamic Marriage', 182-216.

lationships of inequality.⁽⁷⁹⁾ Although the term *walā'* sometimes camouflaged social inequalities, every participant in this social charade knew his role and position within the local social hierarchy.⁽⁸⁰⁾ *Walā'* in many ways resembles the French Code Noir or the Black Code in many ways. In his study of Louisiana, Mathé Allain explained that the Code was used to regulate the lower classes and was especially geared towards controlling the lives of slaves and former slaves.⁽⁸¹⁾ Ennaji writes that the term *walā'* perfectly disguised the inequality that exists in Muslim societies; it was a word that described all forms of affinity, from friendship and family ties to even slavery.⁽⁸²⁾ He argued that *walā'* became an essential key to social and political domination.⁽⁸³⁾ Although today it is commonly used to pledge allegiance, it was, according to Ennaji, exclusively used to restrict and control people of slave ancestry.⁽⁸⁴⁾ The institution of *walā'* and the bonds emanating from it were as strong as the chains of slavery.⁽⁸⁵⁾

In Islam, manumission did not mean emancipation; it did not nullify the everlasting bond between a master and his former slave. *Walā'* became a control instrument that allowed masters to continue to dominate their former slaves long after their freedom. Manumission allowed slaves to be put in a new condition, which resembled their old condition in many ways.⁽⁸⁶⁾ Frederick Lugard explains that Arab slave masters believe that a slave has 'no existence as a man' and therefore, the manumitter 'stands in *loco parentis*, and can claim the rights of a 'father'.⁽⁸⁷⁾ This patriarchal hold on former slaves in Islamic societies created an under-caste that could not shed the shackles of social stigmatization. Former slaves in Mombasa and on the Swahili coast suffered from both social and legal disabilities because of their previous

⁽⁷⁹⁾ Y. Daddi Addoun, 'So that God Free the Former Master from Hell Fire: Salvation through Manumission in Nineteenth-century Ottoman Algeria,' in A. L. Araujo, M. P. Candido and P. E. Lovejoy, *Crossing Memories: Slavery and African Diaspora* (Trenton, NJ: Africa World Press, 2011), 251-252.

⁽⁸⁰⁾ Ibid., 252.

⁽⁸¹⁾ M. Allain, 'Slave Policies in French Louisiana,' *The Journal of the Louisiana Historical Association*, 1, 2 (1980), 127-137.

⁽⁸²⁾ Ennaji, *Slavery*, 190.

⁽⁸³⁾ Ibid., 191.

⁽⁸⁴⁾ Ibid., 192.

⁽⁸⁵⁾ Ibid.

⁽⁸⁶⁾ F. Soyer, 'Muslim Freedmen in Léon, Castile and Portugal (1100-1300),' *Al-Masaq*, 18, . 2 (2006), 129-143.

⁽⁸⁷⁾ F. Lugard, *The Dual Mandate in British Tropical Africa*, (London: William Blackwood, 1922), 364

conditions. They were not completely free, and in the eyes of the local community, were still regarded as serviles.⁽⁸⁸⁾

5.5. Ambiguous/Ambivalent Attitudes of *Kadhis* Towards the Abolition of Slavery

The usual plot when discussing colonialism is always one-dimensional, where colonial power imposes upon and dominates occupied natives. This oversimplification leaves out the nuances and underground struggles that continue long after colonialism has been established.⁽⁸⁹⁾ Slavery was officially abolished on Mombasa and the Kenyan coast in 1907, but the battle to control slaves by their former owners continued long after the abolition. Therefore, it was not surprising to hear decades after the abolition of slavery, a man state emphatically in a colonial court 'she is my 'slave'.⁽⁹⁰⁾ The marriage of ex-slaves formed one of the reasons for tension and struggle between ex-slave owners, slaves, *Kadhis* (Islamic court judges), and colonial officials. Therefore, the struggle shows that it was difficult for a foreign power with little knowledge of the religion and customs of the people to impose social change. In Mombasa, religious beliefs and customs regarding ex-slave owners and ex-slaves took a long time to change.⁽⁹¹⁾ To understand the struggle that took place between former slaves and their former masters in Mombasa, this chapter examines how the institution of the Kadhi Court was used to curtail the freedoms gained by former slaves who had been emancipated by the British. It also looks at the attitude of the Kadhi Court towards slavery by focusing on the case of Sadiki, an ex-slave who was prevented from marrying another ex-slave, Mgeni binti Faraji, until a token fee was paid to the descendants of his former master.

Kadhi's institution of the *Kadhi* preceded colonial rule in Mombasa and the coastal strip. Before colonialism, the Sultan of Zanzibar appointed *Kadhis* to various towns across the coastal

⁽⁸⁸⁾ Soyer, *Muslim Freedmen*, 143.

⁽⁸⁹⁾ A.H. Hardinge, Her Britannic Majesty's Agent and Consular-General, to the Foreign Office (1895) [Letter]. *Confidential Letter discussing Agreement between Seyyd Hamed bin Thwain, Sultan of Zanzibar regarding the His mainland possession to be administered by Britain, Zanzibar, 14 Dec. 1895*, TNA CO 533/35, The National Archives; see also, Mwakimako, 'The Historical Development of Muslim courts', 329.

⁽⁹⁰⁾ Clarence-Smith, *Islam and Abolition*, 125.

⁽⁹¹⁾ Strobel, *Muslim Women*, 51.

strip. *Kadhis* were more political and administrative heads than law practitioners. In 1895, when the British established their protectorate on the coast of Kenya, they agreed to recognize the authority of the *Kadhis*.⁽⁹²⁾ The British transformed the *Kadhis*. He created bureaucratic posts, in which Islamic scholars and Muslim elites were incorporated into the colonial system. These initial changes created tensions as Islamic scholars vied for newly created positions. Different ethnic and interest groups pushed for their favorite candidates, creating hostility among various ethnic, class, and racial groups. The main criteria for the appointment of *Kadhis* were their ethnic affiliation and loyalty to colonial rule.⁽⁹³⁾ In 1898, Sir Arthur Hardinge, the British Consul General, ushered in changes through the enactment of the Mohammedan Marriage Divorce and Succession Ordinance.⁽⁹⁴⁾ This ordinance established the shari'a courts where authority was vested in the *Kadhi*, reorganized Kadhi Courts by ranking the *Kadhis*, and finally integrated them into the colonial bureaucracy.⁽⁹⁵⁾

One of the major innovations introduced by the British on the coast of Kenya was the position of Shaykh-al-Islam, which later evolved into the post of Chief Kadhi, which operated as an appellate court to Kadhi courts. In addition, the secular High Court looked to Chief Kadhi for advice on Islamic Law.⁽⁹⁶⁾ The post of Shaykh-al-Islam and later Chief Kadhi became the sought-after position of Muslim scholars on the coast of Kenya. On the one hand, the colonial government consolidated the position of the *Kadhis* and weakened it by confining the *Kadhi* court to dealing with only domestic affairs such as marriage, divorce, inheritance, settling debts and contracts, and criminal cases within the jurisdiction of the Sharia.⁽⁹⁷⁾ Colonial officials attempted several times to abolish the Kadhi courts, but because of their need to ap-

⁽⁹²⁾ Mwakimako, *Conflicts and Tensions*, 110.

⁽⁹³⁾ *Ibid.*, 110-111.

⁽⁹⁴⁾ A. Hardinge, the British Consul General (1898)[Letter]. *Correspondence* discussing the enactment of the Mohammedan Marriage, Divorce and Succession Ordinance KNA/ MP/330/1912-14, Kenya National Archives.

⁽⁹⁵⁾ *Ibid.*, 111.

⁽⁹⁶⁾ Swartz, 'Religious Courts' 34.

⁽⁹⁷⁾ Mwakimako, 'The Historical Development of Muslim courts', 331-333.

pease their Muslim subjects and also adhere to 'Protectorate Agreements,' the courts were spared.⁽⁹⁸⁾

The British wanted to eradicate the Kadhi court because of inefficiencies and the lack of training in the criminal and civil jurisdiction of its staff, but they nevertheless tolerated it. Muslim litigants themselves shunned secular courts and preferred to take their cases, including criminal ones, to the Kadhi court because it derived its authority from the sharia'a.⁽⁹⁹⁾ This led Chief Kadhi, a colonial appointee, to decree that all *kadhīs* should deal with only personal law. The Supreme Court heard appeals from the judgements of the Kadhi Court. Because most secular judges did not understand the procedures of Islamic courts, many cases were upheld by the courts because they were unsure of the basis of decisions.⁽¹⁰⁰⁾ Marriage of ex-slaves was one area that produced a lot of contestation after abolition and where the Kadhi court played a crucial role in the control of legal matters and was instrumental in demarcating 'social boundaries'.⁽¹⁰¹⁾⁽¹⁰²⁾

The courts in Mombasa, like those in Zanzibar, had a 'dual jurisdiction' or a dual system of law, having both magistrate courts and *kadhi* courts, which combined British law and Islamic law.⁽¹⁰³⁾ British colonial officials tried to use the courts to both control and transform the cultural and social norms of its colonized subjects on the Swahili Coast.⁽¹⁰⁴⁾ Mombasa experienced a 'legal stew' of British laws that were overlaid on or existed side by side with *shariah* law. This phenomenon was described as 'legal pluralism,' which was characterized by multiple sets of norms, both formal and informal, that interacted with each other and af-

⁽⁹⁸⁾ J.W. Barth, Chief Justice to the Chief Native Commissioner, Nairobi (1922) [Letter]. *Correspondence relating to 'Kathis have had criminal jurisdiction since 1907'*, KNA/DR/ 1723/22, Kenya National Archives. See also, Mwakimako, 'Conflicts and Tensions', 110-111.

⁽⁹⁹⁾ Mwakimako, 'The Historical Development of Muslim courts', 333.

⁽¹⁰⁰⁾ Ibid.

⁽¹⁰¹⁾ Swartz, 'Religious Courts', 29.

⁽¹⁰²⁾

⁽¹⁰³⁾ E. McMahon, 'Networked Family: Defining Kinship in Emancipated Slave Wills on Pemba Island', *Journal of Social History*, 46, 4 (2013), 916-930.

⁽¹⁰⁴⁾ Ibid.

fects the colonial subjects.⁽¹⁰⁵⁾ Although the British tried to transplant its legal system to the Sultan's dominion on the mainland of East Africa, *shariah* law continued to be the law of the land. In discussing Islamic legal tradition in Zanzibar, dealing with marriage and divorce, E. E. Stiles tells us that in 1897, the British were able to establish in Zanzibar and the Sultan's dominion on the mainland, which included Mombasa, a dual system of laws that made provisions for British and Sultan's 'law'. The British essentially created a hierarchy of courts where a two-tier system of law was the rule. The system consisted of one British court and one Sultan court. The latter court was wholly run by Arab officials and comprised *mudir*, which are similar to third-level subordinate courts, and *kadhi* courts, which were Islamic courts and usually dealt with matters pertaining to inheritance, marriage, and divorce.⁽¹⁰⁶⁾

British colonial rule on the coast of East Africa has peculiar legal features. The Protectorate was both a 'legislative authority and a dual 'jurisdiction'. The Sultan of Zanzibar retained legislative powers over his subjects, and the British had the authority to legislate over their subjects.⁽¹⁰⁷⁾ This judicial duality was not confined to the island of Zanzibar alone, but spread throughout the dominion of the Sultan on the mainland. Therefore, Mombasa also experienced the same dual court system. According to Stiles, how these court systems developed and spread was indicative of how the legal system of Zanzibar, despite being unique because of the dual system in place, largely mirrored legal systems on the mainland dominion of the Sultan.⁽¹⁰⁸⁾ Although numerous studies have claimed that British colonial rule had diminished the influence of *shariah* through reforms in the early parts of colonial rule, in reality, very little change was made. *Shariah* law remained paramount in Zanzibar and the mainland dominance of the Sultan.⁽¹⁰⁹⁾ The *Kadhi* courts, According to McMahon, Kadhi courts were the

⁽¹⁰⁵⁾ M.J. Calaguas et al., 'Legal Pluralism and Women's Rights: A Study in Postcolonial Tanzania', *Columbia Journal of Gender and Law*, 16 (2006), 471-507.

⁽¹⁰⁶⁾ E.E. Stiles, *A kadhi in his Court: Marriage, Divorce and Zanzibar's Islamic Legal Tradition*, PhD thesis (Washington University, 2002).

⁽¹⁰⁷⁾ S. Abrahams, 'The Conflict of Laws in Zanzibar', *Journal of Comparative Legislation and International Law*, 23, 4 (1941), 169-171.

⁽¹⁰⁸⁾ Stiles, *A kadhi in his Court*, 66-67.

⁽¹⁰⁹⁾ Stockreiter, *Islamic law, gender*, 3.

only courts where most people preferred to settle their disputes.⁽¹¹⁰⁾ Elke Stockreiter's study of social change in post-abolition Zanzibar shows that *shariah* Law was the law of the protectorate during British colonial rule.⁽¹¹¹⁾ She argues that the Kadhi courts were used to settle civil matters, especially marriages, divorces, and inheritance. Thus, all the Sultan's subjects in the islands or the mainland, Africans, or Arabs, who were predominately Muslims, resorted to the Kadhi courts to settle all their legal disputes.⁽¹¹²⁾ The British tried to incorporate *shariah* law into the colonial legal structure and create reforms.⁽¹¹³⁾ This move by the colonial government was challenged by the *kadhis*. They saw the reforms as an encroachment on their jurisdiction and attack on their religion. One area that became a bone of contention between the *kadhis* and colonial officials was the abolition of the slavery. *Kadhis* supported the institution of slavery, and their main concern was furtherance of the *status quo*. They preferred that slavery continued and, in the event that slaves were manumitted, that their owners should retain some form of control. Their objective was a social apartheid, with individuals kept in place socially within the Swahili hierarchical structure.⁽¹¹⁴⁾

One of the main problems was that the kadhi courts did not recognize the legitimacy of the British abolition of slavery. It was difficult for the *kadhis* to understand the liberation of the slaves by colonial rulers. In accordance with *shariah* law, masters were the only ones with the right to manumit slaves. Therefore, *kadhis* understood that the status of the slaves had not changed as far as the *shariah* was concerned.⁽¹¹⁵⁾ Another contention is that the former masters believed in their entitlement to compensation to liberate their slaves. According to the Malik School of Law, which predominated in North and West Africa, 'a person under coercion is not bound by...forced manumission and the 'like'.⁽¹¹⁶⁾

⁽¹¹⁰⁾ McMahon, 'Networked Family', 920.

⁽¹¹¹⁾ Stockreiter, *Islamic law, gender*, 4.

⁽¹¹²⁾ *Ibid.*, 5.

⁽¹¹³⁾ *Ibid.*

⁽¹¹⁴⁾ *Ibid.*

⁽¹¹⁵⁾ Cooper, *Plantation Slavery*, 242-244.

⁽¹¹⁶⁾ J. Zdanowski, 'The Manumission Movement in the Gulf in the First Half of the Twentieth Century', *Middle Eastern Studies*, 47, 6 (2011), 863-883.

As far as the *kadhis* were concerned, the former slaves still belonged to their former masters.⁽¹¹⁷⁾ Moreover, even if we assume that the *kadhis* accepted that the emancipation of slaves by the British was legitimate and that the masters were rightly compensated, the *kadhis* still believed that masters had rights over their former slaves through the old tradition of *walā'*.⁽¹¹⁸⁾ This might seem to contradict the earlier story of Barirah, in which *walā'* was the prerogative of the manumitter, in this case, the British. However, the manumission and *walā'* were vested in individuals, not a state, and not a non-Muslim entity. Consequently, in Islam and along the Swahili coast, freedom for slaves did not mean complete equality. Freedom was not the end of exploitation, as it could only be considered partial.⁽¹¹⁹⁾

Kadhi courts thus became sites of resistance to imposed change and struggles pitting former slaves against their former masters. They were also places where colonial regulation encountered resistance from the *kadhis* who saw themselves as guardians of Islam.⁽¹²⁰⁾ According to Abdulkadir Hashim Abdulkadir, the kadhi courts became strongholds of resistance against British encroachment and interference in their jurisdiction. Muslims as colonized subjects also used the kadhi courts as a form of resistance and thus sought to preserve their religious practices through resort to them.⁽¹²¹⁾ The *kadhis* saw themselves as defenders of the socio-economic status of their former masters.⁽¹²²⁾ They supported and encouraged *walā'* relationship between masters and their former slaves, which gave the former the right to inherit from the estates of their erstwhile slaves.⁽¹²³⁾ Thus, inheriting from former slaves became a point of contention between former masters and former slaves in Mombasa and the whole of the Kenyan coastal strip.

⁽¹¹⁷⁾ Strobel, *Muslim Women*, 52.

⁽¹¹⁸⁾ Cooper, *Plantation Slavery*, 251.

⁽¹¹⁹⁾ Addoun, 'So That God Frees the Former Masters from Hell Fire' 251.

⁽¹²⁰⁾ Stockreiter, *Islamic law, gender*, 36.

⁽¹²¹⁾ Abdulkadir, *Reforming and Retreating*, 153.

⁽¹²²⁾ Stockreiter, *Islamic law, gender*, 2.

⁽¹²³⁾ Abdulkadir, *Reforming and Retreating*, 413.

5.6. Inheritance from Slaves in Islam

Former slaves and their descendants in Mombasa and throughout the Swahili Coast were involved in legal battles to protect their property from their former masters and descendants. On the one hand, former slave masters and their descendants claimed the right to inherit from their former slaves, those with heirs, or those who were heirless. This was on the grounds that they had a right of *walā'* and thus, according to *shariah* law, were legitimate inheritors. On the other hand, the former slaves tried to protect their estates from their former masters by stating that they were freed under the Legal Abolition of Slavery Ordinance of 1907, and therefore had the right to pass their property to their offspring as legitimate heirs.⁽¹²⁴⁾ In *shariah* law, a former master, as the manumitter of a slave, was entitled to inherit the residual estate of his former slave. This form of inheritance is called *walā'* of manumission, and the manumitter is called 'mawla by 'manumission'. A female can inherit if she is a slave manumitter.⁽¹²⁵⁾ The manumitter is given the right to inherit on the grounds that he or she had 'given life' to the deceased former slave by emancipating him from slavery. It is said that the Prophet compared the *walā'* relationship with blood relationships. Nevertheless, in practice, the *walā'* relationship was skewed in favor of the former master, who had the right to inherit from his former slave, and the manumitted slave did not have the right to inherit from his former master.⁽¹²⁶⁾

According to Abdulkadir, the kadhi courts reinforced *walā'* relationship between the former master and the former slave. This allowed former masters to inherit the property belonging to their former slaves. He argues that the *kadhis* as Muslim judges, made sure that the legal principle that favored the devolution of property from former slaves to former masters was strictly enforced. Anderson explains that in Islam, if a former slave dies without having male heirs to inherit his estate, then his former master and descendants can inherit his property. The master, being the manumitter, is permitted to inherit partial or full property

⁽¹²⁴⁾ Ahmed bin Abdulla v Admin. Natives Estates (1925), 10 K.L.R; Anderson, *Islamic law*, 118:

⁽¹²⁵⁾ A. Rumsey, *Moohummudan Law of Inheritance, and Rights and Relations Affecting It: Sunni Doctrine*, (London: W.H. Allen & Co., 1880), 164.

⁽¹²⁶⁾ Rumsey, *Moohummudan*, 170.

on the account of *walā'*.⁽¹²⁷⁾ Consequently, both *shariah* law and Swahili traditions secured privileges enjoyed by former masters, giving them rights over their former slaves and descendants. These rights extended from controlling them when they were alive to even when they died. This meant that, in reality, when a former master died, the former slave remained bound to his former master's family, the *walā'* being passed on to descendants and ensuring that the former slave was still obligated to serve or respect the family of his deceased master. In short, the former slaves remained legally bound to the descendants of their former masters.⁽¹²⁸⁾

Wherever slavery was abolished, battles arose over the meaning of freedom. Local elites and religious scholars have challenged the ideas of freedom. They tried to reinterpret the meaning of freedom and, at times, used culture and religion to curtail the freedoms gained by former slaves.⁽¹²⁹⁾ Hence, former slaves in Mombasa and the Swahili coast, like their counterparts in other societies, found their freedom to be severely limited because they had not acquired what Professor Foner aptly described as 'practical independence,' an important ingredient and a fundamental component of real liberty.⁽¹³⁰⁾ One issue on which former masters and slaves clashed revolved around inheritance. Ennaji explains that According to a decree by Caliph Omar ibn Abdul Aziz, freedmen are subject to three categories of control: kinship, slave, and contractual clientage. He proposes, 'The relative inherits and is inherited, the freedman is inherited but does not inherit. In contrast, he does not inherit, and his inheritance goes to his paternal 'relatives'.⁽¹³¹⁾

For example, in Mauritania, according to Abou A. Toure, when a slave died, their former master came to collect their inheritance because, according to him, slaves could not inherit in accordance with the *shariah*.⁽¹³²⁾ According to Clarence-Smith, in Northern Nigeria, masters

⁽¹²⁷⁾ Anderson, *Islamic law*, 378.

⁽¹²⁸⁾ Forand, 'The Relation of the Slave', 64.

⁽¹²⁹⁾ E. Foner 'The Meaning of Freedom in the Age of Emancipation', *The Journal of American History*, 81, 2 (1994), 435-460.

⁽¹³⁰⁾ Foner 'The Meaning of Freedom', 460.

⁽¹³¹⁾ Ennaji, *Slavery*, 192.

⁽¹³²⁾ A. A. Toure, *Slavery in Mauritania: History, Religion and the New Forms of Exploitation*, M.A. Thesis (Northern Arizona University, 2012), 49-50.

dragged their feet when emancipating their slaves and forced their former slaves to provide them with concubines. He argues that, in the eyes of the locals, the former slaves were still seen as slaves of their former masters, and the former masters continued the religious custom of inheriting from their deceased former slaves.⁽¹³³⁾ This is a point of contention on the coast of Kenya.

Elisabeth McMahon's study of Slave Wills along the Swahili Coast.⁽¹³⁴⁾ gives us important insights into the religious beliefs of former slaves. It shows how the former slaves negotiated or renegotiated their relationships with their former masters through the writing of their will.⁽¹³⁵⁾ According to McMahon, local Islamic law guided the division of estates of the deceased among heirs.⁽¹³⁶⁾ Although inheritance was regulated by the local interpretation of Islamic law and traditions, it still followed most of the basic rules prescribed by *Shariah*.⁽¹³⁷⁾ Inheritance rules, according to McMahon, were based on three types of relationships: blood relations (*nasab*), relations through marriage (*sabab*) and relationship based on *walā'*.⁽¹³⁸⁾ The latter, according to her, was an important relationship for former slaves, for when a slave was managed by his master, a bond was created. The relationship forged between the master and his former slave is alleged to have been similar to kindred ties.⁽¹³⁹⁾ McMahon argues that although *walā'* mimicked family relationships, it favored the former master more than the former slave, and it gave the former master rights to inherit from their former slaves and not vice versa.⁽¹⁴⁰⁾ In Mombasa and on the coast of Kenya in general, *walā'* was a mechanism used to keep former slaves from transferring property to their heirs.⁽¹⁴¹⁾ In some cases, the masters justified the right to inheritance on the grounds of *walā'* and, in others, on the grounds that the

⁽¹³³⁾ Clarence-Smith, *Islam and Abolition*, 145.

⁽¹³⁴⁾ E. McMahon, 'Slave Wills along the Swahili Coast', in A. Bellagamba, S. E. Greene, and M. A. Klein (eds.) *African Voices on Slavery and the Slave Trade*, Vol. 1, (New York: Cambridge University Press, 2013), 748-763.

⁽¹³⁵⁾ *Ibid.*, 750.

⁽¹³⁶⁾ *Ibid.*

⁽¹³⁷⁾ P. E. Lovejoy et al., *Slavery and its abolition in French West Africa: the official reports of G. Poulet, E. Roume, and G. Deherme* (Madison: University of Wisconsin-Madison, 1994), 5.

⁽¹³⁸⁾ McMahon, 'Slave Wills', 750.

⁽¹³⁹⁾ *Ibid.*

⁽¹⁴⁰⁾ *Ibid.*, 750-751.

⁽¹⁴¹⁾ *Ibid.*, 751.

former slaves were still slaves and were deemed to be slaves by local society. In addition, because they had been freed by the British, a non-Muslim colonial power, they were technically still seen as slaves as far as *shariah* was concerned.⁽¹⁴²⁾ Thus, the struggle for former slaves to protect their property from their former masters remained a problem on the Swahili Coast long after the abolition of slavery.⁽¹⁴³⁾ British colonial records in Kenya show that there were disputes between former masters and former slaves that flared after the abolition of slavery.

The earliest records examined in this study dealt with the case of the late Majumah binti, Khamsin (1900). This case is discussed in terms of two correspondences between the collector (equivalent to a District Commissioner) in Malindi and the Registrar of the Protectorate in Mombasa.⁽¹⁴⁴⁾ From their exchanges, it '...appears to be a conflict of opinion between the [kadhi] of Malindi and the Sheikh al Islam [Chief kadhi] at Mombasa',⁽¹⁴⁵⁾ with the dispute centering on an estate valued at Rs96.⁽¹⁴⁶⁾ It appears that the kadhi sided with the former master of Majumah binti Khamsin, the deceased. Majumah died, leaving her parents, Khamsin wa Ferusi and Sequanda wa Ferusi, her heirs. From the dates of correspondence, it is clear that Majumah and her parents were manumitted long before the abolition of slavery.⁽¹⁴⁷⁾ The kadhi of Malindi, following Islamic law and local traditions, felt that the Majumah manumitter should have a share of the estate. On the other hand, the chief kadhi gave an opposing opinion, holding that the estate of the deceased should go to her parents because at the time of her death, they were considered free persons.⁽¹⁴⁸⁾ The Collector agreed with the opinion of Chief kadhi and he decided that

⁽¹⁴²⁾ Ibid.

⁽¹⁴³⁾ Ibid.

⁽¹⁴⁴⁾ Collector Malindi to the Secretary to the Administration, Nairobi c/o Hon. the Crown Advocate (1900)[Letter]. *Correspondence relating to the Estate of the late Majumah Khamsin, 22 February 1900*, KNA/AP/11/39, Kenya National Archives.

⁽¹⁴⁵⁾ Ibid.

⁽¹⁴⁶⁾ Ibid.

⁽¹⁴⁷⁾ The Collector Malindi to the Registrar of the Protectorate in Mombasa [Letter] (1900). *Letter discussing conflict of opinion between the kadhi of Malindi and the Sheikh al Islam Chief kadhi 27 January 1900*, KNA/AP/04/29, Kenya National Archives.

⁽¹⁴⁸⁾ Ibid.

The deceased was a freed woman, and her father and mother were freed persons and are therefore, under Mohamedan law, entitled to become possessors of or inherit the property. The father and mother of the deceased were the only heirs. and they should take: - Mother 1/3, and the Father the remainder.⁽¹⁴⁹⁾

The above case seems to contradict *shariah* law, which allows the manumitter and his heirs a share in inheritance left by a former slave. In this case, it shows that the Chief *kadhi* being an employee of the colonial government, might have been pressured to contradict the *kadhi* of Malindi, although the *kadhīs* were reluctant to be seen as agents of British colonial rule and were inclined to act as servants of the *shariah*. This did not preclude some of them, especially Chief *Kadhi*, from showing loyalty to the British. This loyalty is vividly expressed in a letter by the Principal Judge in Mombasa, who wrote that the official relationship between Chief *Kadhi* and the government was close. According to the Judge, the Chief *Kadhi* had '...served the government loyally and did not intervene or express opinions on disputed matters except when they are officially referred to him by the courts of the 'Administration'.⁽¹⁵⁰⁾

However, most of the cases the researcher encountered show that most *kadhīs* sided with the former masters as opposed to the former slaves when it came to inheritance. After the abolition of the legal status of slavery in 1907, there were recurring clashes between Islamic and English law, especially in cases that dealt with inheritance. For example, in a 1910 case brought to the *kadhi* of Lamu regarding the estate of a former slave, Farzalla wa Hamad Ali, the deceased person's only blood relationship was his daughter. In a correspondence, the acting Provincial Commissioner of Lamu, F.W. Isaac, wrote: 'Farzalla has left one child, a girl, who according to the Sheria is a slave and therefore cannot 'inherit'.⁽¹⁵¹⁾ In support of this argument, Isaac noted that the following questions must be answered:

⁽¹⁴⁹⁾ Ibid.

⁽¹⁵⁰⁾ Abdulkadir, *Reforming and Retreating*, 60; The Principal Judge, Mombasa, to the Secretary to the Administration (1910) [Letter]. *Correspondence relating to Increase of salary of Sheikh al-Islam* 21 February 1910, KNA/AP/1/606/10, Kenya National Archives.

⁽¹⁵¹⁾ F.W. Isaac, District Commissioner of Lamu, to the Secretary to the Administration of the Protectorate, Nairobi (1910) [Letter]. *Correspondence relating to the Law of Inheritance and Succession*, 1 September 1910. KNA/PC/Coast/1/20/95, Kenya National Archives; see also, Curtin, 'Laboratory for the Oral History of Slavery', 858-882.

1. Is a slave girl to inherit?
2. Is the inheritance to be completed according to English Law or Mohamedan Law on the assumption that the girl is not a slave?⁽¹⁵²⁾

According to McMahon, the struggle for former slaves to protect their property from their former masters remained a struggle for former slaves well after emancipation.⁽¹⁵³⁾ For example, on the Island of Pemba, ⁽¹⁵⁴⁾ former slaves used wills to protect their properties from the claims and predatory designs of their former masters.⁽¹⁵⁵⁾ Although the researcher did not come across wills written by either slaves or masters in the course of this research in Mombasa, scholars working on Zanzibar were able to find wills written by former slaves who tried to protect their descendants from being disinherited by their former masters and descendants, thus shedding light on the kind of resistance that could have been duplicated, but not documented on the coast of Kenya and Mombasa in particular.⁽¹⁵⁶⁾ Islamic rules of inheritance stipulated how divisions were to be made in the estates of the deceased. One stipulation is that non-Muslims cannot inherit Muslims. Nevertheless, this did not stop the colonial government from trying to inherit former slaves who died without leaving heirs. A reply to a petition addressed to the Governor of the East Africa Protectorate from Messrs. Morrison and Allan, who were lawyers on behalf of Abdalla Rithwani and other members of the Twelve Tribes, discussed the possibility of government inheriting from former slaves who had died without natural heirs. The letter mentioned that the amending of the Ordinance of 1909 prohibited former masters from claiming inheritance from their former slaves, starting November 30, 1911. According to the government, it was possible if compensation had been paid to the former master for the loss of their former slave, and if the former master had stopped paying for his old and ailing former slave's maintenance, as is customary. Under such conditions, the gov-

⁽¹⁵²⁾ Ibid.

