

# The dynamics of Islamic marital jurisprudence in Islamic courts: the experience of the Kwara state and Zanzibar

**Issa Babatunde Oba**

Al-Hikmah University, Nigeria

Email: [iboba@alhikmah.edu.ng](mailto:iboba@alhikmah.edu.ng)

## Abstract

Zanzibar is an island located in East Africa and part of the United Republic of Tanzania. In contrast, Kwara State is one of the states of the Federal Republic of Nigeria in the West Africa sub-region. Both regions have similar colonial histories and post-colonial experiences. Islamic Jurisprudence has undergone many reforms since the post-colonial era in Zanzibar Island of Tanzania and Kwara State of Nigeria. Islamic Jurisprudence is used in the adjudication process in Islamic religious courts in these two regions of Africa with a sizeable Muslim population. These courts essentially adjudicate Muslim personal matters, such as marriage, divorce, inheritance, wills, and endowment. The official jurisprudence of the people Zanzibar-Tanzania is Shafi'i jurisprudence. For the people of Kwara State of Nigeria, Maliki jurisprudence is recognized. Marriage is considered part of Muslim identity; therefore, applicable jurisprudence is necessary for a fair hearing on Muslim personal matters. The Muslim judges (*qadis*) play a laudable role in the justice system under Islamic Jurisprudence. This paper uses doctrinal, case law and empirical approaches for the discourse.

Zanzibar adalah sebuah pulau yang terletak di Afrika Timur dan merupakan bagian dari Republik Tanzania, sedangkan Negara Bagian Kwara adalah salah satu negara bagian Republik Federal Nigeria di sub-wilayah Afrika Barat. Kedua wilayah tersebut memiliki sejarah kolonial dan pengalaman pasca-kolonial yang serupa. Fikih Islam telah mengalami banyak reformasi sejak era pasca-kolonial

di Zanzibar-Tanzania dan Negara Bagian Kwara Nigeria. Fikih Islam digunakan dalam proses adjudikasi di Pengadilan Kadhi di dua wilayah Afrika ini dengan populasi Muslim yang cukup besar. Pengadilan Kadhi pada dasarnya mengadili Masalah Pribadi Muslim, seperti perceraian perkawinan, warisan, surat wasiat, dan wakaf. Yurisprudensi resmi rakyat Zanzibar-Tanzania adalah yurisprudensi Syafi'i. Bagi masyarakat Kwara Negara Nigeria, Fikih Maliki yang diakui. Perkawinan dianggap sebagai bagian dari identitas Muslim, oleh karena itu yurisprudensi yang berlaku diperlukan untuk pemeriksaan yang adil tentang Masalah Pribadi Muslim. Kadhi memainkan peran terpuji dalam sistem peradilan di bawah Fikih Islam. Paper ini menggunakan pendekatan doktrinal, kasus hukum dan empiris untuk menganalisisnya.

**Keywords:** *Islamic marriage, Islamic court, Zanzibar-Tanzania, Kwara state, Maliki school, Shafi'i school.*

#### **How to cite this article:**

Oba, I. B. (2023). The dynamics of Islamic marital jurisprudence in Islamic courts: the experience of the Kwara State and Zanzibar. *Indonesian Journal of Religion, Spirituality, and Humanity*. 2 (1), pp 43-67.

#### **Introduction**

The paper discusses Islamic Marriage in Muslim courts in Zanzibar Island of Tanzania and Kwara State of Nigeria to examine the conceptual and theoretical frameworks for the Muslim Legal Doctrine. This article addresses the concept of marriage and Islamic jurisprudence. The paper highlights the origin of Muslim law and the makeup of the jurisprudence of *Shafii* and *Maliki*. The jurisprudential composition of the two Schools on marital matters is also identified. The paper reviews the development and the origin of Islamic law. The article overviews Islamic Jurisprudence in modern times and identifies socio-legal doctrine as useful in the application of Islamic jurisprudence. Lastly, the paper examines doctrinal theory for this study.

The institution of marriage is as old as man itself and recognized in different regions of the world. Besides, most religions of the world have guiding principles regarding the norms of this ancient tradition. From the classic era, Islam has laid down rules guiding the institution of marriage. This discourse examines the institution of marriage under Islamic jurisprudence from the classic era to the post-colonial era in Zanzibar and Kwara State of Nigeria.

Different scholars from different eras have attempted to define the concept of marriage. Contemporary Western notion explains it as an agreement between a man and the opposite sex to relate couples (Hanks, 2014). Marriage is interpreted by some scholars as a binding or socially accepted union (Anson, 2000; Vargus, 1999; White, 2008). In summary, marriage is regarded as a situation where two individuals come together via a binding agreement (Adjetey, 1999). Marriage under the African customary law examines the union of persons from a different angle for it regards such relationships which are not limited to just two individuals but the two families are part of the union (Dorian & Marshall, 2006). The Africans see marriage as a holy solemnization for it assists in peaceful co-existence and enhances bridges for different nations and regions.

Marriage is a respected tradition among different African communities, a well-acknowledged tradition is celebrated not only by the parties involved but also by the two families, communities or even different religions. On the other hand, Muslims regard their region as a total valued way of life in all its ramifications. This tradition of the Prophet must be obeyed to the letter since it is an avenue to perfect the religion of Islam. Marriage under Islamic law is a binding civil agreement with spiritual backup legally allowing sex between the two parties for procreation. The tradition of marriage in Islam is evaluated as one of the hallmarks of Muslim social institutions (Raiz, 2013).

