

“Fantastic Charities”: The Transformation of *Waqf* Practice in Colonial Zanzibar*

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Abstract

The present study examines the impact of British colonial rule on *waqf* practice in Zanzibar. I argue that colonial policy towards *waqf* did not aim at the dismantlement of *waqf* as such. Nonetheless, it disrupted traditional patterns of *waqf* practice. Traditionally, *waqf* was controlled by wealthy patron families who used endowments to foster bonds of dependence and loyalty with manifold clientele and to maintain mosques representing the patron's social status. This practice was antithetical to British political and economic ideas, which were modern and capitalist. British officials insisted that patrons must use their wealth as a business resource and that the maintenance of mosques was a responsibility of the state. Accordingly, the British controlled *waqf* administration classified endowments as either “family *waqf*” or “mosque *waqf*”. The first was fully exploited in favour of the founder's family, while the latter was turned into revenue for public mosque upkeep. As a result, *waqf* ceased to be an economic base for patron-client relationships and clients were transformed into a modern working class entirely dependent on wage labour.

Keywords

Waqf, Zanzibar, Colonialism

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Introduction

The present study examines the impact of British colonial rule on traditional *waqf* practice in the Sultanate of Zanzibar. I shall argue that British policy towards *waqf* in Zanzibar was shaped by a combination of motives that were to some extent contradictory. *Waqf* was closely connected with the interests of local elites whose cooperation was essential for the exercise of British power in the Sultanate. Most endowments were founded and controlled by wealthy patron families who used them mainly for two purposes: To build and maintain mosques that represented the social status of the family, and to accommodate large numbers of slaves and clients who—having no economic means of their own—were dependent on a patron's "charity" as a means of subsistence. The central position of such patron families in Zanzibar society rendered it unadvisable in British eyes to dismantle *waqf* as an institution.

The colonial power did however interfere in local *waqf* practice and transformed it significantly. To some extent, interference was motivated by a desire to exploit *waqf* as revenue for the colonial administration. I shall argue, however, that material interests do not suffice as an explanation of British *waqf* policy in Zanzibar. The colonial transformation of *waqf* practice reflects a conflict between local and British notions of social order, that is to say, ideas about how a society should be structured and who holds which roles, rights and responsibilities. Such conceptions prescribe and legitimize a specific distribution, administration and employment of political power and economic resources.

British *waqf* policy reflected notions of social order that were both modern and capitalist. Those notions were antithetical to patronage as practiced by the founders and trustees of *waqf*: British officials deemed it a responsibility of state bureaucracy to maintain and administer mosques. Accordingly, it was legitimate for the state to draw on *waqf* resources for that purpose. Families, according to British conceptions, must be autonomous, economically self-contained social units engaging in wage labour or capitalist enterprise, unhampered by bonds of dependence and loyalty. As a consequence, British controlled *waqf* administration insisted that *waqf* in favour of the dedicator's offspring must be fully exploited as a business

resource of the founder's family, whereas *waqf* in favour of mosques must be exploited for public mosque upkeep. To provide "charity" to destitute clients was not acknowledged by British officials as an appropriate use of *waqf*. As a result, the have-nots of society were deprived of a traditional safeguard for social security.

To illustrate this transformation of *waqf* practice, I proceed in two steps. In part one, I depict the historical roots of *waqf* in Zanzibar, the social background of local *waqf* practice, and the traditional patterns of endowment and administration of *waqf*. In part two, I describe how the colonial power established control of *waqf* administration and analyze the processes of transformation effected by British interference.

The present study is based on a survey of British administrative files preserved in the Zanzibar National Archives as well as in the British National Archives (Public Records Office) in London. In addition, I have profited from the valuable studies on *waqf* in Zanzibar by Sheriff (2001 b), Anderson (1959) and Lienhart (1958). Other works containing sections on *waqf* in Zanzibar are Anderson (1970), Myers (1995 and 1997), Fair (2001), and Bang (2003).¹ Otherwise, the study of *waqf* in Zanzibar—and in East Africa as a whole²—remains a desideratum. As for *waqf* in other parts of the colonial British empire, there are valuable studies on the subject by Baer (1969), Kozłowski (1985), Powers (1989), Reiter (1996), Ginio (1997) and Nasution (2002).

1. Traditional *Waqf* Practice in Omani Zanzibar

1.1. *The Historical Roots of Waqf in Zanzibar*

Owing to the scarcity of pre-colonial sources, it remains almost impossible to determine how far back Islamic endowment practices reach in the history of East Africa. Archaeologists have uncovered

¹) See Fair 2001: 119-29; Bang 2003: 167-72; Myers 1995.

²) The only study of *waqf* on the Swahili coast which is not confined to Zanzibar is Carmichael 1997 which deals with *waqf* in Mombasa.

several ancient mosques on the Swahili Coast, some of them dating to the 8th century C.E.³ However, there is no empirical basis for the conclusion that the early Muslim communities on the Coast treated these mosques in either a formal or informal way as *waqf*. In his 1961 study on land tenure in Zanzibar, Middleton described the traditional institution of the *kitongo*, an inalienable plot of land in the hands of a family, whose members inherit usufruct rights as well as the right to be buried on it. Although Middleton's informants told him that *kitongo* was "like a *waqf*",⁴ we cannot take this as an indication of early Muslim endowment practice on the Swahili Coast, though such traditional patterns of land tenure might well have facilitated the introduction of the Islamic *waqf* institution into the local context.

What we do know is that from the 1820s on, when the Omani Sultan Sayyid Sa'īd established his rule on Zanzibar and large parts of the coastal mainland, endowing *waqf* gradually became a common practice. In the first decade of the 20th century, when the British colonial administration developed a more systematic approach to urban development in Zanzibar Stone Town, they realized that a substantial proportion of the urban space was indeed *waqf* property. Precise figures lack in the administrative files,⁵ but an official survey from 1944 identifies some 6.4% of Stone Town's houses as *waqf*.⁶ To this must be added large tracts of urban ground dedicated for the free dwelling of different groups of beneficiaries, to be treated below. Furthermore, rich families dedicated a remarkable quantity of urban space as burial ground for their relatives or for the poor. In 1921, according to a study by Issa, almost one-third of the

³ On ancient mosques on the Swahili coast, see Horton 2001: 452ff.; Flury 1922.

⁴ See Middleton 1961: 24.

⁵ In 1908, the Wakf Commission created by the British authorities controlled 65 houses, 47 shambas (farms) and 33 mosques (see ZNA, AC 18/2, Attorney General's Correspondence 1906-1908, vol. 2, entry of 29th July 1908). At that early date the Wakf Commission's control of *waqf* was not yet systematic. Accordingly, these figures may reflect only a fraction of the existing endowments.

⁶ See Sheriff 2001 b: 33. 6.4 % of the houses in Stone Town equalled a sum of 158 houses. However, as the figures cover only the endowments under the control of the Wakf Commission, the actual percentage of *waqf* houses may have been even higher.

peninsula on which Stone Town was erected consisted of burial grounds.⁷

A systematic assessment of the age of these manifold *awqāf* is difficult. The oldest *awqāf* whose founding date can be identified go back to the 1840s and 1850s, with a growing number founded in subsequent decades.⁸ This does not rule out the possibility that some of the *awqāf* in Zanzibar predate the Omani Sultanate.⁹ However, the bulk of *awqāf* that existed when the Protectorate was imposed appear to have been founded during Omani rule.

1.2. *The Social Background to Endowment Practice*

Why did the endowment of *waqf* become a common social practice in Zanzibar only decades after the establishment of Omani rule? The answer lies in the socio-economic shifts brought about by Omani domination that resulted in the creation of structures in which *waqf* fulfilled a significant function.¹⁰

Economically, the most important effects of Omani rule on the Coast were a greatly enhanced involvement in long-distance trade and the introduction of large-scale production of cash crops, mainly cloves. Global trade in cloves quickly became the backbone of Zanzibar's economy and remained so during the colonial period and beyond. This shift in the archipelago's economic conditions had significant repercussions on local social structure. For one thing, cash crop production increased the demand for labour. To meet this demand, slaves were imported in growing numbers, usually from the African mainland. In the middle of the 19th century, slaves formed roughly two-thirds of Zanzibar's population.¹¹ At the same

⁷ See Issa 1995: 70. On burial grounds in Zanzibar see also Penrad 1995.

⁸ A *waqf* founded in Chake Chake (Pemba) by Nāṣir b. Khalaf dates back to the 1840s (see 1 ZLR, 365-9), endowments founded in subsequent decades include for instance the Ma'ūli-*waqf* (ZNA, HD 10/13) and the Laghbri-*waqf* (ZNA, HD 5/9).

⁹ With regard to Lamu, Pouwels refers to an informant who told him in 1975 that there had been no *waqf* prior to the advent of the Bū Sa'īdi rulers (Pouwels 1987: 115, n. 119).

¹⁰ For a detailed account of the establishment of the Sultanate of Zanzibar and the socio-economic consequences of Omani rule, see Pouwels 1987; Bennett 1978; Sheriff 1987.

¹¹ See Cooper 1977: 56.

time, the new cash-crop economy led to the formation of new economic elites. Global trade in cash crops required both capital and commercial networks. These resources were provided by substantial business people, mostly of Indian origin, who formed small but influential communities in the Sultanate.¹² Another important group within the Sultanate's new economic elites were the proprietors of plantations. Some plantation owners were of local Swahili origin. The bulk of plantations, however, belonged to Omanis and, to a lesser extent, Hadramis who had acquired land for clove cultivation in the early decades of the Sultanate.

Political power in the Sultanate was largely a reflection of economic power. The most important tool of political influence was, as Pouwels has styled it, "largesse"¹³, that is a hardly formalised distribution of wealth in exchange for loyalty and support. In other words: power relations in the Sultanate must largely be understood in terms of patronage. Even the Sultan as the nominal sovereign was little more than the "biggest patron" of the region. His power over wealthy families was limited. It did not rest on any large standing army. Nor did it rest on descent, as the prevailing Ibādī creed of the Omani tribes precluded rather than supported hereditary entitlement to rule.¹⁴ The main pillar of the Sultan's power was the enormous wealth that he acquired from his involvement in trade as well as his possession of a substantial part of the archipelago's plantations.¹⁵ All these resources were commanded by the Sultan "in private", as they were looked upon as his personal property and not as revenues of any "state treasury". However, that personal wealth had to be used to "buy" the loyalty required for protracted political domination.

¹²⁾ Colonial sources depict Indians almost exclusively as businesspeople and particularly as money-lenders. One must keep in mind, however, that British officials tended to perceive Zanzibar's society in terms of ethnical stereotypes. In general, one must be careful not to conceive of the Sultanate's society in terms of clear-cut relations between socio-economic roles and ethnic groups. This holds true also for the landholding class discussed below. For the complex issue of ethnicity in Zanzibar and the relationship between ethnic groups and economic roles, see Sheriff 2001a; Glassman 2000.

¹³⁾ See Pouwels 1987: 102 and 108f.

¹⁴⁾ See Wilkinson 1977: 178f.; Pouwels 1987: 102ff.

¹⁵⁾ See Pouwels 1987: 104.

For a Sultan, rule meant to redistribute wealth, often in the form of gifts and stipends, and particularly to potential political rivals among the Omani clans who considered the Sultan merely a *primus inter pares*.¹⁶

The close relation between economic and political power in the Sultanate enabled wealthy families to maintain a wide political autonomy vis-à-vis the ruler. Such families applied the same strategy of patronage as the Sultan in order to foster their position in society. As they controlled most of the Sultanate's economic resources, they provided the means of subsistence for many who had no such means of their own. The relationship between wealthy families and such have-nots was not defined by formal contracts, but rather by virtual economic dependence and—ideally—a sense of responsibility on the patron's side. Most such dependants were slaves, for which reason the expression "patronage" is slightly euphemistic. Even slaves, however, enjoyed some basic rights within the framework of local customary norms. The British Agent and Consul General (Basil Cave) observed, in 1906, that "an Arab who discarded an old or sick slave would [...] be regarded with contempt by his associates, and such an occurrence is very exceptional".¹⁷ Besides, slaves frequently were manumitted, but usually continued to work for their former owners, as legal freedom did not sever the bonds of economic dependence.¹⁸ The importance of economic bonds between masters and slaves became apparent when the British abolished slavery in 1897. British officials were anxious that freed slaves would turn not to wage labour—as was hoped—but to vagrancy and prostitution. Most of the freed slaves, however, continued to work on the plantations. They followed an arrangement which the British called "squatting": In exchange for their labour the ex-slaves were allowed to live on the plantations and cultivate the ground between the clove trees for their own subsistence. What the British called "squatting", however,

¹⁶) See *ibid.* 102ff.

¹⁷) See Memorandum to the Foreign Office by Cave, FO 881/9215, 41. In his study on slavery in Zanzibar, Cooper stresses the notions of mutual loyalty and responsibility between masters and slaves as a characteristic feature of slavery in the Sultanate (see Cooper 1977: 162, 183, 246).

¹⁸) See Cooper 1977: 243, 246ff., 252; Fair 2001: 115f.

was merely a continuation of the traditional arrangement for providing slaves with their basic needs for living.¹⁹

To sum up: Wealthy patron families formed a central element of the Sultanate's social structure. Those families stood at the centre of large socio-economic units defined by economic dependence and loyalty and far exceeding mere bonds of kinship. Politically, these families enjoyed a high degree of autonomy vis-à-vis the Sultan, who was merely a *primus inter pares* among them.

The role of patron families in Zanzibar accounts for the rapid spread of *waqf* after the establishment of the Sultanate. The institution of *waqf* provided an excellent means for wealthy patrons to display "largesse". To endow a *waqf* not only met the obligations of a patron, but also linked patronage to Islam as the predominant normative discourse. Equally, patronage accounts for the specific patterns of *waqf* endowment and administration that predominated in Zanzibar. These patterns, to which I shall turn presently, represented an adaptation of *waqf* law to local conditions and involved some deviations from classical legal doctrine. As we shall see, the British did not hesitate to point to these deviations in order to justify their own meddling in local *waqf* practice.

1.3. Patterns of Waqf Endowment and Administration in the Sultanate

Practically all *waqf* in Zanzibar consisted of real estate, mostly houses and shambas (farms), but also burial grounds.²⁰ The vast majority of these *awqāf* were endowed by members of the wealthy patron families mentioned above.²¹

One remarkable feature of *waqf* practice in Zanzibar was the largely autonomous administration of the endowments by the

¹⁹⁾ On squatting see Middleton 1961: 43ff.; Depelchin 1991: 24, 27ff.