⁽¹⁵³⁾ McMahon, 'Slave Wills', 751.

⁽¹⁵⁴⁾ The second largest island in the Zanzibar archipelago.

⁽¹⁵⁵⁾ McMahon, 'Networked Family', 916-930.

⁽¹⁵⁶⁾ Ibid., 922.

ernment could technically inherit the former slaves instead of the former master if there were no natural heirs.⁽¹⁵⁷⁾ In the latter case, the estate is divided according to the gender of the person's progeny. Half of the estate was to go to the husband if there were no other heirs, but this was reduced to one-quarter if there were other heirs.⁽¹⁵⁸⁾ A wife also inherited one-quarter if she was the only heir, and one-eighth if other heirs existed. In *shariah* law, children had precedence in inheritance; sons inherit twice as much as daughters but 'a solitary daughter' received up to half of the estate. The paternal brothers and sisters of a deceased could inherit if their siblings did not leave the offspring behind. Whatever was left over or not claimed in the estate reverted to *beit-al-mal* (public treasury).⁽¹⁵⁹⁾ Online Oxford Islamic Studies defines *beit-al-mal* literally as a house of money. The *beit-al-mal* acted as a royal treasury and distributed the taxes collected for public works.⁽¹⁶⁰⁾

One group that faced problems when devolving their property to their heirs was the slaves or former slaves. In Islam, slaves or manumitted slaves have no right to inheritance, and thus, they are excluded from succession when their former master dies. As a result, someone with slave ancestry, according to the al-Shāfi'i school of Islamic law, which is followed by the majority of East African Muslims, can neither inherit nor be inherited.⁽¹⁶¹⁾ The case of Kiroboto, a former deceased slave, highlights the plight of many descendants of slaves who fought to protect their inheritance against their former masters and descendants. It also shows that kadhi courts recognized the right of inheritance by patronage, provided they were not apprehensive of British reactions to such judgements.⁽¹⁶²⁾ McMahon argues that the residual portion of

⁽¹⁵⁷⁾ Assistant Colonial Secretary to Messrs. Morrison & Allan (1925) [Letter]. *Correspondence relating to Non-Native Taxes and Morrison & Allan's petition on behalf of Abdalla Rithwani and other members of the Twelve Tribes 31 August 1925*, KNA /A.232.32/33/25, Kenya National Archives.

⁽¹⁵⁸⁾ J. Schacht 'Mirath,' *Encyclopaedia of Islam*, 2nd ed., VII (Leiden, 1993), 106-111.

⁽¹⁵⁹⁾ McMahon, 'Networked Family', 921.

⁽¹⁶⁰⁾ 'Bayt al-Mal', in J.L. Esposito, (eds.) *The Oxford Dictionary of Islam* (Oxford: Oxford University Press, 2003).

⁽¹⁶¹⁾ Schacht 'Mirath', 106-111.

⁽¹⁶²⁾ A.N. Bailward, Asst. District commissioner for Administrator Native Estates to District Commissioners of-
fice, Lamu (1924) [Memo]. Memorandum discussing the case of Kiroboto, a former deceased slave, whose grandchildren want to inherit his property against the wishes of his former master's family, 4th January 1924, KNA/AG/1/439, Kenya National Archives; see also, KNA/AG/1/1/4, Attitude of Kadhis towards Slavery, 1913, Kenya National Archives; Ahmed bin Abdullah v Admin. Of Native Estates (1915), 10 K.L.R 136; Anderson, *Islamic law*, 118.

the estate belonging to a former slave was often the section that former owners attempted to claim for themselves.⁽¹⁶³⁾ However, in many cases, such as the one below, the former master and their descendants attempted to inherit the whole estate and tried to exclude relatives of the deceased former slave.

5.7. The Case of Juma Kiroboto

In the Caribbean, British laws had a profound influence on society's customs and practices, whereas in Kenya, colonial laws and their influence were still at an embryonic stage in the era of the abolition of slavery. The result was that, unlike in the Caribbean, they had not yet penetrated society or shaped the economic, social, and political landscape of the Swahili coast. According to Christer Petley, a law dealing with inheritance in Jamaica had highly evolved so that passing property and land from one generation to another had penetrated all island societies as part of the legacy of British dominance.⁽¹⁶⁴⁾ By contrast, in Zanzibar, as stated by McMahon, *walā'* was instrumental in thwarting the slave's efforts to transfer property to his heirs. Cases of obstructing former slaves from bequeathing their property to their offspring were so prevalent on the East African coast that as late as the 1920s, former masters with the help and approval of *kadhis* were still inheriting lands belonging to their former slaves.⁽¹⁶⁵⁾

The story of Amani wa Hamadi and Umar wa Hamadi, the grandsons of Juma Kiroboto and former slaves of Ahmad bin Abdalla, who died in 1922, is particularly illustrative of the struggles that slaves had to inherit from their relatives. ⁽¹⁶⁶⁾ After the death of their grandfather, Amani and Umar wa Hamadi, the grandsons of Kiroboto, went to the local *kadhi* to claim inheritance. The *kadhi* refused their claim and instead awarded the estate to his former master and manumitter, Ahmad bin Abdalla, in accordance with *shariah* law. ⁽¹⁶⁷⁾ Ahmad bin

⁽¹⁶³⁾ McMahon, 'Networked Family', 921.

⁽¹⁶⁴⁾ C. Petley, 'Legitimacy' and social boundaries: Free people of colour and the social order in Jamaican slave society', *Social History*, 30, 4 (2011), 481-498.

⁽¹⁶⁵⁾ McMahon, 'Slave Wills', 751.

⁽¹⁶⁶⁾ Ahmed bin Abdulla v Admin. Natives Estates (1925), 10 K.L.R. 136-139.

⁽¹⁶⁷⁾ Ibid.

Abdalla's claim to Kiroboto's estates stemmed from the Islamic tradition of *walā'*, which allowed him to inherit him as a manumitter, a right under Shariah law.⁽¹⁶⁸⁾ The master has the right to inherit from his former slave in the absence of certain heirs, and is obligated to afford his former slave protection.⁽¹⁶⁹⁾ As mentioned earlier, the master is permitted to inherit from his former slave or is entitled to inherit the residual estate of his former slave after all other sharers have been given their portion.⁽¹⁷⁰⁾

Abdalla claims that Kiroboto was manumitted 11 years before the enactment of the Abolition of Slavery Ordinance of 1907. Therefore, as his former master and emancipator, he had rights of *walā'* under *shariah* law to inherit from him. The *kadhi* of Lamu agreed with him and passed judgement in favour of Abdalla and against the two grandchildren of Kiroboto.⁽¹⁷¹⁾ Court records showed that Abdalla manumitted Kiroboto in 1894, and he lived for the next 28 years as a freedman. Kiroboto's only child and son, Hamadi, was not freed with his father according to the records, and he remained a slave to Ahmad bin Abdalla. Hamadi died as a slave, passing before the abolition of slavery, but leaving two sons, Amani wa Hamadi and Umar wa Hamadi. These two grandchildren technically belonged to Hamadi's the former master, who was also Kiroboto's former master. Hamadi's children attained freedom through the Abolition of the Legal Status of Slavery Ordinance in 1907.

When Kiroboto died in 1922, leaving an estate for his two grandchildren, his former master claimed the right to inherit from him. His grandchildren claimed to inherit based on their blood relation to the deceased, while the former master claimed to inherit because of *walā'*. Kiroboto's two grandsons contested the latter, which rested on the Shariah law.⁽¹⁷²⁾ The *kadhi* supported and upheld the former master's right to inherit Kiroboto's estate. At the same time, the *kadhi* disqualified Kiroboto's grandsons from inheriting the estate of their grandfathers on

⁽¹⁶⁸⁾ Mitter, 'Unconditional manumission', 39.

⁽¹⁶⁹⁾ Ibid.

⁽¹⁷⁰⁾ Rumsey, *Moohummudan Law*, 164.

⁽¹⁷¹⁾ Acting Solicitor General, C.E. Law to S.H. Fazan District Commissioner of Lamu [Letter] (1922). *Correspondence relating to Estate of Juma Kiroboto—Deceased Probate and Administration Cause*, KNA/ no.102/1922/ Ref. Your No .P. &A. 102/22, Kenya National Archives; Abdulkadir, *Reforming and Retreating*, p.412.

⁽¹⁷²⁾ Ahmed bin Abdulla v Admin. Natives Estates (1925), 10 KLR. 136-139.

the grounds that they were still slaves.⁽¹⁷³⁾ This case illustrates the influence former masters were able to exert on the 'Arab Courts' where a decade and a half after the abolition of slavery on the coast of Kenya, a former master could claim the right to inherit from his former slave and the courts gave that right their stamp of approval.

Kiroboto's case created great interest among the colonial administrators, and a flurry of communication and exchange of opinions ensued between colonial administrators on the spot and colonial legal experts in the colonial administrative headquarters in Nairobi. In 1922, the acting Solicitor General, C.E. Law, wrote to the District Commissioner of Lamu regarding the estate of Kiroboto. In this letter, he raised three points. First, he pointed out that Ahmad bin Abdalla did not have a case because Islamic law made it very clear that a former master, as the emancipator, has the right to inherit only where a former deceased slave 'leaves no sharer or residuary by blood'.⁽¹⁷⁴⁾ Second, the commissioner pointed out that the provisions of 'Section 2 of the 1907 Ordinance' abolished all claims by Ahmad bin Abdallah to the right of inheriting from his former slave. Third, Mr. Law explained that under Section 2 of Ordinance 6 of 1909, all claims by former masters concerning 'property in possession of a slave' should have been settled before January 1, 1912,⁽¹⁷⁵⁾ and that any claims arising after that date would not be heard in a court of law. Mr. Law argued that Ahmad bin Abdalla could have successfully filed his case if he had done it before January 1, 1912, but after that date, no court could have entertained such a case.⁽¹⁷⁶⁾ He advised the District Commissioner of Lamu to file an appeal on behalf of Kiroboto's grandchildren and heirs.⁽¹⁷⁷⁾

⁽¹⁷³⁾ Acting Solicitor General, C.E. Law to S.H. Fazan District Commissioner of Lamu [Letter] (1922). *Correspondence relating to Estate of Juma Kiroboto—Deceased Probate and Administration Cause*, KNA/ no.102/1922/ Ref. Your No .P. &A. 102/22, Kenya National Archives.

⁽¹⁷⁴⁾ Ibid.

⁽¹⁷⁵⁾ L. Tooth, acting Solicitor General (1918) [Letter] Opinion relating to 'courts cannot entertain these claims of 'Compensation' after 1st January 1912', KNA/M/225/23, Kenya National Archives.

⁽¹⁷⁶⁾ C. C. Bowring, Acting Governor to L. Harcourt, *Secretary of the colonies*, 11th Mar. 1912, TNA CO 533/103/No. 18/12, The National Archives.

⁽¹⁷⁷⁾ Acting Solicitor General, C.E. Law to S.H. Fazan District Commissioner of Lamu [Letter] (1922). *Correspondence relating to Estate of Juma Kiroboto—Deceased Probate and Administration Cause*, KNA/ no.102/1922/ Ref. Your No .P. & A. 102/22, Kenya National Archives.

This case illustrates that the distance former masters would go to maintain and hang on to the privileges they had before the abolition of slavery. The *kadhis*, unlike British colonial officials, were members of the local elites; thus, they had a stake in the outcomes of the cases because they were closely linked to former slave masters. As Islamic judges and legitimisers of Islamic tenets, they enforced *shariah* law and transmitted Islamic scholarly traditions. In this capacity, the *kadhis* were able to give their stamp of approval to claims of existing hierarchies in society.⁽¹⁷⁸⁾

On April 4, 1923, the District Commissioner of Lamu, Ainsworth Dickson, wrote to the Chief Justice, seeking advice. In correspondence, Dickson wanted to know which laws the European Administrative Officer should follow if there was a disagreement between *shariah* law and English law. What laws should take precedence? The reason for this question, according to him, was due to 'perplexity, which arose from the case of Kiroboto. Dickson wrote that Kiroboto was freed by A. S. Rogers, former Sub-Commissioner of Tanaland, who was later appointed Prime Minister in the Government of His Highness the Sultan of Zanzibar.⁽¹⁷⁹⁾ According to Dickson, Ahmad bin Abdalla, the former master of Kiroboto, claimed to be an heir, '...on the grounds that the surviving grandchildren are slaves and are, therefore, under Mohamedan law precluded from doing 'so'.⁽¹⁸⁰⁾ In the letter, Dickson gave further elaboration of the *shariah*:

Under Mohamedan Law, although a child assumes the nationality of its father, it inherits the social status and disabilities of its mother. Moreover, a slave is considered to have no status or power to inherit, and under Mohamedan Law, the master of a deceased slave inherits any property he may leave, provided there is no close relation surviving who is a freeman.⁽¹⁸¹⁾

⁽¹⁷⁸⁾ Sikainga, 'Slavery and Muslim', 57-72.

⁽¹⁷⁹⁾ Mr. Rogers former Sub-Commissioner of Tanaland and later appointed Prime Minister of the Government of His Highness the Sultan of Zanzibar, in The Official Gazette of the East Africa and Uganda Protectorates, Vo. III-No.28, Mombasa, January 1, 1901, 310.

⁽¹⁸⁰⁾ A Dickson, District Commissioner Mombasa to Chief Justice J.W. Barth (1923) [Letter]. *Correspondence relating to Ahmad bin Abdalla vs Kiroboto case on inheritance from a former slave*, 4th April 1923, KNA/M/225/23, Kenya National Archives.

⁽¹⁸¹⁾ Ibid..

Therefore, according to Dickson, a child inherited 'the social status and disabilities' of its mother if she was a slave.⁽¹⁸²⁾ Amani and Umar's father, Hamadi, was a slave to Ahmad bin Abdalla, and he died before the abolition of slavery on the coast of Kenya. Their mother was probably a slave to Ahmad bin Abdalla, but unlike her husband, she survived long enough to be freed by Ordinance 7 of 1907.⁽¹⁸³⁾ Being supposedly children of slaves, Amani and Umar were considered slaves; consequently, they were not considered legitimate heirs in Islam.⁽¹⁸⁴⁾

Dickson, like all local colonial officials of European descent, relied on the advice of Arab Officers or sometimes used English law where they thought it was appropriate. In this case, they felt the need for judicial guidance in dealing with such cases in the future.⁽¹⁸⁵⁾ As mentioned earlier, local traditions implied that a manumitted slave or a freed slave was not completely free. The ties to the former master were not completely severed. Thus, to the *kadhis*, the abolition of slavery was seen as something akin to the Islamic manumission. Even when the slaves were free, the *kadhis* still regarded them as belonging to their former master. The latter were considered guardians and protectors of the former slaves. Hence, the former slaves were still seen by the *kadhis* as dependents of their former owners, and in essence were still servile, whereas abolition in the eyes of colonial officials was seen as an act that severed all ties to their former status as slaves.⁽¹⁸⁶⁾

On 14 September 1923, the Lamu District Commissioner, S.H. Fazan, wrote in support of the grandsons of Kiroboto. In the letter, he complained about the conflicting advice on the case. He complained that:

⁽¹⁸²⁾ Ibid.

⁽¹⁸³⁾ C.E. Law, AG. Solicitor General, to S.H. Fazan, The District Commissioner of Lamu (1924) [Letter]. *Correspondence relating to Estate of Juma Kiroboto* dated 13th February 1924, KNA/N./224/24, Kenya National Archives.

⁽¹⁸⁴⁾ A Dickson, District Commissioner Mombasa to Chief Justice J.W. Barth (1923) [Letter]. *Correspondence relating to Ahmad bin Abdalla vs Kiroboto case on inheritance from a former slave*, 4th April 1923, KNA/M/225/23, Kenya National Archives.

⁽¹⁸⁵⁾ Ibid.

⁽¹⁸⁶⁾ Shaham, 'Masters, Their Freed Slaves', 162-188; Abdulkadir, *Reforming and Retreating*, 413; Hamel, 'Race', slavery and Islam, ' 35; Toledano, 'Representing the Slave's Body', 66-67.

The Court has been advised in one sense by the Kathi of Lamu and the opposite by the Solicitor General. I consider the correct procedure to follow the advice of the Solicitor General, and therefore find *Natural Heirs*. However, I order that for a period of two months, their shares shall remain on a simple deposit. This gives the wronged party an opportunity to institute civil proceedings if he desires to do so. He should be advised accordingly.⁽¹⁸⁷⁾

As noted above, Fazan followed the advice of the Solicitor General and found natural heirs. However, at the same time, he allowed a plaintive opportunity to sue for his rights. This clearly counters the narrative that 'the colonizers occupied Muslim lands, dislodged native laws, and replaced them with European 'ones'.⁽¹⁸⁸⁾ Colonial officials had to walk a tight rope hoping, on the one hand, not to offend their Muslim subjects,⁽¹⁸⁹⁾ and on the other, trying to uphold British law. Nevertheless, Fazan played an active role in helping Kiroboto's grandson. At one time, he directed them to send a letter to the Senior Coast Commissioner in Mombasa, instead of sending it to the Governor and the *Liwali*, Sheikh Ali bin Salim,⁽¹⁹⁰⁾ as they initially intended to do.⁽¹⁹¹⁾

In a letter from C.E. Law, Solicitor General to the District Commissioner of Lamu, through the Senior Coast Commissioner in Mombasa, he explained that the abolition of slavery had also abolished master and slave relations. Mr. Law stated:

Under Ordinance 7 of 1907, the legal status of slavery was abolished as and from the 1st of October 1907, and all claims with respect to the alleged relations between Master and Slave became cognizable by a special court. Claims for rights based on slavery were excluded by

⁽¹⁸⁷⁾ Correspondence from Mr. S.H. Fazan, Lamu District Commissioner to G.H. Osborne, Senior Commissioner, Coast, regarding Estates of Heiress Slaves dated 14th September 1923.

⁽¹⁸⁸⁾ Moosa 'Colonialism', 158-181.

⁽¹⁸⁹⁾ H. Sandler, the Governor of the East Africa Protectorate to R. Crewe-Milnes, Secretary of State for the Colonies [Telegram] (1908). Telegram discusses how colonial officials try not to offend their Muslim subjects, 10th Sept. 1908, TNA 533/47, The National Archives.

⁽¹⁹⁰⁾ KNA/AP/1/1601, Sheikh Ali bin Salim, 1929; KNA/PC/1/223, Sheikh Ali bin Salim, 1915-1920; KNA/AP/1/210, 1904.

⁽¹⁹¹⁾ Estate of Juma Kiroboto—Deceased Probate and Administration Cause no.102 of 1922 Ref. Your No. P. & A. 102/22 of the 4th inst., KNA/S/15114/9/9, Kenya National Archives.

that Ordinance, though claims for vested rights-other than rights over property-[emphasis is in the original] were allowed to be compensated through such a court.⁽¹⁹²⁾

According to the Solicitor General, the above-mentioned claims could not be made because of the amendments to the law that came under Ordinance 6 of 1909, whereby 'no claims as aforementioned could be entertained after the 1st January'. 1, 1912'.⁽¹⁹³⁾ In his opinion, it was difficult to understand how the former master could claim to have the right to inherit from Kiroboto while the two above-mentioned ordinances were in use.⁽¹⁹⁴⁾ He felt that the case could be a good test case, where the outcome could in his words be 'communicated to all Coast Stations as a 'Circular'.⁽¹⁹⁵⁾

In a correspondence from the acting coastal Senior Commissioner, G. K. Osborne, to District Commissioner of the coastal region, he attached legal opinions made by both the Acting Solicitor General, Lawrence Tooth, and the Attorney General, J.W. Barth. In their opinion, both concurred that *shariah* law had been correctly applied by'smu the *kadhi*.⁽¹⁹⁶⁾ According to Mr. Tooth, the case of Kiroboto's former master is based on Section 2 of the Legal Status of Slavery Abolition Ordinance of 1907 and Ordinance 6 of 1909. Both these two statutory laws are not connected to the case because Mr. Tooth argued that the word 'alleged' relationship of Master and Slave' only deals with slaves who were freed by the Ordinance of 1907. The tooth further stated the following:

The Plaintiff's claim is entirely different; it is not a claim with respect to the 'alleged' relationship of master and slave. The deceased was 'freed' 30 years ago, and the Plaintiff's claim

⁽¹⁹²⁾ C.E. Law, AG. Solicitor General to S.H. Fazan, The District Commissioner of Lamu (1923) [Letter]. *Correspondence relating to Former master's claims of right to inherit from their former slaves, 21st August 1923*, KNA/M./228/23, Kenya National Archives.

⁽¹⁹³⁾ Ibid.

⁽¹⁹⁴⁾ Ibid.

⁽¹⁹⁵⁾ Ibid.

⁽¹⁹⁶⁾ Circular from acting Senior Commissioner Coast, G. K. Osborne to District Commissioner's on the coastal region. 14th December 1923 (No.1537/25). Enclosed also Opinions by Acting Solicitor General Lawrence Tooth and The Attorney General J. W. Barth, dated 25 September 1918 and 5 July 1919, respectively.

arose out of that relationship thereby created and not out of the relationship abolished by the Ordinance, and is not in respect of the 'alleged' relationship of Master and Slave.⁽¹⁹⁷⁾

According to the Circular, the deceased were freed long before the abolition of slavery, with the result that the relationship between Kiroboto and his former master preceded the abolition of slavery.⁽¹⁹⁸⁾ Barth agrees with Mr. Tooth. He argued that 'the Ordinance does not deal with the question of a slave freed before the enactment of the Ordinance of 1907 by his master or with the master's rights of inheritance under Mohamedan 'law'.⁽¹⁹⁹⁾ Regarding section 2 of the amending Ordinance, 1909, Tooth believed that the plaintiff had no case, because under the above ordinance, no claim could be made in court '... unless made before 1st January'. 1, 1912'.⁽²⁰⁰⁾ Mr. Tooth suggested that an amendment to the above ordinance should be made 'so as to prevent any claim, not only with respect to the relationship of Master and Slave abolished by the 1907 Ordinance, but also any claims arising out of the relationship of Master and 'Freedman'.⁽²⁰¹⁾ Barth, on the other hand, opposed the amendment suggested by Mr. Tooth, for, according to him, it was '...undesirable to alter the Mohamedan law of inheritance in His Highness the Sultan's dominions in the manner desired by the Provincial Commissioner, 'Lamu'. To Barth, *shariah* law superseded British law when it came to the coastal dominance of the Sultan of Zanzibar.⁽²⁰²⁾ It is clear from Barth's statement that the 'British legal and political systems both had to accommodate Muslim law...'⁽²⁰³⁾

On December 8, 1923, the Chief Native Commissioner John Ainsworth wrote to the Senior Commissioner of the Coast, G. K. Osborne. He enclosed opinions by the then-Acting Solicitor General, Tooth, regarding the judgement delivered by the *Kadhi* of Lamu on the estate of Kiroboto. As understood by Mr. Tooth, it was not the case 'that the Sheria is wrongly inter-

⁽¹⁹⁷⁾ Ibid.

⁽¹⁹⁸⁾ Ibid.

⁽¹⁹⁹⁾ Ibid.

⁽²⁰⁰⁾ Ibid.

⁽²⁰¹⁾ Ibid.

⁽²⁰²⁾ Ibid. Enclosed also Opinions by Acting Solicitor General Lawrence Tooth and The Attorney General J. W. Barth.

⁽²⁰³⁾ Moosa, 'Colonialism', 159. .

puted or that the facts are not as 'found'.⁽²⁰⁴⁾ According to Tooth, the *Kadhi's* judgement was not according to '... Section 2 of the Legal Status of Slavery Abolition Ordinance, 1907, ' which had nullified all claims by former masters of having rights over their former slaves.⁽²⁰⁵⁾ Therefore, the acting Solicitor General argues that any 'alleged' claims must or should have been brought to court immediately after the enactment of the laws abolishing the legal status of slavery.⁽²⁰⁶⁾ In essence, Mr. Tooth divided the former slaves into two groups: those manumitted or freed before the enactment of the Abolition of Slavery Ordinance 1907 and those freed afterwards. It is clear that former masters were permitted to continue with master-slave relationships as long as the slave was manumitted prior to the abolition ordinance.⁽²⁰⁷⁾

Kiroboto's grandsons appealed to the Supreme Court of Kenya, the case being presided over by Chief-Justice J. W. Barth and acting Judge Eric T. Johnson. The plaintiff Ahmad bin Abdalla did not appear in court. Barth delivered the court's rule on its behalf. In his ruling, he declared the grandsons to be the legitimate heirs of Juma Kiroboto.⁽²⁰⁸⁾ Kiroboto's former master, Ahmad bin Abdalla, appealed to the Supreme Court's decision that favored Kiroboto's grandchildren. In his appeal, he cited that the Supreme Court was not properly constituted, for usually in cases involving the *shariah*, a kadhi is present in court as an assessor, as stipulated by section 22 of the Courts Ordinance of 1907.⁽²⁰⁹⁾ The appeal was granted, and the case was heard by the Court of Appeals for Eastern Africa, with Chief Justice T.S. Tomlinson (Zanzibar), Chief Justice W. A. Russell (Tanganyika), and Justice Haythorne Reed (Tanganyika). According to the justices, the court had to deal with two issues.

1. Are the grandsons entitled to inherit?

⁽²⁰⁴⁾ Correspondence from Chief Native Commissioner John Ainsworth to the Actg. Senior Commissioner Coast, G. K. Osborne dated 8th December 1923 with copy of Opinion of Actg. Solicitor General, Mr. Lawrence Tooth, dated the 25th of September, 1918, and of Opinion of Attorney-general (Sir J. Barth) dated the 5.7.19. S.1089/11 & S-403-447

⁽²⁰⁵⁾ Ibid.

⁽²⁰⁶⁾ Ibid.

⁽²⁰⁷⁾ Ibid. 7

⁽²⁰⁸⁾ Ahmed bin Abdulla v. Admin. Of Native Estates (1925), 10 K.L.R. 136-137.

⁽²⁰⁹⁾ Ibid., 136-138.

2. If not, is the appellant entitled?

The court found Kiroboto grandsons to be entitled to inherit and not his former master. In his ruling, Chief Justice Tomlinson instructed that the ruling of the *kadhi* 'should be discharged, ' and he declared in favor of the grandsons.⁽²¹⁰⁾ Chief Justice Russell also found for the defendants and asked that the *kadhi* court's decision be 'set aside ab initio, ' and Justice Reed came to the same decisions.⁽²¹¹⁾ Therefore, all three justices unanimously found the *kadhi* court wrong in making the former master of Kiroboto the sole heir of his estate. Not all former slaves were able to challenge their masters in colonial courts, and many faced obstacles to challenge their former masters. Some of them could not do so because they did not have a representation. Others could not afford to pay court expenses or did not live near the court. However, others were ignorant of the law. Finally, some former slaves died without heirs, an issue that is addressed next.

5.8. Estate of Heirless Former Slaves

In 1923, the Senior Commissioner Coast, G.K Osborne, wrote to Ali bin Salim, the *Liwali* of the Coast, and discussed how best to dispose of with 'Estates of Heirless 'Slaves'.⁽²¹²⁾ Osborne explained that the issue of property left by the passing of former slaves will become more conspicuous as the aging population increasingly dies.⁽²¹³⁾ He wanted to know from *Liwali*, Sultan of Zanzibar's representative of the coast of Kenya, if *shariah* law or British law took precedence when settling inheritance disputes regarding heirless former slaves. Under the *shariah*, Osborne stated, 'the property of the ex-slave who dies heirless becomes the property of ex-master the property of a free man dying heirless is distributed amongst poorer neighbors if there is no 'Imam'.⁽²¹⁴⁾ Under British law, Osborne explained:

⁽²¹⁰⁾ Ibid., 138.

⁽²¹¹⁾ Ibid., 139.

⁽²¹²⁾ Letter from acting Senior Commissioner, Coast, G.K Osborne to the Ali bin Salim, the *Liwali* of the Coast, 21 November 1923 (No.1537/19).

⁽²¹³⁾ Ibid.

⁽²¹⁴⁾ Ibid.

The Abolition of slavery Ordinance does not deal with this point specifically.

However, it makes a free man of the ex-slave and releases him from obligation to his ex-master, and thereby theoretically includes his property and the disposal thereof, which should be at his free disposal and presumably is at his disposal so far as his heirs can and do inherit.⁽²¹⁵⁾

Osborne proposed that the property left by a deceased former slave should automatically become an Islamic charitable trust (*wakf*) and that the property should be administered by the *wakf* commissioners.⁽²¹⁶⁾ *Wakf*, as described by Tim Carmichael, is an Islamic Trust. It allowed land and property to be given in perpetuity for either pious works or public goods.⁽²¹⁷⁾ *Wakf*, according to him, was used to fund mosques, religious schools, and help the poor.⁽²¹⁸⁾

Osborne suggested that property belonging to heirless ex-slaves should be used for the benefit of the poor, who, in the case of Mombasa at that time, were former slaves.⁽²¹⁹⁾ In another correspondence from Osborne to the District Commissioner of Malindi titled 'Heirless Slaves,' he discussed the opinion of the Attorney General regarding former masters inherited from former slaves. He stated:

In view of the opinion of the Attorney General, it appears to me that the 1907 Ordinance may be taken as not applying to the estates of slaves, whether freed before or after the Ordinance 1907 came into force, and that such estates follow the Sheria as if the 1907 Ordinance had never been passed.⁽²²⁰⁾

⁽²¹⁵⁾ Ibid.

⁽²¹⁶⁾ Ibid.

⁽²¹⁷⁾ T. Carmichael, 'British 'practice' towards Islam in the East Africa protectorate: Muslim officials, Waqf administration, and secular education in Mombasa and environs, 1895–1920', *Journal of Muslim Minority Affairs*, 17, 2 (1997), 293-309.

⁽²¹⁸⁾ Ibid., 299.

⁽²¹⁹⁾ Letter from acting Senior Commissioner, Coast, G.K Osborne to the Ali bin Salim, the Liwali of the Coast, 21 November 1923(No.1537/19).

⁽²²⁰⁾ Letter from acting Senior Commissioner, Coast, G.K Osborne to the District Commissioner Malindi, 23rd January, 1924, Your 528/1/17 of December 20th (No.1537/27).

Osborne's opinion clearly shows his frustration with the attitudes of the *kadhis* towards former slaves and his frustration with the opinion of the Attorney General on the issue of former masters inherited from their former slaves. The Attorney General seems to have lumped all former slaves together: those who were manumitted before the 1907 Ordinance, and those freed after the Ordinance of 1907. As a result, the Attorney General's opinion that *shariah* law had precedence and should be followed when dealing with inheriting estates left by deceased former slaves reinforced and gave legitimacy to former masters' demands at the expense of descendants of former slaves.