Marriage is an everlasting union that improves the spiritual, physical and mental well-being of those engaged in the act. Under the Islamic jurisprudence

*nikah*, it means union of two individuals. Simply, the agreement must be witnessed by not less than two male witnesses (Raiz, 2013). *Nikah or* marriage deals with joining a male and female; such involves legal consequences and is regarded as an established social system. Modern Islamic scholars argue that the Quran sees marriage as both a religious obligation and a moral duty that transcend other social duty. The basic legal elements of a marriage contract include parties competent to initiate an offer and acceptance and free consent. Islamic law makes provisions for obligations and rights for the parties and at the time makes provisions for the remedies to safely guide the breach of the contract (Hammudah, 1998).

### **Shafi'i school and their views on marriage**

In the eighth century, *Abu Abdallah Muhammad al-Shafi'i* established the jurisprudence that assisted in the growth of Islamic law. The school had its origin in the Traditionalist School. They agreed to the positions of the rightly guided caliphs as the origin of law. The major achievement of *Shafi'i* doctrine was maintaining equilibrium between the Rationalists and Traditional Schools of jurisprudence by suggesting a methodology to Islamic jurisprudence which was still in use in contemporary times. *Shafi'i* jurisprudence suggested the divine sources were the cardinal origin of Islamic law and that the saying of the Prophet is pinned down to Muhammad as explained by the solid narratives (Hammudah, 1998).

Al-Shafi'i was one of the Medina School's disciples and followed the conservatives' doctrines. Traditionalists argued mainly on the premise of the *Sunnah* of the Prophet of Islam and spread in many Islam centers conflicting with the existing School of thought (Al-Jaziri, 1986). This discourse examines the *Shafi'i* School's outlook from the following positions: the recital of marriage offer; the concept of *wajib*; the presence of witnesses; and the capacity to enter marriage, among others. *Shafi'i* School of thought recommends that the recital

of the marriage offer is done by the bride or her representative or guardian and acceptance of the offer by the male or his representative. In the opinion of the school whenever the recital of marriage offer is done through fundamental keywords such as *ankah tu* or *zanwaju* and it no needs to be omitted. On *wajib*, the phrase used in the marriage contract needs to be immediate and not delayed.

Thus, the parties in a marital relationship can terminate the agreement. The *Shafii* jurisprudence suggests that both the agreement and the condition are void notwithstanding the marriage's consummation. The school regards the importance of marriage is witnessed by at least two male Muslims for it shows cases of the validity and the quality of *adallah* (Al-Jaziri, 1986). The *Shafii* jurisprudence on the capacity to enter into a marriage agreement that essential elements such as sanity and adulthood is vital ingredients for both parties, except the guardian of the parties negotiates the marriage. Hence a sane female adult can make an offer of marriage and the male counterpart accepts the offer. This is because both parties have the right to marriage. The *Shafii* jurisprudence suggests that proof rest on the complainant and the other part is the mate to swear to justify his position on the issue. Another issue on the marital matter in which the *Shafii* clarifies its position is the issue of minimum age for marriage, the jurisprudence recommends fifteen years of age for both parties. For those that are forbidden to marry by the Muslims, the *Shafii* School aligns with the position of the Quran.

Furthermore, it argues for uprightness in marital relationships, the daughter is forbidden on the matter of sex and lustfulness or mere glancing without sexual interest is immaterial (Al-Jaziri, 1986). The *Shafii* School brought to bear the technicalities and classification of *mahr* as regards a marriage contract. *Mahr*, under Islamic law, is the payment of dowry. The jurisprudence states that *Mahr* is important since price is vital in the Contract of Sale. It is one of the elements of marriage agreement. But again, that without *Mahr* the

marriage remains valid. According to the jurisprudence under review, *al-Mahr al-Musamma* one of the various types of *mahr* payable in the contract of marriage is the rights of a woman in a marital relationship under the Islamic jurisprudence contract. Another classification of *mahr* payable is *mahr al-Mithl*, payable only in situations where one of the parties involved in marriage is no more before the marital relationship is concluded. *Shafii* School recommends *Mahr al-Mithl* when a man had sex with a woman without her relevant consent. On the mode of payment of *mahr* according to the *Shafii* School of thought, such payment may be delayed or immediate, but in the situation where of lack of no definite time is fixed and the parties died the *mahr* payment becomes irrelevant but that *mahr al-Mihl* then is acceptable. According to *Shafii* jurisprudence as a general rule, once the recital of the marital relationship is concluded, the woman has the right to request for her a specified payment as her *mahr* any objection to such demand a woman can walk away until the *mahr* is paid (Al-Jaziri, 1986). On instalment payment of *mahr*, the *Shafii* jurisprudence argues that the husband may be asked to pay the initial payment as a deposit. For such an arrangement the *Shafii* School recommends a go-between the parties. In a situation where the husband defaults on the instalment payment, as an alternative the husband compensates the wife by maintenance allowance on her demand for it. On the other hand, if a man cannot pay *mahr* and this is confirmed and possibly the contract is yet to be concluded, the wife can cancel the marital relationship. However, if such a marital relationship has been concluded, the woman has no option but to remain in the marriage (Al-Sharbini & Muhammad, 1994).

In an area of doubt as to the consummation of a marital relationship and which of *mahr* is *to* be adopted if the wife accepts the arrangement, marital relationship is established. But on such matters *Shafii* suggests that the husband's position is absolute. *Shafii* explains that the husband has the last say on the matter. The school rests its case that the husband and wife are both claimants and refuters.