²⁰⁾ I came across only one *waqf* that was not real estate: A number of works on Ibāḍī law were printed in Zanzibar and dedicated by the Sultan to the free use of the public (see ZNA, AB 62/74).

²¹⁾ Remarkably, I have not encountered any evidence that the Sultans endowed real estate. However, members of the Sultan's family endowed some *waqf* for the benefit of their offspring (see for instance ZNA, HD 6/55 and HD 5/66 for large and valuable endowments founded by Sayyid Ḥamūd b. Aḥmad (d. 1881), a close relative of Sultan Sayyid Sa'īd and, according to Sheriff 2001 b: 38, one of the richest property owners in Zanzibar).

founders' families. Trusteeship typically rested with the founder's heirs, usually the eldest living son (female trustees appear to have been exceptional).²² This pattern was applied regardless of whether the founder's heirs also were the beneficiaries of the *waqf*. The largely autonomous administration by the founders' families correlates with a very limited degree of interference in *waqf* matters from the Sultan or his representatives, including the official qāḍīs appointed by the Sultan. I have come across only four cases in which either the Sultan or a qāḍī seized control of a *waqf*. The sources do not mention the reasons for these seizures, but in one case the Sultan clearly acted to punish a political ally who had fallen in disgrace.²³

One may regard this limited official supervision of *waqf* as a deviation from classical *waqf* doctrine, which holds that the qāḍī has a duty to safeguard the proper administration of *waqf*. On the other hand, the powerful position of families in Zanzibar plainly precluded official interference in what obviously was considered "family-business". The lack of official supervision—although a deviation from classical doctrine—was at the same time an adaptation of Islamic law to local socio-political conditions.

Other such adaptations become apparent when we compare the stated purposes of *awqāf* in Zanzibar with the way in which they were actually used. For a classification of *waqf* according to its

²²) I encountered only one case in which females acted as trustees, viz. the *waqf* complex of Sayyid Ḥamūd, which will be analyzed below. Albeit exceptional, the case is nonetheless remarkable, since according to Peters, the classical doctrine of the Sunni schools except for the Ḥanafis accepts only males as trustees (see Peters 2002: 63 a). It must be added, however, that Sayyid Ḥamūd was an Ibāḍī. I have not been able to determine the Ibāḍī legal position on female trustees.

²³) See ZNA, HD 3/5. The victim of the Sultan's retaliation was Ḥāmid b. Sulaymān b. Sa'īd, who controlled a large plot of land at Ng'ambo which his father, Sulaymān b. Ḥāmid, had dedicated as a *waqf* to accommodate clients and slaves. The family held an influential position at court until 1893. In that year, a political quarrel arose between the family and Sultan Ḥāmed b. Thuwaynī, who confiscated large portions of Ḥāmid b. Sulaymān's property as well as the *waqf* at Ng'ambo. Other cases in which the Sultan seized *waqf* are the Far'ī *waqf* at Gulioni (see ZNA, HD 10/87) and the above-mentioned Ma'ūlī *waqf* (see ZNA, HD 10/13). The only case I have come across in which a qāḍī took control of an endowment is that of the *waqf* of Nāṣir b. Khalaf at Chake Chake (in Pemba) which was administered for some time by the local qāḍī (see ALI BIN NASSOR BIN KHALAD (*sic!*) v. ZWENA BINTI HAMOOD, 1 ZLR, 366).

purpose one may refer to the categories drawn by the Shāfi'ī qāḍī Aḥmad b. Sumayṭ (1861-1925), who was (and remains) the most highly esteemed 'ālim of the Sultanate.²⁴ His classification of *waqf* is recorded in a judgment passed by His British Majesty's Court for Zanzibar in 1907. According to the judgment, Sheikh Amad distinguished between "private" and "public" *waqf*. These expressions, however, seem to be a rather clumsy translation of what Sheikh Aḥmad no doubt referred to as "*waqf 'āmm*" and "*waqf khāṣṣ*" (literally: "general" and "specific" *waqf*).²⁵ According to Sheikh Aḥmad, a *waqf* is "public" if there are no specifically stipulated beneficiaries, in which case the beneficiaries are the general poor. In Zanzibar, such "public" *waqf* was confined to tracks of land reserved for the free dwelling of those who had no ground of their own. "Private" *waqf* was *waqf* dedicated for specifically stipulated beneficiaries. In Zanzibar, "private" *waqf* was of two types: The

²⁴ Aḥmad b. Sumayṭ's classification is recorded in THE WAKF COMMISSIONERS FOR ZANZIBAR V. WALLO RAMCHOR, Civil Case No. 1,333 of 1907, 1 ZLR, 227-39 [238f.]. For biographical information on Aḥmad b. Sumayṭ, see Bang 2003. The high reputation of Sheikh Aḥmad is reflected in a letter written by the Administrator General, Dar es Salam, to his colleague in Zanzibar, enquiring about a question of *waqf* law. The sender asked, "is old Sheikh Smidt still alive? As if one can quote him, there would be no opposition from any Mohammedan on this side" (see ZNA, HD 10/9, Administrator General, Dar es Salaam, to Administrator General, Zanzibar, 25th of July, 1933).

²⁵ In his study on *waqf* in Mamluk Egypt, Ito points out that the distinction between *waqf 'āmm* and *waqf khāṣṣ*—although unusual in Mamluk sources—was drawn by the Mamluk scholar Badr ad-Dīn b. Jamā'a (d. 1332/33 C.E.) (see Ito 2003: 52, note 20). Ito suggests that Ibn Jamā'a borrowed the distinction from Māwardī (d. 1058) and that the distinction correlates with the well-known categories of *waqf ahlī* and *waqf khayrī*. This contention is erroneous in my point of view. As Ito describes the distinction drawn by Ibn Jamā'a, that distinction correlates exactly with the one drawn by Ibn Sumayṭ: *Waqf khāṣṣ* is a *waqf* in favour of specific beneficiaries, viz. the founder's offspring, other individuals, a mosque, a *madrasa*, etc., whereas *waqf 'āmm* is for the benefit of the general poor. This distinction does *not* correlate with the *ahlī/khayrī* distinction. Some scholars have suggested that the *ahlī/khayrī* distinction was, to quote Baer, "an innovation of modernist twentieth century ideology and, subsequently, legislation which emerged under Western influence (see Baer 2005: 273; see also Peters 2002: 60 b and Anderson 1959: 154). This suggestion is corroborated by the present study. As will be seen, the *ahlī/khayrī* distinction was introduced by the British controlled *waqf* administration, whereas Ibn Sumayṭ does not mention it. Neither did I come across any other indication in the sources that scholars in pre-colonial Zanzibar ever classified *waqf* in terms of *ahlī* and *khayrī*.

first and most common type was *waqf* in favour of the founder's dependants—usually their offspring, but sometimes also ex-slaves and particularly concubines.²⁶ The second type of “private *waqf*” was the type of endowment the British customarily called “mosque *waqf*”, but which in fact is not a mosque, but an estate endowed to provide resources for the upkeep of a mosque (which usually had been built by the founder).²⁷ Such “mosque *waqfs*” were very numerous, as were mosques themselves. Though comparatively small in size, mosques were (and are) scattered all over Stone Town. In 1914, their total number was at least sixty-six.²⁸ Those mosques were a visual symbol of the social status of those who built them, and whose families typically dominated the quarter in which the mosque was situated.²⁹

Sheikh Aḥmad's classification shows that Zanzibari scholars clearly distinguished between endowments with different purposes. That distinction, however, was drawn only at a formal legal level. A look at administrative practice reveals a different picture: Although the foundation deeds usually mention specific purposes, those purposes were regularly ignored. Actual use of endowments customarily followed a different pattern: All *waqf*—regardless of its formally stated purpose—was used in more or less the same way, viz. as a family resource earmarked for the fulfilment of the various obligations of a patron, e.g. to build and maintain a local mosque, and to sustain

²⁶ See, for instance, the foundation deed translated by Sheriff 2001 b: 43f., in which Sayyid Ḥamūd b. Aḥmad dedicated a *waqf* to provide for his freed slaves, among them his concubine Birilch Habshia and a woman named Zafṛān, the mother of two of his sons.

²⁷ It should be added that at least the ground on which a mosque was built was usually *waqf*, too. According to the local qāḍī, a building for prayer which stands on other than *waqf* ground does not qualify as a mosque proper, but merely as a “*msala*” (*muṣallan* in Arabic, lit. “place for prayer”). The qāḍī pointed out that, unlike a mosque, a *msala* may be torn down by the owner of the ground at any time (see ZNA, HD 10/7, Minute of Wakf Commissioners' meeting on 31st of May 1939).

²⁸ See Memorandum (untitled, anonymous and undated), ZNA, AB 34/1, 5f.

²⁹ See Sheriff 1992; Pouwels 1987: 78f. and 117. Interestingly, only a few endowments in Zanzibar were dedicated for religious learning. Sheriff mentions two endowments which were *madāris*, as well as one lodging house for students of Ibāḍī law (see Sheriff 2001: 38 and Sheriff 1992: 14). One assumes, however, that religious learning took place in mosques, and thus was indirectly provided for by *waqf*.

poor family members, clients and slaves. This practice, of course, deviated from classical legal doctrine, which holds that the founder's stipulations must be strictly observed. It is unlikely, however, that the patron families perceived their practice as "un-Islamic". In their eyes, religion required the fulfilment of their manifold duties as patrons. It was of minor importance which particular resource the family used to carry out which particular duty. What mattered was that all duties were fulfilled. Strict adherence to the founder's stipulations would merely have hampered that task by creating an element of inflexibility within the patron family's overall budget.

In 1890, however, the Sultanate was turned into a British protectorate. British officials had little sympathy for traditional patterns of *waqf* administration. The colonial power sought to impose "modern" notions of social order. Consequently, *waqf* administration was subjugated to impersonal procedures, administered by official bodies and guided by strict legal categories. These categories did not conform to the traditional use of *waqf* or to the categories of "public" and "private" *waqf* used by Aḥmad b. Sumayṭ (viz. *waqf 'āmm* and *waqf khāṣṣ*). Instead, the colonial power introduced a strict administrative distinction between endowments for the benefit of the founder's offspring, which the British classified as "family *waqf*", and endowments in favour of mosque upkeep, which the British classified as "charitable *waqf*" (or simply "mosque *waqf*"). Charitable *waqf* was used exclusively to finance the local infrastructure of mosques, which was now run as a public utility rather than being left to the care of patrons. Family *waqf* was managed for the exclusive benefit of the founder's offspring. As a consequence, *waqf* ceased to be a means of patronage. It also ceased to provide social security to the numerous clients and former slaves of the Sultanate's society. This transformation of *waqf* administration will be described more closely in the following sections.

2. British Administration of *Awqāf* in Zanzibar

2.1. British Waqf Legislation

The first step towards British administrative control of *awqāf* in Zanzibar was taken in 1904, when a decree was issued ordering all

subjects of the Sultan to register the endowments they administered at the bureau of the First Minister (at that time A.S. Rogers).³⁰ One year later the first in a series of Wakf Property Decrees³¹ set up Wakf Commissions and defined their responsibilities and powers. It will suffice here to give an account of the decree of 1907, since its content can be regarded as paradigmatic.

The decree set up two Wakf Commissions, one for Pemba and one for Unguja, each consisting of a British official acting as chairman and two qādis.³² One qādi represented the Shāfiʿī *madhhab*, which was followed by the majority of the local population. The other qādi represented the Ibāḍī school of law, viz. the *madhhab* followed by the Omani ruling elite who had founded most of the endowments. All Commissioners were appointed by the Sultan, but “on the recommendation” of the First Minister. They were empowered to audit the administration of *awqāf* by the trustees, and any transaction, such as a lease or alienation of *waqf* property, required the consent of the Commission in order to be legally binding. In cases in which a *waqf* lacked a “properly constituted trustee” or was administered in an “unauthorized or improper manner”, the Commissioners had the right to seize the administration of the endowment.

Section 9 of the decree prescribed that the Commission must administer *awqāf* in strict accordance with the founder’s intention. The following sections contained important additions to that general rule: According to sec. 10, if a *waqf* produced more revenues than required to satisfy the founder’s stipulations, the Commissioners were to use the surplus for “good and charitable purposes on behalf of the Mahommedans as may be desirable”. The same applied to the revenues of *awqāf* whose founders’ intention could not “be carried out”. Section 11 provided that in cases in which the founder’s intention could not “reasonably be carried into effect” the Commis-

³⁰) See ZNA, HD 10/37.

³¹) The spelling common in scientific works is “*waqf*”. In British colonial files, however, the term is usually spelled “wakf”, and I shall use that spelling when referring to the Wakf Commission or the Wakf Property Decrees.

³²) In 1909, the Wakf Commissions for Pemba and Unguja were merged into one for both islands. The new Commission was composed of two British officials and two qādis.

sioners were empowered to sell a *waqf*, provided that the sale proceeds were applied—again—for the “good and charitable purposes” as mentioned in section 10.

According to the Decree of 1907, the sale of a *waqf* or the use of its surplus income for “good and charitable purposes” required an order by the court. Likewise, the Commissioners had to apply for such an order if they wished to take over the management of a *waqf* on the grounds of maladministration by the original trustee. Those special provisions for judicial control were dropped in 1916, when a new Wakf Property Decree was passed. All administrative acts by the Commission, however, could be challenged in court by affected parties. In principle, jurisdiction in *waqf* matters lay with all courts in the Protectorate, including those courts in which qāḍīs sat on their own enjoying full power of decision. The qāḍīs’ courts, however, had no jurisdiction in civil cases in which the amount or value involved exceeded Rs. 100.³³ As a consequence, virtually all *waqf* cases were tried by higher ranking courts headed by British judges who sat together with two qāḍīs, representing the Ibāḍī and Shāfi‘ī schools of law respectively. These qāḍīs had purely advisory powers.³⁴ The law applied by the courts was, of course, the Wakf Property Decree, which was too vague and incomplete to provide for all questions of *waqf* law. As we shall see, the courts regularly referred to Islamic law in order to construe and supplement statutory *waqf* legislation. If a case depended on a point disputed between Shāfi‘īs and Ibāḍīs the court applied the *madhhab* of the parties, or—if the parties differed in that respect—whichever *madhhab* the court deemed more equitable in the particular circumstances.³⁵ Ibāḍīs

³³) See Zanzibar Courts Decree, No. 8 of 1908, Section 34.