The Attorney General's opinion and the intransigent attitudes of the *kadhis* did not deter former slaves from using their limited freedom to demand their rights. They resorted to different strategies to protect their properties and the properties of their kin. This strategy was used to pre-empt any predatory actions by former masters to use *shariah* law to strip the rights of former slaves, those with heirs, and those without heirs, from passing their property to their legitimate heirs or even other former slaves.⁽²²¹⁾ For example, there have been reported cases of former slaves trying to be inherited from other former slaves. In an exchange of communications with the *Liwali* of the coast, Ali bin Salim, Osborne reported that he had received a letter from the *Liwali*, which stated 'that the ex-slaves have no claim on an ex-slave's estate if he dies 'childless'.⁽²²²⁾ In a letter from the acting Solicitor General, C.E. Law, to the acting District Commissioner of Malindi regarding land left by a deceased former slave named only Nahoda, Law stated:

I can trace no authority to the principle that ex-slaves can inherit from each other. Under Mohamedan Law, a slave cannot acquire property. Therefore, it is difficult to understand how inheritance is claimed. I would conjunct that the land referred to was acquired by Nahoda after he became freedman.⁽²²³⁾

⁽²²¹⁾McMahon, 'Slave Wills', 751; McMahon, 'Networked Family', 926.

⁽²²²⁾ Letter from acting Senior Commissioner, Coast, G.K Osborne the District Commissioner Malindi Ref: Your No.528/1/17 of 20.11.23 (No.1557/30).

⁽²²³⁾ Letter from the Acting Solicitor-General C.E. Law to the Acting District Commissioner of Malindi, Ref. Your No.86/9/9 of 14th Instant. 27th February 1924 (No. S. 279/24).

The above letter clearly illustrates that former slaves were trying to circumvent *shariah* law so as to avoid their hard-earned property falling into the hands of their former masters and descendants. They would rather fellow former slaves inheriting their property if no heirs existed.

5.9. Conclusion

This chapter examines how former slaves who were emancipated by the abolition of slavery and those manumitted before 1907 faced an uphill battle to control their property. The case involving Kiroboto's grandchildren clearly captured this struggle. It highlights the power of the former master over their former slaves and also sheds light on how the *kadhis* sided with the former masters in upholding the tradition of *walā'*, which gave legitimacy to those seeking to take control through the inheritance of the property of their former slaves, thereby excluding blood-related and others seen by the colonial authorities as legitimate heirs.

The following chapter further explores the status of ex-slaves after 1907 by focusing on the doctrine and practice of *kafā'ah* or equal social status in Muslim marriages. It will highlight how this doctrine was used to create social boundaries for former slaves, and how it was used to impede former slaves in their quest to marry and create family.

Chapter 6

British Indirect Rule on the Coast of Kenya

This chapter examines how indirect rule allowed the Swahili and Arab elites to hang on to their privileged positions long after the establishment of colonial rule on Mombasa and the rest of the Kenyan coast. It examines how Islamic scholars, most of whom are members of elite groups with connections to the slave-owning class, used Islamic law to entrench their privileges, and at the same time used Islamic courts to curb the gains of former slaves.⁽¹⁾ It also shows that British colonial rule introduced a racial paradigm that imposed a racial-cum-class social structure on the coast of Kenya, where Arab and Swahili elites occupied a privileged position on the hierarchical ladder, and the former slaves occupied the bottom.⁽²⁾ In many slave-owning societies where slavery was dismantled, the beliefs and norms that supported it often lingered long after its demise. For the most part, the abolition of the status of slavery and the ushering in of a 'new' colonial regime was to the former slaves merely 'old wine in new bottles': colonialism not only reinforced the privileges of the former masters but allowed the pernicious cycle to persist long after slavery.⁽³⁾ This chapter examines the extent to which

⁽¹⁾ Sikainga, 'Slavery and Muslim', 57.

⁽²⁾ A. Sheriff, 'Race and Class in the Politics of Zanzibar', *Africa Spectrum* (2001), 301-318.

⁽³⁾ M. Ruef & Ben Fletcher, 'Legacies of American slavery: Status attainment among southern blacks after emancipation', *Social Forces*, 82, 2 (2003), 445-480.

slavery continued to influence the social status of former slaves after the abolition of slavery in Mombasa. Martin Ruef and Ben Fletcher define institutional legacy as ‘the reproduction of material resources and cultural conditions from a social institution despite the fact that the institution has been formally dismantled’.⁽⁴⁾ In the case of Mombasa, former slaves continued to bear the burden of slavery long after the demise of the institution because the socio-economic status present in colonialism was not very different from the old institution of slavery, because inequality was present in the latter; it was without a doubt present in the former.⁽⁵⁾ After the abolition of slavery, most of the former slaves in Mombasa, for instance, were lacking resources and by virtue of necessity, drifted back to their former occupations; they were mostly employed in the same domestic settings as maids, servants, and labourers.⁽⁶⁾

6.1. British and Dual Mandate in Mombasa: Colonial Laws

In the late nineteenth and early twentieth centuries, Britain, using minimal power, asserted juridical and political control over East Africa. They used local elites to help govern their vast empires. Scholars have agreed that colonialism was not the sweeping force that many have said it was; instead, it was more of a selective process where British colonial officials chose what they wanted to keep. The British established indirect rule in Zanzibar, Nigeria, and India in the late nineteenth century. In Africa, they strategically established indirect rules in predominantly Muslim areas. In fact, whenever the British came across an established Islamic system of government, they used indirect rule. For example, in Zanzibar, as in northern Nigeria, the local inhabitants of the East African coast used *shariah* as the law of the land. Therefore, the British used indirect rule; thus, utilizing the existing Muslim governing system, they allowed the existing administration to continue instead of replacing it with British officials and laws.⁽⁷⁾ Thus, British colonial officials showed a mark of respect and deference towards

⁽⁴⁾ Ibid., 447.

⁽⁵⁾ Ibid.

⁽⁶⁾ Ibid.

⁽⁷⁾ J. Reynolds, ‘Good and Bad Muslims: Islam and Indirect Rule in Northern Nigeria’, *The International Journal of African Historical Studies*, 34, 3 (2001), 601-618.

areas governed by Muslims.⁽⁸⁾ Officially, J. Reynolds explained that British colonial administrators maintained a facade of even-handedness. It never interfered with religious beliefs, as long as they did not threaten the peace and 'good order' of the colony.⁽⁹⁾ The British policy of 'non-interference' with Islam helped legitimize their rule, creating an indirect rule that 'served' the British and their subjects. '⁽¹⁰⁾ The British maintained their rule by publicly acting neutrally towards Muslim elites and rulers; for the most part, they supported those in power and repressed those who threatened the status quo.⁽¹¹⁾ When establishing indirect rule, the British made sure to accommodate the wishes of the elites. Scholars debate the reality of indirect British rule in East Africa. However, the British used indirect rule with caution; they did not want Arabs and Swahilis to rebel against them. Throughout the empire, the British exercised power by adapting to the contours of pre-colonial political systems, including law. The result was that, in many of its structural features, as well as its substantive policies, the colonial state sustained what was essentially a pre-colonial political system. Although lacking military and financial power, the edifice of the Sultan of Zanzibar provided a source of de jure authority throughout the colonial period.⁽¹²⁾ Omani administrative ranks, honors, rituals, and terminology persisted in a muted, although significant, form even after they had declared a protectorate over the Sultan's mainland dominions.⁽¹³⁾ There was in many ways continuity between the *ancien régime* and the new colonial rule, although the British brought a host of entirely new political institutions that allowed indigenous mechanisms to be adapted to colonial purposes, and these were incorporated within the new institutional fora.⁽¹⁴⁾ To do so, the British retained the *shariah* and other local traditions to maintain their rule.

⁽⁸⁾ Ibid., 601.

⁽⁹⁾ Ibid.

⁽¹⁰⁾ Ibid., 604-605.

⁽¹¹⁾ Ibid., 601.

⁽¹²⁾ M. R. Anderson, 'Islamic Law and the colonial Encounter in British India', in D. Arnold and P. Robb (eds.), *Institutions and Ideologies – A SOAS South Asia Reader, Collected Papers on South Asia* (Richmond: Curzon Press, 1993), 5.

⁽¹³⁾ Ibid.

⁽¹⁴⁾ Ibid.

Regarding the abolition of slavery, colonial officials always accommodated the wishes of the elites in both Zanzibar and its mainland dominion. Kristopher Radford's *Exalted Order*⁽¹⁵⁾ attests to this point. He tells us that colonial officials in Zanzibar advised Foreign Office officials to ensure that Muslim sentiments should not be offended when putting together anti-slavery policies, especially ensuring that the *shariah* was respected.⁽¹⁶⁾ Richard D. Wolff has argued that after ending the slave trade, Britain's *coup de grace* came to fruition when it replaced the economic and political hegemony of both the Sultan of Zanzibar and the Arab-Swahili aristocracy. Wolff says that the Sultan, caught between his aristocratic pro-slavery base and the anti-slavery British, sided with the British: Consequently, neither the British nor the Sultan were able to abolish the institution of slavery.⁽¹⁷⁾ For the most part, the British government took the recommendations of the Arab and Swahilis onboard, making the task of ending slavery a long-drawn and tedious process that took years to untangle. For example, according to Radford, the Bureaux of Manumission took years to establish, long after the initial official request. As a gradualist, the British Consul General, Charles Euan-Smith, felt that there was improvement on the 'question of slavery'; most importantly, he saw the freeing of offspring of slaves as a step towards abolition of slavery. To him, these concessions by the Sultan of Zanzibar were good grounds for hope that the legal status of slavery in Zanzibar and its mainland possessions would end one day. In effect, Euan-Smith saw the decree of 1890 as a further step towards full abolition; to him, it was imperative that slow and measured steps were taken so as not to upset the social, economic, and political balance of the sultanate.⁽¹⁸⁾ However, this gradual process prolonged the ending of slavery and hindered people of slave ancestry in gaining freedom, and in effect, it created the 'slow death of slavery'.⁽¹⁹⁾ European colonial-

⁽¹⁵⁾ K. Radford, *Exalted Order: Muslim Princes and the British Empire 1874-1906*, PhD Thesis (York University, 2013).

⁽¹⁶⁾ Radford, *Exalted Order*, 284.

⁽¹⁷⁾ R. D. Wolff, "British Imperialism and the East African Slave Trade," *Science & Society*, 36, 4 (1972), 443-62.

⁽¹⁸⁾ G. Portal, Her Majesty's Agent and Consul-General to Her Majesty's Principal Secretary of State for Foreign Affairs (1889) [Telegram]. *Correspondence relating to dangers of sudden and complete abolition of slavery on the mainland possession of the Sultan of Zanzibar*, 23 Aug. 1889, TNA FO 84/1985/Tel. No. 224/89, The National Archives..

⁽¹⁹⁾ E.W. Brooks to E.G. Petty- Fitzmaurice (1907) [Letter]. Correspondence discussing Anti-Slavery Committee of the Society's concern of the continuation of Slavery in Pemba and Zanzibar, 30 Jun. 1907, TNA CO 533/35/

ists, the Germans in Cameroon, for example, saw slavery as 'no great evil' and believed that in time, it would end by itself.⁽²⁰⁾ Similar to their counterparts in West Africa, the British in East Africa perceived slavery as a dying institution.⁽²¹⁾ In the predominantly Muslim region of Cameroon, especially the Adamawa region, Germans paid little or no attention to slavery. In his memoirs, Governor von Puttkamer advised the German administrator not to interfere with the 'extremely mild domestic slavery'; thus, slavery was allowed to continue unhindered. Most European colonial officials believed slavery in Muslim regions was not cruel, that it was a kind of 'serfdom' and the only cruel aspect of it was the slave raiding. The colonial officials believed that if a slave was set free, he would regret his manumission!'.⁽²²⁾ The major reason for this position by colonial officials was a fear that immediate abolition would lead to resistance, thus undermining British authority, and that any intervention would lead to direct rule, which was to them a costly affair. For the most part, European colonialists were reluctant to abolish slavery or ignored it, and the slow death of slavery across continents came about mainly as a result of changing economic and political conditions.⁽²³⁾

The concept of 'the steel frame, ' 'iron rule' or even 'an administrative straitjacket, ' is a recurring theme in literature dealing with colonial East Africa. However, this imagery of ubiquitous colonial administration has rarely been supported by evidence.⁽²⁴⁾ Scholars such as Mahmood Mamdani, Jean, and John Comaroff have argued that colonialism did not destroy local institutions, but reified them. Similarly, they did not dislodge local elites but strate-

No. 21842/07, The National Archives; W. Langley, Under Secretary of State, Colonial Office to Under Secretary of State, Colonial Office (1907) [Letter]. *Correspondence Discussing existence of Slavery in Zanzibar and Pemba, 18 Jul. 1907*, TNA CO 533/35, No. 21842/07, The National Archives; Lovejoy and Hogendorn, *Slow Death for Slavery*, 99.

⁽²⁰⁾ A. Eckert, 'Slavery in colonial Cameroon, 1880s to 1930s', *Slavery and Abolition*, 19, 2 (1998), 133-148.

⁽²¹⁾ T. Buxton, Secretary, British and Foreign Anti-Slavery Society to Foreign Office (1905) [Letter]. *Correspondence contained an extract from the "Anti-Slavery Reporter" of January -February 1905, titled Slavery in Zanzibar and Pemba, Parliamentary Paper, "Africa No.14 (1904)"*, TNA FO 367/Conf.23682/24/2/05, The National Archives.

⁽²²⁾ *Ibid.*, 141.

⁽²³⁾ *Ibid.*, 144.

⁽²⁴⁾ Kirk-Greene, 'The Thin White Line-The Size of the British Colonial Service in Africa', *African Affairs*, 79, 314 (1980), 25-44.

gically redeployed them in the new colonial bureaucratic structure.⁽²⁵⁾ Although scholars have claimed that British colonialism devastated the Arab-Swahili elites, while they might have been defeated, they were unvanquished.⁽²⁶⁾ Those writing on Zanzibar and its mainland dominions have perpetuated the myth of British dominance over the less powerful Sultanate.⁽²⁷⁾ However, the British lacked the transformative efficacy to ideologically dominate local elites, and in some cases, Arab-Swahili elites often disassembled colonial rules, thus undermining the colonial project.⁽²⁸⁾ Elites in Mombasa, as elsewhere, contested the restructuring brought about by the colonial government. Such examples debunk the narrative that colonialism was a one-way process in which powerful European powers dominated a weak Omani administration.⁽²⁹⁾ To understand the relationship between the colonized and the colonizer, one must examine the external and internal forces acting on them. Even the Omani Sultanate was unable to completely incorporate all Arabs and Swahilis into its political system. According to G.A. Akinola, the Omani Sultanate achieved only limited political integration because of social stratification and failed to dislodge local political entities completely.⁽³⁰⁾

One of the seminal works that tackled the issue of British colonial strategy or lack thereof is the classical 1981 work by imperial historians Ronald Robinson and John Gallagher, *Africa and the Victorians: The Official Mind of Imperialism*.⁽³¹⁾ Also, in an earlier article written in 1953 by two scholars, titled 'Imperialism of Free Trade,' they explained that the British used a variety of strategies and techniques, using both 'commercial penetration and political influence' to extend their influence in East Africa.⁽³²⁾ According to them, the British exercised both

⁽²⁵⁾ I. R. Hussin, *The Politics of Islamic Law: Local Elites, Colonial Authority, and the Making of the Muslim State* (University of Chicago Press, 2016), 10.

⁽²⁶⁾ Daniel, 'The Metamorphosis of Slavery', 88.

⁽²⁷⁾ Constantin, 'Social Stratification', 151.

⁽²⁸⁾ F. Cooper, 'Conflict and Connection: Rethinking Colonial African History', *The American Historical Review*, 99, 5 (1994), 1516-1545.

⁽²⁹⁾ S. Raychaudhuri, 'Colonialism, Indigenous Elites and the Transformation of Cities in the Non-Western World: Ahmedabad (Western India), 1890-1947', *Modern Asian Studies*, 35, 3 (2001), 677-726.

⁽³⁰⁾ G.A. Akinola, *The Sultanate of Zanzibar, 1870-1890*, PhD thesis (University of Ibadan, 1971).

⁽³¹⁾ R. Robinson and J. Gallagher, (with A. Denny) *Africa and the Victorians: The Official Mind of Imperialism* (Macmillan, London, 1981).

⁽³²⁾ J. Gallagher & R. Robinson, "The Imperialism of Free Trade," *The Economic History Review*, New Series, 6, 1 (1953), 1-15.

informal and formal rules depending on the situation on the ground. Robinson and Gallagher's thesis on the 'official mind' of British colonial administrators has had a profound influence on scholarly work on colonial rule. Their work on the 'official mind' of British imperialism affected a paradigm shift in academic writing in the Empire.⁽³³⁾ In the case of Zanzibar, the British, through Sir John Kirk, the British Consul General in Zanzibar, was able to convince the sultan to place his military and administrative bureaucracy at their disposal.⁽³⁴⁾ The establishment of the British Protectorate on the coast of Kenya in 1895 brought political and economic changes to the Arab-Swahili elites. Margaret Strobel and others have depicted the establishment of European colonialism on the coast of Kenya as catastrophic for Arab elites on the coastal strip.⁽³⁵⁾ Strobel, for example, maintained that British colonialism undermined Arab elites' control in Mombasa. In one breath, she states that 'the process of colonialism—transferred control and influence from the Muslim elite to British administrators,' but, in the next, she states that, '[t]hough offices changed hands, the same class of men sat as judges, religious teachers, and administrators'.⁽³⁶⁾ The idea that the Arab and Swahili elites lost their political and cultural hegemony during the colonial period was highly exaggerated. There is no doubt that 'Arab elites faced challenges to their prestige, reproduction, and rule as a dominant group'; nevertheless, the idea that British colonialism 'transformed the epistemological prestige of Islam' is highly overstated.⁽³⁷⁾ The changes were not as drastic as historians of the Swahili coast have portrayed. The reality is that the British accommodated the traditional Arab administration. The colonial government favored the Arabs, or Omani Arabs to be precise, over other groups; for example, the Swahili Twelve Tribe of Mombasa, because they were non-Arab and were overlooked completely by the colonial administration. This divide-and-rule strategy by the British created animosity between Arabs and Africans, which contin-

⁽³³⁾ T. Ballantyne, 'Colonial knowledge', in S. Stockwell (ed.) *The British empire: Themes and Perspectives* (Malden, MA: Blackwell, 2008), 177-198.

⁽³⁴⁾ Gallagher & Robinson, "The Imperialism', 11-1; O. C. Adyanga, *Modes of British imperial control of Africa: A case study of Uganda, C. 1890-1990* (Newcastle: Cambridge Scholars Publishing, 2011).

⁽³⁵⁾ Strobel, *Muslim Women*, 34.

⁽³⁶⁾ Ibid.

⁽³⁷⁾ Mathews, 'Imagining Arab Communities', 135-163.

ued throughout the colonial period and spilled into postcolonial East Africa, with the ugliest manifestation occurring during the 1964 revolution in Zanzibar.⁽³⁸⁾

This examines the work of the British colonial state as it passed through the hands of Mombasa elites, chosen as middlemen in the colonial administration, whose value lay in their undisputed local knowledge, and whose position as 'in between' required them to perform crucial work between British and local communities. The work of these actors disputed the idea that colonial authorities effortlessly imposed their domination on local communities. Therefore, the colonial project was not a top-down system of authority where orders from the motherland were strictly imposed on the colonized, but it was a process conditioned and altered from within the societies by which it ruled and by the actors upon which its rule depended.⁽³⁹⁾ This chapter discusses how the British worked with the Arab and Swahili elites to subjugate former slaves. By looking at the administrative practices when it came to the Muslim elites on the coast of Kenya, this section discusses how colonial officials worked hand-in-glove with the local elites and thereby helped in the subjugation of the former slaves. Among the casualties of the ordinance abolishing slavery were slave women; their exclusion from the ordinance appeased and pacified the Arab and Swahili communities from rebelling.⁽⁴⁰⁾ British colonial officials took pain to reassure the Arab and Swahili elites in Mombasa that the colonial government respected their religion and preserved their local customs. Colonial desires were not the same as anti-slavery attitudes in Britain.⁽⁴¹⁾

In the beginning, Arabs and Swahilis saw the abolition of slavery as a way of undermining their economic and political powers. According to Salim, former slave owners saw the abolition of slavery as a 'levelling down,' whereby they were economically undermined. At the same time, they believed that the process was not a 'levelling up' of former slaves, meaning

⁽³⁸⁾ A.I. Salim, 'The movement for 'mwambao' Or Coast Autonomy in Kenya, 1956-1963', in B.A. Ogot (ed) *Hadith Volume 2* (Nairobi, 1973).

⁽³⁹⁾ I. Hussin, 'Making Legibility between Colony and Empire: Translation, Conflation and the Making of the Muslim State', in M. J. Kimberly and A. S. Orloff, *The Many Hands of the State: Theorizing Political Authority and Social Control* (Cambridge: Cambridge University Press, 2017), 350.

⁽⁴⁰⁾ Salim, *Swahili Speaking*, 109-111.

⁽⁴¹⁾ Nussbaum, 'Slavery, blackness and Islam', 154.

that neither the former masters nor the former slaves benefited from the process of emancipation.⁽⁴²⁾ However, Strobel claims that the abolition of slavery leading to a downturn in the economic well-being of elites in Mombasa is inaccurate.⁽⁴³⁾ British colonialism reinforced the 'capitalist patriarchy,' where Arab and Swahili elites were able to control not only their households but also the families of their former slaves, who had been freed by the abolition.⁽⁴⁴⁾ To use Mamdani's term, the relationship between the British colonial administration and Muslim elites in Zanzibar and the coast of Kenya was a 'lips-teeth' relationship.⁽⁴⁵⁾ This was an interdependent relationship between British colonial officials and the local Islamic hierarchy.⁽⁴⁶⁾ The British nurtured and protected the Arab and Swahili elites over the majority of the inhabitants of Mombasa and mainland dominions of the Sultan of Zanzibar.⁽⁴⁷⁾ For example, when the decree to abolish slavery came into force in Zanzibar, Sir Arthur Hardinge and Sir Lloyd Mathews were the greatest supporters of the Arab and Swahili elites. Hardinge, according to L.W. Hollingsworth, 'had made no secret of his intense satisfaction at finding there was no immediate rush on the part of slaves for freedom.'⁽⁴⁸⁾ Mathews, according to Mr. Cave, had occupied 'the position of Sultan's First Minister' for over a period of over two decades.⁽⁴⁹⁾ Theodore Burt, a Lincolnshire Quaker and a member of the abolitionist movement in Zanzibar, felt that both Hardinge and Mathews were eager to please the Arab elites. According to Hollingsworth, Hardinge had a 'pro-Arab bias' and affinity towards local governing classes.⁽⁵⁰⁾ Mathews was said to have lived in such 'close intimacy' with the elites in Zanzibar that he 'unconsciously re-

⁽⁴²⁾ Salim, *Swahili Speaking*, 114.

⁽⁴³⁾ Strobel, *Muslim Women*, 218.

⁽⁴⁴⁾ Ibid., 219.

⁽⁴⁵⁾ M. Mamdani, *Citizen and Subject : Contemporary Africa and the Legacy of Late Colonialism* (Princeton: University Press 1996), 86.

⁽⁴⁶⁾ Ibid.

⁽⁴⁷⁾ Bhagat & Othman, 'Colonialism and Class Formation', 206.

⁽⁴⁸⁾ L.W. Hollingsworth, *Zanzibar: Under the Foreign Office 1890-1913* (London: Macmillan & Co, 1953), 151.

⁽⁴⁹⁾ Cave, 'The End of Slavery in Zanzibar,' 22.

⁽⁵⁰⁾ Hollingsworth, *Zanzibar*, 151; J. Chamberlain (1903) [Notes]. 'Notes on Mombasa and East African Protectorate, by the Right Honourable J. Chamberlain, 2, January 1903', TNA FO 881/Conf. 7966/03, The National Archives.

flected' their thoughts.⁽⁵¹⁾ He reached a point of even regarding abolition as 'regrettable necessity,' fearing that it might lead to vagrancy among men and prostitution among women.⁽⁵²⁾

Like their counterparts in Zanzibar, the Arab and Swahili elites in Mombasa were engaged in lavish, conspicuous consumption, something that British colonialists encouraged because it provided markets for their goods. Therefore, these elites became the 'most pliant and reliable allies of imperialists'.⁽⁵³⁾ Nevertheless, this partnership was not equal: the British were the senior partners and the Omanis, the junior ones.⁽⁵⁴⁾ The British colonial government not only protected former slave owners, H. Bhagat and H. Othman maintained that they also went a step further. For example, in Zanzibar, they trained them to serve in the colonial government and employed them as police, and even gave them positions in the colonial District Administration.⁽⁵⁵⁾ The British incorporated Omani administration into the colonial structure; 'Islam' and 'empire,' are both deceptive terms. On the one hand, Islam underpinned and profited from British colonial rule; on the other hand, it opposed and suffered from it.⁽⁵⁶⁾ In addition, according to Anderson, most British colonial administrators took the path of 'least resistance' by incorporating local intermediaries to take control.⁽⁵⁷⁾ For example, throughout the coast of Kenya, the British used *shariah* law and co-opted with the Omani political system. The result was that the British colonial regime not only resembled the pre-colonial political system, but it was a continuation of the old Omani system in terms of structural features, and this continued throughout the colonial period.

Therefore, British colonialism did not supplant Omani rule, but instead entrenched it. In India, as in East Africa, Muslim elites legitimized British rule. European colonial officials

⁽⁵¹⁾ B.S. Cave to Sir E. Grey (1906) [Memo]. *Memorandum, relating to the Proposed Abolition of Slavery in the Islands of Zanzibar and Pemba, 19th Oct. 1906*. TNA FO 367/24/Inc. 1/ Conf, 35249/3, The National Archives.

⁽⁵²⁾ Hollingsworth, *Zanzibar*, 151;

⁽⁵³⁾ H. Bhagat & H. Othman, 'Colonialism and Class Formation in Zanzibar', *Utafiti: Journal of the Faculty of Arts and Social Science, University of Dar Es Salaam*, 3, 1 (1978), 193-214.

⁽⁵⁴⁾ Bhagat & Othman, 'Colonialism and Class Formation', 207.

⁽⁵⁵⁾ Ibid.

⁽⁵⁶⁾ F. Becker, 'Islam and Imperialism in East Africa', in D. Motadel, *Islam and the European Empires* (Oxford: Oxford University Press, 2014), 112-130.

⁽⁵⁷⁾ Anderson, 'Islamic Law', 167.

worked 'side by side' with their Arab counterparts in administering justice to the African population 'settling disputes and minor political matters' and becoming intermediaries between the Muslim population and colonial administration. Therefore, they were better able to influence the colonial government's decisions.⁽⁵⁸⁾ For the former slaves, their former masters became 'intermediaries' between them and the colonial government. Immediately after declaring the coastal strip a protectorate, the British 're-established Arab sub-imperial' rule. Therefore, much of the story of struggle during colonialism on the coastal strip is a struggle between marginalized Swahilis, the Mijikenda, and people of slave ancestry 'against these agents of British imperialism'.⁽⁵⁹⁾ Hence, how the British extended former masters and how other coastal elites tried to protect their privileges are discussed. Some of the entitlements they tried to protect were the supremacy of *shariah* law, local elite control over land, and government jobs that came with their association with the Sultan of Zanzibar.⁽⁶⁰⁾ In East Africa, as in India and Nigeria, Muslim elites legitimized British rule. Reflecting this consensus, Stein writes of 'scribal groups' and 'ideologues,' represented by 'educated and cultivated' Muslims, who provided administrative skills and legitimated the 'new rulership.'⁽⁶¹⁾

6.2. The East Africa Protectorate

According to Newman, the presence of the British in East Africa was complicated by the existence of an Omani Sultanate on the coast of East Africa. Through the machinery of this Muslim Power, the British were able to exercise their control. Therefore, the British had to compromise when it came to social customs.⁽⁶²⁾

⁽⁵⁸⁾ Salim, *Swahili Speaking*, 78-79.

⁽⁵⁹⁾ Ogot, 'Kenya under the British', 251.

⁽⁶⁰⁾ Brennan, 'Lowering the Sultan's flag', 832.

⁽⁶¹⁾ M.R. Pirbhai, 'British Indian reform and pre-colonial trends in Islamic jurisprudence', *Journal of Asian History*, 42, 1 (2008), 36-63. .

⁽⁶²⁾ H.S. Newman, *Banani: the transition from slavery to freedom in Zanzibar and Pemba* (New York: Negro Universities Press, 1969), 87-88.

Margery Perham defines a protectorate as a 'policy of non-interference, of proffering advice, of leaving two parallel governments to work in a state of detachment'.⁽⁶³⁾ Husain M. al-Baharna contends that the British were a tight-fisted nation of shopkeepers who were reluctant to spend a penny amount on the British Empire. Therefore, they 'practiced imperialism on the cheap, ' and the protectorate was the symbol of this inexpensive expansion.⁽⁶⁴⁾ The establishment of a protectorate was permitted for two reasons. On the one hand, it stopped other European colonial rivals from encroaching on their sphere of influence, and on the other hand, it was cheaper to run a protectorate, because it avoided all the costly administrative expenses associated with a colony; thus, the Treasury would not object to it.⁽⁶⁵⁾ In 1897, the Sultan of Zanzibar conceded to the British East African Association to rule on his behalf of Kenya's coastal strip. Due to financial difficulties, the association transferred its charter to the Imperial British East African Company.⁽⁶⁶⁾ The agreement with the two companies stressed the sovereignty of the sultan and non-interference in Islamic practices. Subsequently, the British government replaced the IBEAC, and their attempts to take executive and judicial power were met with resistance.⁽⁶⁷⁾ The Omani Sultanate established *kadhi*, *liwali*, and *mudir* courts. Therefore, when the IBEAC took control of the Sultan's dominion on the mainland, they did not abolish the judiciary system that was in existence but retained it. The IBEAC established a nascent administration, but in reality, did not interfere with the judiciary system that existed on the coast of Kenya.⁽⁶⁸⁾ In 1889, when the British took over from the IBEAC, they maintained the same system that preceded them. Instead of replacing Arab courts, the British further entrenched the powers of the *liwalis*, *mudirs*, and *kadhis*, allowing them to exercise

⁽⁶³⁾ M. Perham, 'A re-statement of indirect rule', *Africa*, . 7, 3 (1934), 321-334.