If a marriage party *establishes* proof of payment of mahr and it fails, the position of the *Shafii* jurisprudence is that judgment be awarded to the party that tries to prove. Where there is deadlock, the use of oath-taking resolves the statement for mahr payment. On the issue of domestic matters, particularly concerning the ownership of domestic goods and other related matters. *Shafii* School of thought contends that equitable sharing of those items in issue be it whether the goods are meant for common or personal usage. The above illustrations are classical examples of the contributions of *Shafii* jurisprudence in Islamic aspect of marital matters which are still laudable in many parts of particularly Zanzibar Tanzania. Apart from discourse on marital jurisprudence, *Shafii* School of Thought clarifies its position on other areas of Islamic jurisprudence. Firstly, on the significance of the Holy book as the fundamental origin of Islam and that the Prophetic Sunnah assist as to bridge the areas of gaps in the Quran. He argues that the Quran is divine in its origin therefore is the grand norm of the Muslim law. Next, on the ambiguous nature of the Quran, he supports the Rationalists on human reasoning usage and *qiyas* to widen law far beyond the sources. Similarly, align with the use of *ijma* which is the principle of consensus and *ikhtilaf*, the doctrine of disagreement whereby human thinking is used in comprehension of the law. *Shafii* School is against the use of public interest and presumption of continuity in the validation of the law. But instead recommends the use of consensus opinion that is not restricted to the opinion of the people of Medina (Hallaq, 1986).

### **Maliki's outlook on Islamic marriage**

The jurisprudence emerges among the Medina people who observed the conservative practices of the native people of this region of Islam. This School objected to the incorporation of opinion into Islamic law, but subscribes to the use of *Abadith* gathered reasonable time. This paper evaluates Imam Maliki's outlook from the following angles such as the recital of marriage offer; the

concept of *wajib*; the presence of witnesses; and capacity to enter marriage among others. Maliki School of Jurisprudence argues in favor of use of the recital in the marriage agreement and that such terms like *al-nikah* and *al-zawī* or they are equivalent be maintained. The school posits further that the recital may be in whatever language (Abdu-Allah, 1976). On the issue of *mahr* that is the dowry, is payable as one of the elements of valid marriage but cautioned that the agreement is legal whenever such term as *al-hibah* is used, with a caution that the amount to be paid as *mahr* or *sadaq* is identified. On the use of sign language for a recital in the contract of marriage particularly by the dumb Maliki jurisprudence is reserved on the matter.

On the annulment of a marriage relationship, *Maliki* School explains that if the marriage relationship is not concluded, this marriage term and the agreement are unacceptable under Islamic Jurisprudence. On the other hand, if the marriage contract has been completed, only the condition is void, but the contract is valid (Abdu-Allah, 1976).

However, on the issue of witnesses for a valid marital relationship, the school accepts the position but maintains that is not valued at the time of the agreement but significant at the time when the marital relationship is to be concluded. Besides, it is important that when the Male intends to conclude a marriage contract, it is vital to have at least two adult male witnesses otherwise the contract is void. On recommended age for marital relationship, The *Maliki* jurisprudence suggests seventeen years for the male and the female. On the issue of affinity, the school in the support of the Holy book of Allah and the *Sunnah* accordingly, while on the issue of being sane and adult as a vital prerequisite to the agreement of a marital relationship, the position of this School of Jurisprudence is the guardian of any of the parties that must be involved in such a contract. On moral uprightness and marital relationship, *Maliki* jurisprudence comments on moral uprightness in marital relationship that anybody contact or lustful glance with inner thought is not allowed to



amount to a sexual relationship for the *Sunnah* based matters according to the intention of Muslims (At-Tirmidhi, 1970).

For *mahr* payment, the school suggests a specific amount but nothing below for the male and the female go for marital relationship consummation. If not by paying half of the required amount the marriage contract the marriage is dissolved forthwith. *Mahr* payment may be postponed or immediately according to Islamic law. *Maliki's* jurisprudence argues that if the term is concluded at the moment of the marital contract Bride is entitled to collect payment in cash and in full. Besides, as a rule under *Maliki's* jurisprudence, the groom is expected to pay the bride her maintenance allowance after the conclusion of the marriage contract. If the bride does not fulfil the marital responsibility despite the payment of *mahr* the husband must pay *mahr* in due course accordingly. But in case the groom is not able to pay the *mahr* and proven before the marital relationship is concluded the Muslim court may be approached to fix a definite time for the payment of *mahr* (Maghniyyah, 1997). The *Maliki* School suggests an oath-taking to settle the issue. In resolving the dispute on the ownership of domestic utensil and other related matters in the course marital relationship the Maliki jurisprudence supports the Quran and *Sunnah* which allow for equal treatment of the parties on the matter (Maghniyyah, 1997). From the above, it can be argued that Maliki's jurisprudence contributes a lot to the development of marital jurisprudence.

On the ambiguity of the Prophetic *Sunnah*, such a gap should be filled regarding the custom of the Medina people. On the order of preference, the *Maliki* School picks consensus of the (*sahabah*) the companion of the Holy Prophet followed by the analogy (*qiyas*) and lastly the custom of the Muslim *Ummah* but must not conflict with the Holy Quran and the Tradition of the Prophet. Maliki's jurisprudence was privileged to have direct contact with the real sources of the Traditions of the Prophet's narration of about two generations of the Holy Prophet (Maghniyyah, 1997). *Maliki's* jurisprudence

argues that *Ijma* is only limited to the opinion of Muslim judges. The school relies on the public interest as an approach to correctly evaluate the details of law, not necessarily establishing issues to the origin of Islamic law. The *Maliki* School method did not register the fundamental theory on which the school based its argument; on that basis, the school got his verdict to which the school rests its verdicts (Maghniyyah, 1997).