³⁴) For a detailed account of the court system in colonial Zanzibar see Vaughan 1935, for a brief account see Anderson 1970: 58ff.

³⁵) See Vaughan 1935: 39ff. and 67ff., but also the slightly different account by Anderson 1970: 68. It should be stressed that there was some dispute among the British judiciary as to which *madhhab* must be applied under which circumstances (see Vaughan 1935: *ibid.*). The “rules” I have presented above were those predominantly followed in practice, but they were not authoritative (see for instance the dissenting opinion expressed in *THE WAKF COMMISSIONERS V. WALLO RAMCHOR*, (1908), 1 ZLR, 227). It will be observed that according to those rules *waqf* cases were not perforce decided according to the founder’s *madhhab*. In the vast majority of *waqf* cases, however, the parties and the founder adhered

and Shāfi'is differ on some points of *waqf* law and occasionally, those differences became relevant in court decisions.³⁶

It is difficult to identify the considerations that motivated British *waqf* legislation. The available file material does not shed any light on the drafting process, but a decree of very similar content had been passed some years earlier in the East African Protectorate and it is possible that the administration in Zanzibar simply copied that decree without reflecting on it too deeply.³⁷ The Kenyan decree itself might have been modelled on *waqf* legislation in another part of the British empire, but I could not determine any particular source of inspiration.³⁸ Interestingly, the passage of the decrees in Kenya and Zanzibar contrasts with the policy of non-interference in *waqf*

to the same *madhhab*. In some cases, one of the parties was the Wakf Commission. In one such case the court applied Shāfi'ī law, although the defendants were Indians who probably were no Shāfi'is. The court justified its decision by pointing out that the majority of Zanzibar's population was Shāfi'ī, and that practically the entire family of the founder was Shāfi'ī (see *THE WAKF COMMISSIONERS v. WALLO RAMCHOR*, (1908), 1 ZLR, 227). In *JOKHA BINTI SALIM v. THE WAKF COMMISSIONERS*, (1955), 8 ZLR, 341, the court applied Ibāḍī law, to which *madhhab* both the founder and the plaintiff adhered. In *TATU BIN SAID v. THE WAKF COMMISSIONERS*, (1935), 4 ZLR, 7) the court followed the Shāfi'ī *madhhab*, but the judgment does not state the grounds for doing so, nor whether the parties or the founder adhered to that *madhhab*.

³⁶ For an account of the differences between Shāfi'ī and Ibāḍī *waqf* law, including references to decisions by courts in Zanzibar, see Anderson 1970: 77. Anderson states *inter alia* that the two schools differed on (a) the interpretation of the expression *awlāduhu min ṣulbihi* ("his children from his loins") and (b) the question as to whether a *waqf* is valid if the founder does not expressly mention the poor or some "charity" as ultimate beneficiaries. I do not entirely agree with Anderson's account regarding those two points, which I shall discuss more closely in sections 2.5.1 and 2.5.2 below.

³⁷ For *waqf* legislation in the East African Protectorate, see Pouwels 1987: 176f.

³⁸ Egypt comes to mind as a possible source of inspiration for *waqf* legislation in East Africa. In Egypt, however, the Khedives successfully thwarted British attempts to interfere in *waqf* administration. "Modernist" *waqf* reform was instigated by Egyptian reformers in the 1920s and subsequent decades (see Baer 1969: 83f.). British authorities in Malaysia passed an "Ordinance for the Better Administration of Mohammedan and Hindu Religious and Charitable Endowments" in 1905 (see Nasution 2002: 306ff.). The Ordinance set up an Endowment Board entitled *inter alia* to "sell and exchange" *waqf*. The British Attorney General in Penang commented that the bill "contained in an abridged form many of the provisions of the Charitable Trust Acts 1853, 1855 and 1860", which regulated the Charity Commissions in England (see *ibid.*). It is quite possible that British *waqf* legislation in East Africa was also modelled on those Acts.

matters adopted by the British Indian government at that time.³⁹ Neither do the decrees reflect the deprecating attitude towards family *waqf* adopted both by Indian courts and the Privy Council. Those courts denied the validity of family *waqf* on the grounds that benefit for relatives does not qualify as a religious or charitable purpose.⁴⁰ In principle, decisions handed down by the Privy Council were binding throughout the British empire. Nonetheless, the British administration in Zanzibar—including the judiciary—adopted a different stance towards family *waqf*, as will become clear from the cases discussed below.⁴¹

2.2. *Alienation and Long-term Lease of Waqf under Colonial Rule*

In her study on “Pastimes and Politics” in Zanzibar, Fair has characterised British *waqf* legislation as “an eclectic patchwork of provisions taken from various schools of Islamic law, sewn together in the interest of colonial practicality”.⁴² But one cannot properly identify

³⁹ On British *waqf*-policy in India see Rashid 1978: 11ff.; Liebeskind 1998: 15ff. In India, the Religious Endowment Act XX of 1863 and the Charitable Endowments Act VI of 1890 prescribed that *waqf* be superintended by local committees and a Treasurer of Charitable Endowments. However, those administrative bodies had very limited powers and their practical effect on *waqf* administration was marginal (see Rashid 1978: 15f., 17f.).

⁴⁰ For the history of *waqf* jurisdiction in India and relevant Privy Council decisions see Powers 1989: 556ff. The most important of those decisions was the ruling by the Privy Council in *ABUL FATA MAHOMED ISHAK V. RUSSOMOY DHUR CHOWDHRY* (22 I.A. 76). For a discussion of this case and its impact on *waqf* jurisdiction in the Empire, see Anderson 1959; Powers 1989: 559f.; Riexinger 2004: 598f.

⁴¹ In India, political pressure from local Muslims eventually resulted in the passage of the Mussalman Wakf Validating Act of 1913. The Act provided a legal basis for family endowments. However, the Privy Council construed the Act as not being retroactive. As a result, Indian courts continued to deny the validity of family endowments founded prior to 1913. An amendment to the Act in 1930 eventually overruled the Privy Council’s restrictive construction (see Powers 1989: 562f.; and ZNA, AB 34/8). In Zanzibar, a Wakf Validating Decree was passed in 1946. The Decree had retroactive force, and was passed in response to the decision by the Court of Appeal for Eastern Africa in Civil Appeal No. 1 of 1946, *SAID BIN MUHAMMED BIN KASSIM EL-RIAMI & 12 OTHERS V. WAKF COMMISSIONERS, ZANZIBAR*. By that decision the Court had set aside a ruling by the Chief Justice of Zanzibar and declared a family *waqf* null and void (see ZNA, AB 34/8. For a discussion of the Zanzibar Wakf Validating Decree see also Anderson 1959).

⁴² Fair 2001: 123 (the first part of the quote is itself a quote from Pouwels 1987: 177).

any particular “patch” of school doctrine in the decree which—rather than eclectic—was vague and permissive.

In particular, the decree’s provisions regarding the sale of *waqf* allowed transactions rejected as unlawful by all schools of Islamic law. To be sure, most schools of law permit a transaction that technically speaking involves the alienation of *waqf*. This transaction, called *istibdāl* (literally “exchange”), consists of the sale of a *waqf* and the reinvestment of the sale proceeds to acquire new *waqf* property to fulfil the founder’s intention. Most Ḥanafīs allow *istibdāl* if the qāḍī deems the transaction to be in the interest of the *waqf*. The Ḥanbalīs are more restrictive, confining *istibdāl* to *waqf* that can no longer be used as intended by the founder. The Mālikīs further restrict *istibdāl* to a *waqf* consisting of moveable goods. The Shāfi‘īs completely reject *istibdāl*, but consider *waqf* to come to an end when it can no longer be used or exploited except by consumption. In that case, the *waqf* becomes the private property of the beneficiaries, who may sell it.⁴³ The conditions for sale stipulated in the decree—viz. that the founder’s stipulation cannot “reasonably” be carried out—could be construed in accordance with the Ḥanbali position, but equally could be read in a more permissive fashion. No school, however, allowed the sale proceeds of a *waqf* to be reapplied to unspecific “good and charitable purposes” as the decree did.

The Wakf Property Decrees provided the legislative framework for British *waqf* administration. However, it was political considerations rather than legislation which shaped administrative practice. Political strategy required caution toward the religious sensitivities of local elites, and such caution prevented the Wakf Commission from making full use of its legal powers. When the British Wakf Commissioners, in 1916, single-handedly advertised in a local newspaper that a *waqf* stood for sale, the qāḍīs Aḥmad b. Sumayṭ and ‘Alī b. Muḥammad al-Mundhirī—both members to the Wakf Commission—complained to the British Resident. They pointed out that “according to the Sheria, Wakf property cannot be sold under

⁴³) For the various positions of the Sunnī schools of law regarding the sale of *waqf*, see Peters 2002: 62 b.

any circumstances".⁴⁴ When the Resident asked the British Commissioners for explanation, they pointed to their powers under the Wakf Property Decree. Nonetheless, the Resident expressed dissatisfaction with the Commissioners' action, drawing their attention to "the importance of letting the Arabs feel that they are not neglected in matters which are so closely connected with their religion".⁴⁵ The sale offer was withdrawn.

In several respects this course of events was symptomatic of British *waqf* legislation and the way it was put into practice. It is evident from the sources that the qāḍīs—who obviously took a very restrictive stance toward the sale of *waqf*—were genuinely surprised to learn that the sale of *waqf* was permitted by the decree.⁴⁶ Their astonishment reveals that they had been excluded from the drafting process, but it also reveals that the Wakf Commission had not sold any endowments previously. The attempt to sell a *waqf* in 1916 appears to have been launched in order to test whether a full implementation of the decree was politically viable. For the time being, the qāḍīs proved able to prevent the sale.

In the long run a political compromise was established. In subsequent years the Wakf Commission sold quite a number of endowments, and there are no traces in the sources of any resistance to those sales from the qāḍīs.⁴⁷ In 1947, the sale of a *waqf* was

⁴⁴ See ZNA, HD 5/18, Acting Resident to Chief Secretary on 25th of November 1916, and subsequent correspondence.

⁴⁵ See ZNA, HD 5/18, Acting Resident to Chief Secretary on 19th of December 1916.

⁴⁶ One reason for the qāḍīs' surprise was probably the fact that only a few years earlier the Wakf Commission had asked them for an expert opinion on whether Islamic law allows the sale of unrenumerative *waqf*. The qāḍīs emphatically negated the permissibility of such a sale (see the qāḍīs' expert opinions preserved in ZNA, HD 10/9).

⁴⁷ In 1924, the Secretary to the Wakf Commission reported that seven "inaccessible" shambas "of small value", located in "outer districts", had been sold by the Commissioners between March 1923 and May 1924 (See ZNA, AB 34/35, Secretary to the Wakf Commission to Chief Secretary, 3rd of May 1924). In 1934, the Commissioners sold a "godown" in "dilapidated condition" located in Shangani (a quarter of Stone Town). The property was *waqf* dedicated for the upkeep of a mosque (see ZNA, HD 3/21). Between 1941 and 1947, the Commissioners sold five endowments pursuant to requests submitted by the respective beneficiaries, who claimed that the endowments were unprofitable (see ZNA, HD 8/1, Minute No. 6 of 19th November 1947 and Minute No. 11, undated; see further ZNA, HD 10/46, Minute No. 7 of 21st October 1941, Minute No. 8 of 24th March 1943,

even proposed by one of the Shāfiʿī qāḍīs on the Commission, ʿUmar b. Sumayṭ, who was a beneficiary of the endowment in question.⁴⁸ However, the acquiescent stance adopted by the qāḍīs appears to have been part of a tacit understanding which required that the British Commissioners keep the sale of *waqf* within limits.

There is a clear pattern regarding the circumstances under which the British Commissioners insisted on the alienation of a *waqf*. In practically all cases, they did so on the grounds that the income from the endowment was insufficient to provide for its upkeep. I have found no single indication in the sources that the alienation of such a *waqf* ever took the form of outright sale. Instead, the Commissioners used the sale proceeds as required by the doctrine of *istibdāl*: They bought new property to be administered according to the same stipulations as the property sold.⁴⁹

In many cases the Wakf Commission, instead of alienating unremunerative *waqf*, opted for a transaction known in Islamic law as “double rent” (*ijāratayn*): The property was leased for a very long term (usually 99 years) and at a comparatively low rate, but the lessee paid a larger lump sum in advance and undertook to keep the property in good repair. In principle, Islamic law proscribes long-term lease of *waqf*: Urban *waqf* must not be leased for a term exceeding one year and for rural *waqf* the limit is three years.⁵⁰ In

and Minute No. 10 of 22nd December 1943). In 1951, the Commission sold two additional endowments on the grounds of unprofitability, one dedicated for mosque upkeep, the other for the benefit of relatives of the Sultan (see ZNA, AB 34/35, Chief Secretary to Secretary to the Wakf Commission, 13th of June 1951, and subsequent correspondence). In 1943 the Commissioners sold a piece of *waqf*-land to M. D Kermali. Kermali bought the premises on behalf of the Imāmī-Shīʿī Community in Zanzibar, who desired to enlarge their mosque which stood adjacent to the respective plot (see ZNA, HD 10/46, Minutes No. 10 of 20th October 1943 and No. 8 of 17th November 1943).

⁴⁸) See ZNA, HD 8/1, Minute No. 6 of 19th November 1947. ʿUmar b. Sumayṭ was the son of Aḥmad b. Sumayṭ, who—as mentioned above—had objected to the Wakf Commission’s first attempt to sell a *waqf* in 1916.

⁴⁹) In some of the cases mentioned in note 47 above, it is unclear what happened to the sale proceeds (viz. the cases in 1923/24 documented in AB 34/35 and the case documented in HD 3/21). In all the other cases the sale proceeds were verifiably used to buy new property and turn it into *waqf* administered according to the same stipulations as the property sold.