⁽⁶⁴⁾ H. M. Albaharna, *The Legal Status of the Arabian Gulf States: A Study of Their Treaty Relations and Their International Problems* (Manchester: Manchester U.P., 1968), 209.

⁽⁶⁵⁾ Ibid.

⁽⁶⁶⁾ A.H. Hardinge, Her Britannic Majesty's Agent and Consul-General to the Foreign Office, London [Letter] (1895). 'Agreement between Great Britain and Zanzibar respecting the possession of the Sultan of Zanzibar on the Mainland and adjacent Islands, exclusive of Zanzibar and bemba, December 14th, 1895, TNA CO 533/35/Conf.8928/360/1895, The National Archives; See also, Mwakimako, 'The Historical Development of Muslim courts', 330-331.

⁽⁶⁷⁾ Ibid.

⁽⁶⁸⁾ Ibid.

jurisdiction over criminal and civil matters. This tripartite court system has developed new ways of interacting with the new colonial dispensation. ⁽⁶⁹⁾

6.3. What Was Indirect Rule

Indirect rule means 'minimum rule, non-intervention,' and Perham has aptly described its operation in Africa as a system where a 'tutelary power recognizes existing African societies and assists them to adapt themselves to the functions of local government'.⁽⁷⁰⁾ Michael Crowder, the British historian of Africa, and especially Nigeria, describes indirect rule as a system introduced by the British that allowed Africans to preserve their local institutions and, at the same time, be guided by colonial officials to develop a better system of governance.⁽⁷¹⁾ According to Mahmoud Mamdani, however, indirect rule was 'the hegemonic assertion of colonial power,' not the benign form of rule that others have described.⁽⁷²⁾ To him, the indirect rule was 'a regime enforcing culture on an ethnicized peasantry'.⁽⁷³⁾ Mamdani asserts that the indirect rule was a 'hegemonic enterprise' that was more inclusionary than exclusionary. It focused on incorporating Africans rather than marginalizing them;⁽⁷⁴⁾ incorporation into indirect rule thus led to a 'decentralized despotism'.⁽⁷⁵⁾ The indirect rule, Mamdani continues, was a colonial experience that was 'mediated through one's own'.⁽⁷⁶⁾ The basic principle of indirect rule was that instead of building the colonial government from the ground up, the British laid their authority atop the existing local administration. In the case of Mombasa, officials of the exist-

⁽⁶⁹⁾ Ibid.

⁽⁷⁰⁾ H.F. Morris and J.S. Read, *Indirect rule and the search for justice: essays in East African legal history* (Oxford: Clarendon, 1972), 256-257.

⁽⁷¹⁾ M. Crowder, 'Indirect rule: French and British style', *African*, 34, 3 (1964), 197-205.

⁽⁷²⁾ M. Mamdani, 'Historicizing power and responses to power: indirect rule and its reform', *Social Research*, 66, 3 (1999), 859-886.

⁽⁷³⁾ Mamdani, 'Historicizing power', 862.

⁽⁷⁴⁾ Ibid., 866.

⁽⁷⁵⁾ Ibid.

⁽⁷⁶⁾ Ibid., 870.

ing Omani administration continued with the day-to-day affairs of the protectorate under the supervision of British colonial officials.⁽⁷⁷⁾

When it comes to indirect rule, scholars usually put forward two hypotheses: competition among European colonial powers and the lack of sufficient European manpower to govern colonial possessions.⁽⁷⁸⁾ The first instance is described as an outcome of the competitive environment created by the need to have an 'effective occupation' borne out of the partition of Africa.⁽⁷⁹⁾ The second reason is the lack of sufficient Europeans to administer these new colonies. Thus, according to some scholars, the 1884 Berlin Conference made indirect rules virtual necessity.⁽⁸⁰⁾ Therefore, the system of indirect rule reposed indigenous rule and in Mombasa and Zanzibar on the Omani bureaucracy that had existed prior to the scramble for Africa.⁽⁸¹⁾ Scholars have argued that the British established their protectorate over Zanzibar and the mainland dominance of the Sultan on two grounds: the abolitionist impulse and the German factor. They argue that the British imposed an indirect rule because of European rivalries known as the 'scramble for Africa'. Imperial historians such as W. Langer, R. Robinson, and J. Gallagher all subscribe to the 'dominant geo-strategic Nile model,' which supports the theory that the motives behind the acquisition of territories in East Africa were defensive rather than commercial.⁽⁸²⁾ According to them, Britain's reason for establishing a formal presence in East Africa was to protect Egypt and the Suez Canal and thus maintain Britain's hold over its 'jewel' – India. Therefore, Britain's colonial expansion was a reaction triggered by threats to its global interests, and once the British intervened, they could 'not have stayed on without local collaborators and mediators—[they] had to operate within local political systems—

⁽⁷⁷⁾ J.C. Myers, 'On Her Majesty's ideological state apparatus: indirect rule and empire', *New Political Science*, 27, 2 (2005), 147-160.

⁽⁷⁸⁾ Myers, 'On Her Majesty's', 153.

⁽⁷⁹⁾ Ibid.

⁽⁸⁰⁾ Ibid.; R.F. Betts, 'Methods and institutions of European domination', in A.A. Boahen (ed.), *Africa Under Colonial Domination 1880-1935* (London: Vol. 7, UNESCO, 1985), 312-331.

⁽⁸¹⁾ Crowder, 'Indirect rule', 197-205.

⁽⁸²⁾ F. Gjernsø, 'The scramble for East Africa: British motives reconsidered, 1884-95', *The Journal of Imperial and Commonwealth History*, 43, 5 (2015), 831-860; J.F. Gjernsø, 'Continuity of moral policy': a reconsideration of British motives for the partition of East Africa in light of anti-slave trade policy and imperial agency, 1878-96, PhD thesis (LSE, 2015).

they could rarely do otherwise'.⁽⁸³⁾ Historian John Darwin believes that British intervention in East Africa was the '*locus classicus*' of a late Victorian grand strategy.⁽⁸⁴⁾ Zanzibar and its mainland dominion, Darwin notes, became the 'playground of the official mind, ' and the region became 'the product of high policy, with Lord Salisbury becoming the 'grandmaster of the imperial chessboard, ' sacrificing allies and occupying territories here or there for their intrinsic value, all for the sake of protecting the 'vitals of his world-system. '⁽⁸⁵⁾ According to Darwin, there is no evidence of Salisbury's 'grand strategy, ' and any evidence of it is circumstantial.⁽⁸⁶⁾ Like other colonial adventures, British expansion into East Africa was not the grand strategy of an official mind but a more 'Micawberish' move spurred by local factors and sub-imperialist forces.⁽⁸⁷⁾ Nevertheless, like other scholarly debates on the reality of indirect British rule in East Africa, this analysis reveals a significant difference between the traditional views of Britain's informal empire in East Africa and the reality of how it actually functioned during the late nineteenth and early twentieth centuries.

Scholars of African history have heated debates on the landmark study of modern British imperialism by two prominent British historians, Ronald Robinson and John Gallagher. Their thesis in *Africa and the Victorians*⁽⁸⁸⁾ is that strategy was the overriding factor in the colonization of Africa by the British.⁽⁸⁹⁾ Therefore, the British presence in East Africa was more defensive than the commercial presence. Defensive theory took the central stage because Britain's economic role was considered negligible. British officials were reluctant to engage with anti-slavery activities that led many historians to conclude that the partition was a result

⁽⁸³⁾ J. Onley, 'Britain's informal empire in the Gulf', *Journal of social affairs*, 22, 87 (2005), 29-45.

⁽⁸⁴⁾ J. Darwin, 'Imperialism and the Victorians: the dynamics of territorial expansion', *The English Historical Review*, 112, 447 (1997), 614-642; Gjersø, '*Continuity of moral policy*', 10.

⁽⁸⁵⁾ Darwin, 'Imperialism and the Victorians', 635.

⁽⁸⁶⁾ Ibid.

⁽⁸⁷⁾ Ibid., 636.

⁽⁸⁸⁾ R. Robinson et al., *Africa and the Victorians: The Official Mind of Imperialism* (London: I.B. Tauris, 2015).

⁽⁸⁹⁾ G.N. Uzoigwe, 'The Victorians and East Africa, 1882-1900: The Robinson-Gallagher Thesis Revisited, ' *Transafrican Journal of History*, 5, 2 (1976), 32-65.

of strategic 'geographical-derived logic'.⁽⁹⁰⁾ This theory suggests that defense concerns were the primary motivation for British activities in Zanzibar and East Africa.

On the 'Egypto-Centric' theory and the idea that British involvement in Zanzibar was mostly due to private commercial interests or to imperial humanitarian policy objectives, P.J. Cain and A.G. Hopkins assert that economic factors were at the core of British imperial strategies. Unlike other explanations that show, colonial officials on the 'spot,' rather than those in London, were pulling the strings of colonial expansion. Cain and Hopkins's theory shows that it was '...financial interest of the City of London—[that]—determined the nature and timing of British imperial activity'.⁽⁹¹⁾ Views espoused by Robinson and Gallagher, and Cain and Hopkins, as motives for the Scramble, have been recently challenged by J. F. Gjørsø. According to Gjørsø, the most decisive determinant for the establishment of protectorate rule in Zanzibar and its mainland dominion and the eventual partition of East Africa depended on two broad themes: an abolitionist impulse and the German factor.⁽⁹²⁾ Gjørsø argues that the abolitionist cause became a mainstream issue in the latter part of the nineteenth century. Triggering what he calls a 'moral panic' influenced Britain's commitment to ending the slave trade.⁽⁹³⁾ According to him, another catalyst was the arrival of Germans on the coast opposite to Zanzibar. The ratification of the Anglo-German Boundary Agreement in 1886 followed four years later by the 'Heligoland-Zanzibar Agreement' of 1890.⁽⁹⁴⁾ Therefore, fearing a threat to its dominant position, the British government decided to make Zanzibar a protectorate. Zanzibar gradually came under closer control of the Foreign Office. Thus, strengthening British control over Zanzibar and, by extension, the mainland dominated the Sultan of Zanzibar.⁽⁹⁵⁾ In other words, British involvement in Zanzibar and the rest of the East African region, according to Gjørsø, primarily ended the slave trade. He argued that the motivation for British policy in the 1880s

⁽⁹⁰⁾ Gjørsø, 'Continuity of moral policy', 10.

⁽⁹¹⁾ Onley, 'Britain's informal empire', 33.

⁽⁹²⁾ Gjørsø, 'The scramble for East Africa', 832-833; Gjørsø, 'Continuity of moral policy', 12.

⁽⁹³⁾ Gjørsø, 'Continuity of moral policy', 13.

⁽⁹⁴⁾ Ibid., 21.

⁽⁹⁵⁾ Radford, *Exalted Order*, 254-255.

and onwards was to end slavery rather than a grand defensive strategy.⁽⁹⁶⁾ Regardless of the motives or intentions, indirect rule became the cornerstone of British imperial rule. Indirect rule became an official dogma of colonial rule in which ruling using existing indigenous and customary political ruling classes became the norm. Cooper and Stoler argue that this 'implied that if one was to rule well, one should not do too much with one's rule.'⁽⁹⁷⁾ Therefore, British colonialism, according to Robinson and Gallagher, was informal control if possible, formal control, if necessary, the greater their success, the more indirect their control'.⁽⁹⁸⁾

The Sultanate of Zanzibar came into being in 1861 through an edict by the Viceroy of India. However, according to Radford, it was only later that Zanzibar came under the control of the Foreign Office.⁽⁹⁹⁾ In 1890, the informal British presence in Zanzibar changed into indirect rule when Lord Curzon, the Viceroy of India, and agents of the Government of India changed British relations with Zanzibar into indirect rule through the Foreign Office. Although a sovereign state, Zanzibar was incorporated into the British Empire.⁽¹⁰⁰⁾ Arab rulers of Zanzibar, in need of protection, collaborated with colonial officials to maintain Pax Britannica, while elites on the coast of Kenya worked as 'native agents' for British officials.⁽¹⁰¹⁾ The result was a collaborative power triangle between British colonial officials, native agents, and rulers that sustained Britain's informal empire on the coast of Kenya.⁽¹⁰²⁾ Michael Doyle argued that Zanzibar was a patrimonial society that dealt with British imperial power.⁽¹⁰³⁾ According to F.C. Owtram, the British incorporated the Sultanate of Zanzibar into their empire. To avoid interference from other European rivals, Britain, according to Owtram, changed its relationship with the sultanate from one of alliance to one of hegemony; at the same time, the British changed the

⁽⁹⁶⁾ Gjersø, 'Continuity of moral policy', 12-13.

⁽⁹⁷⁾ F. Cooper, & A. L. Stoler, 'Introduction Tensions of Empire: Colonial Control and Visions of Rule', 609-621.

⁽⁹⁸⁾ Onley, 'Britain's informal empire', 29-45.

⁽⁹⁹⁾ Radford, *Exalted Order*, 246.

⁽¹⁰⁰⁾ Ibid.

⁽¹⁰¹⁾ J. Onley, 'Britain's Native Agents in Arabia and Persia in the Nineteenth Century', *Comparative Studies of South Asia, Africa and the Middle East*, 24, 1 (May 1, 2004), 129-137.

⁽¹⁰²⁾ Ibid., 129.

⁽¹⁰³⁾ F.C. Owtram, *Oman and the West: State Formation in Oman since 1920*, PhD thesis (University of London, 1999).

relationship of the ruler to his subject from 'autocratic patrimony to foreign support puppet,⁽¹⁰⁴⁾ thus undermining the 'political and economic bases of the Sultan's patrimonial authority'.⁽¹⁰⁵⁾ The word 'collaboration' in this study takes on a neutral meaning, meaning working together.⁽¹⁰⁶⁾ The British used local collaborating groups – whether ruling elites, landlords, or merchants – as mediators between British and indigenous political and economic systems.⁽¹⁰⁷⁾ This collaborative system allowed Britain to rule large areas of the world next to nothing, with fewer European administrative officials.⁽¹⁰⁸⁾

The Sultan of Zanzibar allowed the British to administer the coast of Kenya on his behalf. In Zanzibar and the Sultan's dominion on the coast of Kenya, British political officers held commissions on their sovereignty. The British vice-consuls, consuls, and consuls-general were political representatives and imperial officials. These officials enforced the treaties that Zanzibar's rulers had signed with the East India Company or the Government of India; therefore, Zanzibar came under British protection. The British informally incorporated Zanzibar into its empire, but simultaneously considered it a sovereign state.⁽¹⁰⁹⁾ The Sultan of Zanzibar used the doctrine of *takiah* or 'legitimate dissimulation' to avoid a complete takeover by the British.⁽¹¹⁰⁾ This doctrine allows a weak Muslim ruler to contradict the *shariah* when faced with a powerful non-Muslim enemy, as long as he is compelled to do it to save his nation from calamity. The *takiah* concept means that, under certain circumstances, a Muslim can use deception as long as the purpose is to preserve life.⁽¹¹¹⁾ *Takiah* makes such 'fiction' permissible; the doctrine, which could be defined as 'legitimate dissimulation',⁽¹¹²⁾ thus allows things that

⁽¹⁰⁴⁾ Ibid., 37.

⁽¹⁰⁵⁾ Ibid., 38.

⁽¹⁰⁶⁾ Onley, 'Britain's Native Agents in Arabia and Persia', 129.

⁽¹⁰⁷⁾ R. Robinson, 'Non-European foundations of European Imperialism: sketch for a theory of collaboration', in R. Owen and B. Sutcliffe (eds.) *Studies in the theory of imperialism* (London: Longman, 1972), 117-142.

⁽¹⁰⁸⁾ Robinson, 'Non-European Foundations of European Imperialism', 117.

⁽¹⁰⁹⁾ J. Onley, 'The Raj reconsidered: British India's informal empire and spheres of influence in Asia and Africa', *Asian Affairs*, 40, 1 (2009), 44-62.

⁽¹¹⁰⁾ A. H. Hardinge, 'Legislative methods in the Zanzibar and East Africa protectorates', *Journal of the Society of Comparative Legislation*, 1, 1 (1899), 1-10.

⁽¹¹¹⁾ M. Yarden, 'Taqiyya as polemic, law and knowledge: following an Islamic legal term through the worlds of Islamic scholars, ethnographers, polemicists and military men', *The Muslim World*, 104, (2014), 89-108.

⁽¹¹²⁾ Hardinge, 'Legislative methods', 4.

are usually illegal under the *shariah* to legally bind to Muslim citizens. By virtue of this fiction, the Sultan of Zanzibar was able to reconcile the prohibition of the slave trade, abolition of the status of slavery, and colonization of his lands by non-Muslims.⁽¹¹³⁾

The British introduced indirect rule in Zanzibar and on the coast of Kenya, just as they had done in India and Nigeria; this means that they used already existing local power structures to rule over their colonial possessions.⁽¹¹⁴⁾ The term 'indirect rule' was popularized in the early twentieth century by Sir Frederick Lugard, himself an architect of British rule in Nigeria.⁽¹¹⁵⁾ However, it is far older than that conceptually: indirect rule in the British Empire was a product of an earlier period of expansion and went back to agents of the English East India Company who suddenly found themselves in charge of a rapidly growing territorial empire in India in the 1800s.⁽¹¹⁶⁾ Indirect rule is a process and system that depends on both invented and real traditions. Therefore, the indirect rule is a policy dictated by the situation on the 'spot'. Its essence is that the administration of a territory had to depend upon local institutions and rulers with guidance from British colonial officials.⁽¹¹⁷⁾ This dual administration gave political legitimacy to both British and local elites. Therefore, colonial rule in Mombasa became possible, largely because the Arab and Swahili elites gave legitimacy to the British. In exchange, the elites retained their power and wealth and, most importantly, their prestige. The elites also used their legitimacy to accumulate power, wealth, and other benefits accrued from their association with the British.⁽¹¹⁸⁾ Critics of indirect rule blame it as a source of ethnic politics in post-colonial Africa. Claude Eke argues that because the colonial administration had a small contingent of European administrators to control their vast empire, they had to rely on existing traditional political institutions.⁽¹¹⁹⁾ Lord Lugard, in his *Dual Mandate* en-

⁽¹¹³⁾ Ibid.

⁽¹¹⁴⁾ Crowder, 'Indirect rule', 197-205.

⁽¹¹⁵⁾ Lugard, *The Dual Mandate*, 199.

⁽¹¹⁶⁾ Radford, *Exalted Order*, 1-2.

⁽¹¹⁷⁾ Z.K. Matthews, 'An African view of indirect rule in Africa', *Journal of the Royal African Society*, . 36, 145 (1937), 433-37.

⁽¹¹⁸⁾ S. Stilwell, 'Constructing Colonial Power: Tradition, Legitimacy and Government in Kano, 1903-1963', *The Journal of Imperial and Commonwealth History*, 39, 2 (2011), 195-225.

⁽¹¹⁹⁾ C. Ake, 'What is the Problem of Ethnicity in Africa?' *Transformation*, 22, 1(1993), 1-14.

couraged native rule as long as local powers were loyal to British colonial rule. Lugard said that indirect rule would allow colonized people to 'manage their own affairs,' and European administrators would play the role of supervisors on issues dealing with laws and policies of colonial administration.⁽¹²⁰⁾ Scholars have described British colonial rule in Zanzibar and its mainland dominion as indirect rule. In reality, it was more of a 'diarchy' system of governance, in which the colonial administration ruled side by side with the Omani administration. In many cases, British colonial officials played a supporting role by increasing the prestige, authority, and autonomy of local rulers as long as they were loyal to the crown.⁽¹²¹⁾ The relationship between the British colonial official and the local governing group was, in general, that of an advisor rather than that of a supervisor. Colonial officials seldom interfered with the traditional authority of natives or questioned the authority of the local elites.⁽¹²²⁾ According to Crowder, the aim of indirect rule was 'to encourage local self-government through indigenous political institutions'. This means leaving the existing institutions in their place and, at times, even strengthening them.⁽¹²³⁾ As in other parts of the British colonial empire in Africa, local elites in Mombasa became, for all practical purposes, more powerful than in the pre-colonial period. The Omani rule became more entrenched than it had been before the creation of the protectorate.⁽¹²⁴⁾ Thus, colonial rule in Mombasa never tried to minimize or undermine traditional authority, but fortified it.⁽¹²⁵⁾ Individual colonial officials played an influential role in creating indirect rules in colonial possessions.

6.4. A Thin White Line

A 'thin white line' of colonial administrators represented the scant colonial presence in Mombasa and Zanzibar.⁽¹²⁶⁾ This phenomenon is articulated by A.H.M. Kirk-Green, who states: 'The

⁽¹²⁰⁾ Lugard, *The Dual Mandate*, 204.

⁽¹²¹⁾ Ibid., 204.

⁽¹²²⁾ Crowder, 'Indirect rule', 197-205.

⁽¹²³⁾ Ibid., 198.

⁽¹²⁴⁾ Ibid.

⁽¹²⁵⁾ Ibid.

⁽¹²⁶⁾ Kirk-Greene, 'The Thin White Line', 25-44.

ratio of colonial administration to the African population was proverbially slim, to the point of being miniscule under the system of indirect rule'.⁽¹²⁷⁾ In another instance, Robinson asserts that the colonial enterprise was 'a gimcrack effort run by two men and a dog'.⁽¹²⁸⁾ Although the European colonial staff was exiguous, according to Kirk-Green, it 'was rarely in danger of being imperceptible or ineffective'.⁽¹²⁹⁾ Indirect rule relied on a small contingent of colonial officials supported by a large Omani bureaucracy. This phenomenon is not unique to the eastern parts of Africa. For example, in northern Nigeria, where Islam is predominant, Lord Lugard appropriated the administrative structure of the Sokoto Caliphate.⁽¹³⁰⁾

Colonial officials in the 'spot' were instrumental in the administration of indirect rule. Officials were not just following orders from the Foreign Office but instead played important roles in creating policies and were the key figures in a chain of colonial authority that connected them to London. Robinson and Gallagher's seminal work shows how these colonial officials wielded power and were at times responsible for the colonial expansion in bringing Zanzibar under indirect rule. Nevertheless, most colonial officials believed that the government's Omani method was suitable for the east coast of Africa. The colonial official, coming from a country that maintained a monarchy, respected the sultan and treated him with deference.⁽¹³¹⁾ The Political Agent was the primary representative of colonial rule. In Zanzibar, as in other areas that came under indirect rule, the Political Agent was the primary representative of imperial authority. In Zanzibar, the highest-ranking British official was the Political Agent and the Consul General, who was only answerable to the Foreign Office in London. In the years following the establishment of the protectorate, the Consul General gained control over the state's foreign relations and later expanded to take control of the administrative and

⁽¹²⁷⁾ Ibid., 26.

⁽¹²⁸⁾ Ibid.

⁽¹²⁹⁾ Kirk-Greene, 'The Thin White Line', 38.

⁽¹³⁰⁾ M.S. Umar, *Islam and colonialism: intellectual responses of Muslims of Northern Nigeria to British colonial rule* (Leiden: BRILL, 2006), 27.

⁽¹³¹⁾ M. Crowder, 'Indirect rule: French and British style', *Africa*, 34, 3 (1964), 197-205.

defense operations of the sultanate. During this period, only a few British officials in Zanzibar played a central role in imposing this type of imperialism on the sultanate.⁽¹³²⁾

The successful establishment of indirect rule depended on a powerful British official. In other words, the presence of a powerful British official guaranteed the successful establishment of indirect rule. These officials had a variety of titles: resident, agent and consul. According to Radford, these officials held positions that resembled a 'part-colonial governor, part-ambassador to the court of the subject-ruler'.⁽¹³³⁾ He explained that the mandates of these individual officials varied widely. In some cases, Radford said that these officials were the most powerful figures and controlled many state functions of the government. Zanzibar was one of these states, where the British Consul General was so powerful that he practically dictated the policies of the ruling Sultan.⁽¹³⁴⁾ Like other colonial powers in Africa, the British have created a hierarchy of religions. Christianity took the top position, followed by Islam, and at the bottom were traditional African religions. The British saw African traditional religions as 'fetish worship, ' and the Africans themselves as uncivilized and savage.⁽¹³⁵⁾ Although Lord Lugard stated that Christianity was superior to Islam, he nevertheless felt that Islam was superior to any other traditional African religion.⁽¹³⁶⁾

Individual colonial officials' attitudes towards Islam influenced the creation of indirect rule policies in predominantly Muslim colonial possessions. Attitudes towards Islam varied greatly among individual colonial officials, depending on their own backgrounds and the sources to which they were exposed. Furthermore, individuals' attitudes frequently change over their tenure of service in Muslim regions. Nonetheless, certain themes are recognizable within historical records. Among these, few are clearer than Lord Lugard's. Since Lugard established boundaries for the system of indirect rule in northern Nigeria, his views on Islam were partic-

⁽¹³²⁾ Radford, *Exalted Order*, 256.

⁽¹³³⁾ Ibid., 12-13.

⁽¹³⁴⁾ Ibid., 12-13.

⁽¹³⁵⁾ H. Weiss, *Between accommodation and revivalism: Muslims, the state, and society in Ghana from the precolonial to the postcolonial era* (Helsinki: Finnish Oriental Society, 2008), 193.

⁽¹³⁶⁾ Ibid., 194.

ularly influential and represented the views held by many colonial officials during his tenure and after. Briefly stated, Lugard felt that while Islam was clearly inferior to Christianity, it was well suited to Africans, whom he saw as themselves inferior to Europeans. The colonialists saw Islam as representing the highest level of spiritual achievement for Africans and as superior to indigenous African beliefs. In *Dual Mandate*, Lugard quotes Mr. R. Bosworth-Smith, who believed in a hierarchical form of religion where Christianity is superior to Islam. He argues that Islam is suitable for Africans because it is a superior alternative to traditional African religions.⁽¹³⁷⁾ He states:

[Islam] is incapable of the highest development, but its limitations clearly suit the limitations of the people. It has undeniably had a civilizing effect, abolishing the gross forms of pagan superstition and barbarous practices and adding to the dignity, self-respect, and self-control of its adherents. Its general effect has been to encourage abstinence from intoxicants, a higher standard of life and decency, better social organization, and tribal cohesion, with a well-defined code of justice.⁽¹³⁸⁾

H.R. Fox Bourne's *Slavery and its Substitutes in Africa* provides a general narrative of how the British viewed Africans. Bourne writes that the conditions of life among Africans before the Arab conquests were 'repulsive to civilized notions, ' and although Arabs had enslaved Africans, it was not the worst condition. Most Africans who were enslaved by the Arabs were 'in happier state' compared to other Africans still living in their 'original savagery. ' He adds, 'Arab slave trading has been to a large extent put down, at the mercy of Europeans.'⁽¹³⁹⁾ When it comes to abolition of domestic slavery in Africa, Bourne warns against 'premature and ill-advised attempts to abolish it before the people themselves are ready for change—[these] can lead to nothing but mischief'.⁽¹⁴⁰⁾

⁽¹³⁷⁾ Reynolds, 'Good and Bad Muslims', 603.

⁽¹³⁸⁾ Lugard, *The Dual Mandate*, 78.

⁽¹³⁹⁾ H.R. Fox-Bourne, *Slavery and its Substitutes in Africa* (London: Aborigines Protection Society, 1900), 4-5.

⁽¹⁴⁰⁾ Fox-Bourne, *Slavery and its Substitutes*, 5.

6.5. Legal Pluralism

To understand how the British were able to legislate pluralism and integrate Muslim institutions into their colonial administration, it is useful to look to India and see how the British used 'educated and cultivated' Muslims, who provided administrative skills and legitimate 'new rulerships.'⁽¹⁴¹⁾ In British colonies that were predominantly Muslim, the British created legal pluralism that existed within a colonial legal structure. Paolo Sartori and Ido Sharah demonstrate that the British used prevailing 'indigenous' laws and incorporated them into the colonial legal system. According to them, 'Such incorporation in turn produces a variegated and polycentric legal system and creates a situation of "state legal pluralism," that is, legal pluralism that exists within the parameters of the state apparatus.'⁽¹⁴²⁾ Therefore, in Muslim society in India and other places with a Muslim population, Islamic culture was able to influence colonial institutions, allowing the *shariah* to coexist side by side with the British legal system.⁽¹⁴³⁾

Legal pluralism and autonomy enjoyed under the Sultanate of Zanzibar continued during colonial rule. The actual social impact of the courts was constrained by the reluctance expressed by many colonial officials to interfere with Islamic institutions unless presented with a compelling need.⁽¹⁴⁴⁾ In addition, the resilience of precolonial institutions meant that actual authority was shared among the number of entities, so that most disputes were settled at the local or community level. Local bodies acquired privileges of legal autonomy under the Sultan of Zanzibar, which persisted during the colonial period. The autonomy of legal arrangements sheltered a diversity of legal norms, even among those who professed strict adherence to the same orthodoxy.⁽¹⁴⁵⁾

⁽¹⁴¹⁾ Pirbhai, 'British Indian reform', 41.

⁽¹⁴²⁾ P. Sartori & I. Shahr, 'Legal pluralism in Muslim-majority colonies: Mapping the terrain', *Journal of the Economic and Social History of the Orient*, 55, 4-5 (2012), 637-663.

⁽¹⁴³⁾ Ibid., 643.

⁽¹⁴⁴⁾ Anderson, 'Islamic Law', 167.

⁽¹⁴⁵⁾ Ibid.