The doctrine is still of value, especially to the people of Nigeria and other places of the Muslim world, such as Northern Sudan, Egypt, Tunisia, Morocco, and the United Arab Emirates (Khan, 2013). *Imam Maliki* published a book known as the *al-Muwatta* (The Approved) a vital reference material on Islamic law up till recent times. This classic document is neither a book of hadith nor a book of *fiqh*. Besides, the book is a milestone in the history of Islamic legal documents. Opinion differs as to the classification of the book whether it serves as a collection of hadith. But definitely, not the same status in terms of original content when compared to other Islamic legal documents. Scholars argue that the book not be justified as a *Sunnah* book since the document, the *Sunnah* of the Prophet evaluates the discourse of Muhammad's companions. With these features of the book, it is regarded as one of the best on jurisprudence (Guraya, 1972).

### **The origin of Islamic Law**

The birthplace of the Prophet of Islam is Mecca where the religion of Islam evolves and later spreads to Medina via jihad or holy war. An Islamic State developed and an Islamic Legal system emerged with the use of the Holy Quran and the Sunnah of the Prophet accordingly. With the death of the founder of Islam spread to different territories of the world. With this development the secondary sources of Islamic jurisprudence such as analogical reasoning, and consensus amongst others became useful to the Muslim communities (Saheed et al., 2004).

The holy book of God and prophetic sayings and deeds are the origins of Islamic jurisprudence. These two documents are divine legislation from the almighty transmitted directly to the Prophet for more than two decades from 612 to 632 AD. Muslim experts submit that there are about 6666 verses in the Holy Quran of which up to 500 verses deals with issues. Scholars argue the documents in the Holy Quran are of general application and thus of relevant usage in modern times. This position is not widely accepted by some Muslim scholars. This group argues on the cultural difference between classical times and modern times. Some scholars posit that the Prophet was the messenger of Allah and thus received the Holy Quran revelation. The school of thought argues further that the Prophet was the right person to guide on the useful supplementary details in areas of the lacuna of the sole legislation (Cason et al., 2000).

Another notable source of Islamic jurisprudence is the *Sunnah* which is the composition of the saying, deeds and behavior while the prophet was still alive. This provides temporal and spiritual uplifting to the Muslims. The *Sunnah* provides solutions to areas of gaps in the Quran. The Holy Book explains Sunnah's importance and expects Muslims to follow. These documents are a milestone to Muslim thoughts (Cason et al., 2000). When the arrangement of the Islamic law was concluded in the third year while Muhammad was in Medina during this classic period Muslim jurists came up with the approach and skills of assessing and evaluating the *Sunnah*. This resulted in the development of six major documents of the Sunni School. The detailed collection of the *Sunnah* of the Prophet is immense importance to Islamic jurisprudence. The major Sunni Schools appreciate and acknowledge the divine sources as one of the origins of jurisprudence.

The twentieth century marked a new beginning among Muslim scholars for a deeper thought into the interpretation of the Quran. This group of

scholars made serious attempts to showcase the significance of the Holy Quran to modern circumstances (Baljon, 1961).

Secondary sources include disagreement, critical thinking, and *Ijma. Qiyas*, which is analogical reasoning deals with assessing weight, the value of length, or the worth of a specific issue. This becomes useful in issues of legislation where the Holy Quran and the Traditions of the Prophet are silent or not detailed enough. Muslim scholars contend that there is a need to bridge the gap in which the Holy Quran and the Tradition of the Prophet do not address especially in relating to the ever-changing world. Thus, *Ijma*, the consensus of opinions is most appropriate to tackle difficult problems of the society. Classical Muslim jurists comment that the application of the doctrine of *ijma* needs to be based on the consensus of the total Muslim *Ummah*. The Holy Quran recommends the significance of consensus as one of the origins of Islamic jurisprudence (Baljon, 1961). The secondary origin of Islamic law includes *ikhtilaf* which is the doctrine of disagreement which permits an individual to interpret an aspect of the Muslim law that best tackles the matters at hand but must be free from being unlawful nature.

The doctrine of disagreement is seen as the opposite of (*ijma*) and the *Sunnah* of the Prophet acknowledges the doctrine. In the same vein, Muslim scholars argue that this doctrine is a significant element in the comprehension of Muslim law due to enlargement of the Islamic law.

### **Muslims population in the Kwara state and Zanzibar**

On the population of the study, a total of 200 questionnaires were administered in the two regions, one hundred questionnaires for each region. Out of which 93 were returned from Zanzibar and 97 were collected from Kwara State of Nigeria. According to research findings, 95% of respondents responded. On the distribution of responses by gender 54.7% were male and that of female were 45.3%. Moreover, 11% of women were involved in group interaction. On

the Muslims population in these regions, research findings show that the majority of respondents in Zanzibar are 92% Muslims by birth simply because their parents are Muslims, 0% by conversion, and 1% and 5% are not Muslims at all, whereas, in Kwara State, 84% represents Muslim by birth, 08 % converted to Islam and 05 % as none. These findings conclude that in these regions, a sizeable number of the population are Muslims (Oba, 2019).