⁵⁰) See Gerber 1988: 172.

the Ottoman empire, however, the majority of jurists accepted *ijāratayn* (Ottoman: *icareteyn*) as a means to safeguard an endowment's upkeep if such upkeep could not be financed otherwise.⁵¹ The practice of *ijāratayn* was very common in the Ottoman empire and a similar arrangement to secure an endowment's upkeep—a form of lease called *hikr*—was common in Egypt well into the 20th century. Unlike *ijāratayn*, *hikr* did not involve the payment of a lump sum, but the contractor was often granted a right of perpetual lease which he could sell to other parties or bequeath to his progeny. Similar forms of long term lease, called '*anā*', *jalsa* or *zīna*, were common in the Maghrib.⁵² The files do not indicate whether the qāḍīs in Zanzibar regarded long-term leases as lawful. It is evident, however, that they preferred long-term lease to sale: It was at the qāḍīs' insistence that the Wakf Commission often decided against the sale of unremunerative *waqf* and in favour of a long-term lease.⁵³

The Commissioners sold unremunerative *waqf* with a view to saving it from dilapidation. Long-term leases presented a viable alternative to achieve that goal. In most cases, however, long-term leases served an entirely different purpose: Quite a number of *waqf* properties were affected by the government's urban development schemes. The properties were designated as sites for new administrative buildings or public roads. In such cases the government was anxious to secure a lasting title to the properties—and the British Commissioners obligingly offered their assistance. In virtually all such cases the properties concerned were leased to the government for 99 or even 999 years. Technically speaking, those leases did not result in the "alienation" of *waqf*. In effect, however, many of those leases were tantamount to a gift. The rent was often fixed at a moderate rate and in one case the Wakf Commission charged a mere "peppercorn rent" of one Rupee per annum.⁵⁴ Such leases were a

⁵¹ See *ibid.* 171ff.; Kreiser 1986: 220. *Ijāratayn* was common in the Ottoman empire since at least the 17th century.

⁵² On *hikr* and similar forms of long-term lease see Baer 2004: 386ff.

⁵³ See ZNA, HD 10/37, Secretary to the Wakf Commission to Chief Secretary, 10th May 1923. For cases in which the Commissioners rented out unremunerative *waqf* on long terms see for instance ZNA, HD 5/18 and HD 8/1.

⁵⁴ For the case of a lease for one Rupee see ZNA, HD 5/9. The property was designated

clear breach of Islamic law, which accepts long-term leases exclusively as a last resort to secure an endowment's upkeep. The British Commissioners, however, pointed out that those leases served public benefit and argued that such benefit was the essential purpose of all *waqfs*.⁵⁵

In her above mentioned study, Fair suggests that the primary object of British *waqf* policy was to “overturn wakf and return the property to the realm of private ownership”.⁵⁶ In pursuance of that object, she asserts, “large numbers of wakf properties [...] were sold, transferred, or exchanged”.⁵⁷ This is an imprecise assessment of British *waqf* policy. To be sure, the alienation of *waqf* was not exceptional, but it *always* took the form of “exchange”. More importantly, it was confined to specific circumstances which rendered alienation desirable to the British administration for specific reasons. The Wakf Commissioners did not sell *waqf* as a blind reflex. Myers's account of colonial housing policy in Zanzibar illustrates that a key means of colonial domination was control over space.⁵⁸ Such control includes the power to decide what space may be used by whom and for what purpose. By selling *waqf* to private owners, the British administration would have made short-sighted use of that power. British *waqf* policy was more sophisticated than that. Although the sale of *waqf* was not a negligible aspect of British *waqf* policy in Zanzibar, it was not a characteristic feature of that policy.

2.3. *The Early Wakf Commission: A Slack Start, a Scandal and a New Beginning*

What were the primary features of British *waqf* policy in Zanzibar? During the early years of the Wakf Commission, the most out-

as site for a memorial hall after the World War One. Other long-term leases to the government are documented in ZNA, HD 3/2, HD 3/24, HD 4/1 and HD 9/1. In one case, the Wakf Commission even left a property to the government for free use. The case does not lack a certain irony: The site was designated, of all things, for the new court buildings (see HD 9/3).

⁵⁵ See ZNA, HD 10/37, Secretary to the Wakf Commission to Chief Secretary, 10th May 1923.

⁵⁶ See Fair 2001: 123.

⁵⁷ See *ibid.* 124f.

⁵⁸ See Myers 1997 and 1996.

standing feature was the erratic, almost slack nature of *waqf* administration, which points to a half-hearted interest in endowments. This situation represents a striking contrast to the wide powers provided by the Wakf Property Decrees.

The archives do not contain much file material dating from the early years of the Wakf Commission's activities. However, in 1913, the Commission's administrative practice came under closer review by higher levels of the British administration, dissatisfied with the Commission's performance. Waves of displeasure resulted in a file documenting the "scandalous" practices of the Commission.⁵⁹

The file indicates that prior to 1913 the Commission administered only a limited number of family *awqāf*, presumably because many families successfully had avoided registration of their endowments with the British authorities. Further, there are clear indications that although the Wakf Decrees called for the appointment of two qāḍīs to the Commission, the qāḍīs did not play a role in the Commission's daily activities.⁶⁰ Instead, the Commission was run by a single British official, Peter Shearman Turner, who delegated most of the work to a Goan clerk by the name of Rodriguez. According to the file, Rodriguez collected rents from the occupants of various *awqāf* without any oversight from his British superior and in a manner the British regarded as arbitrary and corrupt. The file suggests that he had exempted various occupants of *awqāf* as a personal favour and that he had retained some of the rents for himself. Whether

⁵⁹) See ZNA, AB 34/1.

⁶⁰) In a note addressed to Shearman Turner on the 18th of February 1913, the British Agent and Consul General, Edward Clarke, ascribes the Commission's inefficiency to the fact that the Commissioners could not read the foundation deeds, which are all written in Arabic. He continues: "where do you think we could find a really trustworthy person for the business" (see ZNA, AB 34/1). Clarke's statement is revealing. The Wakf Commission included qāḍīs who were perfectly conversant with Arabic. Clarke either was ignorant of the Commission's composition, or he regarded the qāḍīs as not "really trustworthy". In a note written to the Chief Secretary on the 12th of December 1916, the Secretary to the Wakf Commission states that "it has been the custom only to summon the Kathis when any question of Mohamedan Law arose, as, from a business point of view, they have few suggestions to offer" (see ZNA, HD 5/18). This statement is another indicator that the qāḍīs were deliberately excluded from decision-making processes within the Commission.

these allegations were true is not altogether clear from the file. As to the “arbitrary” exemption from rent, it is possible that Rodriguez simply followed a practice which—as will become clear below—was well-established in Zanzibar: not to press for rent when occupants of a *waqf* were either poor or relatives of the founder. At any rate, this state of affairs was regarded as scandalous by higher levels of the British administration. Shearman Turner was removed from his position as a Commissioner and it was decided to make a “fresh start”.⁶¹ A report on the malpractices of the Commission concluded:

It is to be lamented that the Wakf properties in Zanzibar after 10 years of a European Administration, should be found in a state that reflects only discredit on the Government and the more so as the Government took them away from the hands of the Moslem administrators with a view to improve them.⁶²

What did such “improvement” mean in British eyes? British views of improved *waqf* management become more transparent when examined in light of the events that led to the above-mentioned scandal.

2.4. Raising Public Funds: British Policy Towards “Charitable” Waqf

The “scandal” described above was triggered by an enquiry (probably instigated by the Foreign Office)⁶³ into the collection and management of various kinds of revenue by the respective responsible departments.

This enquiry generated a memorandum in which attention was drawn, among other things, to the thorny issue of mosque upkeep in Zanzibar. As the memorandum makes clear, financial responsibility for the upkeep of mosques (as well as for the salaries of Imams and preachers) was only vaguely and informally defined. The memorandum mentions twenty-six mosques, mostly in the Ng’ambo area, all classed

⁶¹ See ZNA, AB 34/4, Extract from Secretary of State’s despatch confidential of 17th February 1915.

⁶² See ZNA, AB 34/1, Andrade to Consul General (confidential), 14th of March 1914.

⁶³ See ZNA, AB 34/1, Clarke to Shearman Turner, 18th of February 1913.

as “private”. Further it lists some forty mosques in Stone Town, including twenty-six under the control of the Wakf Commission, which were severely underfinanced owing to the Commission’s lack of funds. As for the remaining fourteen mosques in Stone Town, their upkeep was financed partly by the Sultan out of his “private purse”, but to a greater extent—as the memorandum put it—their upkeep was “vaguely supposed to be a charge upon Government funds, though this charge was never formally admitted”.⁶⁴

The figures presented by the memorandum allow for a tentative conclusion about traditional mosque upkeep. While some mosques were maintained by the families who built them, others were maintained by *awqāf* specifically designated for that purpose. When a mosque fell on hard times, it seems to have been the Sultan who stepped in to provide relief, using his enormous personal wealth. By 1913, things had changed. The Sultan had ceded most of his ruling powers to a formally instituted government controlled by British officials, and his wealth had been turned into a “state treasury”, leaving only a small portion to his personal discretion.⁶⁵ The British government apparently felt that it had inherited responsibility for mosques—a responsibility it did not refuse, probably because of the political prestige involved. At the same time, the government felt that mosques threatened to become a drain on its notoriously scarce resources. To remedy this uncomfortable situation, Rs. 1657 were collected in 1909 by subscription from better-off Zanzibaris. This was merely a short-term measure, however, and British officials were on the lookout for a long-term solution.

It was this state of affairs that aroused systematic British interest in *waqf* matters for the first time. From an accounting point of view, the Wakf Commission’s revenue legally was considered to be separate from government resources and thus was not of much use in the perpetual struggle to balance the Protectorate’s budget.⁶⁶ But *waqf*

⁶⁴ See ZNA, AB 34/1, Memorandum (untitled, anonymous and undated), 5f.

⁶⁵ On this process of curtailing the Sultan’s financial means, see Pouwels 1987: 167ff.

⁶⁶ See ZNA, AB 34/10, Secretary to the Wakf Commission to Chief Secretary, 27th of November 1930. That correspondence also indicates the reasons for the separation of accounts: “It was recognised some years ago that any attempt on the part of the Government to incorporate Wakf funds in the Protectorate balance sheet or make use of Wakf funds

revenue could serve to relieve the government of the burden to maintain the mosques. After all, many *awqāf* had been endowed specifically for that purpose.

This solution required a much more effective financial exploitation of *awqāf* than had hitherto taken place. In reaction to the memorandum quoted above, the British Agent and Consul General, Edward Clarke, decided to take a closer look at the Wakf Commission's accounts. What he saw did not meet his approval. The income of the Commission had fallen far below its original estimates, owing mainly to the fact that much of the rents payable by the tenants of *waqf* property had been permitted to remain in arrear, sometimes for years, while some tenants were not even charged any rent at all. Clarke was determined to change this state of affairs. He wrote to the Wakf Commissioners:

I have been informed—it may be wrongly—but I have been informed that as a matter of fact only a very small proportion of the wakf properties have been left for the benefit of the general poor—though there is a certain amount—a very small amount—left for the benefit of the poor of certain tribes. They have on the contrary been left specifically for the upkeep of certain mosques. If this is so, not only ought we not to let poor people who cannot pay their rent take possession of them but we are committing a very reprehensible breach of trust in so doing since it should be our duty to get the very utmost out of the various properties which may be possible.⁶⁷

Clarke's attitude towards *awqāf* obviously was not shared by the Wakf Commission. Clarke continues:

There is, I am aware, a contrary belief held, viz., that though no doubt certain houses do appertain to certain mosques, yet it has been the practice for years not to press the lessees for arrears of rent when they are old and poor on the ground that to do so would be contrary to the wishes expressed or implied of (*sic!*) the dedication.

Alas, Clarke was no longer prepared to accept this “contrary belief”. He ordered a systematic enquiry into the deeds of dedication. In

for the purpose of reducing a Protectorate overdraft would be liable to cause a serious religious disturbance and was highly undesirable“.

⁶⁷⁾ ZNA, AB 34/1, Clarke to Shearman Turner on 18th of February 1913.

the future, all *awqāf* dedicated for the upkeep of mosques should be fully exploited and for that purpose only. As for all other *awqāf*—that is those for the “general poor” and the “poor of certain tribes”—any notion of an assured income from such endowments should be abandoned and an explanatory dispatch written to the Foreign Office. The best thing to do with such “fantastic charities”—as Clarke put it—would be “to let the Arabs manage them as they like”, since the matter would be “too ridiculous for a sane Englishman to meddle with”.⁶⁸

It is evident that the course of action suggested by Clarke was strongly shaped by budgetary considerations. However, it would be wrong to interpret these considerations as reflecting only material interests. Obviously, the course of action he suggested was only too legitimate in Clarke’s eyes, and it is important to realise *why* this was so. For a Sultan to reach into his pockets in order to maintain poor mosques accorded with traditional notions of social order. What, after all, could have been more prestigious for a Sultan than to act as a “patron” for a mosque? But “modern” political thought—the frame of reference for British officials—assessed social roles and responsibilities differently. In “modern” society, religious institutions are treated as public utilities that serve a public demand. This conception entails, on the one hand, that the state has a responsibility to safeguard the proper administration and maintenance of mosques and, on the other hand, that the state is entitled to raise public revenue to that end. The attempt to collect funds for mosque upkeep by public subscription clearly reflects this notion. To use *awqāf* as a resource was the next logical step in this line of thought. After all, *awqāf* were “charities”—and what could be more equitable than to finance religious institutions out of religious charity?

It will be remembered that the upkeep of mosques was the explicit intention of the founders of the endowments in question. It may be argued that Clarke, by the course of action he suggested, was adhering to the letter of Islamic law. Strictly speaking, however, Clarke adhered to Islamic law as *he* perceived it, and this was not how Islamic norms were perceived by the people of Zanzibar. Ob-

⁶⁸) See *ibid.*

viously, old and poor people were allowed to benefit from the mosque endowments, which for decades had been under control of the families of their respective founders. One assumes that this benefit was a kind of “favour” that fostered bonds of patronage, as described above. It is important to note, however, that such a “favour” was not granted in *defiance* of Islamic norms. To the contrary, it reflected a view of what Islamic norms *entailed*, as becomes clear from the “contrary belief” mentioned in Clarke’s statement above. In fact, strict adherence to the founder’s explicit intention does not seem to have been a high priority in traditional Zanzibar endowment practice. It is remarkable that British courts, when dealing with *awqāf*, often proved unable to identify the exact intentions of the founder, as the foundation deeds frequently were lost and oral evidence was vague and inconsistent.⁶⁹ That inconsistency must not be interpreted as reflecting conflicting interests of the affected parties. People simply could not recall the exact stipulations of a founder, as those stipulations were of limited importance to actual practice. What mattered was the family to which a *waqf* pertained, information that usually was common knowledge and often was contained in the name the public would apply to a *waqf*.