The British established 'legal pluralism' on the coast of Kenya. The centrality of law to the colonial project remains uncontested, although the understanding of the role of law has broadened and deepened. No longer does one simply think of laws as 'imposed by the colonizer'; one does not look to just the myriad ways in which law enabled and facilitated the imperial project, but to the complex manifestation of law within colonized spaces and the myriad ways in which law was appealed to and accessed by the colonizer and the colonized alike. Scholarship has made significant moves to rethink key concepts such as sovereignty, jurisdiction, justice, and legality, not just as intellectual constructs but as concepts grounded in local practices. When the British established colonial rule on the coast of Kenya, Anne Cussac explains that a 'complex judicial system' was already in existence based on the *shariah*. According to her, although the British wanted to establish their own laws, they accepted and retained the administration that existed there before their arrival. In 1895, she wrote that the British and the Sultan of Zanzibar signed an agreement that allowed the British to establish a protectorate on the mainland dominion of the Sultan of Zanzibar. The agreement allowed the British to administer the protectorate on behalf of the sultan, as long as the Muslim population continued with their long-established administrative practices. According to Cussac, the agreement established 'a dual system of rule,' with both the Sultan of Zanzibar and the Queen of England as the legitimate sovereigns. However, the Sultan allowed the British to administer the mainland dominion on his behalf, on the condition that the *shariah* was the law of the land and that the existing Omani bureaucracy would remain intact.⁽¹⁴⁶⁾

6.6. *Shariah* under the Shadow of Colonial Legal System

Islamic institutions were an integral part of British colonial rule along the coast of Kenya, although in a subordinate position. According to Becker, British rule recognized Islamic institutions as an integral part of the power structures it sought both to subordinate and 'pre-

⁽¹⁴⁶⁾ A. Cussac, 'Muslims and politics in Kenya: The issue of the Kadhis' courts in the constitution review process', *Journal of Muslim Minority Affairs*, 28, 2 (2008), 289-302.

serve'.⁽¹⁴⁷⁾ For example, the British took a keen interest in the administration of Kadhi courts; they stressed their commitment to respecting *shariah* law protected by the Sultan of Zanzibar.⁽¹⁴⁸⁾ The British easily incorporated *shariah* into their colonial legal system because it was highly institutionalized and had a written tradition. The British also assimilated and regulated indigenous laws, codifying oral traditions and customary laws into written forms, and incorporated them into the colonial legal system. Islamic law, on the other hand, has a written and highly established body of law. Therefore, because it had a well-developed legal system, it was relatively easy for it to merge into the colonial legal system.⁽¹⁴⁹⁾ Significantly, because *shariah* law was held in great esteem by Muslims, its incorporation into the colonial legal system conferred authority and legitimacy on the entire legal system of the colony'.⁽¹⁵⁰⁾

The codification of the *shariah* during colonialism came from the interaction between colonial officials and local elites. During the colonial period, local elites played a critical role in the continued use of Islamic law. According to Hussin, 'through processes of negotiation between local elites and colonial officials, Islamic law became a codified, state-centered system, limited to areas of personal and family law; the state became the final arbiter of Islam and Muslim identity; and Muslim elites became state elites'.⁽¹⁵¹⁾ Therefore, these changes became the foundation of the colonial state, and they would later become laws that would hamper the complete abolition of slavery in Mombasa and Zanzibar, where the British declared a protectorate.⁽¹⁵²⁾

Zanzibar and its mainland possessions had an interesting legal structure whereby Arab officials wielded greater power over the local population. For example, Zanzibar was a protectorate state because the sultan still held administrative powers. Sidney Abrahams explains that the protectorate had 'a duality of legislative authority and a dual jurisdiction'.⁽¹⁵³⁾ Some

⁽¹⁴⁷⁾ Becker, 'Islam and Imperialism', 123-124.

⁽¹⁴⁸⁾ Ibid.

⁽¹⁴⁹⁾ Sartori & Shahar, 'Legal pluralism in Muslim-majority colonies', 644.

⁽¹⁵⁰⁾ Ibid., 644-5.

⁽¹⁵¹⁾ Hussin, *The Politics of Islamic Law*, 10.

⁽¹⁵²⁾ Ibid.

⁽¹⁵³⁾ Abrahams, 'The Conflict of Laws', 169-171.

Arab officials who held power in the colonial administration were *liwalis* and *mudirs*. These two officials were equal to a district commissioner (DC) and an assistant DC, respectively; they had magisterial powers under Court Ordinance Section 5. Arab officials controlled native courts, and their powers in criminal cases were laid down in Section 16, Chapter 7.⁽¹⁵⁴⁾ Therefore, as a native court, it dealt with all criminal cases on the coast of Kenya, except for those involving Europeans.⁽¹⁵⁵⁾ British colonial judges applied customary and Islamic law as long as they were morally consistent with the English notions of justice. In the specific case of the *shariah*, the British used a 'repugnancy clause,' which dictated that as long as Islamic law did not contravene the basic principles of natural justice and morality, or went against colonial statutes, then these customary and religious laws were accepted.⁽¹⁵⁶⁾ For example, in northern Nigeria, any Islamic law that did not go against British law and was not 'repugnant to natural justice, equity, and good conscience was upheld.'⁽¹⁵⁷⁾ There was a hierarchy of laws in Zanzibar and its mainland dominance. For instance, if there was a conflict between English law and *shariah*, the former prevailed, and if there was a conflict between customary law and Islamic law, the latter prevailed.⁽¹⁵⁸⁾ Although the *mudir* courts had limited power, they could adjudicate in cases involving non-Muslim natives as long as their decisions were not 'repugnant to justice and morality' or 'inconsistent with any other law';⁽¹⁵⁹⁾ in other words, as long as they did not contravene colonial laws. A letter written on May 10, 1929, addressed to the Chief Native Commissioner from the Provincial Commissioner's (PC) office in Mombasa, was concerned with the magisterial powers of *liwalis* and *mudirs*. The PC felt that a revision of court ordinances was needed; he was satisfied with the work of *liwalis* and *mudirs* regarding their powers in criminal cases, but when it came to civil matters, the PC stated that they had 'ex-

⁽¹⁵⁴⁾ Ag. Provincial Commissioner, Coast to J. Ainsworth, The Chief Native Commissioner [Letter] (1929). 'Magisterial Powers of Liwalis and Mudirs', 10 May 1929. KNA No. LEG 12/1/1/2/29, Kenya National Archives.

⁽¹⁵⁵⁾ A. Hashim, 'Shaping of the Sharia Courts: British Policies on Transforming the Courts in Colonial Zanzibar', *Social Dynamics*, 38, 3 (2012), .381-397.

⁽¹⁵⁶⁾ Ibid., 382-383.

⁽¹⁵⁷⁾ F.A. Salamone, 'The clash between indigenous, Islamic, colonial and post-colonial law in Nigeria', *The Journal of Legal Pluralism and Unofficial Law*, 15, 21 (1983), 15-60.

⁽¹⁵⁸⁾ Hashim, 'Shaping of the Sharia Courts', 383.

⁽¹⁵⁹⁾ Abdulkadir, *Reforming and Retreating*, 48.

ceeded their powers for years' without any oversight.⁽¹⁶⁰⁾ According to the correspondence, Civil Cases in which Swahilis are parties ha[d] ... been heard every day somewhere on the coast since the 1907'; this is an interesting point because this was the same year that slavery was abolished on the coast of Kenya. It is the researcher's belief that these cases revolved around disputes between former masters and slaves.⁽¹⁶¹⁾ For example, property disputes arise from things, such as the inheritance of estates belonging to slaves.

British colonial administrators found it challenging to accommodate *shariah* and customary law in their legal systems. As in most colonial regimes, accommodating both local religious and customary laws in the colonial legal system was a bureaucratic challenge.⁽¹⁶²⁾ Despite these problems, *shariah* became part of the colonial legal system, but in a subordinate position within the colonial bureaucracy. Despite these drawbacks, the colonial legal system incorporated *shariah* into British colonial rule on the Kenyan coast. However, this incorporation was multifaceted, took different forms, and worked in different ways; for example, the British maintained *shariah* when dealing with marriage, divorce, inheritance, and *waqf* (Islamic endowment) laws. By giving jurisdictional legitimacy to pre-colonial legal institutions and recognizing *shariah* laws, the British colonial authorities were able to both allow and regulate Islamic law. Thus, these 'institutional arrangements' allowed continuity with the past and, at the same time, led to the subordination of *shariah* by the colonial administration.⁽¹⁶³⁾ In other words, the legal system under colonial rule in Mombasa contained both *shariah* and traditional practices, otherwise known in Islamic jurisprudence as '*urf*' and '*ada*'.⁽¹⁶⁴⁾

⁽¹⁶⁰⁾ Ag. Provincial Commissioner, Coast to J. Ainsworth, The Chief Native Commissioner (1929) [Letter]. '*Magisterial Powers of Liwalis and Mudirs*', 10 May 1929. KNA No. LEG 12/1/1/2/29, Kenya National Archives.

⁽¹⁶¹⁾ Ibid.

⁽¹⁶²⁾ The District Registrar of H.M. Supreme Court of Kenya on behalf of Mr. Justice Thacker (KC) to The Registrar of H.M. Supreme Court of Kenya (1941) [Letter]. Accommodating both local religious and customary laws in the colonial legal system, 2 April 1941, KNA/ No. C.307/41, The National Archives; See also, Sartori and Shahar, 'Legal pluralism in Muslim-majority colonies', 650.

⁽¹⁶³⁾ Ibid., pp. 645-6.

⁽¹⁶⁴⁾ Ibid., pp. 648.

6.7. Sir Arthur Hardinge's Colonial Administration

Sir Arthur Hardinge was a British official who played a significant role in the integration of the Arabs into his administration. During his tenure as Her Majesty's Agent and Consul General in Zanzibar from 1895 to 1900, he implemented policies that favored Arabs and Swahili elites, and his successors later adopted these policies with minor variations.⁽¹⁶⁵⁾ British colonial officials took pain to reassure the Arab and Swahili elites that they respected and would preserve Islam and the customs of the people on the coast of Kenya. To ease Muslim fears, Hardinge publicly proclaimed that Islam would be the dominant creed on the Sultan's mainland. Additionally, the *shariah* would continue to adjudicate all cases, and the long-established Omani administration would be maintained.⁽¹⁶⁶⁾ Hardinge used racial terms to favor the Arab and Swahili elites; he argued that their comprehension of religion, government, and language made them natural leaders over others on the coast. Therefore, the appointment of Arabs to positions of power was 'initiated by the Sultans of Zanzibar, institutionalized by Arthur Hardinge, refined, and perfected by other colonial officers.'⁽¹⁶⁷⁾ This hobnobbing with Arab and Swahili elites by Hardinge came to the attention of anti-slavery groups, who protested his lack of sympathy for the slaves and his soft spot for the Arab and Swahili elites.⁽¹⁶⁸⁾

Hardinge headed a handful of European colonial officials, with the help of a small contingent of Indian workers residing in Zanzibar.⁽¹⁶⁹⁾ As a Political Agent, Hardinge has three functions. First, he supervised the government of the Sultanate, the islands of Zanzibar, and Pemba. Second, he oversaw the colonial administration of Sultan's dominance on the mainland.⁽¹⁷⁰⁾ Third, he retained regular consular and diplomatic functions and was liaised with

⁽¹⁶⁵⁾ J. Chamberlain (1903) [Notes]. 'Notes on Mombasa and East African Protectorate, by the Right Honourable J. Chamberlain, 2, January 1903', TNA FO 881/Conf. 7966/03, The National Archives; see Also, H. Mwakimako, *Politics, Ethnicity and Jostling for Power: The Evolution of Institutions of Muslim Leadership and Kadhiship in Colonial Kenya, 1895-1963*, (PhD thesis, University of Cape Town, 2003), 74.

⁽¹⁶⁶⁾ Mwakimako, *Politics, Ethnicity and Jostling for Power*, 75.

⁽¹⁶⁷⁾ Ibid., 82-3.

⁽¹⁶⁸⁾ HC Deb (15 June 1900) vol. 84, col.217-19. Available at: <https://api.parliament.uk/historic-hansard/commons/1900/jun/15/class-v> (Accessed: 04 July 2018).

⁽¹⁶⁹⁾ Radford, *Exalted Order*, 259.

⁽¹⁷⁰⁾ Lugard, *The Dual Mandate*, 199.

the Germans in Tanganyika.⁽¹⁷¹⁾ Hardinge became the Political Agent and Consul General in Zanzibar because of his experience as a diplomat in the Middle East. His careers in Egypt and Persia exposed him to Islamic religious, legal, and cultural practices.⁽¹⁷²⁾ Therefore, by the time he was appointed as the British Agent and Consul General at Zanzibar in 1895, he had already amassed an admirable record as a diplomat, administrator, and public servant.⁽¹⁷³⁾ His experience in other parts of the Muslim world helped him shape his interactions with the local Muslim elites.⁽¹⁷⁴⁾ Three months into his tenure, Hardinge announced a public gathering in Mombasa declaring a protectorate over the mainland possession of the Sultan of Zanzibar, which at one time the IBEAC had leased.⁽¹⁷⁵⁾ In his declaration of a protectorate, Hardinge promised not to interfere with the religious beliefs of coastal people, meaning that Islam would remain the state religion of the Sultan of Zanzibar and its mainland possession. Customary law, in this case the *shariah*, continued to be the law of the land, and traditional leaders like *kadhis*, *liwalis* and *mudirs* became part of the new colonial administration.⁽¹⁷⁶⁾ Like other architects of indirect rule, hardinge always relied on local leaders and their forceful personalities, with a small number of European administrators.⁽¹⁷⁷⁾ In his memoirs, Hardinge's predecessor, Sir James Rennell Rodd, explains the tenuous position of British colonial officials in Zanzibar. He states, "This little group of Englishmen, acting under the much-abused Foreign Office, and using native and in a few cases Indian instruments, held on tenaciously to a precarious position in East Africa with no material force behind them except for the two or three light cruisers or gunboats on the station."⁽¹⁷⁸⁾ Hardinge retained the *liwali* system and appointed Arab officials for the colonial administration. He appointed local elites in the hope that they would cooperate with the colonial project. Therefore, British colonial officials gave more power to

⁽¹⁷¹⁾ Ibid.

⁽¹⁷²⁾ Radford, *Exalted Order*, 258.

⁽¹⁷³⁾ H. Moyse-Bartlett, *The King's African Rifles: A study in the military history of East and Central Africa, 1890-1945* (Luton: Andrews UK, 2012), 95-102; Salim, *Swahili Speaking*, 72-73.

⁽¹⁷⁴⁾ Radford, *Exalted Order*, 258.

⁽¹⁷⁵⁾ Moyse-Bartlett, *The King's African Rifles*, 95-102; Salim, *Swahili Speaking*, 72-73.

⁽¹⁷⁶⁾ TNA: CO 533/488/, Sir Ernest Dowson to Colonial Office, 14 Nov. 1938. See Salim, 73.

⁽¹⁷⁷⁾ Radford, *Exalted Order*, 260.

⁽¹⁷⁸⁾ Ibid., 259-260.

local officials to help them better administer. In 1897, Hardinge enacted an Order-in-Council, which made changes to the administration of the protectorate that led to increased powers for the *liwalis* and the appointment of more Arab officials on the coast.⁽¹⁷⁹⁾ During the debate on the East African Protectorate and Uganda, St. John Brodrick agreed with allegations that Sir Arthur Hardinge was an ‘obstacle’ to the process of ending slavery.⁽¹⁸⁰⁾

Although noted for his skillful diplomacy to end slavery, Hardinge came under attack by abolitionists for his gradual emancipation policy. The Swahili proverb *haraka haraka haina baraka* (hasten slowly) aptly describes his gradual policy aptly.⁽¹⁸¹⁾ Heated debates on Hardinge’s pro-Arab and pro-slavery stance took place on June 15, 1900, when the Member of Parliament for Gloucester, Forest of Dean, Sir Charles Dilke, stated that ‘these officials who hob-nob with Arabs have no regard to the slave population’.⁽¹⁸²⁾

6.8. Hardinge’s Opinion on Slavery

Hardinge believed that slavery in the Sultan of Zanzibar’s mainland dominion was a ‘mild form of slavery’ or ‘serfdom.’⁽¹⁸³⁾ Slavery, as far as he was concerned, would disappear in a few decades without recourse to the compensation of the slave owners or manumission of slaves.⁽¹⁸⁴⁾ With regard to slaves in Mombasa, Hardinge quoted Mr. D. Wilson, acting District Officer, who states that ‘the principal domestic slave owners, sooner than complain, allow their slaves to do just as they like—none of the Arabs and Swahilis can make their domestic slaves work’.⁽¹⁸⁵⁾ In an article titled *Slavery under the British Flag*, F.D. Lugard stated that Hardinge ignored the rule that prohibited slaves from Zanzibar from being hired outside

⁽¹⁷⁹⁾ Salim, *Swahili Speaking*, 81.

⁽¹⁸⁰⁾ HC Deb (10 April 1899) vol. 69, col.712. Available at: https://api.parliament.uk/historic-hansard/commons/1899/apr/10/east-african-protectorate-and-uganda#column_712. (Accessed: 04 July 2018).

⁽¹⁸¹⁾ Hollingsworth, *Zanzibar under the Foreign Office*, 166.

⁽¹⁸²⁾ HC Deb (15 June 1900) vol. 84, col.231. Available at: <https://api.parliament.uk/historic-hansard/commons/1900/jun/15/class-v> (Accessed: 04 July 2018).

⁽¹⁸³⁾ Report by Sir A. Hardinge on the E.A.P. from Establishment to 20 July 1897 Africa, 7 (1897) (C.8683), 60.

⁽¹⁸⁴⁾ Ibid.

⁽¹⁸⁵⁾ Ibid., 61-2.

the island; instead, he instituted a tax on the masters who hired their slaves outside the islands. Hardinge's action, Lugard argues, is 'perilously near the position of raising revenue on the employment of slaves'.⁽¹⁸⁶⁾ Although Lord Lugard was an avid supporter of the abolition of slavery, he was nevertheless cautious about the immediate emancipation of slaves. He believed that this was a drastic move and would inadvertently harm slaves, especially the aged or infirm.⁽¹⁸⁷⁾ Lord Lugard's sentiments are repeated years later in a letter by Foreign Secretary Sir . E. Grey to Joseph A. Pease, Esq., M.P. explaining the advice of Mr. Cave that the laws should not be further changed because the masters might discard their old and sick slaves.⁽¹⁸⁸⁾ In addition, they tear apart from the social fabric, leading to financial crises and disturbances.⁽¹⁸⁹⁾ Therefore, he suggests that slaves should have permissive freedom instead of compulsory freedom.

6.9. Conclusion

This chapter sheds light on the legacy of indirect rule in Mombasa and how it allowed the Swahili and Arab elites to retain their privileged positions long after the establishment of colonial rule. It has shown how the Islamic scholars, who were mostly from the elite groups with connections to the slave-owning class, used Islamic law to entrench their privileges and curb the gains of former slaves. Additionally, it highlights how British colonial rule introduced a racial paradigm that imposed a racial-cum-class social structure on the coast of Kenya, with the former slaves occupying the bottom rungs of the hierarchical ladder.

⁽¹⁸⁶⁾ F. D. Lugard, 'Slavery under the British Flag', *The Nineteenth century and after: a monthly review*, 39, 228 (1896), 335-355.

⁽¹⁸⁷⁾ B.S. Cave to Sir E. Grey (1906) [Memo]. *Memorandum, on the Proposed Abolition of Slavery in the Islands of Zanzibar and Pemba, 19th Oct. 1906*. TNA FO 367/24/Inc. 1/ Conf, 35249/3, The National Archives; see also, TNA CO 533/42/Disp. 138. 13729/08/28 Mar. 1908, The National Archives.

⁽¹⁸⁸⁾ E. Grey to Joseph A. Pease, Esq., M.P. (1908). [Letter]. *Correspondence relating to the Foreign Office, comparing slaves on the mainland (coast of Kenya) to those on the Islands of Zanzibar and Pemba, 23rd Mar. 1908*, TNA: CO 533/50/7839/08, The National Archives; B.S. Cave [Memo] (1906). *Memorandum relating to the Proposal of abolition of slavery in Zanzibar and Pemba, 19th October 1906*, TNA FO 367/24/ 35249/06, The National Archives.

⁽¹⁸⁹⁾ Lugard, 'Slavery under the British Flag', 335-355.

The chapter also demonstrated how the abolition of the status of slavery did not automatically dismantle the beliefs and norms that supported it. The socioeconomic status present in colonialism was not very different from the old institution of slavery, and the inequality that was present in the latter persisted in the former. Former slaves in Mombasa continued to bear the burden of slavery long after its demise, as they lacked resources and were forced to drift back to their former occupations, mainly as maids, servants, and laborers.

Overall, this chapter has highlighted the deep-rooted effects of slavery on social and class relations in Mombasa, which continue to persist. The institutional legacy of slavery has endured, and it will take more than formal dismantling of the institution to eradicate the inequalities that persist. There is a need for continued research and discourse to create a better understanding of the long-lasting legacies of slavery and colonialism as well as to address the social and economic inequalities that persist in Mombasa and other parts of the world.

Chapter 7

Arab Sub-Imperial Rule on the Coast of Kenya

Immediately after declaring the coastal strip a protectorate, the British re-established what the renowned Kenyan historian, Bethwell Ogot, labels 'Arab sub-imperial rule'.⁽¹⁾ He argues that much of the story of the struggle during the colonial period was a struggle between marginalized people, who were predominately of slave ancestry, on the one hand, and Arab and Swahili elites, on the other.⁽²⁾ In 1907, the British moved their headquarters to Nairobi in what would later become part of the Kenya Colony, while the coast remained a British-administered protectorate under the rule of Arab agents of the Sultan of Zanzibar.⁽³⁾

According to Radford, the British used indirect rule in Africa and Asia wherever Muslims held sway.⁽⁴⁾ Indirect rule was predicated along racial categories but based on mutual understanding between British colonial officials and Arab and Muslim elites on the coast of Kenya.⁽⁵⁾ Radford argues that the British used indirect rule to define and reinforce multiple entangled

⁽¹⁾ Ogot, 'Kenya under the British', 251.

⁽²⁾ Ibid.

⁽³⁾ M.A. Porter, 'Resisting uniformity at Mwana Kupona Girls' School: Cultural productions in an educational setting', *Signs: Journal of women in culture and society*, 23, 3 (1998), 619–643.

⁽⁴⁾ Radford, *Exalted Order*, 7.

⁽⁵⁾ Ibid., 8.

hierarchies of race, religion, and class.⁽⁶⁾ Terms such as *uungwana*, associated with the free-born elites, which means refinement, and *ushenzi*, which had the opposite meaning, became social signifiers during colonialism.⁽⁷⁾ The British retained the administrative system that existed before colonialism. According to Carole Rakodi, the British colonial government used the existing hierarchy of Omani administrators to govern the mainland dominance of the Sultan of Zanzibar.⁽⁸⁾ The British and Arabs shared a sense of superiority over the Africans. The Arabs and the Swahili elites saw themselves as culturally superior to the Africans.⁽⁹⁾ Thus, the British saw the Arabs as allies and used them and their existing hierarchy to govern the Africans.⁽¹⁰⁾ The Omani administrative system continued long after the establishment of colonial rule and ended with the lowering of the red flag of the Sultan of Zanzibar on the eve of Kenya's independence.⁽¹¹⁾

Although the Sultan of Zanzibar lacked financial and military power, he nevertheless provided British colonial rule with legitimacy.⁽¹²⁾ On this account, the British retained and continued the Sultan's administrative system, hierarchy, and terminology, which operated throughout the colonial period. Thus, the continuity between *ancien régime* and the new colonial dispensation continued until the eve of independence. Colonial bureaucratic structures incorporated most indigenous institutions on the coast of Kenya.⁽¹³⁾

7.1. Arab Administrators

The British accommodated Muslim administrative and judicial institutions in Zanzibar and its mainland dominance.⁽¹⁴⁾ In a speech commemorating the administrative transfer of Zanz-

⁽⁶⁾ Ibid.

⁽⁷⁾ Mathews, 'Imagining Arab Communities', 137.

⁽⁸⁾ C. Rakodi, 'Mombasa's missing link: marginalization or mismanagement?' in D.F. Bryceson, *African urban economies* (London: Palgrave Macmillan UK, 2006), 131-150.

⁽⁹⁾ Mathews, 'Imagining Arab Communities', 137.

⁽¹⁰⁾ Mirza & Strobel, *Three Swahili Women*, 9.

⁽¹¹⁾ Brennan, 'Lowering the Sultan's flag' 831-861.

⁽¹²⁾ Anderson, 'Islamic Law', 166.

⁽¹³⁾ Ibid., 166-167.

⁽¹⁴⁾ Abdulkadir, *Reforming and Retreating*, 40.

ibar's mainland territory from IBEAC to the British government, Hardinge concluded by saying: 'Lastly, I confirm the present Administrator at Mombasa, and all Walis, Cadis, Akidas, and other officers of the former Company in their present positions pending further orders, and I enjoin upon you all to continue to obey them'.⁽¹⁵⁾ Hardinge incorporated Arabs into colonial administration, thus creating a two-tier administrative system in which Arab and British administrators worked together. Arabs dominated all local administrative positions during the colonial rule. Hardinge restructured the Arab administrative system in the hope of modernizing it. According to Salim, Hardinge had to reorganize the Arab administrative system, giving *liwalis* and *mudirs* powers and respect equal to those of district officers and commissioners. In Salim's view, only the *kadhis* distinctly retained Muslim duties, although to these were added 'European magisterial powers—criminal and civil'.⁽¹⁶⁾

During colonialism, *liwaliship* and *mudirship* belonged only to Arabs. The *kadhi* had power over criminal matters, with jurisdiction over both Muslims and non-Muslim Africans. However, all these positions continued to be independent when the *kadhi* court was restricted to Muslims only and confined to marriage, divorce, and inheritance. Arab officials worked hand-in-glove with the British in administering justice to local African populations. Therefore, in Mombasa, Arabs and Swahili elites worked with colonial administrators to provide justice to the entire population on the coast of Kenya. Arabs became intermediaries, resolving disputes between the coastal population and European colonial officials. These elites, as intermediaries, influenced colonial decisions.⁽¹⁷⁾ Arab and Swahili officials became intermediaries in resolving conflicts between former slaves and former masters. Some officials belonged to the same slave-owning class on the coast of Kenya. As officials, they relayed government edicts to both the former and former masters. Their position as cogs in this new colonial system allowed them to fight to protect and extend their privileges, including those of former mas-

⁽¹⁵⁾ E. Hertslet, *The Map of Africa by Treaty, Vol. II* (London: Frank Cass. 1967). (see Appendix for a full text of the 1895 speech).

⁽¹⁶⁾ Salim, *Swahili Speaking Peoples*, 145-146.

⁽¹⁷⁾ *Ibid.*, 78-79.

ters, during colonialism. Among the entitlements they tried to protect were the supremacy of *shariah* law, control over land, labor, and government jobs.⁽¹⁸⁾ On the other hand, the British used Islamic institutions as instruments of social control.⁽¹⁹⁾ Ironically, on the eve of Kenya's independence, Ronald Ngala, a politician from the *Mijikenda* group, a marginalized group on the coast of Kenya, in an act of political theatre, to use James R. Brennan's words chose to lower the red flag of the Sultan of Zanzibar, instead of the Union Jack. The red flag for many Africans, including former slaves, on the coast of Kenya symbolized Omani colonialism and the embodiment of Arab and Swahili domination on the coast. Ngala's dramatic performance was a signal that all forms of colonialism had ended, and a new era of independence was beginning.⁽²⁰⁾

Arab officials worked with European colonial officials to administer justice and act as intermediaries between the local population and the colonial regime. *Liwalis* worked alongside European colonial officials, exercising authority over the native population, administering justice, and acting as intermediaries between the British and the rest of the Muslim population. The *liwalis* had powers equivalent to those of second-class magistrates. Technically, in criminal cases, they could pass sentences not exceeding six months, punish 50 lashes, and fines up to Rs. 200. In civil cases, they could award punitive damages of up to Rs. 1, 000.⁽²¹⁾ The *liwali* court was procedural and bureaucratic by European standards, but most Muslims preferred bringing criminal cases to the *kadhi* courts instead of the highly organized *liwali* courts.⁽²²⁾ These Arab officials served as administrators, and had jurisdiction over Muslims and non-Muslim Africans.

To avoid friction and power struggles between European district officers and *liwalis*, Hardinge instructed that the *liwalis* adjudicated in all cases. In exceptional cases, the former could interfere with the judgement of *liwalis*, but only with 'a valid reason'.⁽²³⁾ Hardinge allowed *liwalis*

⁽¹⁸⁾ Brennan, 'Lowering the Sultan's flag', 832.

⁽¹⁹⁾ Becker, 'Islam and Imperialism', 112.

⁽²⁰⁾ Brennan, 'Lowering the Sultan's flag', 831.

⁽²¹⁾ Salim, *Swahili Speaking Peoples*, 78-79.

⁽²²⁾ Mwakimako, 'The Historical Development of Muslim courts', 329-43.

⁽²³⁾ Salim, *Swahili Speaking Peoples*, 79.

to pass sentences in criminal cases and made *kadhis* responsible for civil cases. The *kadhis* worked with the *liwalis* as chief Muslim judicial officers, so the former mostly dealt with criminal cases, and the latter with religious and civil cases. However, at times, their duties overlapped. Hardinge used the Egyptian and Turkish systems to distinguish and define the duties of the *kadhis* and *liwalis*. He confined *kadhis* to religious matters concerning marriage, divorce, and inheritance. The *kadhis* also acted as legal advisors to *liwalis* and other European officials on issues concerning the *shariah*.⁽²⁴⁾ Echoing the earlier statement, a memorandum circulated on 27th of October 1922, to the Chief Justice from G.V. Maxwell (the Chief Native Commissioner) explains that the *kadhi* courts mostly dealt with civil cases, marriage, divorce, and inheritance. *Kadhi* courts, According to the memorandum, Kadhi courts are similar to the Probate and Divorce Court in England. However, in accordance with the *shariah*, and in practice, the courts dealt with both criminal and civil cases. In his letter, the Chief Native Commissioner writes that the functions of a *kadhi* are 'confined to the adjudication of suits brought under the Sheriah in matters of marriage, divorce and inheritance. He is frequently consulted by *liwalis* and European judicial officers on points of Mohammedan law'.⁽²⁵⁾ In defense of *kadhi*'s jurisdiction and suitability in conducting criminal cases, Chief Justice J.W. Barth stated that, to the best of his knowledge and understanding, *kadhis* in other Muslim countries were not confined or limited to adjudicating cases relating to marriage, divorce, and inheritance. They adjudicated cases that dealt with both criminal and civil matters. Hence, he did not understand the reason for limiting their jurisdiction to civil suits on the coast of Kenya.⁽²⁶⁾

⁽²⁴⁾ Ibid.

⁽²⁵⁾ In a Memorandum dated 27th of October 1922 from G.V Maxwell, the Chief Native Commissioner titled Kathis.

⁽²⁶⁾ J.W. Barth, Chief Justice to G.V. Maxwell, The Chief Native Commissioner (1922) [Letter]. *Correspondence relating to limits to adjudicating cases by Kadhis*, 29th November 1922, KNA/No. DR 1723/22. Kenya National Archives.