On the distribution of responses by religious practice in Zanzibar and Kwara State, the study's findings revealed that in the frequency of responses in Zanzibar, 89 respondents were practicing Muslims, 3 were not, 0 selected none, and one did not specify. In the Kwara State of Nigeria, 85 are practicing Muslims, are not practicing, 0 are Muslims by name, and 2 are not defined.

Research findings in Zanzibar showed that 47 indicated influence on them, 31 frequency answers indicated moderate influence on them, 10 frequency responses indicated little influence on them, and 05 frequency responses indicated not specified. In Kwara state, Nigeria, 41 frequency responses said that *Maddhab* had a significant influence on them, 50 frequency responses admitted that *Maddhab* had a moderate influence, 5 % frequency responses indicated little influence, and 1 % frequency response did not specify. On the mode of *Maddhab* acquisition in these regions of Africa, in Zanzibar there were 47 frequency replies based on textual knowledge, 34 through sermons, 9 through family members, 2 through friends, and 1 frequency response as "none." In Kwara State, there were 42 frequency replies based on literary knowledge, 32 frequency responses based on sermons, 18 frequency responses based on family members, 3 frequency responses based on friends, and 2 frequency responses based on having no information at all. Research findings conclude that the people of these regions of Africa are aware of their *Maddhab* and have knowledge of jurisprudence (Oba, 2019).

### **Time taken to resolve marital disputes**

On time taken to resolve marital matters in these regions, one frequency response lasted less than three months, one lasted three months, two lasted six months, three lasted a year, and one lasted a year. All was recorded in both regions. This shows that reasonable time is spent on resolving marital disputes. On the issue of the distance of the courts in the regions, 69 frequency replies in Zanzibar said that the courts are not distant from their place of residence, while ten frequency responses asserted that the courts were far from them, while two frequency responses stated that the courts were very far away, and 12 frequency responses indicated that they were unsure. In the case of Kwara State in Nigeria, 71 frequency replies indicated that the courts were not far away, 14 frequency responses indicated that the courts were far away, 4 frequency responses indicated extremely far away, and eight frequency responses were ambiguous. The residents of both regions could generally reach the courts because of their proximity (Oba, 2019).

Muslims from the classic era to the present times make use of divine principles such as the Quran and Sunnah and other secondary sources for the adjudication process. However, law case from the post-colonial era of the two regions is used to illustrate the competency of the courts in line with modern expectations.

### **Court holding in Zanzibar**

Ahmed Ali Ali v. Khaula Ali Hassan: Islamic law establishes fundamental guidelines for determining paternity.

### ***Facts of the case***

The appellant's mother-in-law is the respondent in this case. According to the appellant's argument, he married his wife in line with Islamic law. On June 4, 2010, the couple officially ended their marriage and began living as husband and

wife. The marriage was blessed with a child who was delivered via surgery on November 28, 2010. Following Muslim custom, the newborn was given a name on the seventh day after birth. After the baby's mother passed away, the maternal grandmother was in charge of the child's custody, welfare, and care. The maternal grandmother of the in-question child was the respondent, and the Kadhi court in Mwanakwerekwe decided in her favor. The appellant expressed displeasure with the decision by seeking an appeal since the lower court disregarded the crucial case circumstances.

### ***Court decision***

The court determined that after hearing both sides of the story and listening to the testimonies of both parties, the following key points stood out: that an Islamic marriage was properly conducted; that a baby was born following the marriage via surgery on November 28, 2011, and named on the seventh day following Muslim rites; that the appellant never denied being pregnant; that disputes over the baby's paternity began after the mother of the child passed away; and that the baby's father was not the father. According to the court, the estimation of the child's birth using the Gregorian calendar was incorrect under Islamic law, which led to its overturning of the lower court's rulings.

The estimation was six months plus one day based on the computation utilizing the Muslim calendar. According to Islamic law, a pregnancy must last for at least six months. The court decided that giving the infant a name after seven days was appropriate following Islamic law and that the maternal grandmother could only visit the kid on exceptional occasions, such as holidays. The baby was born in the case at hand after six months and one day; this was the correct estimation and gave the father of the child paternity right to claim the child; and the court questioned why the dispute was allowed to continue. The court based its decisions on the following considerations: under Islamic jurisprudence estimation of the duration of pregnancy is based strictly on the

Muslim calendar to calculate using any other calendar which was regarded as a fundamental error under Islamic jurisprudence. The court held that it is improper under Islamic law to postpone providing answers in legal disputes when they are most necessary. In the end, the court decided that any party who was dissatisfied with the decision might challenge it within 30 days.

### ***Analysis of the decision***

Important aspects of the ruling include the importance of the Muslim calendar in reaching conclusions on Islamic topics; the minimal gestation period required to establish paternity under Islamic marital law; and the validity of marriage as a factor in determining paternity. The court's stance can best be described as conservative given the advancement of science and technology in the modern world. In the present era, using a DNA test to establish paternity is the best option, a technique used in science to confirm genetic data and the unique traits or features of a person. The paternity was established using an outdated, cautious procedure. Second, it was incorrect to rely on the Muslim calendar's estimation. A legitimate certificate was presented as evidence in court. Everything should be calculated based on what was tended before his lordship.

Because of the judge's limited conservationist viewpoint, utilizing the Islamic calendar instead of the Gregorian calendar that was offered in court was nothing short of a miscarriage of justice. The Gregorian calendar is the best practice in the modern age. The lunar calendar, which has either 29 or 30 days per month, provides the basis for the Islamic calendar. Because of this, the estimate was given as plus one rather than six months. The lunar calendar depended on the moon's sighting. However, this varies from one geographic area to another, rendering it untrustworthy. Although Muslims can use the lunar calendar. Everyone agrees that the Gregorian calendar is the accepted norm in the modern era. To make his decision official, the *Maliki* would have to take an oath in resolving the matter.