This nonchalance towards the founders’ stipulations suggests that the people of Zanzibar did not regard *waqf* resources as “public” revenues to be applied by formal and impersonal procedure. Neither did they regard charity or mosque upkeep as tasks pertaining to a state bureaucracy. Those matters were the task of patrons—be it the Sultan or any other wealthy member of the local elites. The same notions of patronage entailed, of course, that *waqf* was not conceived as a strictly “private” resource, either. No matter what the founder of a *waqf* had stipulated—according to local norms of patronage, all *waqf* had to be used, at least in part, to exercise “largesse”. In short: the customary nonchalance towards the founder’s stipulation does not reflect a careless attitude towards Islamic law, but merely the fact that a conceptual separation of private and public

⁶⁹ See for instance *THE WAKF COMMISSIONERS FOR ZANZIBAR V. WALLO RAMCHOR*, 1 ZLR, 227-239, and *ALI BIN NASSOR BIN KHALAD V. ZWENA BINTI HAMOOD*, 1 ZLR, 366,

resources made little sense against the background of traditional social order.

This local conception of social roles not only stood in the way of British ambitions to raise public revenue, but also defied “modern” notions of social order. In a “modern” society, private persons may make charitable donations, but must not administer them, let alone use them for private purposes. Furthermore, in “modern” political thought “charity” is conceived as a means to prevent mass pauperization, not as a regular means of subsistence for clients or slaves. This modern concept of charity, again, correlates with a conception of the family as a social unit economically responsible for itself and for itself only. British outlook on *waqf* in Zanzibar was shaped by these notions of social order, and this explains why Clarke characterized *waqf* not dedicated for public purposes as “fantastic charities”. In his eyes, a *waqf* not dedicated for public use was no charity at all.

It will be remembered that Clarke recommended non-interference in such “fantastic charities”, presumably because he falsely assessed them as not very numerous. In the long run, however, the British adopted a different policy. British notions of social order were not only “modern”, but also capitalist. Capitalist ethos required that families not squander “their” *waqf* to “squatters”, and that “squatters” pick up wage labour. Consequently, British *waqf* administration discouraged or forcefully hindered families from using *waqf* to exercise traditional “largesse”. In the following sections I shall present three case studies to illustrate this aspect of British *waqf*-policy.

2.5. *The Entrepreneurial Trustee: British Policy Towards “Family-Waqf”*

2.5.1. The *Waqf* Complex of Sayyid Ḥamūd

The first case to be discussed here concerned a complex of several *awqāf* dedicated by Sayyid Ḥamūd b. Aḥmad b. Sayf al-Bū Saʿīdī (d. 1881), a close relative of Sultan Sayyid Saʿīd and one of the richest property-owners in the Sultanate.⁷⁰ The *waqf* complex, which included several shambas (farms) as well as houses, was situated

⁷⁰ See Sheriff 2001 b: 38.

partly in the Hurumzi quarter of Stone Town, partly in Kiungani (in the Ng'ambo part of town), as well as comprising a substantial part of Bububu (a hamlet about 7 km north of Stone Town). The bulk of the complex was dedicated in favour of the founder's offspring, though some portion of the Hurumzi and Kiungani parts of the endowment were reserved for the family's poor members and freed slaves, as well as for the poor of Mecca and Medina.⁷¹

In 1915, the Wakf Commission developed a closer interest in these endowments. The Commissioners wrote a letter to Bibi Khawla binti Ḥamūd⁷², the eldest surviving child of the founder and the trustee of the *awqāf*. The letter expressed concern about shops and houses that had been built by some people on the Bububu-*waqf* and suggested that these people should be put under "proper agreements of tenancy".⁷³

The Commissioners' concern did not come out of the blue. As early as 1907 (and probably before that), the Wakf Commission had started to impose ground rent on the occupants of *waqf*-lands under its control. Some occupants successfully sued in court to be exempted from such rent. In a decisive judgment issued in 1908, Judges Lindsay Smith and Murison of His British Majesty's Court for Zanzibar expressed their conviction that in the past

...it was the custom in Zanzibar for people to build huts and houses on Wakf land, Government land, and the land of wealthy Arabs and Indians, by permission of the owner, and no rent was charged for land so occupied. Ground rent, in fact, was unknown, as land had no value except for agricultural purposes, and even now there are many proprietors in Zanzibar who do not charge anything to people who have huts on their land.⁷⁴

⁷¹) See ZNA, HD 6/55 and HD 5/66.

⁷²) The files refer to Bibi Khawla as "Khole" or sometimes "Hole" and to her sister Jūkha (to be mentioned below) as "Jokha", a common name among Swahilis. Both names are Arabic in origin. The sisters—apparently taking pride in their Arab ancestry—signed their letters to the administration in Arabic, even though they wrote them in English. As with all names of Arabic origin referred to in this essay, I spell the sisters' names according to the pronunciation in classical Arabic.

⁷³) See ZNA, HD 6/55, Acting Secretary to the Wakf Commission to Bibi Khawla binti Ḥamūd, 2nd of June 1915.

⁷⁴) THE WAKF COMMISSIONERS FOR ZANZIBAR V. WALLO RAMCHOR, 1 ZLR, 227–239 [230f.].

Based on this conviction, the judges concluded that the occupants in question had been living on the *waqf*-ground rent free for a long enough time to bar any claims for rent. In other words, the occupants had acquired prescriptive rights for free dwelling on the land.

The position of the Court, repeated in later decisions, met with considerable irritation from the Wakf Commissioners.⁷⁵ Any ambition to exploit *awqāf* by the imposition of rents had come to rest on a legal base which at best was slippery. The numerous people who had settled on *waqf* land—"squatters", as the British officials called them—were now in a position to sue for exemption from rent. In response, the Commission demonstrated an eagerness to put occupants of *waqf* land under agreements of tenancy, if only to prevent further claims for prescriptive rights. It was this course of action which prompted the Commissioners' letter to Bibi Khawla.

Bibi Khawla, however, did not accept the Commissioners suggestion. She answered,

...there are about 53 small huts built on the property in question by our Swahilis and one Police Station [...]. In the latter there is an agreement but for the rest there are no agreements, and these poor people I do not want to bother with such things as agreements. I have not the slightest fear of any one tenant turning round in future and presuming to acquire the rights of my lands. They are all poor law-abiding Swahili citizens of Zanzibar [...].⁷⁶

In the following months and years, the Commissioners urged Bibi Khawla to act "reasonably", invoking the Sultan's assistance to encourage her to change her mind. But Bibi Khawla remained—as some British officials put it—"obdurate", sticking to her "benevolent and unbusinesslike attitude" of good faith in her tenants' honesty, while it was obvious to the Commissioners that "in acquiring wakf

⁷⁵ See ZNA, HD 6/55, Chief Secretary to Secretary to the Wakf Commission, 12th of July 1916.

⁷⁶ See ZNA, HD 6/55, Bibi Khawla binti Ḥamūd to Secretary to the Wakf Commission, June 1915.

properties for nothing, neither Indians nor Arabs had any compunction”.⁷⁷

In 1918, the Commissioners took steps to seize administration of the *waqf* complex. Bibi Khawla, however, frustrated their efforts with repeated representations to the Resident, who—probably with a view to Bibi Khawla’s eminent pedigree—proposed a compromise solution: active management of the endowments should remain with Bibi Khawla, but the boundaries of the Bububu-*waqf* should be demarcated, the houses numbered, and the entire *waqf* complex strictly monitored by the Wakf Commission in the future.

This was only the first round in an ongoing struggle between the Wakf Commission and the founder’s family over control of the *waqf* complex. In the following years, the Commissioners continued to make allegations of mismanagement, now directed against Bibi Jūkha, the sister of Bibi Khawla, who took charge as trustee after the latter’s death. Now however, these allegations no longer concerned the management of the Bububu-*waqf*. Rather, the Commissioners charged that Bibi Jūkha had rented out some of the houses at Hurumzi at below market value. The Commissioners also complained that one of the tenants was a risk to the *waqf* since he was “not a man of substantial means”, while another tenant had sub-let a house for a much higher price than he was charged by Bibi Jūkha. It is hard to judge the merits of these allegations, especially considering the Commissioners’ eagerness to discredit Bibi Jūkha. In part, Bibi Jūkha conceded that more profitable offers to lease the estates had been made to her. But she pointed out that those offers had come from people she deemed “undesirable as tenants”.⁷⁸ At any rate, the Commissioners’ allegations failed to convince the Resident of the need to transfer the management of the endowment to the Commission. Once again, the Commissioners’ attempt to gain control of the *waqf* remained unsuccessful.

⁷⁷) See ZNA, HD 6/55, Chief Secretary to Administrator General, 10th of August 1916, and minute by Acting Secretary to the Wakf Commission, 16th October 1917.

⁷⁸) See ZNA, HD 6/55, A.R. Stephens (Bibi Jūkha’s legal counsel) to Secretary of Wakf Commission, 18th of February 1921.

The last round in the battle over control of the *waqf*-complex was yet to be fought. Before relating the end of the story, I interrupt my narrative to analyze what “happened” so far.

One striking aspect of this case is that the Wakf Commissioners invested enormous energies in a *waqf* of the kind that Consul General Clarke, only a few years earlier, had characterized as too ridiculous for a sane Englishman to meddle with. Had the Commissioners gone mad? The minutes in the files clearly indicate that the Commissioners understood that interference in the *waqf*-complex was a deviation from policy. But the Commissioners also had come to realise that family-*awqāf* were not—as Clarke had wrongly assessed—a peripheral phenomenon in Zanzibar. Indeed, to justify their interference in this particular case, they emphasized the enormous value of the estate.⁷⁹

The emphasis in the files on the estate's value raises a suspicion that the Commissioners' interference in this case—as with the mosque endowments—was related to budgetary considerations. However, to administer family-*waqf* was not very profitable for the Commission, as all income had to be redistributed to the beneficiaries. It is true that the Commission was entitled to retain 5% as a fee for management,⁸⁰ but that hardly suffices to explain the Commissioners' drive to gain control of the estate. One might speculate that the Commissioners' enhanced interest in the estate was based on the latter's location. Bububu had been earmarked as a terminal for a projected railway connecting it to Stone Town. In fact, the file reveals that from 1920 onwards the Department of Public Works commenced construction work for a railway on the *waqf* estate. Authorization from the family was not acquired. Although the family tacitly had accepted this infringement, a tricky legal situation emerged.⁸¹ It is possible that the Commissioners were eager to achieve control of

⁷⁹) See ZNA, HD 6/55, Acting Secretary to the Wakf Commission to Administrator General, 10th of August 1915.

⁸⁰) See ZNA, HD 10/46, minutes of Wakf Commissioners' meeting held on 1st of February 1940.

⁸¹) See ZNA, HD 5/66, A.S. Stephens to Secretary to the Wakf Commission, 3rd of December 1920.

the *waqf* in order to safeguard the government from undesirable legal proceedings.

There were strong motives for the Commissioners to break with their self-imposed restraint toward family endowments in this case. It would be mistaken, however, to treat this case as an exceptional interlude motivated by short-term considerations that reflected colonial practicality. To the contrary, the case reflects the emergence of a policy towards family-*waqf* which came to be implemented on a more regular basis as time passed. That policy was no less indebted to British “modern” political thought than the policy towards mosque endowments. In fact, both policies were logical complements. Their common rationale was to disentangle “charity” from “family-business”, although in the case of family endowments that rationale worked in the opposite direction. Family endowments could not be exploited for any public revenue. Thus, according to British logic, family endowments were “private” resources, and had to be used accordingly—which in British eyes entailed not squandering *waqf* resources on “strangers”.

It is remarkable how often one encounters the expression “business-like” when reading the file on this case. According to the correspondence contained in the file, the Commissioners’ initial aim was to talk Bibi Khawla into an entrepreneurial attitude rather than to launch a campaign to seize her estate. They exhausted all possible means to persuade Bibi Khawla, approaching her informally through her medical adviser, Dr. A. Copland.⁸² From the start, both sides seem to have regarded the affair as a matter of convictions and principles. This accounts for the Commissioners’ obstinacy.

For the Bibis “businesslike” was not a convincing creed. They represented a social order in which it was essential for wealthy families to care for numerous dependants, thus binding them to the family in terms of political support and the availability of manpower. To act in a “businesslike” manner was clearly not an option for a family whose power was fostered by “largesse”. Alas, such a family

⁸²) See ZNA, HD 6/55, Acting Secretary to the Wakf Commission to Administrator General, 10th of August 1915, and Acting Secretary to the Wakf Commission to Dr. A. Copland, 6th of September 1917.

had no place in the society envisioned by the Wakf Commissioners. British notions of social order conceived of “families” as small kinship-groups that formed autonomous economic units. This concept of “family” probably accounts for the fact that the Commissioners felt no scruples when pressing “squatters” for rent. Such a policy required squatters to exchange their status of dependence on patrons for that of wage labourers (though admittedly this intention is not apparent in the files).⁸³

Another aspect of this case implicitly, but deeply, reflects this British notion of the autonomous, self-reliant family: The application, by the British courts, of the statute of limitation. The statute of limitation implies that a proprietor who tacitly accepts an infringement on his property over a period of time (viz. the period of limitation) may no longer seek redress in court. The infringer thus acquires rights on the property, called “prescriptive rights” (or “squatter’s rights”). It is this legal principle to which the courts referred when ruling that squatters acquire a right to live on *waqf* rent free.⁸⁴

Strictly speaking, the statute of limitation as a legal principle was not alien to traditional legal practice in the Sultanate. A period of limitation had been introduced by Sultan Sa‘id and is not altogether unknown in Islamic legal doctrine.⁸⁵ It is doubtful, however, whether

⁸³) Fair has convincingly argued that the imposition of rents and taxes by the British administration was in part motivated by an intention to compel people to work on the plantations. In 1902 a considerable part of the clove crop was left to rot on the trees owing to the lack of picking labour (see Fair 2001: 131). In 1903, the administration offered a tax refund to those who participated in the harvest and doubled the tax rate for those who refused to pick cloves (ibid., 130f.) Fair also refers to a letter by the Director of Agriculture to the Consul General in 1909, which document attests for a British intention to compel people to pick up wage labour (ibid. 130).