7.2. Merging Islamic Law and Colonial Rule

The Sultan signs a decree, the Englishman guides the hand, and a Mohammedan judge pronounces a verdict, the Englishman predicates the decisions.⁽²⁷⁾ Arab and Swahili elites used the colonial legal system to enhance their power over their former slaves. As C.A. Bayly has shown in his *Empire and Information*, colonial rule was based on networks of knowledge configuration created through encounters between the colonized and colonizer. In Mombasa, elites exploited colonial legal institutions to reinforce their dominance over former slaves.⁽²⁸⁾ In Mombasa, as elsewhere, individuals with superior economic and political resources often manipulate institutions to gain their advantage.⁽²⁹⁾ In such circumstances, the administration of Anglo-Muhammad law was more than a concession to 'native opinion'. Systems of personal law served to consolidate the authority of certain community groups and thus incorporated community-based forms of surplus extraction into the colonial state.⁽³⁰⁾

When the British established their protectorate over Zanzibar in 1890, British colonial administration started to transform *kadhi*, *liwali* and *mudir* courts.⁽³¹⁾ Hardinge reassured the Arab and Swahili elites that the colonial government would not interfere with their religion and customs. Salim argues that the fear of this was in the minds of the people since the declaration of the British Protectorate in July 1895. However, Hardinge took pains to assure the Arab and Swahili elites in Mombasa that their 'religion and customs would be respected and preserved'.⁽³²⁾ Colonial administration avoided confronting Arab elites and ruled through existing Arab administrators.⁽³³⁾ The law played a central role in the colonial project,⁽³⁴⁾ although views on how the deployment of law across the empire should be understood have

⁽²⁷⁾ Newman, *Banani*, 89.

⁽²⁸⁾ C.A. Bayly, *Empire and information: Intelligence gathering and social communication in India, 1780-1870* (Cambridge: Cambridge University Press, 1996), 56.

⁽²⁹⁾ Anderson, 'Islamic Law', 168.

⁽³⁰⁾ Ibid.

⁽³¹⁾ Abdulkadir, *Reforming and Retreating*, xiv.

⁽³²⁾ Salim, *Swahili Speaking*, 108.

⁽³³⁾ Mathews, 'Imagining Arab Communities', 144.

⁽³⁴⁾ Abdulkadir, *Reforming and Retreating*, 45.

hardly remained static.⁽³⁵⁾ British colonial law was a double-edged sword, viewed as both legitimate and illegitimate. Sartori and Shahar view colonial law as 'a vehicle simultaneously of governmentality and of its subversion, of subjection and emancipation, of dispossession and reappropriation'.⁽³⁶⁾ Nathaniel Mathews says that colonial administrators like Hardinge 'paid lip service' to the idea of continuity of Omani administration and the enforcement of *shariah* by local religious experts.⁽³⁷⁾ The colonial regime incorporated *shariah*, customary laws, and colonial laws into the colonial legal system. Colonial legal understanding was restricted because of limited knowledge of *shariah* and local norms. Colonial authorities, therefore, used their legal institutions to collect information about the colonized society. By using text instead of customary practices, they strategically contained the fluidity of local traditions. Therefore, inadvertently, they created 'arrested, frozen forms of representation'.⁽³⁸⁾ Nevertheless, British colonial officials found that the *shariah* could not be manipulated and was inflexible in their own words. On the other hand, the fact that Islamic law was already a highly institutionalized and written legal system also complicated the process of incorporation. As a body of religious law based on divine revelation and authoritative interpretations of sacred texts, Islamic law may have been less susceptible to manipulations and more resistant to domination. Indeed, complaints about the 'inelasticity' of *shariah* were common among high-ranking colonial officers. Reports on tensions and conflicts between Muslim jurists and colonial authorities concerning the application of *shariah* law are also common.⁽³⁹⁾

Legal pluralism was prevalent in the Islamic world long before the colonial era, but when colonial empires took control of regions inhabited by Muslims, they introduced new forms of legal pluralism. Some have argued that the British reforms and attempts to codify the Islamic law 'were an eclectic patchwork of provisions taken from various schools of Islamic law,' thus

⁽³⁵⁾ S. Dorsett & J. McLaren, *Laws, engagements and legacies: The legal histories of the British Empire: an introduction*, in S. Dorsett and J. McLaren (eds.) *Legal histories of the British Empire: laws, engagements and legacies* (Abingdon, Oxon: Routledge, 2014).

⁽³⁶⁾ Sartori & Shahar, 'Legal pluralism', 642.

⁽³⁷⁾ Mathews, 'Imagining Arab Communities', 144.

⁽³⁸⁾ Anderson, 'Islamic Law', 180.

⁽³⁹⁾ Sartori & Shahar, 'Legal pluralism', 645.

undermining the diversity and flexibility of the *shariah*.⁽⁴⁰⁾ The British enacted statutes and incorporated both the *shariah* and customary laws into the colonial legal system.⁽⁴¹⁾ British colonial authorities sometimes manipulated *shariah* and customary laws, at times giving them legitimacy and delegitimizing them. For example, in northern Nigeria, *shariah* was reduced to the level of customary law. Thus, British colonial authorities simultaneously conferred legitimacy and restricted Islamic laws.⁽⁴²⁾ Although colonial laws have influenced *shariah* and customary laws, both *shariah* and customary laws have also had an impact on colonial laws. Conceptualizing colonial law as a framework within which *shariah* and customary laws interact has merits, but colonial law is not a pre-given legal order that controls or arranges this encounter from the outside. Rather, while colonial law shaped the relations and division of labor between *shariah* and customary laws, it was also shaped by these relations and by its own encounters with these bodies of law.⁽⁴³⁾

Arthur Hardinge had a significant impact on the life of slaves in both Zanzibar and its mainland dominion. He introduced the Egyptian and Turkish systems, which assigned religious duties to *kadhis*, the dispensed justice to *liwalis*, and created a *wakf* to manage religious trusts.⁽⁴⁴⁾ Hardinge laid the foundation of British administration at a time when a significant economic and political change occurred within Muslim society on the coast of Kenya. Salim portrayed this change as negatively impacting Arab and Swahili communities on the coast; to him, Hardinge's administrative changes precipitated the economic and political decline of the old Arab and Swahili ruling classes.⁽⁴⁵⁾ However, reality is far from that. Hardinge held Arabs and Swahili elites in high esteem; instead of undermining them, he entrenched their dominance over the lower classes, especially the former slaves. Hardinge proposed the creation of a post of *shaykh al-Islam* post in Egypt. He even suggested that a scholar from Egypt

⁽⁴⁰⁾ Mathews, 'Imagining Arab Communities', 144.

⁽⁴¹⁾ Sartori & Shahar, 'Legal pluralism', 654.

⁽⁴²⁾ Ibid., 651.

⁽⁴³⁾ Ibid.

⁽⁴⁴⁾ J. D. Holway, *Marriage as a Factor Affecting the Transfer of Religious Allegiance in Kenya*, PhD thesis (University of Nairobi, 1976), 200.

⁽⁴⁵⁾ Salim, *Swahili-Speaking Peoples*, 140.

be appointed to this position. However, for financial reasons, this suggestion was rejected. Therefore, he had to appoint a local scholar in that position. Hence, Mwenye Abudu was appointed the first *shaykh al-Islam* on the coast of Kenya in 1897.⁽⁴⁶⁾ Hardinge gave Arabs important positions in colonial administration; this preferential treatment of Arabs created a dual administrative system on the coast of Kenya. According to a prominent historian of the Swahili coast, A.I. Salim, Arab officials worked alongside European officials. He argues that the British reshuffled old administrative officials and appointed civil servants who were loyal to them instead of the Sultan of Zanzibar.⁽⁴⁷⁾ Salim maintained that the British gradually replaced independent-minded officials with loyal collaborators.⁽⁴⁸⁾ Nevertheless, Salim contradicts himself when he states: 'Hardinge personally acknowledged the usefulness of the old-established personages'.⁽⁴⁹⁾ He continues by saying that even 'Hardinge's plan for expanding Arab administration through training of Arabs administration and the 'better-class Swahili' was never implemented during his tenure and was not even considered by his successors'; this clearly shows that Salim wants to distance the Arabs from the label of colonial collaborators. He says that the Arabs and the Swahili had become politically irrelevant quite early during colonial rule; in his own words, they had become a 'disappearing factor'.⁽⁵⁰⁾ To support his 'disappearing factor' thesis, Salim points to a statement in 1909 by the then newly appointed Governor of Kenya, Sir Percy Girouard, in his opposition to the appointment of Indians to the Legislative Council. According to Salim, Girouard 'noted that the admission of Indian representation would lead to a legitimate demand on the part of the Arabs and the Swahili' who are our oldest native subjects 'and who outnumber the Indians'.⁽⁵¹⁾ However, Salim glosses over the administrative powers enjoyed by Arabs and Swahili elites in the coastal region. He con-

⁽⁴⁶⁾ Ibid., 141-142; Abdulkadir, *Reforming and Retreating*, 105.

⁽⁴⁷⁾ A.I. Salim, 'Early Arab-Swahili political protest in colonial Kenya', in B.A. Ogot (ed.) *Hadith 4: Politics and Nationalism in Colonial Kenya* (Nairobi: E.A.P.H. 1972), 76.

⁽⁴⁸⁾ Ibid., 77.

⁽⁴⁹⁾ Ibid.

⁽⁵⁰⁾ Report by Sir A.H. Hardinge on the condition and progress of the East Africa Protectorate from its establishment to the 20th July 1897, British Sessional Papers, Africa, No. 7, (1897), 26.

⁽⁵¹⁾ Ibid., 78.

tinues his argument by saying that Girouard criticized the treatment of Arab administrative officials on the coast by 'young and inexperienced European officials'.⁽⁵²⁾ However, Girouard's outburst was in response to a memorandum sent by Ali bin Salim, son of the *Liwali* of Mombasa, whom Salim calls 'the shrewdest, most articulate, and most (self) educated among the Arab-Swahili peoples'.⁽⁵³⁾ In the memorandum, Salim says that Ali bin Salim complained about the decline in status of the Arab administration, linking its 'demoralization with general Arab discontent'.⁽⁵⁴⁾ Salim argues that Ali bin Salim was 'defending the Arab officers' privileges, 'bemoaning the 'terms and service offered to the Arab official' compared to European officials or even Indians working for the colonial government. He says that Ali bin Salim argued that this disparity 'not only struck at their confidence in the government but left an undesirable impression in the minds of the Arab-Swahili people'.⁽⁵⁵⁾

Nevertheless, Hardinge saw Arabs as valuable assets for the colonial project, making them intermediaries between Europeans and Africans. Hardinge hired Arabs of 'good family' whom he saw as 'valuable' to the colonial enterprise. He employed them as judicial officials to run native courts. Hardinge saw the upper-class Swahilis and Arabs as the only coastal people who were literate and understood how the government worked. Because of their experience as rulers and administrators on the coast, they carried influence over the illiterate coastal population, mostly people with slave ancestry. Thus, they were in a good position to go between European colonial officials and the majority African population.⁽⁵⁶⁾ This led to racially based leadership and favoritism according to leadership positions in Arab and Swahili elites.⁽⁵⁷⁾

Hardinge respected the Arab-Swahili elite, deferring to their Islamic sensibilities. Like many colonial officials, he appreciated Muslim 'half-civilized' ways, and, having been a diplomat in Egypt and Turkey, he found ways to be familiar.⁽⁵⁸⁾ The British, like other European

⁽⁵²⁾ Ibid., 79.

⁽⁵³⁾ Ibid.

⁽⁵⁴⁾ Ibid.

⁽⁵⁵⁾ Ibid., 80.

⁽⁵⁶⁾ Ibid., 77.

⁽⁵⁷⁾ Mwakimako, *Politics, Ethnicity and Jostling for Power*, 89.

⁽⁵⁸⁾ Becker, 'Islam and Imperialism', 112.

colonial powers, succeeded in cultivating amicable relations with Arab and Swahili elites; in many instances, they deferred to their perceived 'Islamic' sensibilities.⁽⁵⁹⁾ Hardinge, like most British administrators, appeared to be relatively easy in his relations with elite Arab and Swahili intermediaries. While resigning to the fact that the elites might be pushing their own agendas, he was confident that their usefulness outweighed the risk of employing them.⁽⁶⁰⁾ Hardinge believed Arabs and Swahili elites, political representatives of the coastal milieu, to be better intermediaries than other Africans. He considered them the most 'civilized' part of the population, as some of them had long careers in colonial administration.⁽⁶¹⁾ British colonial officials were highly prejudiced towards ordinary Africans, but they praised the practical and intellectual abilities of Arab and Swahili intermediaries, finding them indispensable to their colonial project in British East Africa.⁽⁶²⁾

Hardinge knew that it would be difficult for the Arab and Swahili elites to hold on to their privileged positions without Western education and, therefore, made provision for their children to obtain education. He was aware that Arabs and Swahilis needed to obtain secular education if they were to hold on to their privileged positions. Therefore, he recommended that revenues from Islamic endowments or *wakf* should be set aside to help establish a school where they could acquire instruction in both secular and traditional religious education.⁽⁶³⁾ Hardinge was magnanimous for the Arab community along the coast of Kenya. In reality, colonial officials considered Arabs to be superior to Africans. Therefore, the British treated

⁽⁵⁹⁾ Ibid., 117.

⁽⁶⁰⁾ Ibid., 117-118.

⁽⁶¹⁾ Ibid.

⁽⁶²⁾ Ibid., 118.

⁽⁶³⁾ Principal Secretary of State for the Colonies to A. C. Hollis, Governor's Office, Nairobi (1907) [Letter]. *Correspondence relating to* how revenues from Islamic endowments or *wakf* could be used to establish a school for the Arabs and Muslims, 16th Dec. 1907, TNA CO 533/33/07, The National Archives; Arab School (1915-1921) [Letters]. *Correspondence relating to establishment of Arab School or Mohamedan School* KNA PC/Coast/1/4/8, Kenya National Archives; J.R. Orr, Director of education, [Note] (1913). Arab school, Mombasa, August 1913, KNA/ CP/MP/290/13, Kenya National Archives; see also, T. Carmichael, "Practice' Towards Islam in the East Africa Protectorate: Muslim Officials Waqf Administration and Secular Education in Mombasa and Environs 1895-1920', *Journal of Muslim Minority Affairs*, 293-309; Salim, *Swahili-Speaking Peoples*, 146.

Arabs as a distinct community, who enjoyed special treatment under colonial rule.⁽⁶⁴⁾ Salim explained that Hardinge gave Arab and Swahili elites important positions in his administration. This special treatment of Arabs by Hardinge, Salim suggests, was due to his 'personal attitude:' his soft spot for Islam and Muslims, formed during his time as a diplomat in both Egypt and Turkey. Thus, Hardinge's generosity towards Arabs and his support for 'local Islamic institutions' is due to his encounters with Muslims in the Islamic heartlands of Istanbul and Cairo.⁽⁶⁵⁾ The above factors outlined in Salim's book are true, but in the following pages, he expounds on the main reasons for Hardinge's preference for Arabs in his administration. He argued that Hardinge had to rely on Arab and Swahili administrators because he could not depend on the skeletal staff left by the IBEAC to rule the protectorate. Therefore, Salim says 'with only a small European staff, not all of whom were entirely satisfactory to him, and with little immediate prospect of the Treasury providing the money to recruit more, it was inevitable that Hardinge should maintain a significant dependence on Arab and Swahili manpower and experience'.⁽⁶⁶⁾

7.3. Islamic Legal Institutions in the East Africa Protectorate

At the onset of British colonialism in Mombasa in 1895, the *kadhi* court assumed an important role in the new colonial legal system. The protectorate agreement affirmed the sultan's authority over the region and guaranteed that the *shariah* should be the law of the land. The initial strength of the *shariah* came from its commitment to the Sultan of Zanzibar. Apart from the obligation to Zanzibar, British colonial officials deployed a strategy that had worked elsewhere in the colonial empire, where they used the *shariah* as a tool for co-opting local elites.⁽⁶⁷⁾ Because of its limited resources, the *kadhi* courts to deliver justice. The primary dilemma of colonial rule whenever they encountered local legal systems was to find ways to project their

⁽⁶⁴⁾ Cussac, 'Muslims and Politics in Kenya', 292-301.

⁽⁶⁵⁾ Salim, *Swahili-Speaking Peoples*, 74-76.

⁽⁶⁶⁾ *Ibid.*, 76.

⁽⁶⁷⁾ B.B. Brown, 'Islamic Law, Qadhis' Courts and Muslim Women's Legal Status: The Case of Kenya', *Institute of Muslim Minority Affairs*, 14, 1-2 (January 1993), 94-101.

power to provide order cheaply and efficiently, especially when it lacked manpower and political legitimacy.⁽⁶⁸⁾ Islamic legal institutions provided solutions to the British government.⁽⁶⁹⁾ However, ruling through local intermediaries gave local elites the power to define what was moral or immoral. In the case of Mombasa, Muslim legal relevance was always derived from a properly authoritative *kadhi* whose moral probity and knowledge of local arrangements could translate the precept into practice. The *kadhis* in Mombasa relied on local norms or what C.A. Bayly calls 'the sense of the neighborhood' to adjudicate justice. The *shariah* became a focal point of struggle among the local elites, the colonial regime, and especially marginalized groups such as former slaves. In essence, this meant that the *kadhis* had judicial powers to continue to use *shariah* and customary norms established long before colonialism.⁽⁷⁰⁾ According to Stockreiter, the *kadhi* courts negotiated with the British on ways of 'improving and defending socioeconomic status among a wide range of actors, Arabs, non-Arabs, spouses, and kin, as well as former slaves and slave owners'.⁽⁷¹⁾

Stockreiter argues that Islamic law in Zanzibar and its dominions underwent two waves of modernization. The first phase was when the Omani Sultanate embarked on institutionalizing and regulating its legal system. The second phase occurred during the British colonial period.⁽⁷²⁾ Under the Omani Sultanate, the Swahili coast saw a move away from decentralized 'traditional' arbitration to a more centralized system of Islamic law based on dispute resolution.⁽⁷³⁾ The *kadhis*, According to Stockreiter, the *kadhis* were usually traders and scholars who also worked as legal functionaries; at times, they worked as adjudicators, giving legal opinions on matters relating to the *shariah*. She argues that the 'boundaries between their public, state-appointed role as *kadhis* and their private counselling role in social-legal matters were blurred'.⁽⁷⁴⁾ This blurring of boundaries continued when the British established the

⁽⁶⁸⁾ Hussin, 'Making Legibility between Colony and Empire', 350.

⁽⁶⁹⁾ Anderson, *Islamic law*, 10.

⁽⁷⁰⁾ Mwakimako, 'The Historical Development of Muslim courts', 333.

⁽⁷¹⁾ Stockreiter, *Islamic law, gender*, 2.

⁽⁷²⁾ *Ibid.*, 561.

⁽⁷³⁾ *Ibid.*

⁽⁷⁴⁾ *Ibid.*

so-called dual jurisdiction in Zanzibar and its mainland dominion following their declared protectorate over these lands.⁽⁷⁵⁾

In 1890, when the British declared a protectorate over Zanzibar and later its dominions on the mainland, they categorized its population as both Muslim and Arab.⁽⁷⁶⁾ In his study of colonialism in northern Nigeria, Muhammad S. Umar shows that the British appropriated Islamic symbols and celebrated 'the Islamic credentials' of the British Empire. The appropriation of Islamic sentiments was designed according to Umar to win the hearts and minds of Muslim subjects to colonial policies and programs.⁽⁷⁷⁾ In Zanzibar and its mainland dominion, like other parts of the British Empire where Islam was predominant, the British extensively used Islamic law to support indirect rule.⁽⁷⁸⁾ Stockreiter argues that it was the norm to adopt 'ruling class' laws, in this case, Islamic law, in order to implement indirect rule. The adoption of this laws as 'a policy of "respect and non-interference"' was in order not to offend Muslim sensibilities. Therefore, in Zanzibar and its dominion on the mainland, *shariah* remained the law of the land.⁽⁷⁹⁾

The British approach to Muslims was respectful, especially when it came to the implementation of dual jurisdiction. In Zanzibar and its mainland dominion, the British created a two-tier judicial system, one for themselves and their Indian subjects under the British Crown and the other under the Sultan of Zanzibar.⁽⁸⁰⁾

Stockreiter states that the colonial officials introduced a British version of Islamic law known as Anglo-Muhammadan law from India that provided a 'template for structuring' and interpreting Islamic law in East Africa. In 1897, the British introduced the Indian Codes to the mainland dominion of the Sultan, which improved the formality and procedure in the *kadhis* court and, at the same time, stopped *kadhis* from adjudicating Islamic criminal law. The

⁽⁷⁵⁾ Ibid.

⁽⁷⁶⁾ Stockreiter, 'British Kadhis', 562.

⁽⁷⁷⁾ Umar, *Islam and colonialism*, 28.

⁽⁷⁸⁾ Ibid.

⁽⁷⁹⁾ Stockreiter, 'British Kadhis', 562.

⁽⁸⁰⁾ Ibid.

British, Stockreiter argues, introduced an innovation by dividing Islamic law into criminal and civil laws; consequently, they restricted the *kadhi* to areas focusing only on marriage, divorce, and inheritance.⁽⁸¹⁾

In 1899, the Supreme Court of Zanzibar was established, which consisted of a British judge and two *kadhis*, one from the Ibadi sect and the other from the Sunni sect of Islam.⁽⁸²⁾ The British judge only interfered with proceedings if asked by the sultan or any of the two *kadhis*. The non-interference principle was applied in other courts in the Sultan's dominion.⁽⁸³⁾ The Zanzibar Courts Decree and British Subordinate Courts of 1923 amalgamated dual jurisdiction; nevertheless, the administration of justice was still in the hands of *kadhis* and other Arab officials.⁽⁸⁴⁾ Kevin Wanyonyi argued that the aim of British colonial administrators was to unify parallel court systems into one under British judicial officers. However, Wanyonyi points out two factors that did not make the unification of the court system practical. First, the amalgamation of the two-court system was not possible because of the nature of the protectorate, where the Sultan had jurisdiction over his subjects and the British had jurisdiction over its subject. Second, the two systems approached dispute resolution differently: the Islamic court system was a mediatory system that attempted to reconcile litigants, and the British system, on the other hand, was adversarial, with the judge acting as a referee.⁽⁸⁵⁾

Colonial officials were influenced by the Weberian notion of *kadijustiz* (kadi justice) in many ways. Weber saw the *kadhi* court system as substantively irrational. Weber argued that Islamic law has no autonomy because it came under the influence of the state.⁽⁸⁶⁾ He views the khadi as being 'under the tree dispensing justice according to considerations of individual

⁽⁸¹⁾ Ibid., 562-563.

⁽⁸²⁾ Hollingsworth, *Zanzibar under the Foreign Office*, 164-165.

⁽⁸³⁾ Stockreiter, 'British Kadhis' and 'Muslim Judges,' 563.

⁽⁸⁴⁾ Ibid., 564; Hollingsworth, *Zanzibar under the Foreign Office*, 164-165.

⁽⁸⁵⁾ K. Wanyonyi, *Kadhi's Courts in Kenya-Towards Enhancing Access to Justice for Muslim Women*, MA Thesis (Lund University, 2016), 14.

⁽⁸⁶⁾ M. Deflem, 'Max Weber on the Rationalization of Law, *Sociology of Law: Visions of a Scholarly Tradition* (Cambridge: Cambridge University Press 2008), 57-55.

expediency'.⁽⁸⁷⁾ British colonial officials saw the *kadhi* courts as partial, inefficient, corrupt, and, for the most part, prone to bribery. Hardinge felt that the inhabitants did not have confidence in the *kadhis*. In a letter to Lord Salisbury, Hardinge states '[s]light confidence was felt by the inhabitants in the *kadhis*' purity, integrity, or independence'.⁽⁸⁸⁾ The imagery of bribery and partiality in the minds of British colonial officials was partially influenced by the social environment in which Islamic law operated. However, with the advent of colonialism, the *kadhis* legal universe shifted from open spaces, as mentioned above, to an appropriate place to give judgement. Nevertheless, this appropriation of space did not deter some *kadhis* from dispensing justice in the shade of a tree.⁽⁸⁹⁾

The Courts Ordinance of 1907 brought Subordinate Courts under a unified system, thus restoring *shariah* courts and the establishment of native tribunals.⁽⁹⁰⁾ Thus, the British fulfilled an earlier promise to respect the *shariah* and customs of the people on the coast of Kenya.⁽⁹¹⁾ The law was an area of contestation between the British and their subject, especially in the areas of 'interpretations of morality and culture'. These battles over the interpretation of the law allowed the elites, in the case of Mombasa, not only to find new ways to define their relationship with the British, but also to find ways to influence the colonial social order.⁽⁹²⁾ The British believed that Islamic criminal law was incompatible with British common law. They found Islamic judicial practice to be 'decidedly vague and inelastic'.⁽⁹³⁾ Therefore, in 1908, the colonial government introduced the Zanzibar Courts Decree 1908, which tried to restrict the jurisdiction of the *kadhi* courts. The aim of the Decree was to remove the inconsistencies between the *shariah* procedure and evidence law and the British common law of 'justice, equity, and good conscience'.⁽⁹⁴⁾

⁽⁸⁷⁾ I.A. Rabb, 'Against Kadijustiz: on the negative citation of foreign law', *Suffolk UL Rev.* 48 (2015), 343-377; Stockreiter, 'British Kadhis' and 'Muslim Judges', 566.

⁽⁸⁸⁾ Hollingsworth, *Zanzibar under the Foreign Office*, 163.

⁽⁸⁹⁾ Stockreiter, 'British Kadhis', 566.

⁽⁹⁰⁾ Mwakimako, 'The Historical Development of Muslim courts', 330.

⁽⁹¹⁾ *Ibid.*, 332.

⁽⁹²⁾ Mwakimako, 'The Historical Development of Muslim courts', 332-333.

⁽⁹³⁾ Stockreiter, 'British Kadhis' and 'Muslim Judges', 565.

⁽⁹⁴⁾ *Ibid.*, 563.

According to Mwakimako, '[t] the law of the colonial era witnessed a high degree of "contestation."⁽⁹⁵⁾ One area of contention between some colonial officials was the jurisdiction and procedures parameters of Muslim subordinate courts. Colonial officials, as late as 1944, discussed inefficiencies and irregularities in the *kadhi* court. For example, the *kadhi* court did not follow any formal procedures designed for the courts, and in many instances, court officials often lacked proper training in criminal and civil matters.⁽⁹⁶⁾ In a letter dated April 4, 1944, written by John O.B. Kelly, District Registrar, on the issue of Civil Procedure in Mombasa Subordinate Courts, he states:

During the recent visit to His Honor, the Chief Justice, His Honor instructed me to supply him with full information on the subject of Civil Procedure in Muslim Subordinate Courts, which arose in Civil Appeal No.11 of 1939, when His Honor Mr. Justice Thacker held that in Muslim Subordinate Courts Mohamedan Law does not apply as regards procedure and evidence, and that the Indian Evidence Act and Civil Procedure Ordinance and Rules apply.⁽⁹⁷⁾

7.4. Muslim Subordinate Courts

The Sultan signs a decree, the Englishman guides the hand, and a Mohammedan judge pronounces a verdict; the Englishman predicates the decisions.⁽⁹⁸⁾ In his chapter, 'Colonialism and the Law,' Ebrahim Moosa argues that the myth that colonial laws dislodged native laws was a common theme; it was established as the folklore of Shahrazad's One Thousand and One Stories or Newton's Apple.⁽⁹⁹⁾ According to him, encounters between Muslim law and colonialism created a more complex picture.⁽¹⁰⁰⁾ When the British established their protectorate over Zanzibar and its mainland dominion, they imposed a dual legal framework, which had British

⁽⁹⁵⁾ Mwakimako, 'The Historical Development of Muslim courts', 333.

⁽⁹⁶⁾ Ibid.

⁽⁹⁷⁾ J. O.B. Kelly, District Registrar, Supreme Court, Mombasa, to Registrar, Supreme Court, Nairobi (1944) [Letter]. *Correspondence relating to the issue of Civil Procedure in Mombasa Subordinate Courts*, April 4, 1944, KNA/AP/1/1200/44, Kenya National Archives.

⁽⁹⁸⁾ Newman, *Banani*, 89.

⁽⁹⁹⁾ Moosa *Colonialism*, 158.

⁽¹⁰⁰⁾ Ibid.

law on top and *shariah* as subordinate. However, at the same time, the colonial authorities due to their 'non-interference' principle were able to preserve and at times entrench Islamic institutions such as the *kadhi*, *liwali* and *mudir* courts.⁽¹⁰¹⁾ Elke E. Stockreiter argues that colonial laws were an outcome of 'interaction between the colonizer and the colonized.'⁽¹⁰²⁾ Muslim scholars and elites in colonized Muslim societies collaborated with the British to enforce a certain *shariah*, which they felt was vital for their survival.⁽¹⁰³⁾ British colonial experiences with Muslim societies in Egypt, Turkey, and India have shaped the practice of Islamic law on the East African coast.⁽¹⁰⁴⁾

In Mombasa, similar to many other colonized Islamic territories, two analytic perspectives emerged. Number one, instead of the colonial ideas of an all-powerful colonial authority subjugating a colonized society, in its place was a situation in which 'colonial officials and local elites conditioned each other's expectations of capacity of the colonial state, the role of law, and the place of Islam'.⁽¹⁰⁵⁾ Second, Islamic law emerged as a central arena for politics out of the struggle between local elites and colonialism, first as a way of maintaining a domain of local autonomy and later as a basis upon which to build a challenge to colonial institutions and authority.⁽¹⁰⁶⁾ As alluded to earlier, colonialism entrenched local institutions and elites.⁽¹⁰⁷⁾

The parallel judicial system was an important characteristic of the British colonial justice system.⁽¹⁰⁸⁾ Colonial pluralism in Zanzibar and the mainland dominion of the Sultan were dual: on one side, the *shariah* and customary law, and on the other hand, English law.⁽¹⁰⁹⁾ In Zanzibar and its mainland dominion, this dual judiciary system came to be because of the treaty signed between the sultan and consular officials. Sultan Bargash b. Said signed a treaty

⁽¹⁰¹⁾ Mwakimako, 'The Historical Development of Muslim courts', 330.

⁽¹⁰²⁾ Stockreiter, 'British Kadhis' and 'Muslim Judges', 560-576.

⁽¹⁰³⁾ Moosa 'Colonialism', 158.

⁽¹⁰⁴⁾ Mwakimako, 'The Historical Development of Muslim courts', 329-330.

⁽¹⁰⁵⁾ Hussin, *The Politics of Islamic Law*, 5.

⁽¹⁰⁶⁾ Ibid.

⁽¹⁰⁷⁾ Ibid.; P. S. Landau, 'Hegemony and History', in J. and J. L. Comaroff's *Of Revelation and Revolution, Africa*, 70, 3 (2000), 501-519; Mamdani, *Citizen and Subject*, 314.

⁽¹⁰⁸⁾ Hashim, 'Shaping of the Sharia Courts', 385.