### **Court holding in Kwara state**

Rukayat S Ibrahim v. Abdul Lateef: If the child is a minor, the mother is granted custody under Islamic law, and the father is obligated to adequately provide for the child's maintenance.

### ***Facts of the case***

This was taken directly from the petitioner's letter to the court. The petitioner and respondent were joined in marriage following Islamic law and cohabited as husband and wife. Ibrahim Ayodeji, who is eight and a half years old, and Fatimoh Ayodeji, who is four and a half years old, are the couple's two blessed children. In her letter, the petitioner outlined why she desired a divorce and custody of the kids because the marriage lacked love and care from the spouse.

### ***Court decision***

The court ruled that it granted the couple's divorce and that the respondent did not object to the mother of the children receiving custody of the children; as for the maintenance award, the court decided to give each child a monthly maintenance payment of 7,000 naira. In addition, the court decided that the respondent must pay the children's tuition and medical costs.

The court further decided that no barriers should be put in the way of the respondent's access to the kids. The court mandated that the child-feeding payment be deposited each month into the court registry. Finally, the court mandated that the petitioner receive marital relationship breakdown and the divorce certificate from the register as proof of the marital relationship breakdown.

### *Analysis of the decision*

Concerning rulings from the Upper Area Court in Ilorin, the ensuing concerns are closely examined. First, justice was swiftly administered without taking into account the need for a break so the judge could properly assess the three accusations. Marriage conflicts are challenging and complicated, but they can negatively affect the children of the marriage. Children who experience a broken household develop long-term psychological and emotional issues. To allow time for potential efforts at reconciliation, the court ought to have taken into consideration at least one adjournment. For the benefit of the children from the marriage, the court should have attempted to lower the emotional pace of both parties who were in court. Here, the court can instead take on a counselling role to encourage the parties to revisit their differences and come to an amicable resolution. Second, the maintenance payment made for the kids' upkeep was a bit on the high side. With all due respect to the court, how would a reasonable man expect a motorbike rider to meet such monthly financial obligations given his difficult lifestyle and lack of a stable source of income? In the long run, it would be impossible, if not very difficult, to enforce such choices. This might not be due to disrespect for the court's ruling, but rather due to the actuality and applicability of the rulings. Third, the court gave the mother general custody of the children without including a stipulation stating that, following established Islamic jurisprudence, the children will return to the father once they reach adulthood. If the court had been critical of the omission above, perhaps its conclusions would have been more robust and the adjudication process would have been better in the long term. This may be considered a fundamental fault in the court's ruling that ultimately opened the door for further marital problems in the future. If this decision was based on Shafi'i legal theory, the husband's financial situation would be taken into account.

This article contends that if the aforementioned flaws in the judicial rulings were taken into account, in cases involving the Muslim citizens of Zanzibar and Kwara State of Nigeria, Kadhis' Courts may still provide support to other legal systems. This study makes the case that certain elements of Islamic procedural law, particularly the use of "red ink" in the adjudication process, should have been incorporated into the current civil code to allow the parties in civil cases to properly rest their cases before judgment. This is for the benefit of the people of Kwara State and Zanzibar. The above discourse highlights legal principles involved in settling marital disputes which indicates the relevance of Islamic jurisprudence in modern times.

### **The dynamics of Islamic jurisprudence in the contemporary age**

Islamic law in the modern era has witnessed new trends simply because it does not engage in finding meaning for the make-up of justice or human duty for moral reasoning. Such focus the religion channel it another area of scholarship known as *kalan* or discourse. One of the beauties of Islamic jurisprudence if compared to other jurisprudence is that it shows more stability and values continuity, thought and established institution.

Judicial precedent, morality and rationality are fundamental sources of the English legal system, Islamic law pays strict attention to basically religion and morality (An-Naim, 2010). One of the characteristics of jurisprudence is that it has well established institutional framework. The structure, therefore, provides the Muslim jurists with the platform in distinguishing religion and morality as distinct disciplines. Disciplines such as philosophy and sociology have overlapping relationships with both common law and Islamic jurisprudence. Scholars posit that the common law exhibits a kind of uncertainty, particularly its content and scope. But recent development indicates some Muslim nations are eager to harmonize the statutory laws with the *Shariah*. Thus, judges and

legal practitioners in such Muslim-majority nations are exhibiting interest in enriching their knowledge of Islamic law (An-Naim, 2010).

Recent trends show that there is a change in attitude towards the Muslim tribunal, particularly in some European countries. In such countries, Islamic organizations have agitated for Muslim law to settle commercial marital and disputes, especially if the parties involved are Muslims. These influential Muslim organizations contend that Muslims need such tribunals to practice their religion (Wolfe, 2006). Of recent two controversies generated a lot of debates one in Great Britain and the other in Canada where some European Muslims expressed their desire for Muslim tribunals which they see as a community identity rather a religious sentiment. The trend is equated to upliftment of Muslim law in the European world. This development was taken to another level when the Canadian Muslims announced to the public in 2003 its wish to establish what became known as the Muslim Court of Arbitration in Canada to settle marital conflicts exclusively for the Muslims (Wolfe, 2006).