⁸⁴) The courts applied different statutes of limitation, depending on the parties to a suit. The Zanzibar Order in Council (1897) prescribed that if the defendant was a British subject, the Indian Limitation Act of 1877 applied. The act prescribed a period of limitation of six years for damages for use and occupation or twelve years for possession of the land (see *THE WAKF COMMISSIONERS V. WALLO RAMCHOR*, 1 ZLR, 227-39 [232] and *THE WAKF COMMISSIONERS V. KESAVJI HIRCHAND*, unreported, FO 881/9122). If the defendant was a subject of the Sultan, the court applied the statute of limitation orally prescribed by Sultan Ḥamūd b. Muḥammad (1896-1902) which fixed the period of limitation at ten years.

⁸⁵) See *THE WAKF COMMISSIONERS V. WALLO RAMCHOR*, 1 ZLR, 227-39 [236]. According to that judgment, Sultan Sayyid Sa‘id (1806-56) fixed the period of limitation at fifteen

squatters would have been granted prescriptive rights under traditional jurisdiction. For one thing, it is questionable whether squatters had access to legal remedy in the first place. More importantly, a claim for title of the land on which they squatted would have been considered beyond their legal rights. It will be recalled that Bibi Khawla felt safe from such claims on the side of “her Swahili” whom she considered “honest” and “law-abiding”. These expressions suggest that the relationship between landlords and squatters was regarded as being of an implicit contractual character. To speak of “contractual” here does not imply the existence of any formal agreement or of any norms at the level of written legal doctrine that would regulate the terms of such a contract. Nevertheless, Bibi Khawla’s statement clearly points to the existence of norms that no doubt materialised in traditional legal practice.

If we take a closer look at prescriptive rights as a legal doctrine, that doctrine applies exactly to situations in which a *de facto* state of affairs *lacks* any contractual character. Prescriptive rights ensue when this *de facto* situation is tacitly accepted by the affected parties. This understanding of the legal logic of prescriptive rights allows for a more precise assessment of what happened legally when British judges granted such rights to squatters. By doing so, they denied the validity of the relationship between landlords and squatters. The judges plainly treated that relationship as an encroachment unwisely condoned by the landlords. Bonds of dependence and loyalty exceeding family boundaries clearly were not relevant to this kind of legal reasoning. It is almost cynical that this legal reasoning was

years, Sultan Barghash (1870-1888) reduced it to twelve years, and Sultan Ḥamūd b. Muḥammad (1896-1902) further reduced it to ten years. The judges also referred to Islamic law books which—according to the judgment—mention periods of limitation between eight and twelve years. One of the law books referred to in the judgment is *Mughnī l-muḥtāj*, a commentary on Nawawī’s *Minhāj al-ṭālibin* written by Shirbīnī (d. 1569 A.D.) [see GAL II, 416 and S II, 441]. The other work is *Shams al-bidāya*, which must probably be identified as the *Shams al-bidāya li-tadhkār ahl al-nihāya wa-irshād ahl al-bidāya fī l-qaḍā’ ‘alā l-madhāhib al-arba’a*, written by Shafshā’unī (d. 1895 C.E.), a Moroccan scholar who lived in Cairo [see GAL, S II, 746 and 884]. A statute of limitation of fifteen years was introduced in the Ottoman empire by Sultan Sulaymān al-Qānūnī in 1550 (see Schacht 1964: 91). According to Schacht, that statute of limitation “became typical of Islamic law as applied in the Ottoman Empire” (ibid.).

applied to *waqf*. To grant someone a prescriptive title to *waqf* means to convert *waqf* into private property. At the same time, it casts the blame for that conversion on the trustees who had “carelessly neglected” the *waqf* for years.

Strictly speaking, when Bibi Khawla characterized “her Swahili” as “law-abiding”, she was ignoring what the law had become under British jurisdiction. As a capable and well-informed person, she probably did so deliberately. Alas, by relying on the persistence of traditional norms she was ignoring the winds of change. As indicated, the story of the *waqf*-complex continued. And what the Wakf Commissioners’ allegations of mismanagement had failed to accomplish would be successfully completed with the assistance of Zanzibari parties.

One of those parties was a relative of Bibi Khawla and Bibi Jūkha, a certain Sayyid Ḥāfiẓ Muḥammad, who successfully sued Bibi Jūkha for entitlement as a beneficiary of the Bububu and Hurumzi *awqāf*. Before filing his complaint, Sayyid Ḥāfiẓ had obtained a court order stipulating that as long as the trial was pending, the Wakf Commission should assume management of the estates. Although the trial was finally settled in Ḥāfiẓ’s favour, the Commission retained trusteeship of the Hurumzi *waqf* and Ḥāfiẓ had to content himself with management of the estate at Bububu.

As for the estate in Kiungani, the Wakf Commission gained control over it in 1922. By that time, Bibi Jūkha was dead, and Bibi Shawāna, a granddaughter of the founder, had succeeded her as trustee. In court, a certain ‘Alī b. Amīr contested Bibi Shawāna’s right to the endowment, pointing out that the *waqf* had been dedicated by the founder for the “children of his loins” (*awlād al-ṣulb*).⁸⁶ This expression, ‘Alī b. Amīr argued, is a technical legal

⁸⁶ There is some confusion in literature on Zanzibar as regards the term “children of his loins” (*awlād al-ṣulb*). Some scholars assert that Shāfi‘is interpret the term as to include grandchildren (see Anderson 1970: 77) or even later generations of successors (see Myers 1997: 258; Fair 2001: 127f.), whereas Ibāḍīs interpret the term as to refer only to children. As evidence, all those scholars point to SHAWANA BINTI SEIF V. ALI BIN SAID, 3 ZLR, 6-12, viz. the case discussed here. However, both the Ibāḍī and Shāfi‘ī qāḍīs who sat with the judge held that the term must be construed as to exclude grandchildren and later generations. To substantiate their point of view the qāḍīs quoted both Ibāḍī and Shāfi‘ī authorities, and in

term restricted in its meaning to children of the first generation only. Because all these children had passed away, the *waqf* should now revert to the ultimate beneficiaries stipulated in the *waqfiyya*—that is, to the Ibādī poor who ‘Alī b. Amīr claimed to represent. The court, after consulting with the qāḍīs, ruled in the plaintiff’s favour and at the same time vested the endowment in the Wakf Commission.⁸⁷

The “second chapter” in the history of the *waqf*-complex discussed here shows that Zanzibaris did not refrain from making use of colonial institutions in order to promote their interests (even Bibi Khawla did so when asking for the Resident’s assistance). At first glance, this reflects a shift of powers and strategic possibilities. At second glance, it may also reflect shifting notions of *entitlement* to both power and economic means. After all, one cannot expect a normative tradition to freeze while a whole social structure is being remodelled. As Asad has pointed out, tradition is a discourse that links the present with both the past and the future.⁸⁸ Tradition always evolves. The next case to be presented illustrates such a shift in the local perception of entitlements and obligations.

2.5.2. The *Waqf* of Nāṣir b. Khalaf at Chake Chake

This *waqf* was founded in the 1840s by Nāṣir b. Khalaf, an Ibādī, who probably was of Omani descent. It consisted of a large plot of land that comprised a substantial part of Chake Chake (a small town on Pemba Island).

fact stated that this point of view “cannot be disputed except by ignorant (sic)” (see the judgment of the lower court in ZNA, HD 6/55, civil application No. 1 of 1922). Fair and Myers suggest that the dispute over the term had significant repercussions on colonial *waqf* administration (see Fair 2001: 128; Myers 1997: 258). I have not come across any other case, however, in which the issue became relevant or in which, for that matter, a *waqf* was actually dedicated for “children of the loins”.

⁸⁷) See the judgment by the lower court, 17th of June 1922, contained in ZNA, HD 6/55, and the judgment by the court of appeal in SHAWANA BINTI SEIF V. ALI BIN SAID, 3 ZLR, 6–12. Interestingly, the court did not even consider that Bibi Shawāna, although not a beneficiary, might nonetheless be entitled to trusteeship. It seems that the judges simply took it for granted that a “charitable *waqf*” must not be administered by a private person.

⁸⁸) See Asad 1986: 14.

In 1909, the *waqf* became the object of legal proceedings that resulted in a judgment from the Supreme Court of His Highness the Sultan, as documented in the Zanzibar Law Reports.⁸⁹ As for the intentions of the founder, they could not with certainty be determined by the Court because the foundation document was lacking. However, all affected parties agreed that the founder had dedicated the *waqf* to his offspring. Trusteeship of the *waqf* was exercised by the founder's male descendents, first the eldest son, Muḥammad, then the second son, Khalaf, and then Sulaymān, the youngest. When Sulaymān died, trusteeship passed to Muḥammad's son Ḥamūd. In 1904, at which time all of Muḥammad's male descendants were dead, trusteeship reverted to the four sons of Khalaf, who managed the estate collectively. Six years later their trusteeship was challenged in court by two daughters of Ḥamūd, who claimed that they were not receiving their proper shares of the endowment's proceeds.

At first glance, the lawsuit filed by Ḥamūd's daughters does not seem remarkable. One assumes that quarrels among beneficiaries over shares were not infrequent, even though such quarrels were only rarely brought to court. The special interest of the case lies in the fact that the Chake Chake *waqf* did not yield any substantial income whose sharing could be taken as a reasonable object of a costly legal battle. The estate comprised a slaughter-house and parts of a road, both built by the government, a shamba run by some Parsees, as well as open ground cultivated by—as the judgment vaguely puts it—"poor people of Chake Chake" who lived in 208 huts situated on the estate. Some small sums of money had been collected sporadically from the inhabitants of the land in order to survey the ground and to buy an additional plot of land adjacent to the estate. Apart from this fundraising—which took place on a voluntary basis—no regular rent had been charged from anyone, except for a nominal rent of Rs. 5 charged from the Parsees. In short, for decades the *waqf* had been administered in a manner similar to that of the *waqf* complex of Sayyid Ḥamūd discussed

⁸⁹) ALI BIN NASSOR BIN KHALAD AND 25 OTHERS V. ZWENA BINTI HAMOOD, 1 ZLR, 365-69.

above: the founder must have been a substantial local landholder, and the beneficiaries had used the estate to make generous allocations to the family's "clientele", including slaves and ex-slaves. Against this background, it becomes clear that the plaintiffs' claim for "proper shares" was more than just a squabble about division. For any "shares" to arise at all, the *waqf* would have to be managed along "business-lines", and this is what lay at the core of the great-grand-daughters' claim for "proper shares".

Not surprisingly, the plaintiffs' claim fell on fertile ground in the British-run courts. The court of first instance (headed by Mr. Sills) pointed out that according to "Indian authorities" a *waqf* was void if the foundation deed did not designate the poor as ultimate beneficiaries. Owing to the absence of the deed it could not be proven that the founder had made a stipulation to that effect. Thus—the judge argued—the *waqf* had to be considered invalid. The judgment does not specify the "Indian authorities" to which the court referred, but those authorities probably relied on al-Shaybānī, an early Ḥanafī authority who held that a *waqf* is valid only if the founder expressly designates the poor or some religious object as ultimate beneficiary. However, Abū Yūsuf—another early Ḥanafī authority—did not insist on an express stipulation to that effect, and the majority of later Ḥanafī jurists follow him on that point. The same position is held by most authorities of the other Sunnī schools of law,⁹⁰ and the qāḍīs who sat with the court as advisors contested the judge's argument. The judge, however, stuck to his position and ruled that the estate was private property to be divided according to the Islamic law of inheritance.

This judgment was not only a crude piece of legal reasoning, but also a reflection of an unrefined assessment on the judge's part of British interest and policy towards *waqf* in Zanzibar. To be sure, the judgment turned one of those "fantastic charities" into private property and thus forced the estate into a pigeonhole more familiar to British legal reasoning. But the ruling also snubbed local legal and religious sentiments—not only those of the qāḍīs but also those

⁹⁰) For the respective positions of al-Shaybānī, Abū Yūsuf, the later Ḥanafī jurists and the other Sunnī schools of law see Peters 2002: 61 a, and Anderson 1959: 153.

of the trustees, who immediately appealed, determined to defend the estate's status as *waqf*. Even more important, the great-granddaughters were not legal heirs of the founder. As all qur'anic heirs (*dhawū l-farā'id*) of the founder had died, the legal heirs were the nearest agnates (*ʿaṣaba*), viz. the trustees of the *waqf*, and (if existent) the sons of Sulaymān.⁹¹ In other words: Division of the estate according to the Islamic law of inheritance would have left the great-granddaughters with no share. Instead, the *waqf* would have been turned into private property of the very persons who had "mis-managed" it. It was not to be expected that those persons would change their "slack" fashion of administering the property in the future.

The appeal court was headed by Judge Lindsey Smith, one of the highest ranking judges in the Protectorate and an influential figure in shaping colonial legal policy in Zanzibar. Lindsey Smith did not find very favourable words for the judgment of the lower court. He squashed the lower court ruling and replaced it with one that reflected a more sophisticated assessment of British legal policy towards *waqf*. On the one hand, Lindsey Smith's ruling was much more considerate towards Islamic *waqf* doctrine and, consequently, much more acceptable to the qāḍīs. On the other hand, Lindsey Smith seized the occasion to impose the British "business-creed", while at the same time "rewarding" the plaintiffs for their entrepreneurial initiative with a ruling more than a little sympathetic to them.

First, Lindsey Smith restored the estate as a proper *waqf*. He argued that local Islamic law in India was not applicable in Zanzibar and that the case must be decided by Ibādī law. Basing himself on the qāḍīs' opinion, he ruled that under Ibādī law the *waqf* was valid.⁹² Having settled this point, the Court prescribed how the

⁹¹ It will be remembered that the male descendants of Muḥammad, the founder's eldest son, had all died. I presume that the lower court did not intend to restore the situation that would have arisen had the estate been passed to the legal heirs at the time of the founder's demise. In that case, the great-granddaughters might have been entitled to a share via Muḥammad (their grandfather) and Ḥamūd (their father), to whom they were legal heirs.

⁹² Anderson, referring to this case, states that under Ibādī law "there must, apparently,

waqf should be managed in the future: proper rents should be charged from anyone who made use of the estate and did not qualify as “really poor” (including the government, as proprietor of the road and slaughter-house).