⁽¹⁰⁹⁾ Mamdani, *Citizen and Subject*, 314.

in 1886, which allowed for the establishment of a British Consular Court that had jurisdiction over British subjects.⁽¹¹⁰⁾ The British do not have a uniform colonial legal framework. For the most part, the 'official on the spot' used customary law, Islamic law, and English law in response to demands in the colony. This lack of a clear policy created conflicts between colonial administrators and judiciary officials. For administrators, English law was an obstacle, and for British judicial officials, without English law, justice would be debased. The administrators were concerned with the day-to-day running of the protectorate, and their aim was to see the smooth running of the colony without incurring a financial burden. On the other hand, the judiciary was concerned with upholding English law, and at times, conflicts occurred between the administrators and the judicial wing of the colony.

⁽¹¹⁰⁾ J. H. Vaughan, *The Dual Jurisdiction in Zanzibar* (Zanzibar: Government Printer, 1935), 13; Hashim, 'Shaping of the Sharia Courts', 382.

Chapter 8

Colonialism and Social Stratification in Mombasa

Slavery was officially abolished by the British colonial government in 1907. This colonial intervention to emancipate slaves in Mombasa brought little change to the newly freed slaves. Relations between the former masters and their 'freed' slaves continued, and the ties that bound slaves to their masters were not loosed by the abolition. Although scholars have claimed that British colonial power undermined the economic, political, and social power of the former slave-owning class in Mombasa, the evidence presented earlier in this study has shown that the supposed colonial Juggernaut was highly overstated. The elites retained their power or at times became even more powerful during colonial rule. However, the slave conditions did not improve or change immediately.⁽¹⁾ One of the instruments used by the British was taxation laws, which created racial categories that strengthened the hands of the former slave owners and solidified their position as elites in Mombasa. Therefore, the introduction of taxes by the British had a significant impact on the social and class relations in Mombasa.

⁽¹⁾ Cooper, *From Slaves to Squatters*, ix; Strobel, *Muslim Women*, 2-3; see also, K.K. Janmohamed, 'African Labourers in Mombasa, c.1895-1940', ch.7, in B.A. Ogot (ed.) *Economic and Social History of East Africa* (Nairobi: Kenya Literature Bureau, 1976), 156-179; Janmohamed, 'A History of Mombasa', 327.

Taxes in Mombasa, apart from being a tool for turning slaves into workers, were used to create a rigidified social structure. Terms such as *mungwana* or *ungwana*, previously denoted as townsmen, are now symbolized as Arab. Therefore, the main 'polarity' within Arab-Swahili society in Mombasa was transformed into an issue of class, and the stratification and the social gulf that was created by the slave system now metamorphosed into class distinction under colonialism.⁽²⁾ Thus, the new racial tax hierarchy created by British colonial officials made Arabic and Arab cultures an important distinction on the Kenyan coast during the colonial period. Arthur Hardinge's appointment as the consul general of the new British protectorate saw a cadre of junior civil servants coming from the Arab-Swahili elites taking up jobs in the newly created administration. British taxation laws also created 'racial categories' that strengthened the hands of former slave owners and solidified their position as elites in Mombasa.⁽³⁾

Therefore, for a resident in Mombasa to be classified as 'Swahili' meant he or she was a 'native.' This designation meant that the residents would be subjected to discrimination.⁽⁴⁾ To be declared 'native' in Kenya during the colonial period was to be reduced to the bottom class, where you refused access to better hospitals⁽⁵⁾, better jail conditions, political representation, trading licences, and even access to good agricultural lands, such as the White Highlands. For example, the Isaq Somali community that had emigrated from British Somaliland and some through Eden in Yemen fought through petitions to the Colonial Office to be reclassified as Asians and paid higher taxes to get the benefits of being Asians.⁽⁶⁾ British colonial officials in Kenya refused to meet the demands of Isaq. The Isaq continued their campaign by sending

⁽²⁾ M.A. Fraken, *Anyone Can Dance: A Survey and Analysis of Swahili Ngoma, Past and Present* (Africa, Kenya), Ph.D. Thesis, (University of California, Riverside, 1986), 70.

⁽³⁾ Salim, *Swahili-Speaking Peoples*, 74-80; Fraken, *Anyone Can Dance*, 46-48.

⁽⁴⁾ Strobel, *Muslim Women*, 2-3.

⁽⁵⁾ Representatives of the Isaak Sheriff Community, Arabs to Governor of Kenya (1932) [Letter]. *Correspondence relating to 'Re: hospital accommodation-native civil hospital'*, 4 May 1932, TNA CO 533/425/7/32, The National Archives.

⁽⁶⁾ Registration of Person's Amendment Ordinance 1915 (1915) [Letter]. *Correspondence relating to demands by the Isaq community in Kenya to be reclassified as Asians*, 1915, TNA CO 533/157/15, The National Archives.

letters to Isaqs in British Somaliland⁽⁷⁾ and to the Isaqs Diaspora in Britain. In one of the letters sent to a fellow Isaq in British Somaliland complaining about new regulations that forced the Isaqs to pay native taxes, one Isaq trader declared 'because we agreed to pay the same taxes as Indians and Asiatics and now we are ordered to pay the same as slaves....'⁽⁸⁾ Therefore, similar to the Isaq Somalis who were granted an exemption from the Registration Ordinance,⁽⁹⁾ many former Swahilis, particularly those belonging to the elite groups, altered their ethnicities and identified as Arabs, thereby distancing themselves from people with slave ancestry and other Africans from the hinterlands. Whereas before colonialism, having wealth, claiming descent from the Prophet, being a townsfolk, and being an Arab or Swahili elite guaranteed you a spot on the higher stratum of Mombasa society, with the new tax policies, being Arab or non-native in Mombasa became an important social category.⁽¹⁰⁾ Therefore, *ustaarabu* or 'Arabness' became a new definition of sophistication and urbanity, replacing *ungwana*.⁽¹¹⁾

Slaves working as agricultural laborers were able to cut their ties with former owners after the abolition, because most of them were newly conscripted slaves. Hence, with the coming of abolition, they were able to find work as laborers in the port, railways, and others found refuge as small-scale farmers in the Watoro settlement.⁽¹²⁾ During British colonial rule, work and occupation became the defining criteria of class stratification in Mombasa. This transition period from slavery to wage labor saw slaves working in more or less the same occupations.

⁽⁷⁾ H. Kittermaster to Lord Passfield, Secretary of State for the Colonies (1930) [Letter]. *Correspondence relating to Isaq continued letter sending campaigns to their fellow Isaqs in British Somaliland, 10 Sept. 1930*, TNA CO 533/402/6/30, The National Archives.

⁽⁸⁾ C. C. Bowring, Chief Secretary to the Government of the protectorate to B. Law, Secretary of State for the Colonies (1916) [Letter]. *Correspondence relating to Isaqs paying native taxes, 20 Sept. 1916*, TNA CO 533/170/16, The National Archives; see also, E.R. Turton, 'The Isaq Somali diaspora and poll-tax agitation in Kenya, 1936-41', *African Affairs*, 73, No. 292 (1974), 325-381.

⁽⁹⁾ Somali being exempted from the Registration of Person's Amendment 1915, CO. 533/157. On March. 1920. Chief Secretary in Circular, 11 March 1920, KNA PC/NFD/4/1/6, in E.R. Turton's 'Somali Resistance to Colonial Rule and the Development of Somali Activity in Kenya 1893-1960', *the Journal of African History*, 13, 1 (1972), 119-143.

⁽¹⁰⁾ Kresse, 'Knowledge and Intellectual Practice in a Swahili Context', 148-167; Allen, *Swahili Origins*, 215.

⁽¹¹⁾ T. Spear, 'Early Swahili History Reconsidered' *The International Journal of African Historical Studies*, 33, 2 (2000) pp. 257-290; C.M. Eastman, 'Service, Slavery (utumwa) and Swahili social reality', *Afrikanistische Arbeitspapiere*, 37 (1994), 87-107.

⁽¹²⁾ Salim, *Swahili-Speaking Peoples*, 109.

They were ", ' tailors, masons, carpenters, and porters, with some even paying a percentage of their earnings to their former masters.⁽¹³⁾ Casual labor, *kazi ya kibarua*, in the dockyards in Mombasa, became the transition from slavery to free labor for most of the ex-slaves because they were better prepared for wage labor than other Africans from the hinterlands.⁽¹⁴⁾ Therefore, the ranks of *vibarua*, general laborers, were filled by ex-slaves, the Mijikenda, and even from lower classes of Hadrami Arabs.⁽¹⁵⁾ Unlike their counterparts, the 'bids' slaves who were born into slavery and working as domestic slaves for their masters in major towns such as Mombasa for freedom were impeded by the double bind: one as slaves and the other, their full incorporation into the dominant ideology of their masters. Many slave owners claimed compensation for their former slaves from the colonial government and, at the same time, claimed that the manumission of their slaves by the British was illegal and not in accordance to the *shariah*, Islamic law. Many former slaves continued to work for their former masters long after being freed by the colonial government. These slaves felt obligated to stay with their former masters because of their 'strong ties of attachment, ' and on the other hand, masters for their part claimed they did not want to 'sever' the bonds with their former slaves and continued to take care of their welfare even in their old age.⁽¹⁶⁾ For example, in Zanzibar, many former slaves were alleged to have returned their freedom medals back to the manumitting courts and asked to return to their former masters because they felt that their freedom had made them socially irrelevant, cutting them off from sharing with their former masters in weddings, funerals, and other social events. Most social events, such as dances, were organized with the help and cooperation of all divisions of society, including slaves. This clearly shows that the masters would ask their former slaves to partake in these ceremonies by helping, for example, in the cooking and preparation of the events. On the other hand, the former slaves asked their former masters to sponsor events organized by them, clearly showing mu-

⁽¹³⁾ Janmohamed, 'African Labourers in Mombasa', 157.

⁽¹⁴⁾ Cooper, *On the African waterfront*, 25-26.

⁽¹⁵⁾ *Ibid.*, 27.

⁽¹⁶⁾ Salim, *Swahili-Speaking Peoples*, 112-113.

tual obligations between the two classes. Therefore, the social hierarchy in Mombasa, which was embedded during slavery, continued and flourished long after its abolition.⁽¹⁷⁾

In Mombasa, after the abolition and during colonialism, a subculture that was a mix between the culture of the dominant groups and people of slave ancestry developed. This Swahili culture, which had both upper- and lower-class elements, later developed and dominated the Mombasa cultural landscape in the twentieth century. Former slaves used music, dances, and Maulidi as vehicles to lay a claim to Swahili culture and Islam. On the other hand, the Arab-Swahili resisted the challenges to their hegemony by their former slaves by using their genealogy, wealth, and education to perpetuate the dominance of their former slaves, but their efforts were late and unfruitful; they had embedded their cultures into the Swahili culture for years, thus reversing the Arabization of Swahili and reclaiming its Africaness.⁽¹⁸⁾ Therefore, former slave owners had adopted some of the customs and dances of their former slaves; nevertheless, this did not lead to social acceptance of the former slaves, as the stigma remained. The Beni was like Jazz, its counterpart in the United States; African American Jazz was appreciated by dominant white citizens; nevertheless, 'prejudice and discrimination' against African Americans continued. Before colonialism, slaves were prohibited from performing dances. Mtoro bin Mwinyi Bakari, a famous Swahili poet, describes how slaves were prohibited from dancing in *ngoma kuu* (big drum). Only freemen and local rulers (*jumbes*) were allowed to dance. Different styles of dancing were associated with different classes; for example, the *waungwana* were associated with 'Arm-dancing,' and slaves were associated 'foot-dancing'.⁽¹⁹⁾

During the transitional period between slavery and colonialism, slave ancestry and the poor had separate dances from Arab and Swahili elites. Many dances were organized around the ethnic origins of former slaves. For example, *wanyassa*, *wangindo*, and others recreated

⁽¹⁷⁾ Fraken, *Anyone Can Dance*, 70-7; Salim, *Swahili-Speaking Peoples*, 114; Strobel, *Muslim Women*, 9-10.

⁽¹⁸⁾ Strobel, *Muslim Women*, 8.

⁽¹⁹⁾ Fraken, *Anyone Can Dance*, 277; I. N. Shariff, *The Function of Dialogue Poetry in Swahili Society*, (Rutgers, the State University of New Jersey, 1983), 76.

their dances from their former lands, and Swahilis never participated, except as spectators.⁽²⁰⁾ During the colonial period, the former slaves were able to organize Beni associations. Beni takes its name from the English word “band.” The Beni Association was an institution that had European musical instruments with mock European military uniforms. Beni associations were hired to add prestige and fun to a wedding celebration; most participants in these Benis were said to be from the ‘rowdier element of the town’. Inviting people to weddings and entertaining people during weddings played the role of slaves. This role would later continue after abolition, with former slaves entertaining guests at weddings as members of Beni associations. The former slaves still looked for their former masters for financial help. For example, it was not out of the ordinary for former slave owners to be financial backers and sponsors of Beni associations.⁽²¹⁾ Although women’s dances seemed less restricted than men’s, class distinctions were apparent. During invitations to weddings or other ceremonies, high-class women were always the first on the list.⁽²²⁾

As mentioned earlier, social stratification on the coast of Kenya was a long process in which Arabs were integrated into patrician elite families. Marriage is one route for this integration. Newly arrived Arab merchants were able to marry elite families all over the coast of Swahili. These unions afforded Arabs social and political powers, leading to the creation of an Arab hegemony on the eastern board of East Africa.⁽²³⁾ Arab elites embodied the Gramscian concept of hegemony because they culturally influenced all other members within the hierarchy.⁽²⁴⁾ They dominated both physically and ideologically, establishing a social-order-based culture and race. Arabs were the sought-after social marker. Therefore, all subordinate groups struggled to attain this status, especially those closely connected to Arab masters.⁽²⁵⁾ Furthermore,

⁽²⁰⁾ R. Skene, ‘Arab and Swahili Dances and Ceremonies’, *The Journal of the Royal Anthropological Institute of Great Britain and Ireland*, Vol. 47 (1917), 413-434; C. New, *Life Wanderings and Labours in Eastern Africa. with an Account of the First Successful Ascent of the Equatorial Snow Mountain Kilima Njaro and Remarks Upon East African Slavery* (London: Frank Cass, 1971), 660.

⁽²¹⁾ Fraken, *Anyone Can Dance*, 101-103.

⁽²²⁾ M. Strobel, ‘Women’s Wedding Celebrations in Mombasa, Kenya’, *African Studies Review*, 18, 3 (1975), 35-45.

⁽²³⁾ Constantin, ‘Social Stratification’, 147-148.

⁽²⁴⁾ *Ibid.*, 145.

⁽²⁵⁾ *Ibid.*, 148.

the economic and political changes brought about by Omani rule precipitated social inequality on the coast of Kenya. In other words, social stratification in Mombasa increased because of the economic and political changes brought about by Omani rule.⁽²⁶⁾ This hierarchical system was not easy to dismantle; much of its appeal was retained long after the establishment of European colonialism.⁽²⁷⁾

Just as they had superimposed themselves on top of Omani rule, the colonialists put themselves on the topmost part of the social hierarchy. Europeans, Arabs, and Africans at the lower end of the 'totem pole'.⁽²⁸⁾ Colonialism has transformed the stratification and social inequality produced by slavery into class distinctions.⁽²⁹⁾ The British used pre-existing social divisions to rule people on the coast of Kenya. Scholars have debated the divisions in African societies, and colonialism has received the bulk of criticism. However, when the British established their rule on the coast of Kenya, they used existing societal fissures to control the people.⁽³⁰⁾ The colonial government promoted the idea of racial hierarchy. The colonial government promoted racial categories, which exacerbated local antipathies among people of different religions and ethnic backgrounds.⁽³¹⁾ British colonial officials have been implicated in the racialization of group identities. Becker believes that the integration of former slaves into Muslim coastal society created an undercurrent racialization of the community. This perceived racism bolstered the status claims of former slave owners and undermined their status of former slaves. British colonial rule was deeply implicated in the elaboration of racialized group identities, which entangled coastal Muslims. Becker argues that the recognition of 'Arab' as a legal category on the mainland dominion of the Sultan of Zanzibar meant that the benefits of claiming this identity were particularly significant and clearly defined.⁽³²⁾

⁽²⁶⁾ Strobel, *Muslim Women*, 25.

⁽²⁷⁾ Constantin, 'Social Stratification', 148.

⁽²⁸⁾ Ibid.

⁽²⁹⁾ Fraken, *Anyone Can Dance*, 70.

⁽³⁰⁾ Constantin, 'Social Stratification', 149.

⁽³¹⁾ Salim, *Swahili-speaking peoples*, 65-85; Strobel, 'Women's Wedding Celebrations', 37-39.

⁽³²⁾ Becker, 'Islam and Imperialism', 124-125.

Colonial officials from other parts of the British Empire brought their prejudice to the coast of Kenya. British colonial officials posted in East Africa worked in other parts of the British Empire. Therefore, they brought with them their experience and understanding of the colonized people on the coast of Kenya. This movement or circulation of high-ranking and low-ranking colonial administrators around the British Empire made them ground 'the ideas of empire in the global experience.'⁽³³⁾ Colonial officials drew elaborate boundaries and hierarchies among populations, and divided people into racial, cultural, and religious categories. One community was detached from another, just as an indigene had been separated from the immigrant earlier. Allied with this, colonial administrations compiled reports and censuses in a classificatory manner. The simple Christian/Heathen or English/foreigner dichotomy was replaced by more elaborate classifications as governments divided and re-divided the population into discrete groups based on linguistic, ethnic, and skin color.⁽³⁴⁾

British colonial rule tried, on the one hand, to deal with different social sectors and, on the other hand, tried to streamline these social divisions. To understand British rule in Mombasa, one has to think in terms of social multiplicity on the one hand and standardization on the other, as ideal types.⁽³⁵⁾ British colonialism has created a rigid and impermeable social structure. On the coast of Kenya and Mombasa in particular, British colonialism heralded a more hardened form of social stratification. Boundaries, which in the past were negotiated and at times permeated, were now impermeable. François Constantin, quoting J. E. Harris, states that 'The Asians sought European status; the Arabs sought Asian status; the Swahili sought Arab status; and all of them sought to override the black majority...'⁽³⁶⁾

British colonial officials drew ethnic and racial boundaries to preserve Britishness. Drawing ethnically inspired boundary lines on the ground was part of the officially perceived need

⁽³³⁾ Cooper, and Stoler, 'Tensions of Empire', 615.

⁽³⁴⁾ A. J. Christopher, 'Divide and Rule': The Impress of British Separation Policies', *Area*, 20, 3 (1988), 233–240.

⁽³⁵⁾ P. Robb, 'Ideas in Agrarian History: Some Observations on the British and Nineteenth –Century Bihar', in D. Arnold and P. Robb, (eds.) *Institutions and Ideologies – A SOAS South Asia Reader, Collected Papers on South Asia* (Richmond: Curzon Press, 1993), 214.

⁽³⁶⁾ Constantin, 'Social Stratification', 145-160.

to maintain an English or British identity. Such a policy developed a more complex strategy as the extent of the empire increased.⁽³⁷⁾ British colonial officials looked at Africans with the contempt that they usually reserved for the lower classes of Britain. British colonial officials in Mombasa and the rest of Sultan's dominion described Africans using terminology that was remarkably similar to that used back in Britain to describe 'the residuum,' the lowest elements of the class order in Victorian cities. Therefore, the Africans, and especially the former slaves, were the designated 'residuum' in a hierarchy, which had the British on top, followed by the Arab and Indians.

European colonial officials saw Africans who had adopted Islam as more civilized than those who practiced traditional religion. Islam was incapable of the highest development, but its limitations clearly suit the limitations of the people. It has undeniably had a civilizing effect, abolishing the gross forms of pagan superstitions and barbarous practices and adding to the dignity, self-respect, and self-control of its adherents. Its general effect has been to encourage abstinence from intoxicants, a higher standard of life and decency, better social organization, and tribal cohesion, with a well-defined code of justice. Colonial officials gave Arabs higher status and, at times, fused being a Muslim with being an Arab. Therefore, they have promoted Arabocentrism.

In Mombasa, where Islam was hegemonic, colonial officials conflated Islam as Arab. The British, in collaboration with Arab elites, encouraged a narrative that portrayed Arabs as transmitters of civilization and as the natural leaders of Africa.⁽³⁸⁾ In Mombasa, colonial officials cultivated particularistic identities, fused Islamic religious identity with Arab identity, encouraged Arabocentrism, and equated all things Arabian as markers of coastal civilization. Claims to privileged access to knowledge of Islam became contested by the assertions of Arab ancestry. The slippage between Arab and Muslim identity and the valorization of Arab culture by colonial officials created racial discord that continued throughout the colonial period and still

⁽³⁷⁾ Christopher, 'Divide and Rule', 233.

⁽³⁸⁾ Becker, 'Islam and Imperialism', 124-125.

resonates today.⁽³⁹⁾ With the emphasis placed on Arabic language and culture, Swahili became a badge of the lower class. The label 'Swahili' at times suggested slave ancestry on the coast of Kenya. This became a euphemism for the underclass, the former slaves.⁽⁴⁰⁾

8.1. Colonial Taxation Regime

The taxation regime employed by British colonial officials created social divisions, making Arab countries an important category. Thus, the new racial tax hierarchy created by British colonial officials made Arabic and Arab cultures an important distinction on the Kenyan coast during the colonial period.⁽⁴¹⁾ Therefore, some of the residents of Mombasa were classified as 'Swahili,' which denoted that they were native, and this designation led to discrimination.⁽⁴²⁾ Taxation laws created new divisions of natives and non-natives, 'a distinction that was particularly difficult to make on the coast because prior to 1910 Arabs, members of the twelve and others of mixed backgrounds...' all paid the three-rupee tax.⁽⁴³⁾

British colonial officials promoted color bars and introduced native and non-native categories. While presenting themselves as models of liberal democracy, European colonialists have legalized racial discrimination. In various fields (politics, administration, education, jobs, economic activities), colonial laws operated codes of rights and obligations according to the 'color of Her Majesty's subject. Later, such indecent discrimination was hardly corrected by the introduction of the simpler distinction of 'native and non-natives,' which was to create an inextricable problem for colonial civil servants and laws.⁽⁴⁴⁾

⁽³⁹⁾ Ibid., 125-127.

⁽⁴⁰⁾ Strobel, *Muslim Women*, p. 3.

⁽⁴¹⁾ O.F. Watkins, acting Native Provincial Commissioner to C.W. Hopley, Provincial Commissioner Coast(1920). [Letter]. *Correspondence relating to the new racial tax hierarchy created by British colonial officials 1920*, KNA, 58/1585/1920, Kenya National Archives; see also, Salim, *Swahili-speaking peoples*, 187, 206.

⁽⁴²⁾ Strobel, *Muslim Women*, 2-3.

⁽⁴³⁾ Ibid., 39; The Morning Post (1920) [Letter]. 'The Rupee Problem', 8 Apr. 1920, KNA AA/38/1/20, Kenya National Archives.

⁽⁴⁴⁾ Constantin, 'Social Stratification', 148; Salim, *Swahili-Speaking Peoples*, 108.

8.1.1 Controlling Former Slaves after Abolition

The archival documents were full of complaints from former masters on the issue of freeing their slaves. One thing that stands out in the archival materials is the voices of the slave owners, which colonial officials articulated. European colonial officials worked 'side by side' with their Arab counterparts in administering justice to the African population, 'settling disputes and minor political matters, ' and becoming intermediaries between the Muslim population and colonial administration, thereby influencing the decisions of the colonial government.⁽⁴⁵⁾ On the other hand, the slaves' voices were silent because the 'intermediaries between them and the colonial masters were their former masters. Right after proclaiming the coastal strip as a protectorate, the British reinstated Arab sub-imperial governance. Therefore, much of the story of struggle during colonialism on the coastal strip was a struggle between marginalized Swahilis, the Mijikenda, and people of slave ancestry 'against these agents of British imperialism'.⁽⁴⁶⁾ British colonial officials saw the former slaves as 'vagabonds and potential criminals and a threat to public order'.⁽⁴⁷⁾ Thus, colonial officials feared that the former slaves would migrate away from their former masters, reducing their productive capacity and, in many cases, paralyzing agricultural production and trade.⁽⁴⁸⁾ British colonial officials feared that former slaves in Zanzibar and in the mainland dominion of the Sultan of Zanzibar would, like their counterparts in other slave societies, once emancipated, opt to work as subsistence farmers for themselves rather than work on farms belonging to their former masters.⁽⁴⁹⁾ Mr. Denton, acting Governor of Lagos in 1898, expressed these fears when he explained that slaves would stop working for their former masters when domestic slavery ended.⁽⁵⁰⁾ The former masters on the coast of Kenya also expressed the same sentiment: British colonial officials

⁽⁴⁵⁾ Salim, *Swahili-Speaking Peoples*, 78-79.

⁽⁴⁶⁾ Ogot, 'Kenya under the British', 251.

⁽⁴⁷⁾ G. Austin, 'Cash Crops and Freedom: Export Agriculture and the Decline of Slavery in Colonial West Africa', *International Review of Social History*, 54, 1 (2009), 1-37.

⁽⁴⁸⁾ *Ibid.*, 15.

⁽⁴⁹⁾ *Ibid.*, 13.

⁽⁵⁰⁾ *Ibid.*

tried to transform slaves into laborers. They attempted to implement a crucial experiment using mechanisms such as taxation, the Master and Servant Ordinance, the Apprenticeship Law, and vagrancy policies. These methods were employed to force freed slaves to remain in close proximity to their former masters and, in many ways, to restore the control of former slaves to their former masters.⁽⁵¹⁾

8.1.2 Master and Servants Ordinance

British colonial rule introduced the Master and Servant Ordinance in East Africa, which was widely used in other colonies throughout the Empire.⁽⁵²⁾ It remained a labor law until the end of colonial rule. This legislation brought stringent labor laws using moral strictures. According to David Anderson, 'the "gospel of labour" was a central element in the civilizing mission of European Rule'.⁽⁵³⁾ The Master and Servant law regulated contractual-bound servants to their masters.⁽⁵⁴⁾ The law defined the master-servant relationships and placed numerous restrictions on workers.⁽⁵⁵⁾ Its use in East Africa varies depending on the needs of employers. For example, in the East African Protectorate, it was used to control deserting porters and regulate labor for European settlers.⁽⁵⁶⁾ The introduction of master and servant ordinances for the former slaves on the coast of Kenya and Zanzibar was to give the masters power over them. The regulations looked good on paper, but in practice, they favoured the former masters.⁽⁵⁷⁾ Because the former slaves did not know their rights or have the desire or even be in a position

⁽⁵¹⁾ P.E. Lovejoy & J. S. Hogendorn, *Slow Death for Slavery: The Course of Abolition in Northern Nigeria 1897-1936* (Cambridge: Cambridge University Press, 1993), 84-87.

⁽⁵²⁾ B.S. Cave (1906) [Memo]. *Memorandum Relating to the proposed Abolition of Slavery in the Islands of Zanzibar and Pemba*, 17 October 1906, TNA FO 367/24/Conf. 35249/ incl.1/1/06, The National Archives.

⁽⁵³⁾ D.M. Anderson, 'Master and Servant in Colonial Kenya, 1895-1939', *The Journal of African History*, 41, 3 (2000), 459-485.

⁽⁵⁴⁾ H.M. Principal Secretary of State for the Colonies to Governor's Office, Nairobi (1908) [Letter]. *Correspondence relating to 'The Master and Servant law'*, 25th Mar. 1908, TNA CO 533/42/No. 135/ Inc. 1/08, The National Archives; (1908) [Memo]. *Memorandum Relating to the working of the Master and Servants Ordinance*, 25th Mar. 1908, TNA CO 533/42/Desp. No. 135/Inc. 2/08, The National Archives. National Archives.

⁽⁵⁵⁾ Ibid., 460.

⁽⁵⁶⁾ Ibid., 462.

⁽⁵⁷⁾ W.S. Kiser, *Borderlands of Slavery: The Struggle over Captivity and Peonage in the American Southwest* (Philadelphia: University of Pennsylvania Press, 2017), 92.

to go to court to assert their rights, their former masters took advantage of them. Thus, the legislation affirmed the social hierarchy by restoring much of the power it had taken earlier from the former masters.⁽⁵⁸⁾ Only with the coming of independence and removal of these punitive labor laws would the former slaves in Mombasa and Zanzibar finally be able to remove the yoke from their necks.

The Master and Servant Ordinance resembled slavery in punishing the laborer when he or she breached the contract. It became the vehicle for colonial officials to extract labor from former slaves. Magistrates and the police misused the master and servant ordinances to punish laborers. Magistrates and employers were not enforcing the ordinance correctly and 'have frequently used the ordinance most improperly' by summarily sentencing employees to be flogged. Although flogging has been banned, it is still frequently used. Flogging should only be used against juveniles using a 'light cane'. The police were advised not to arrest laborers if no complaints had been lodged.⁽⁵⁹⁾

For example, the British introduced The Master and Servant Proclamation, No. 12 of 1903, in Igboland, which in effect turned former slaves into 'apprentices' who were bound by contract to serve their former owners.⁽⁶⁰⁾ This Ordinance made it illegal for former slaves to leave their former masters. According to Ohadike, colonial officials justified the restriction of movement imposed on the former slaves by stating that they wanted 'to preserve the masters' authority over the energies and movement of their slaves'.⁽⁶¹⁾ Ohadike argues that the real reasons for the Proclamation were the fear of economic collapse and fear of having to control being 'saddled with a large population of fugitive slaves'.⁽⁶²⁾

⁽⁵⁸⁾ Ibid., 101.

⁽⁵⁹⁾ H.M. Principal Secretary of State for the Colonies to Governor's Office, Nairobi (1908) [Letter]. *Correspondence relating to 'The Master and Servant law'*, 25th Mar. 1908, TNA CO 533/42/No. 135/ Inc. 1, /08, The National Archives.

⁽⁶⁰⁾ D. C. Ohadike, 'When slaves left, owners wept': Entrepreneurs and emancipation among the Igbo people, ' *Slavery & Abolition: A Journal of Slave and Post-Slave Studies*, 19, 2 (1998), 189–207.

⁽⁶¹⁾ Ibid., 197-198.

⁽⁶²⁾ Ibid., 198.