The Society planned to formalize the establishment of the tribunal with the legal back of the Ontario Arbitration Act which permits binding the Family Law Arbitration accordingly. Yet, another controversy, this time in Great Britain in 2008, when well-known religious leader the Archbishop of Canterbury, Rowan Williams at a public gathering agitated for a formal duty for the Muslim tribunal, which he regarded as part of civil rights like that of religious groups, such as Christianity. The archbishop argues further that Judaism had been incorporated into the Civil Court system in Great Britain without creating any negative consequences. A government report came up in the autumn of 2008 that the civil court under the English Arbitration could enforce the Muslim Arbitration award. Despite some strong oppositions in Great Britain and Canadian in some quarters in two regions to the creation of these Muslim Islamic regimes, the trend for agitation continues in these regions of the world (Movesesian, 2010). Yet the European Muslims' agitation for the

issue at hand is in Europe. This points to one ultimate fact the transformation of the region is ongoing in Europe and regions of the world. The good thing about the proposals for the Muslim tribunals is the fact that such request focuses on Muslim Personal Matters, not jihad for Islamic law. This drive-in the near future will assist to create awareness for better normative comprehension of the religion from the past perspective of Muslim conservatives.

The trend is seen as a vital empirical matter whereby that Muslim scholars need to address if Muslims hope to have deep insight into the historical background of the modern Islamic thought (Aslam, 2006). The emerging trends in Europe according to Muslim experts are good for Islamic jurisprudence development and explain further that the European Muslims should keep the momentum by being active in their nations' political and social life. And that they should remain good ambassadors of the religion and keep the flag flying to spread Islamic jurisprudence in Europe. Modern Muslim intellectuals contend the nation would not implement Muslim jurisprudence would not implement Muslim jurisprudence would not implement Muslim jurisprudence, be it in Muslim minority communities or that of Muslim majority communities (An-Naim, 1990; Esposito, 1999). This school of thought argues that the Muslim jurisprudence need to be an issue of a free option of believers. Another perspective is the minority notion argues that whether such a Muslim can ignore the State in Islamic arbitration. But the Muslims who agitate for the existence of Muslim tribunals are protecting their religious identity for communal and religious convictions which have an overlapping relationship in human communities.

This paper posits that with the contemporary world becoming more secular nature. Both communal identity and religious conviction are seen ridge attitude approach in modern times. With the mass movement of Muslims due to crises in Iraq, Afghanistan, the Middle East and Muslim enclaves of the world to different parts of Europe it is contended that such Muslim migrants

travel together with their Muslim identity thus the agitation for law on Muslim Personal Matters may likely become recurring matter in near future (Rafeeq & Comment, 2011).

### **Socio-legal doctrines**

This paper uses the doctrine of the Muslims in the Domestic Courts. It is based on the doctrine that emphasizes practical and theoretical methods of law. It argues that law is in motion and blends to prevailing circumstances of the society. Law is inevitable in human society with this explanation, modern scholars are of the view that there may clash of interest between the legal practitioners and the field practice of law. But that at the operational levels of the law emphasizes is more with the manipulation of problems (Sterling & Moore, 1987). Socio-legal doctrine deals with the empirical assessment of the law more clinically. Moreover, some scholars observe that law is seen as being in motion not the same as law in the textbooks. Furthermore, to understand the value of law with clarity, a good place to commence is the investigation of the legislation. This aspect of knowledge focuses on some legal issues, like proposing matters some laws that came into being, and matters such as annulment and related matters. Similarly, issues about how laws may be of use to society and the basis and the specific value of law and their consequences and significance. Socio-legal assessment queries what is regarded as the accepted legal knowledge seen as the primary significance of the legal system on matters such as objectivity, sovereignty and trustworthiness to the rule of law.

At this juncture, the paper raises three hypothetical questions concerning socio-legal doctrine in domestic court: Can *Kadhis* Court System settle inherent weaknesses in the Islamic marital relationship? Can *Kadhis* Court System change Islamic jurisprudence? Lastly, can *Kadhis*' Court System settle inherent problems of Islamic jurisprudence? The socio-legal approach highlights proper access to justice through the reflection on the right bearer and legal wishes for the weak

group of society. The unfulfilled legal hope when a certain group of persons cannot take advantage of the recent legal approaches. The importance of a strong legal system is not only to have the system intact but also to promote it to persons and society members of the impact on the reason why the law was enacted in the first place (Nelken, 1984). All in all, scholars explain that the Sociology of law seems to establish why the right bearer does not regard or use the already obtainable usage to promote its manifest legal hope for the good of human society at large. The position of this article is that with necessary adequate education for the members of the *Kadhis* bench, these judicial officers will meet up with the dynamics of the changing modern world.

Besides, with the necessary mechanisms in place, the *Kadhis* will make appropriate use of Islamic law secondary legal sources (Banakar, 2015). However, if some hypothetical questions raised in this discourse are correctly addressed, the court system would go to the next level in the administrative justice system in the modern era.

## **Conclusion**

This paper analyzes that the concept of marriage under Islamic law is different from the modern outlook on the concept. Marriage under Islamic law is guided by the divine books and of classic origin therefore difficult to reform. With the classic nature of the legal documents, they remain of universal application in all Muslim nations of the world. The two Schools are of different opinions on matters related to marital jurisprudence, yet are areas of similarities. This paper rests its discussion on the fact that the conceptual framework of Islamic law is the contribution of the classic jurists to use what is now the socio-legal doctrine to distinguish between marital matters. This development assisted in adding value to the adjudication system in the Muslim Courts, for it enhanced the clarity of the classic texts. Islamic jurisprudence is of great value to the justice system in the Muslim Courts, in the two regions under review since the post-

colonial era. All research data and case law collected from the regions were used to discuss the findings.