The Court then considered the mode according to which the income of the *waqf* should be distributed among the beneficiaries. At this point, a bias towards the plaintiffs emerges in the judge’s legal reasoning. The court argued that according to Islamic law distribution depends on whether the founder has dedicated the *waqf* for his “children and their children” or, alternatively, for his “children and after their death to their children”: In the first case the income must be distributed to all living beneficiaries, whereas in the second case it must be distributed only to the generation of beneficiaries closest to the founder, the entitlement of the next generation becoming effective only after the prior generation has disappeared. Owing to the absence of a *waqfiyya*, it could not be determined which mode of distribution was intended by the founder. Because the second mode would have left the great-granddaughters with no entitlement, the judge considered it “more equitable” to adopt the first mode.⁹³ Furthermore, the judge ruled that the income must

be an express mention of the poor or of some ‘charity’ which cannot end as the ultimate beneficiary, while the Shāfi’is do not insist on this” (Anderson 1970: 77). According to the judgment, the great-granddaughters’ counsel had indeed quoted an Ibādī authority to that effect. Lindsey Smith, however, assumed that the provision did not apply if the heirs consented to the *waqf*. He based this assumption on a statement by the qādis which I think he misunderstood. The qādis upheld the *waqf* on two grounds: (a) the dedicator had founded the *waqf* during his lifetime (viz. not by will) and (b) all children and successors of the founder had treated the *waqf* as good. The qādis stressed those two points for a reason: Some Ibādī authorities hold that testamentary *waqf* in favor of heirs is only valid if the founder’s heirs consent (see Anderson 1970: 77). In my opinion, the qādis’ reasoning did not bear any reference to the issue of the ultimate gift to the poor, and I believe that they did not even consider that the *waqf* might be invalid because it lacked such a gift. It was not uncommon for Ibādī foundation deeds to lack such a provision (see for instance ZNA, HD 3/5). To my knowledge, the qādis never held that such deeds were bad.

⁹³ The judge stated that he personally would have preferred a distribution *per stirpes*, viz. one-third share to the descendants of each son of the dedicator. He assumed, however, that Islamic law did not recognize the principle of representation (*tanzīl*). This assumption holds true as regards the law of succession but not as regards the distribution of *waqf* income. In practice founders often stipulated that entitlement should pass from a beneficiary

be distributed to the beneficiaries in equal shares. This decision, too, might reflect a bias towards the plaintiffs. It was not uncommon for founders to stipulate a distribution in equal shares, but it was no less common to stipulate that female beneficiaries shall receive half the shares of males—an apportionment inspired by the fractional shares prescribed by the Islamic law of inheritance.⁹⁴ The judgment does not state the grounds for Lindsey Smith's decision, but one assumes that once again, he chose the mode of distribution he deemed more "equitable" in the given circumstances.

The judge's bias towards the great-granddaughters becomes obvious in his allotment of legal costs to the parties. The judge conceded that technically speaking the trustees had succeeded in reinstating the estate as a valid *waqf*. Yet he insisted that they should pay all legal costs themselves, pointing to their lack of cooperation with the court and to the "careless way they administered the wakf", which he considered "to a great extent responsible for the action being brought".⁹⁵ On the same grounds, the Court removed them as trustees, vesting the endowment in the Wakf Commission. To this decision the former trustees readily assented. In all probability they were not inclined to implement the very form of management which they had struggled from the start to prevent.

In principle, the case of the Chake Chake *waqf* reflects the same clash of concepts as that of the *waqf* complex of Sayyid Ḥamūd: a notion that family *waqf* must be used to show largesse to clients clashed with the notion that such a *waqf* must be exploited along business lines. The Chake Chake case, however, shows that this clash cannot be interpreted as simply a conflict between local tradition and British ideology. To be sure, the court clearly took sides with

to his descendants according to the principle of representation (see Layish 1997: 366ff. and 374ff.). The court appears to have been under the impression that a founder must choose between fixed "modes" of distribution. However, under Islamic law a founder is entirely free to stipulate the distribution as he wishes (see *ibid.*).

⁹⁴ See for instance the foundation deed quoted by Lienhardt 1958: 4; or the one contained in ZNA, HD 6/2. According to Layish, this apportionment was the commonest one in Mandatory Palestine (see Layish 1997: 375).

⁹⁵ ALI BIN NASSOR BIN KHALAD AND 25 OTHERS V. ZWENA BINTI HAMOOD, 1 ZLR, 365-69 [369].

the great-granddaughters, but it was the latter who had initiated the quarrel over the *waqf*. Obviously, they were prepared to conform to “British” business ideology.

There were other cases—some of which predated the Protectorate—in which families forsook the virtues of patronage for a more “businesslike” attitude. In 1873 a wealthy Arab patron, Amīr b. Saʿīd al-Harthī, sold a parcel of land to an Indian merchant, Remtullah b. Hema. Amīr had allowed his clients to live on the land rent free. Remtullah, in turn, started to collect rents from the residents on the land. When some of the residents ran to Amīr for protection, Amīr tried to persuade Remtullah to uphold the status of the land as a free dwelling ground for Amīr’s clients. Remtullah, however, could not be moved.⁹⁶ Obviously, he did not feel that by buying the land he had acquired responsibility for Amīr’s former clients.

A similar case that also predates the Protectorate involved the *waqf* of Sulaymān b. Ḥāmid b. Saʿīd, a large plot of land in Ng’ambo that had been dedicated in 1867. The founder, an Ibādī who was a relative and close advisor to several Sultans, stipulated that a small part of the land was dedicated for the Muslim poor, whereas the larger part was dedicated to his “heirs who may take possession of it on [the dedicator’s] death”.⁹⁷ After the dedicator’s death in 1872, Ḥāmid b. Sulaymān—the dedicator’s son-in-law and the first trustee under the deed—sold a portion of the property.⁹⁸ Some time after 1902, Ḥāmid b. Sulaymān’s children started to collect rents on the remaining property from the residents. In 1909, Ḥāmid’s eldest son died, whereupon the second eldest, Sayf b. Ḥāmid, paid Rs. 33.000 to the various heirs of the founder as compensation for their respective “shares” in the land. In 1924, Sayf started to sell further parts of the property.⁹⁹

⁹⁶ For an account of the case see Fair 2001: 121f.

⁹⁷ See the foundation deed in ZNA, HD 3/5.

⁹⁸ See ZNA, HD 3/5, Sāliḥ b. ʿAlī to Major Pearce, 12th March 1915. The file does not state which of the two parts of the *waqf* was affected by the sale.

⁹⁹ See ZNA, HD 3/5, Sāliḥ b. ʿAlī to Major Pearce, 12th March 1915, Boyce to McClellan, 4th May 1915, and anonymous letter by tenants of the property to the British Resident, 8th August 1924.

As early as 1915 the Wakf Commissioners began to consider how they could seize control of the property in order to put the founder's stipulations into effect. They refrained from taking legal steps against Sayf, partly because the case appeared to be statute-barred, but also because the qāḍīs noted that the *waqf* must be considered invalid because there was no indication that the founder had ever conveyed the property to the beneficiaries. Moreover, the family had never treated the property as a *waqf*. Under these circumstances—the qāḍīs argued—it must be assumed that the founder had revoked the *waqf* before conveying it to the beneficiaries.¹⁰⁰ The qāḍīs' ruling may have been influenced by the fact that the founder had amassed a debt of 90,000 dollars at the time of his death only five years after executing the deed of dedication.¹⁰¹ Even if the founder had conveyed the property to the beneficiaries, it was doubtful whether he was solvent at the time—and solvency is a prerequisite for the validity of a *waqf*.¹⁰² In short, many considerations spoke against the validity of the *waqf*, and Sayf claimed that the *waqf* was void. The people who resided on the land held a different view: In a letter to the British Resident in 1924 they complained that the land "was recognised as wakf of poormen for years and now we see the wakfship of that ground is nullified under the very eyes of the British Resident".¹⁰³

¹⁰⁰ See the statement by the qāḍīs 'Alī b. Muḥammad al-Mundhirī and 'Alī Muḥammad Salīm in ZNA, HD 3/5 (the original differs from the English translation!). The qāḍīs stated that under Ibāḍī law a founder may revoke his *waqf* as long as he has not handed it over to the beneficiaries. The Mālikīs, the Imāmī Shī'a, the Ḥanafīs (except Abū Yūsuf) and some Ḥanbalīs hold the same position, whereas under Shāfi'i law a *waqf* is only irrevocable after the immediate beneficiaries have accepted (see Peters 2002: 61 b and 62 a).

¹⁰¹ See ZNA, HD 3/5, Boyce to McClellan, 4th May 1915.

¹⁰² See Peters 2002: 60 a and 61 b: If a founder becomes insolvent before handing over the property to the beneficiaries or trustees the *waqf* is void. It is interesting to note that the qāḍīs did not mention the founder's indebtedness in their statement. This does not mean that they ignored that circumstance. I would argue that they simply adopted a *bona fide* interpretation of the facts: They presumed that the founder had not intended to evade the payment of debts—under which presumption it *must* be concluded that the founder had revoked the *waqf* as soon as he had realized his insolvency.

¹⁰³ ZNA, HD 3/5, anonymous letter to the Resident, 8th August 1924.

The histories of the two properties—that of Amīr b. Saʿīd and that of Sulaymān b. Ḥāmid—indicate that even in pre-colonial Zanzibar patrons sometimes neglected their responsibilities towards their clients. The cases also indicate the reasons for such neglect: The system of patronage was vulnerable to economic crisis. One assumes that the economic fortunes of Sulaymān's heirs were no better than those of their ancestor. Many formerly wealthy families suffered an economic downfall during the latter half of the 19th century, owing to grave setbacks to the clove economy. Presumably, Sulaymān's heirs sold land and collected rents to make ends meet.

A similar predicament, it seems, had befallen the heirs of the founder of the Chake Chake *waqf*. The fact that a legal battle was waged over the *waqf* suggests that the family had lost much of its former economic standing. This circumstance must be considered to properly interpret the case: One might argue that the businesslike attitude adopted by the great-granddaughters was a response to economic decline rather than to the impact of British ideology. It would be mistaken, however, to argue that turning to the collection of rent was a “natural step” for wealthy families who were losing ground financially. Although the great-granddaughters' response to economic crisis was not unprecedented, it was not the typical response of Zanzibari patrons. The typical response was to obtain credit, as Sulaymān b. Ḥāmid had done. The tendency of landholding families to borrow money to excess was a well-documented phenomenon in the Sultanate.¹⁰⁴ Indeed, the fact that the shamba on the Chake Chake *waqf* was let to Parsees for a nominal rent suggests that those Parsees were unsatisfied creditors: The nominal rent might well have been designed to disguise a transaction prohibited by Islamic law, viz. the mortgage of the *waqf* and the subsequent attachment of the property by the creditors.

The practice of excessive borrowing aroused grave concern on the part of the patronizing British administration. British officials lamented the “want of knowledge and experience” of “the Arab”, which made him easy prey to the “voracity of the Indian money-

¹⁰⁴) On the impoverishment of plantation owners and excessive money lending, see Pouwels 1987: 181f.; Cooper 1977: 141ff.

lender” who often charged extortionate rates of interest.¹⁰⁵ One may argue that it is unreasonable to pile up debt and at the same time to refrain from collecting rents. “Reasonable” economic conduct, however, is a matter not only of practical options but also of self-esteem and a sense of status. As patrons, the trustees of the Chake Chake *waqf* deemed it ignoble to collect rent from their former slaves. It was this sense of status, I maintain, that distinguished them from the great-granddaughters, who no longer could relate to the virtues of patronage and had learned to assess proper economic conduct in terms of the self-contained, entrepreneurial family.

Socio-economic conditions in the Sultanate had changed and as a consequence, norms of economic conduct were shifting. In the case of the Chake Chake *waqf*, that shift brought about a family quarrel which took the form of a generational conflict. As shown above, that shift was a gradual process predating the Protectorate and not entirely attributable to the impact of British rule. The case of the Chake Chake *waqf* shows, however, that colonial institutions encouraged and actively supported that process. The case also illustrates that such support mattered: It is unlikely that the great-granddaughters would have got their way without the assistance of the court.

2.6. *Waqf Law as a Process: The Ma’ūlī Waqf at Mwembetanga*¹⁰⁶

In the previous sections I have portrayed the legal framework of colonial *waqf* administration, as well as the main objectives of British *waqf* policy. The present case shall illustrate that neither law nor policy was rigid. To a remarkable extent, the fate of a *waqf* could depend on negotiation.

¹⁰⁵ See “Report on Administration by Mr. Clarke”, 18th February 1911, 33ff., Foreign Office Confidential Print, May 1911, contained in FO 881/9839, and the undated minute by Grain in ZNA, AC 18/2 (=Attorney General’s Department, Correspondence 1906-1908).

¹⁰⁶ The files of the Wakf Commission throughout refer to the *waqf* as “Mauli-wakf” (or “Mawli-wakf”). I am almost certain, however, that the name of the founder was “Ma’ūlī”. There exists a personal file on a qāḍī in Pemba who was employed by the British administration from 1930 to 1945, and whose signature reads Ḥabīb b. Mubārak al-Ma’ūlī. He, too, is referred to in the file as “Sh. Mbarak El-Mauli” (see ZNA, AB 86/135).

The *waqf* to be discussed here dates back at least to the 1850s and was founded by a member of the Ma'ūli family who apparently was a Shāfi'ī.¹⁰⁷ It comprised a large track of land in Mwembetanga (a part of the Ng'ambo area of town). Over time it had been occupied by various kinds of people who are vaguely characterized in the files as "the poor". At one point in its history—and for reasons not discernable from the sources—the *waqf* had come under the trusteeship of the Sultan. But shortly after 1905, the Wakf Commission took over management of the estate. When the Commission started to collect ground rent from the occupants of the *waqf* around 1906, an Indian by the name of Wallo Ramchor refused to pay. Consequently, the Wakf Commission sued him in court.¹⁰⁸

The court attempted to determine the exact stipulations of the endowment's founder. The foundation deed no longer existed, and oral evidence was inconsistent as to whether the *waqf* had been dedicated exclusively for the Ma'ūli family, or for the family and the Muslim poor. The judges based their decision on the opinion of the qāḍī Aḥmad b. Sumayṭ, who acted as a legal advisor to the Court: If the foundation deed of a *waqf* was gone, and if the *waqf* customarily was used for the free dwelling of the poor, that customary use must be assumed to reflect the founder's intention. Prior to the Wakf Commission, no one had ever charged ground rent from the endowment's occupants. Consequently, the judges decided in Wallo Ramchor's favor.¹⁰⁹

This was a crushing defeat for the Commissioners. The judges had not only ruled against them, but also defined the law in a way that defied the objectives of the Commission's administrative policy. It will be remembered that the Ma'ūli *waqf* was but one of many endowments whose foundation deeds were lost. Practically all such endowments were occupied by "squatters" who never had paid rent.