After a servant had finished his or her jail term, Section 24 of the Ordinance gave the magistrate the powers to determine the completion of the contract. For example, if the ‘...master is a harsh or unreasonable man,’ then the magistrate has the power to ‘...order the completion of the term of service or not.’⁽⁶³⁾ Most cases dealing with the Master and Servant Ordinance were brought by masters against their servants. In many cases, magistrates had not asked to be shown a contract and had even ordered laborers to be flogged. In addition, the collector, the government representative, in many cases, did not work as an arbitrator but as an enforcer of contracts by punishing laborers. The Collector had also been charging employers fees, contrary to the provisions of the ordinance. According to Judge Hamilton, some of the owners wrongly argued that because they paid fees, the government should ‘...catch their laborers when they desert.’⁽⁶⁴⁾

The enforcement of contracts became the focus of the colonial administration. Sections 13 and 14 of the Ordinance allowed laborers to be paid in kind. For example, a piece of land could be given to a laborer in exchange for labor. Section 19 (b) of the Ordinance gave magistrates powers to enforce contracts by giving sentences for breach of contract on the part of the employees. However, this law would not be enforced if the employer did not see that it was ‘fit to do so’. Therefore, although the judge could sentence an employee, the decision to be imprisoned was made by the employer.⁽⁶⁵⁾

The British introduced apprenticeship laws in Zanzibar and its mainland dominance on the coast of Kenya.⁽⁶⁶⁾ Apprenticeship laws were similar to those used in the British colonies in the West Indies. According to colonial correspondence, Section 10 of the Ordinance had a

⁽⁶³⁾ H.M. Principal Secretary of State for the Colonies to Governor’s Office, Nairobi (1908) [Letter]. *Correspondence relating to ‘The Master and Servant law’, 25th Mar. 1908*, TNA CO 533/42/No. 135/ Inc. 1, /08, The National Archives.

⁽⁶⁴⁾ H.M. Principal Secretary of State for the Colonies to Governor’s Office, Nairobi (1908) [Letter]. *Correspondence relating to ‘The Master and Servant law’, 25th Mar. 1908*, TNA CO 533/42/No. 135/ Inc. 1 /08, The National Archives.

⁽⁶⁵⁾ Ibid.

⁽⁶⁶⁾ A. Hardinge (1896) [Memo]. Recommendation to Her Majesty’s Government a Scheme for the Abolition of Legal Status of Slavery in the Islands of Zanzibar and Pemba, 25th Aug. 1896, TNA FO 881/Conf. 6800/96, The National Archives.

provision that allowed a period of apprenticeship. However, according to the governor, it is rare to find contracts that exceed a year. He provided an example of the Gold Coast, where there was a limit of three years for contracts. He hoped for a period of one to two years for the East African Protectorate, and therefore, he might consider introducing 'a law of apprenticeship'.⁽⁶⁷⁾ Former slaves had to sign 3-year apprenticeship contracts that would bind them to their former masters. Therefore, the apprenticeship in the East African Protectorate forced former slaves to stay with their former masters. However, British colonial officials sometimes encouraged former slaves to stay longer to attain the necessary skills of an artisan, but this was just a ruse to exploit their labor. For example, in Malindi, natives signed a 3-year contract to work in a plantation. It was difficult for up-country natives to sign contracts that were more than a year old, and even these had not been able to fulfil their part of the contract. The only time the Kikuyu, Kamba, and Kavirondo signed a 3-month contract when they agreed to work as clove pickers in the plantations of Pemba. Before the Master and Servant Ordinance, 'it was customary in Lamu and other coast towns for freed slaves to engage themselves to the Indians, Arabs, and Swahili for five years'. Since the abolition of the legal status of slavery, the government, through its colonial officials, tried to 'persuade the slaves to agree to work for their former masters' by entering into contracts of up to three years. Sections 13 and 14 of the Ordinance dealt with wages and allowed 'payment of wages in kind'. Colonial officials did not like this provision; they believed that certain sectors of the settlers might abuse it. Nevertheless, in the case of the Gold Coast, the memo stated that 'It was often customary—and this custom will no doubt continue—for masters to allow their slaves to cultivate their plantations, the only payment being a proportion of their earnings which was made in kind'. According to the memo, up-country natives had adopted the cash economy quickly, but some of the settlers were in favor of natives being settled on farms owned by Europeans '...and to pay rent in kind or work for a certain period free in lieu of rent'. In addition, according to the

⁽⁶⁷⁾ B.S. Cave to Sir E. Grey (1906). [Memo]. *Memorandum, on the Proposed Abolition of Slavery in the Islands of Zanzibar and Pemba, 19th Oct. 1906*. TNA FO 367/24/Inc. 1/ Conf, 35249/3, The National Archives; see also, TNA CO 533/42/Disp. 138. 13729/08/28 Mar. 1908, The National Archives.

memo, the natives and Europeans were in favor of this system, and Europeans would prefer contracts of up to ten years. Because of desertions by natives, the magistrates were empowered to sentence a breach of contract by natives to a three-month prison term. According to the memo, Sections 21 and 22 of the Ordinance dealt with various offences and punishments due to a servant. These were intended for the protection of employees and employers. However, the memo stated that it was still customary for employers to take the law into their hands and mete out punishments such as fines and floggings, although the government was trying to discourage this behavior on the part of the employer. Moreover, the police found it difficult to bring charges against employers who took the law into their own hands. The memo stated that ‘...the police may take no cognizance of a case of assault unless the aggrieved party is certified to have suffered grievous hurt.’⁽⁶⁸⁾

8.2. Conclusion

On the coast of Kenya, like other parts of the British colonial empire in Africa, “native aliens” had the autonomy and latitude to craft their own discernible imperial agendas, some of them corresponding to precolonial imperial traditions and priorities’.⁽⁶⁹⁾ On the coast of Kenya, the abolition of slavery by the British did not loosen the bond on former slaves. Slavery was officially abolished by the British colonial government in 1907. This colonial intervention to emancipate slaves in Mombasa brought little change to the newly freed slaves.

The long and gradual process of dismantling slavery on the coast of Kenya negatively impacted former slaves and favoured former masters. The former slaves and elites had different definitions of freedom. Along the coast of Kenya, the range of understanding of freedom differed in how individuals lived, suffered, and struggled during slavery.⁽⁷⁰⁾ Relations between the former masters and their ‘freed’ slaves continued, and the ties that bound slaves to their

⁽⁶⁸⁾ TNA CO 533/42/Disp. 135. Incl. No 1, 25 Mar.1908.

⁽⁶⁹⁾ M. E. Ochonu, *Colonialism by Proxy: Hausa Imperial Agents and Middle Belt Consciousness in Nigeria*, (Bloomington: Indiana University Press, 2014), 210.

⁽⁷⁰⁾ C. Cowling, *Conceiving Freedom: Women of Color, Gender, and the Abolition of Slavery in Havana and Rio de Janeiro* (Chapel Hill: The University of North Carolina Press, 2013), 214.

masters became even tighter. The vagaries and ambiguities of British colonial policies added to the suffering of former slaves and inadvertently entrenched the social power of slave owners in Mombasa and coastal areas of Kenya.⁽⁷¹⁾ The trajectories of former slaves did not neatly tally with changes in their status, and their social mobility was limited. The social hierarchies that existed prior to colonialism survived the transition from slave society to colonial society.⁽⁷²⁾ In Mombasa, 'explicit slavery-based hierarchies' continued after the abolition of the legal status of slavery and were kept alive by the former slave owners who perpetuated the slave and master distinction. According to Felicitas Becker, 'the overall impression is of an uneven social landscape where slave and owner antecedents remain present in more or less ghostly ways.'⁽⁷³⁾

This chapter has illustrated how colonial rule empowered Swahili and Arab elites and, at the same time, disempowered marginalized groups, especially former slaves. Indirect rule allowed the former ruling classes to re-establish themselves in a colonial setting. The British, using skeletal colonial officials, were forced out of the necessity to use pre-existing local institutions to control their colonial subject.⁽⁷⁴⁾ It is clear that this overlaying of colonial rule over an existing Omani administration on the coast of Kenya allowed the ruling class to 'continue to rule over the day-to-day affairs of a subject population, ' although under the supervision of colonial officials.⁽⁷⁵⁾ This surrendering of British colonial sovereignty to the local elites led to *colonialism by proxy*.⁽⁷⁶⁾ This allowed Muslim subcolonial administrators to operate unencumbered within the colonial administration without the usual strictures of a British-created system.⁽⁷⁷⁾ Therefore, colonial rule in Mombasa reinforced or re-entrenched the dominance of the Swahili and Arab elites over their former slaves along the coast of Kenya. This study

⁽⁷¹⁾ Cooper, *From Slaves to Squatters*, ix; Becker, 'Female Seclusion', 210; Strobel, *Muslim Women*, 2-3; Janmohamed, 'African Labourers in Mombasa', 156-176.157.

⁽⁷²⁾ Becker, 'Female Seclusion', 212.

⁽⁷³⁾ Ibid.

⁽⁷⁴⁾ Myers, 'On Her Majesty's ideological state apparatus', 1.

⁽⁷⁵⁾ Ibid., 2.

⁽⁷⁶⁾ Ochonu, *Colonialism by Proxy*, 207.

⁽⁷⁷⁾ Ibid., 211.

also illustrates how this layered colonial system worked on the Kenyan coast.⁽⁷⁸⁾ The elites in Mombasa were aware of their indispensability to colonial rule and used this awareness as leverage against British officials; thus, the elites were able to reinstate earlier administrative practices that sometimes directly contradicted the professed goals of British colonizers.⁽⁷⁹⁾ For example, the elites of Mombasa used religion, in this case, Islam, to justify Arab political hegemony and its antipode, a subordinate black racial subjectivity.⁽⁸⁰⁾ Historian Jonathon Glassman argues that this 'ethno-religious exclusivity and civilizational superiority' was not merely to mimic or even parallel British colonial racial discourses but 'were remarkable as much for their originality as for their audacious proclamation of racial and civilizational superiority.'⁽⁸¹⁾

In Zanzibar and Sultan's mainland possession, the British used indirect rule. On Mombasa and the coast of Kenya, the British used various forms of local and imported institutions to control their subjects. British taxation laws also created 'racial categories' that strengthened the hands of former slave owners and solidified their position as elites in Mombasa. The introduction of taxes by the British had a significant impact on the social and class relations in Mombasa.

Abolition was a gradual process; its dismantlement at times was met with violence, and its demise was late in coming. Slave owners in Mombasa, similar to slaveholders in other parts of the world, were violently opposed to its abolition; for example, in the 1880s, a group of slave owners attacked a CMS station that harbored fugitive slaves in Freetown on the outskirts of the town.⁽⁸²⁾ The Ordinance 1907 of the abolition of the legal status of slavery created heated debate among colonial officials and anti-slavery movement members. These debates in the

⁽⁷⁸⁾ Ibid., .209.

⁽⁷⁹⁾ Ibid., 211.

⁽⁸⁰⁾ Ibid., 212.

⁽⁸¹⁾ Ibid.

⁽⁸²⁾ C.B. Euan-Smith, Her Majesty's Agent and Consul-General for the Dominions of the Sultan of Zanzibar to R. Gascoyne-Cecil, Her Majesty's Principal Secretary of State for Foreign Affairs [Telegram] (1889). Telegram No. 61. Discussing threats by Arabs on Freretown Church Missionary Station, 10th Feb. 1889, TNA FO 84/1985/89, The National Archives; M. D. E. Nwulia, 'The role of missionaries in the emancipation of slaves in Zanzibar', *The Journal of Negro History*, 60, 2 (1975), 268-287; Akinola, 'Slavery and slave revolts', 224-225; Lovejoy, *Transformations in Slavery*, 264-265; Morton, *Children of Ham*, xviii; see also, W. Kloosterboer, *In-*

Legislative Council in Nairobi, the House of Commons in London, and His Majesty's Agent and Consul General in Zanzibar shaped the outcomes of the experiment to free slaves in Mombasa and the coastal strip in general.⁽⁸³⁾ The Earl of Elgin proposed the appointment of a special Commissioner to oversee the abolition of status of slavery in the mainland dominions of the Sultan of Zanzibar.⁽⁸⁴⁾ The legal framework for the enactment of legislation to abolish slavery was imported and adopted from many parts of the British Empire. The 'compensation blueprint' with minor adjustments was adapted from Zanzibar.⁽⁸⁵⁾ In Lamu District compensation was awarded for 131 cases, which amounted to Rs, 5, 677.⁽⁸⁶⁾ Although a three-year term limit was imposed for the compensation process, and a Bill was introduced to 'amend the abolition of the Legal Status of Slavery Ordinance 1907' which set 31st of December as the last day to claim compensation.⁽⁸⁷⁾ But, payments continued until May 1, 1916. Then, compensation for 7, 683 freed slaves was paid to the slave owners.⁽⁸⁸⁾

Abolition did not change the working conditions of most slaves; they found themselves working in the same occupations they had occupied during slavery. There was a greater chance for slaves working as agricultural laborers to be able to cut their ties with their former owners after the abolition. In addition, newly conscripted slaves with little ties to their masters were able to break away from their owners. Thus, with the coming of abolition, they were able to find work as laborers at ports and railways. Others found refuge as small-scale farmers in the Watoro settlement.⁽⁸⁹⁾ During British colonial rule, work and occupations became the

voluntary Labour since the Abolition of Slavery A survey of Compulsory Labour throughout the world (Leiden: Brill Archive, 1960).

⁽⁸³⁾ TNA CO 533/45/ Conf.67. Incl.3, 13 Jul. 1908; TNA: CO 533/36, Hansard, 24 Apr.1907.

⁽⁸⁴⁾ Treasury Chambers to under Secretary of State [Letter] (1907). Proposal to appointment of a special Commissioner to oversee the abolition of status of slavery in the mainland dominions of the Sultan of Zanzibar, 28th May 1907, TNA CO 533/36, No. 9194/07, The National Archives.

⁽⁸⁵⁾ C.B. Euan-Smith, Her Majesty's Agent and Consul-General for the Dominions of the Sultan of Zanzibar [Memo] (1889). Memo 'on the Suppression of the Slave Trade in East Africa', 22nd Sept. 1889, TNA FO 881/6762/Conf. 5851/89, The National Archives.

⁽⁸⁶⁾ TNA CO 533/43.Disp. 142 of 2 April 1908

⁽⁸⁷⁾ A Bill to amend the abolition of the Legal status of Slavery Ordinance 1907 [Letter] (1908). Amendment setting 31st of December 1911 as the last day to claim compensation, 4th Aug. 1908, TNA CO 533/50/27003/08, The National Archives.

⁽⁸⁸⁾ Salim, *Swahili-Speaking Peoples*, 102-112.

⁽⁸⁹⁾ *Ibid.*, 109.

defining criteria of class stratification in Mombasa; this transition period from slavery to wage labor saw slaves working in more or less the same occupations. They were 'tailors, masons, carpenters, and porters'. Some even paid a percentage of their earnings to former masters.⁽⁹⁰⁾ Casual labor, '*kazi ya kibarua*,' in the dockyards of Mombasa, became the transition from slavery to free labor for most of the ex-slaves because they were better prepared for wage labor than other Africans from the hinterlands.⁽⁹¹⁾ Therefore, the ranks of *vibarua*, general laborers, were filled by ex-slaves, the Mijikenda, and even the lower classes of Hadrami Arabs.⁽⁹²⁾

The abolition of slavery did not make the eradication of social stigma easy for former slaves, as it persisted long after the abolition of slavery. To summarize this historical survey, one can observe that all possible forms of social stratification were experienced in an overlapping manner among coastal people. Master-slave relations did not disappear at one go, and even after the formal outlawing of all forms of discrimination (abolition of slavery, democratic state-building), their ideological representations were not immediately eradicated from individual minds, collective beliefs, and daily attitudes. Confusion was sustained in the hierarchy, even during the colonial era when domination came closer to hegemony than ever before. Colonial hierarchies never eliminated historical inherited forms of discrimination.⁽⁹³⁾

In a few instances, former slaves were able to find mobility within their structure through the accumulation of wealth and other means. Some of them made important profits, disturbing the traditional hierarchy. As did, sometimes before, those former slaves who, having been freed from their original social system and its constraints, were able to innovate, invest in new businesses, and become rich and respected elders.⁽⁹⁴⁾

⁽⁹⁰⁾ Janmohamed, 'African Labourers in Mombasa', 157.

⁽⁹¹⁾ Cooper, *On the African Waterfront*, 25-26.

⁽⁹²⁾ Ibid., 27.

⁽⁹³⁾ Constantin, 'Social Stratification', 149.

⁽⁹⁴⁾ Ibid.; A.H. Nimtz Jr, *Islam and politics in East Africa: the Sufi order in Tanzania* (Minneapolis: U of Minnesota Press, 1980).

Chapter 9

Conclusions

Chapter serves as the conclusion, summarizing this thesis and highlights the impact of British colonialism on the emancipation process and its aftermath. This demonstrates how British reliance on the Arab/Swahili elites affected the opportunities and trajectory of the formerly enslaved people on the coast of Kenya. This thesis sheds light on the struggles of enslaved people to create families and maintain their properties. It also highlights how former masters fought to retain their privileges long after emancipation. British colonial rule on the coast of Kenya was comparable to that of other colonies. Local Arab and Swahili elites were integrated into the new system, while Omani rule remained subordinate to British rule. Traditional authorities were maintained and even reinforced, and social divisions that existed before colonialism continued to influence new dispensation. For many, slavery persisted in new forms. Overall, British colonialism along the coast of Kenya was a new system imposed on the existing Islamic system.

Moreover, my research has shed light on the aftermath of slavery in Africa, specifically on Mombasa and the coast of Kenya, which is a neglected area of study, particularly in urban areas beyond the "plantation belt." Today, discussions on slavery on the East African coast are often overshadowed by the need for social and national buildings in postcolonial states.⁽¹⁾ As

⁽¹⁾Becker et al., 2022, p. 2

a result, my research on the coast of Kenya has revealed the "remarkable disappearing act" of the topic of slavery and the lack of discourse surrounding it, particularly in the context of urban slavery.⁽²⁾

This thesis discussed how British colonial rule in Kenya impacted power dynamics between different groups, particularly the Swahili and Arab elites and marginalized groups such as former slaves. The British used indirect rule, which reinforced the dominance of the elites over their former slaves, who were still subject to their former masters, even after the abolition of slavery in 1907. The abolition of slavery did not loosen the bonds between former slaves and their masters, and their social hierarchies survived the transition from a slave society to a colonial society.⁽³⁾ The introduction of taxes by the British also created 'racial categories' that strengthened the hands of former slave owners and solidified their position as elites in Mombasa. The abolition of slavery did not change the working conditions of most slaves, who realized they were still working in the same occupations as they had occupied during slavery. However, there was a greater chance for slaves to work as agricultural laborers to cut their ties with their former owners after the abolition, and newly conscripted slaves with little ties to the masters were able to break away from their owners. The ranks of general laborers were filled by ex-slaves, Mijikenda, and even the lower classes of Hadrami Arabs. The abolition of slavery did not make the eradication of social stigma easy for former slaves, as it persisted long after the abolition of slavery.

The history of the East African slave trade has been considered, but its various dimensions have not been fully explored. It is clear that Mombasa played an important economic role in the northern aspect of East African slave trade. The city imported and redistributed slaves from Zanzibar, Kilwa, and northern Tanzania into its immediate hinterlands and other towns. Generally, slaves worked as household servants, artisans, and concubines. Slavery in Mombasa was more of an urban than a rural phenomenon and was related to the development of

⁽²⁾ Ibid.

⁽³⁾ Becker, 'Female Seclusion in the Aftermath of Slavery on the Southern Swahili Coast', 212.

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prosperous commercial links with both the hinterlands and Indian Ocean regions as a whole. However, slaves also play an important role in food production.⁽⁴⁾

The ban on Arabian-bound slaves did not stop slavery, but only redirected it to coastal plantation complexes. Instead of receiving slaves to work in date plantations or other domestic services, Arabia received agricultural goods produced by slave labor, a sort of East African 'legitimate trade.' This clearly shows that the eastern coast of Africa, like its counterpart in the West, shared many similarities with the abolition of the seafaring-slave trade.⁽⁵⁾

Colonialism brought about changes to the institution of slavery in Mombasa, as it did elsewhere in Africa, but the ideology that supported the institution of slavery remained resilient and outlasted colonialism. Furthermore, the "vestiges of slavery" are not completely eliminated. Former slaves who were unable to migrate or gain access to land or employment, especially women, had limited choices and were forced to accept certain restrictions to maintain certain rights.⁽⁶⁾

Although colonial governments abolished slavery in many parts of Africa, the social structure of dependency and discrimination against people of slave ancestry has persisted to the present time. In Mombasa, the abolition of slavery did not remove slaves' "disabling status." Although people of slave descent participated in important areas of community activities, identified themselves as waswahili, and adopted cultural trappings of their former masters, they were still not considered complete members of the community. The Swahili cultural hegemony, using paternalism, marginalized slaves both before and after colonialism. The Swahili, using culturally framed Muslim practices to define what was "proper" or not, and what was Islamic or not, were able to use these practices to control their slaves. Gramsci suggested that hegemony "is attained through myriad ways," In the case of the Swahili elites, every tool available to them was used to shape, directly or indirectly, the social reality of their slaves in Mombasa and the coast of Kenya.

⁽⁴⁾ Cooper, 'The Treatment of Slaves', 89; Glassman, 'No words of their own', 131-145.

⁽⁵⁾ McSheffrey, 'Slavery, indentured servitude, legitimate trade', 349-368.

⁽⁶⁾ Clarence-Smith, *Islam and Abolition*, 147.

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This thesis has demonstrated that former masters used local culture and Islam to help legitimize practices that allowed masters to preserve their claim to social and traditional authority over their former slaves in Mombasa. This shows how former masters used the Kadhi courts as an instrument to demarcate social boundaries against their former slaves.

This research delved further into the status of ex-slaves after 1907, focusing on the doctrine and practice of *kafā'ah*, which emphasizes equal social status in Muslim marriages. This doctrine was used to create social boundaries for former slaves, impeding their ability to marry and create family.

For example, the former master used the principle of *kafā'ah* to make sure that the slaves knew their place. It was a form of Code Noir or the Black Code of Islamic society, but it did more than regulate the lives of slaves during slavery; it also regulated them after they were emancipated. The institution of *kafā'ah* was used to bind slaves closer to their masters. *Kafā'ah* favored former masters over former slaves. The mission of the slaves did not break the bonds or bring an end to the asymmetric relationship between the former master and former slave. Instead, *kafā'ah* encouraged the continuation of a dependency relationship between the former slaves and their former masters. Former slaves were forced to remain in the households of their former masters or were attached to them for social and economic reasons. In exchange, the former slaves were at the beck and call of their former master and family. Even when former slaves had left the household of their former master, the ties of *kafā'ah* continued to be maintained. The ties did not end with former slaves; their children were also permanently bound to their father's former masters and their descendants.

The stories of Salama and Sadiki encapsulate the struggles faced by former slaves in Mombasa and along the coast of Kenya. The end of slavery on the Swahili coast mirrored the abolition of slavery in other parts of the continent. However, the ties between dependence and interdependence continued long after slavery. There was no major exodus of slaves from their place of bondage, especially for domestic slaves who remained in the vicinity of their former masters. Most of the remaining slaves had limited employment choices and were con-

sequently forced to accept certain restrictions to survive. In Mombasa, the social structure that divided people into free-born and people of slave ancestry was maintained and survived the abolition of slavery.⁽⁷⁾ Former masters resisted social change, and decades after the abolition and emancipation of the slaves, it was not surprising to hear terms like "She is my slave" uttered in a court of law in Mombasa by a former master.⁽⁸⁾

Once the institution of *kafā'ah* was embedded in Islamic society, it remained unchanged, as constant feature of many Muslim slave-owning societies today. In contrast, *kafā'ah* was used to demarcate social boundaries. This ensured that former slaves did not marry elite families. Furthermore, a former slave can only marry the consent of his former master. A slave intending to marry had to seek permission, regardless of his age, and his master ensured that the slave married his social equality. According to Islamic law, marriage partners should have an equal social status.⁽⁹⁾ Masters, with the help of Kadhis, ensured that the rules of marriage were firmly applied, elite families ensured that their pedigree was preserved, and people with slave ancestry were filtered out. Thus, former slaves remained marked people, social pariahs, and a social underclass in Mombasa and other coastal Swahili communities.

The struggles faced by former slaves and their descendants, who were emancipated by the abolition of slavery or those who were manumitted before 1907, in controlling their property. The case involving the grandchildren of Kiroboto illustrates this struggle, shedding light on the power that former masters had over their former slaves, and how the kadhis supported the former masters by upholding the tradition of *walā'*. This tradition gave legitimacy to those seeking to take control of the property of their former slaves through inheritance while excluding blood relatives and others seen by colonial authorities as legitimate heirs.

⁽⁷⁾ Ibid., 91-2.

⁽⁸⁾ Strobel, *Muslim women in Mombasa, 1890-1975*, 51.

⁽⁹⁾ S. Bangstad, 'When Muslims marry non-Muslims: marriage as incorporation in a Cape Muslim community', *Islam and Christia--Muslim Relations* 15, 3 (2004), 349-364; A. Sheriff, 'Concubinage, law, and the family Suria: concubine or secondary slave wife? the case of Zanzibar in the nineteenth century', in G. Campbell & E. El-bourne, *Sex, power, and slavery* (Athens: Ohio University Press, 2014), 99-120.

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The case involving the grandchildren of Kiroboto exemplified this struggle and underscored the former masters' authority over their former slaves. Moreover, it sheds light on how kadhis supported former masters in upholding the tradition of *walā'*, which legitimizes those seeking to inherit the property of their former slaves and excludes blood-related and other heirs recognized by the colonial authorities.

This thesis sheds light on the legacy of indirect rule in Mombasa and how it allowed Swahili and Arab elites to retain their privileged positions long after the establishment of colonial rule. It shows how Islamic scholars, who were mostly from elite groups with connections to the slave-owning class, used Islamic law to entrench their privileges and curb the gains of former slaves. Additionally, it highlights how British colonial rule introduced a racial paradigm that imposed a racial-cum-class social structure on Kenya's coast, with former slaves occupying the bottom rungs of the hierarchical ladder.

This study has demonstrated how the abolition of the status of slavery did not automatically dismantle the beliefs and norms that supported it. The socioeconomic status present in colonialism was not very different from the old institution of slavery, and the inequality that was present in the latter persisted in the former. Former slaves in Mombasa continued to bear the burden of slavery long after its demise, as they lacked resources and were forced to drift back to their former occupations, mainly as maids, servants, and laborers.

Overall, this research has highlighted the deep-rooted effects of slavery on social and class relations in Mombasa, which continue to persist. The institutional legacy of slavery has endured, and it will take more than formal dismantling of the institution to eradicate the inequalities that persist. There is a need for continued research and discourse to create a better understanding of the long-lasting legacies of slavery and colonialism, and to address the social and economic inequalities that persist in Mombasa and other parts of the world.

This thesis has illustrated how colonial rule empowered Swahili and Arab elites while disempowering marginalized groups, especially former slaves. Indirect rule allowed the former ruling classes to re-establish themselves in a colonial setting. The British, using a skeletal

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colonial official system, were forced out of necessity to use pre-existing local institutions to control their colonial subjects.⁽¹⁰⁾ It is clear that this overlaying of colonial rule over an existing Omani administration on the coast of Kenya allowed the ruling class to "continue to rule over the day-to-day affairs of a subject population, ' although under the supervision of colonial officials⁽¹¹⁾. This surrendering of British colonial sovereignty to the local elites led to colonialism as a proxy.⁽¹²⁾ This allowed Muslim subcolonial administrators to operate unencumbered within the colonial administration without the usual strictures of a British-created system.⁽¹³⁾ Therefore, colonial rule in Mombasa reinforced or re-entrenched the dominance of the Swahili and Arab elites over their former slaves along the coast of Kenya. This study also illustrates how this layered colonial system worked on the Kenyan coast.⁽¹⁴⁾ The elites in Mombasa were aware of their indispensability to colonial rule and used this awareness as leverage for British officials. Thus, the elites were able to reinstate earlier administrative practices that sometimes directly contradicted the professed goals of British colonizers.⁽¹⁵⁾ For example, the elites of Mombasa used religion, in this case Islam, to justify Arab political hegemony and its antipode, subordinate black racial subjectivity.⁽¹⁶⁾ Historian Jonathan Glassman argues that this "ethno-religious exclusivity and civilizational superiority 'was not merely to mimic or even parallel British colonial racial discourses, but 'were remarkable as much for their originality as for their audacious proclamation of racial and civilizational superiority'.⁽¹⁷⁾

The study also highlighted the ways in which colonial rule perpetuated the existing power dynamics and inequalities on the coast of Kenya. The legacy of indirect rule in Mombasa allowed the Swahili and Arab elites to retain their privileged positions at the expense of marginalized groups, especially former slaves. The chapter has also emphasized how this legacy has

⁽¹⁰⁾ J.J.C. Myers, *Indirect Rule in South Africa: tradition, modernity, and the costuming of political power* (Rochester: University Rochester Press, 2008).

⁽¹¹⁾ Myers, *Indirect Rule in South Africa*, 2.

⁽¹²⁾ Ochonu, 'Conclusion: Subcolonialism, Ethnicity, and Memory,' 207.

⁽¹³⁾ *Ibid.*, 211.

⁽¹⁴⁾ *Ibid.*, 209

⁽¹⁵⁾ *Ibid.*, 211

⁽¹⁶⁾ *Ibid.*, 212.

⁽¹⁷⁾ *Ibid.*

endured to this day, with social and economic inequalities persisting in Mombasa and other parts of the world. To address these persistent inequalities, continued research and discourse are needed to understand the long-lasting legacies of slavery and colonialism and work towards dismantling the institutional structures that perpetuate them.⁽¹⁸⁾

This thesis delves into the intricate interplay between colonialism and slavery in Mombasa, Kenya. The implementation of indirect rule enabled the Swahili and Arab elites to preserve their advantageous status while subjugating marginalized communities, especially those who were formerly enslaved. Despite the formal abolition of slavery, its impact as an ex-slave continued to endure economic and social disparities.

One of the key findings of this study is the role played by Islamic law in reinforcing the privileges of the ruling elites and curbing the gains of former slaves. This underscores the importance of considering the intersection of religion, law, and power to understand the legacies of colonialism and slavery.

Furthermore, this study highlights the enduring effects of colonialism and slavery on social and class relationships in Mombasa. The socioeconomic hierarchy established during colonialism persists to this day, with former slaves occupying the lowest rungs of the ladder. It is clear that the dismantling of the institution of slavery was not sufficient to eradicate the deeply ingrained beliefs and norms that supported it.

There is a need to extend this study to other areas of the Swahili coast, showing similarities and dissimilarities regarding urban slavery. Additionally, it would be beneficial to examine how different colonial rules, such as the German, Portuguese, and French administrations, dealt with urban slavery and its abolitions in the areas they controlled. A comparative study is needed to connect the Swahili coast and illustrate how urban slavery fared during the abolition of slavery and its aftermath.

This study sheds light on the long-lasting legacies of slavery and colonialism in Mombasa and beyond. It is imperative that we continue to engage in research and discourse to deepen

⁽¹⁸⁾ Becker, 'Female Seclusion', 212.

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our understanding of these legacies and work towards addressing the social and economic inequalities that persist. Only through concerted effort can we hope to create a more just and equitable society for all.

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