## Bibliography

- Abdu-Allah, U. F. 1976. *Maliki s i Concept of Annals in the light Legal Theory*, 2 Volumes, *unpublished PhD Thesis University of Chicago*.
- Adjetey, F. N. A. (1994). Reclaiming the African woman's individuality: The struggle between women's reproductive autonomy and African society and culture. *Am. UL REv.* 44, pp. 1351-1351.
- Al-Jaziri, A. 1986. *Kitab al-Fiqh'ala Al-Madhabib al-Arba'a*. Beirut.
- Al-Sharbini, M. Muhammad. 1991. *Mughni al Muhtaji Ila Marifat ma'ani Alfaẓ Al-Muhtaj*, Beirut .
- An-Naim, A.A. 1990. *Towards an Islamic REFORMATION: Civil Liberties, Human Rights and International Law*. New York, University Press.
- An-Naim, A.A. 2020. The Compatibility Dialectics: Mediating the Legitimate Co-existence of Islamic Law and State law, 73, *Mosern Law Review*, 1, pp. 27-28.
- Anson J. 2000. *Hutchinson Encyclopedia*. Oxford, Helicon Publishing Ltd.
- Appeal Civil Vuga, *Case Number 29/2018*, from Civil Case Number, 38/2018 Y, Kadhi Court Mwanakwerekwe.
- Aslam, J. 2006. Judicial Oversight of Islamic Family Law Arbitration in Ontario: Ensuring Meaningful Consent and Promoting Multicultural Citizenship. *N.Y.U.J International Law & Politics*. 38, pp.841-842.
- At-Tirmidhi, M. 1970. *Sunnah Al-Tirmidhi*. Vol. 3, edited M.F. Abdulbaqi, Beirut, Dar Al-Kutub Al-Ilmiyyah, Hadith Nummber.
- Baljon, J. M. S. (1961). *Modern Muslim Koran Interpretation:(1880-1960)*. Brill Archive.
- Banakar, R. 2015. *Normativity in Legal Sociology: Methodological Reflections on Law and Regulation in Law in Late Modernity*. Springer International Publishing.
- Cason, J. 2000. *An Exhaustive Concordance of the Meaning of Qur. an: Based Upon the Translation of Abdullah Yusuf Ali*. Islamic African Relief Agency, Eastern Regional Office.
- Esposito, J.L. 1999. *Contemporary Islam: Reformation or Revolution*, in *Esposito*. Oxford: Oxford University Press.
- Guraya, M. Y. (1972). The concept of Sunnah a historical study. *Islamic Studies*, 11(1), 13-44.
- Hammudah, A. 1998. *Islam in Focus*, 3<sup>rd</sup> Ed. Beltsville, Maryland, American Trust Publications.
- Hanks, P. 2014. *The Collins Paper Dictionary*, (10 Ed.). Glasgow: Harper Collins.
- Hallaq, W. B. (1986). On the authoritativeness of Sunni consensus. *International Journal of Middle East Studies*, 18(4), 427-454.



- Hallaq, W. B. (1987). The Development of Logical Structure in Sunni Legal Theory. *Der Islam*, 64(1), 42-67.
- Khan, H. 2013. *Practitioner's Guide: Islamic Law*. Inprol-International Network to Promote the Rule of Law, Washington, DC, United States Institute of Peace.
- Maghniyyah, J. 1997. *Marriage According to the Five Schools of Islamic Law*. Volume, 5, Department of Translation and Publications, Islamic Culture and Relations Organization, Tehran. pp. 5-10.
- Movsesian, M. L. (2010). Fiqh and canons: Reflections on Islamic and Christian jurisprudence. *Seton Hall L. Rev.*, 40.
- Nelken, D. 1984. Law in Action or Living Law? Back to the Beginning of Sociology of Law. *Legal Studies*. 4(2), pp.157-175.
- Oba, I.B. 2019. Application of Islamic Jurisprudence on Marriage in Kadhis' Courts in Zanzibar and Kwara State. *Unpublished Ph.D Thesis*, Dar es salaam, University of Dar es salaam.
- Rafeeq, M. (2010). Rethinking Islamic Law Arbitration Tribunals: Are they compatible with traditional American notions of justice. *Wis. Int'l LJ*, 28, pp. 108-139.
- Raiz, S. 2013. Sharia Perspective on Marriage Contract and Practice in the Contemporary Muslim Society. *International journal of Social Science and Humanity*, 3(3) p. 263.
- Saheed, Abdullah, Fazlur, R. 2004. *A Framework for Interpreting the Ethno – Legal Content of the Quran*, in *Suba Taji-Farouki (ed.) Modern Muslim Intellectuals and the Quran*, Oxford, University Press.
- Suit No. UAC 1/CVFR/74/2017. (*Unreported case*).
- Vargus, B.S. 1999. *Classical Social Theory and Family Studies: The Triumph of Reactionary Thought in Contemporary Family Studies*. Handbook of Marriage and the Family.
- White, M. 2008. *Families Theories*. (3<sup>rd</sup> Ed.). Thousand Oaks, CA Sage Publications.
- Wolfe, C. L. (2006). Faith-Based Arbitration: Friend or Foe-An Evaluation of Religious Arbitration Systems and Their Interaction with Secular Courts. *Fordham L. Rev.* 75, pp. 427-448