¹⁰⁷ See THE WAKF COMMISSIONERS FOR ZANZIBAR V. WALLO RAMCHOR, 1 ZLR, 227-39. The judgment states that practically all members of the Ma'ūli family were Shāfi'īs.

¹⁰⁸ See THE WAKF COMMISSIONERS FOR ZANZIBAR V. WALLO RAMCHOR, 1 ZLR, 227-39.

¹⁰⁹ See *ibid.* and additional information on the case in ZNA, HD 10/13, Tayab Ali & Ghulam Ali (Advocates) to Wakf Commissioners, 14th of July 1934.

The judgment made it impossible to raise any revenue from such endowments—either for the founder's family or for mosque upkeep.

In 1916, however, the government passed a new Wakf Property Decree, which provided that if the intention of the founder of a *waqf* was “not ascertainable”, the Commissioners were entitled to use the proceeds for “good and charitable purposes as may be desirable”. Clearly this provision was designed to overrule the court's decision in the Wallo Ramchor case. Indeed, already in 1916 the Wakf Commissioners recommenced collection of ground rent from the occupants of the Ma'ūli *waqf*.¹¹⁰ Those occupants who were Ma'ūlis were exempted from rent, but the Ma'ūlis did not receive a penny of the rental income. The Commissioners reasoned that “in the absence of any reliable information relative to the object of dedication” they were free to use the proceeds for “payment of the office staff, maintenance of poor mosques and various other objects”.¹¹¹ For sixteen years, the Ma'ūlis tacitly deferred to this course of action, presumably because they deemed it fruitless to challenge the Commission. As it turned out, however, the Commission was not invincible.

It is arguable that the intention of the founder of the Ma'ūli *waqf* was in fact ascertainable. The evidence recorded by the court in the Wallo Ramchor decision made it clear that the Ma'ūlis were entitled to at least some benefit of the *waqf*. The only point of uncertainty was whether the poor were also entitled to benefit. One could argue that if the poor were *not* entitled to live on the *waqf* rent free, the *waqf* must be considered a *family waqf*—in which case the rents collected from the poor occupants had to go to the Ma'ūlis. This was in fact the position advocated by the qāḍis on the Commission. The British Commissioners adopted a different line of argument: During the founder's lifetime, ground rent was unknown in Zanzibar. Consequently, the founder could not possibly have intended that

¹¹⁰) See ZNA, HD 10/13, Secretary to the Wakf Commission to Chief Secretary, 2nd of February 1916.

¹¹¹) See ZNA, HD 10/13, Secretary to the Wakf Commission to Wakf Commissioners Allen, Johnstone and Cumming, 27th of May 1932.

his offspring should benefit from such rents.¹¹² This line of argument, however, was inconsistent with the Commissioners' presumption that collecting ground rent from the endowment's inhabitants was legal in the first place: If the founder had not intended that ground rent be collected from the inhabitants of the *waqf*, then no one was entitled to benefit from such rents—including the Wakf Commission. In short: The course of action adopted by the Commission was disputable from a legal point of view.

In 1932, the Ma'ūlis started to write a series of letters to the Commissioners, demanding information on what actually happened with the income from the estate. Eventually, they demanded the distribution of the proceeds to the family. The Commissioners conferred with the Attorney General and tried to work out a strategy to defend their hold on the proceeds of the *waqf*. They came to the conclusion that their chances of success were slim should the Ma'ūlis take the matter to court. Consequently, the Commissioners were eager to compromise. They conceded the family's demands to all future income from the *waqf* on the condition that the family renounce all claims to past income.¹¹³

The Ma'ūli *waqf* case illustrates that *waqf* law in colonial Zanzibar was not clearly defined. Neither was it static. Legal practice was the result of an ongoing process of negotiation that involved the British Commissioners, the qāḍīs, the government and the courts—which did not always act in concert with the Wakf Commission. Sometimes, beneficiaries and trustees participated in this negotiation and even challenged the Wakf Commission. The Ma'ūli *waqf* case also illustrates that certain social groups were marginalized in the process of “modernizing” *waqf* administration. The Ma'ūlis, it is true, succeeded in frustrating the Commissioners' desire to use the proceeds of the *waqf* for mosque upkeep. But the traditional status of the *waqf* as free dwelling space for the poor was not restored. The *waqf* was transformed into a “business” resource of the Ma'ūli family. The one

¹¹² See *ibid.* and ZNA, HD 10/13, Messrs. Tayabali & Gulamali to Wakf Commission, 26th of July 1934.

¹¹³ See ZNA, HD 10/13, Wiggins to Secretary to the Wakf Commission on 30th of July 1934, and subsequent correspondence.

class of people who had no say in the negotiation of *waqf* during the colonial period was the have-nots of the Sultanate, who were systematically deprived of their traditional means of subsistence.

How did those have-nots respond to their deprivation? The files do not record how the poor tenants of *waqf* property coped with changing conditions. What the files do record are scattered petitions by *waqf* residents who complained about the hardship and—as they saw it—the injustice done to them by the imposition of rents. In contrast to Arab and Indian elites, who frequently used petitions to promote their interests, poor *waqf* residents did so only rarely, and when they did, their petitions usually had no impact on the Wakf Commission's decisions.¹¹⁴ A similar picture emerges when one examines judicial records. I have not encountered a single case in which poor residents of *waqf* took their grievances to court, again in contrast to Arab and Indian elites, who regularly did so. As the Ma'ulī case shows, legal action (or even the threat of it) could be an effective means to challenge British *waqf* administration. A legal proceeding, however, was costly,¹¹⁵ and this is probably why poor people rarely sued.

The residents of *waqf* did not passively accept British *waqf* policy. A frequent form of resistance to rent collection was the plain refusal to pay—which refusal periodically took the form of organized, collective rent strikes. Such resistance was not directed at the Wakf Commission in particular, but generally at owners and trustees of land, many of whom relentlessly jacked up rent.¹¹⁶ Nonetheless,

¹¹⁴) See for example the petitions documented in ZNA, HD 5/9, extracts from Crown Solicitor's minute of 8th September 1915, HD 3/5, anonymous letter to the Resident, 8th August 1924, and HD 6/2, petition by Maṣṣūr b. Aḥmad, 21st January 1925. The first two of those petitions were for exemption from rent. The last was a petition by former slaves residing on a *waqf* shamba, who urged that the Wakf Commission should lease the property to them, pointing out that the current Arab lessees were harmfully neglecting the land. None of the three petitions was granted by the Commissioners.

¹¹⁵) A file from 1912 reports the case of a family who had incurred a loss of Rs. 1.700 in litigation even though they had won their suit (see ZNA, HD 3/6, Minute of 13th February 1912). In a case in 1944, the Wakf Commission incurred Shs. 956 in unsuccessful litigation (see ZNA, HD 7/3, General Fund Accounts of 1944).

¹¹⁶) For a detailed account of resistance to rent collection see Fair 2001: 129ff.

such resistance caused the Wakf Commission considerable trouble. If a tenant refused payment, the Commissioners could only sue him. If many refused, the costs for collection exploded, as the Commissioners had to run after numerous individuals, each of whom owed a comparatively small amount. In 1931, the Commissioners calculated that the costs for the collection of ground rent amounted to some 64% of the proceeds from such rent. The bulk of those proceeds went to the beneficiaries of family *waqf*, whereas the costs of collection were borne by the Commission. As a result, rent collection had to be financed at the cost of charitable *waqf*—a situation which the Secretary to the Commission criticized as “entirely wrong”.¹¹⁷ As a consequence, the Commissioners decided to farm out the collection of ground rents to a wealthy Indian businessman. The latter undertook to pay the Commission 50% of the rents payable and retained as profit everything he could collect above this sum from the tenants.¹¹⁸

Resistance to rent collection reached its apex in 1928, in a rent strike accompanied by popular demonstrations and a storming of the prison building to free tenants arrested for their refusal to pay rent. Alarmed by this outbreak of discontent, the government passed legislation fixing ground rent on a stable level.¹¹⁹ Nonetheless, resistance to rent collection continued at least into the 1930s,¹²⁰ and the abolition of ground rent was among the first measures taken by the government after independence in 1963.¹²¹

In Myers’ judgment the rent strike of 1928 “can be considered one of the first tangible steps” toward the revolution that shook Zanzibar in 1964.¹²² To substantiate that interpretation would require a close analysis of the forces at work in either event. In principle, however, Myer’s suggestion is convincing. To be sure, the

¹¹⁷ See ZNA, HD 3/28, memorandum on the collection of ground rents by the Wakf Commissioners, 30th June 1931.

¹¹⁸ See ZNA, HD 3/28.

¹¹⁹ See Fair 2001: 148ff. and 160ff.

¹²⁰ See ZNA, HD 3/28, minute by the secretary of the Wakf Commission, 11th August 1934.

¹²¹ See Fair 2001: 161.

¹²² See Myers 1997: 260.

Sultanate had never been a society of equals, based as it was on the exploitation of slaves and others with no economic means of their own. The abolition of slavery, however, did not unmake the social cleavage between haves and have-nots. To the contrary: the gradual imposition of capitalist modes of production estranged them from each other. A key aspect of this process was the deterioration of patronage, which started early on in the Sultanate and gained momentum under British rule. The have-nots of Zanzibar, it is true, won a battle when they forced the administration to introduce rent control in 1928. Alas, they had already lost a war. Traditional safeguards for social security were on the wane and were not replaced by new ones. This clearly prepared the ground for the violent outbreak of social tension in 1964.

Conclusion

Endowment practice in Zanzibar changed significantly under colonial rule. Traditional *waqf* practice reflected the dominant social position of patron families. Those families stood at the centre of large socio-economic units defined by bonds of dependence and responsibility that transcended kinship relations. Patron families used *waqf* as a resource to foster those bonds, which were essential to a family's political and economic standing. In principle, this holds for all kinds of *waqf*, even mosque-endowments, which were controlled by, and associated with, the founder's family.

British interference in *waqf* matters disrupted this traditional pattern of endowment practice. The colonial power imposed a strict administrative distinction between "family *waqf*" and "charitable *waqf*". "Family *waqf*" was administered to the exclusive benefit of the founder's offspring, instead of being "squandered" for charity. "Charitable *waqf*" was administered to provide public revenue for mosque upkeep. As a result, *waqf* was stripped of its traditional function: *Waqf* ceased to be an instrument of power in the hands of wealthy families. It also ceased to provide a means of subsistence for the have-nots of society.

To legitimize their interference in local *waqf* practice, British officials referred to Islamic law. They pointed out that *waqf* in

Zanzibar was formally dedicated either for mosque upkeep or, alternatively, for the founder's offspring. Islamic law, so the British argued, insists on strict adherence to the founder's explicit intention. This interpretation of Islamic law was shaped by British notions of social order. It reflected a concept of the family as a socio-economic unit that must be self-contained. According to that concept, the economic relationship between non-relatives must be confined to a formalized exchange of labour for wages. Bonds of dependence and loyalty are incompatible with that concept of the family, and the same holds for any form of charity that creates such bonds.

Some scholars argue that traditional Muslim societies were characterized by a “public sphere”.¹²³ In a recent anthology Hoexter and Levtzion define this term as “a sphere located between the official and private spheres” which “recruits its personnel from the private sphere, not from the ruler's domain”.¹²⁴ Thus, the public sphere is “autonomous from the political order” and “its influence rests on interpretations of the common good vis-à-vis the ruler, on the one hand, and the private sphere, on the other”. To establish the existence of a public sphere in traditional Muslim societies, the contributors to the anthology point to institutions and conceptions that—in one combination or another—characterized all traditional Muslim societies: the *sharī'a*, the *‘ulamā*, the concepts of *umma* and *ijmā*, and—last but not least—*waqf*.¹²⁵

Those institutions and conceptions reflect a religious discourse that produced norms of political conduct. Muslim rulers, it is true, never entirely dominated that discourse. This also holds true for the

¹²³ See “The Public Sphere in Muslim Societies”, edited by Hoexter, Eisenstadt and Levtzion (2002), especially the introduction by Hoexter and Levtzion, the contributions by Hoexter and Gerber, and the “Concluding Remarks” by Eisenstadt. Further studies describing traditional Muslim societies in terms of a public sphere are Kırılı 2004 and Frierson 2004, both contained in Salvatore & Eickelman 2004.

¹²⁴ See Hoexter and Levtzion in their introduction to Hoexter, Eisenstadt and Levtzion 2002: 9. The authors adopt the definition of public sphere put forward in Eisenstadt and Schluchter (1998), “Introduction: Paths to Early Modernities—A Comparative View”, *Daedalus* 10, 10.

¹²⁵ See Hoexter, Eisenstadt and Levtzion 2002, introduction by Hoexter and Levtzion: 10ff., “Concluding Remarks” by Eisenstadt: 147ff., the contribution to the volume by Gerber (specifically 75ff. on *waqf*), and the contribution on *waqf* by Hoexter.

Sultans of Zanzibar. Even so, in my opinion it would be mistaken to argue that a “public sphere” existed in Zanzibar. The conceptual distinction between *private*, *public* and *official* presupposes a specific attribution of roles, rights and responsibilities to individuals and institutions. A patron’s rule over slaves and clients who are tied to him by bonds of economic dependence cannot be described as “official”. Neither does it seem useful to describe patrons, clients and slaves as “private persons”. Social welfare is not “public” if it is provided as personal charity. A distinction between public, private and official responsibilities was imposed on Zanzibar society by the colonial power. That imposition laid the ground for capitalist modes of production. As illustrated in this study, the colonial state forced patrons, clients and slaves into the role of “private persons”. By this process, clients and slaves were turned into free citizens. They were also turned into a new class of “lumpenproletariat”, entirely dependent on wage labour.

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