Islamic Law, Gender, and Social Change in Post-Abolition Zanzibar

After the abolition of slavery in 1897, Islamic courts in Zanzibar (East Africa) became central institutions where former slaves negotiated socioeconomic participation. By using difficult-to-read Islamic court records in Arabic, Elke E. Stockreiter reassesses the workings of these courts as well as gender and social relations in Zanzibar Town during British colonial rule (1890–1963). She shows how Muslim judges maintained their autonomy within the sphere of family law and describes how they helped advance the rights of women, ex-slaves, and other marginalised groups. As was common in other parts of the Muslim world, women usually had to buy their divorce. Thus, Muslim judges played important roles as litigants negotiated moving up the social hierarchy, with ethnicisation increasingly influencing all actors. Drawing on these previously unexplored sources, this study investigates how Muslim judges both mediated and generated discourses of inclusion and exclusion based on social status rather than gender.

Elke E. Stockreiter is an assistant professor of history at American University, Washington, DC. She obtained her PhD from the School of Oriental and African Studies, University of London, and previously held a position as an assistant professor at the University of Iowa. Her work has been published in peer-reviewed journals, such as the *Journal of Eastern African Studies*, and anthologies, such as *Domestic Violence and the Law in Colonial and Postcolonial Africa*, edited by Emily Burrill, Richard Roberts, and Elizabeth Thornberry.

To Jim Giblin and Omar S. Khamis,
with admiration and gratitude

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ELKE E. STOCKREITER
American University, Washington, DC

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Preface

This project has been both an intellectual challenge and a personal journey, which would not have been possible without inspiration and ample support. The skilful reconstructions of social histories based on legal records from the Islamic world, mostly the Ottoman Empire, provided the inspiration for this study. Being able to use a plethora of Arabic court records from Zanzibar as the basis of this book has been a privilege as much as a reminder of limitations. I would like to thank Marie Miran-Guyon for spurring my curiosity about Islamic court records and helping me to track them down on the Swahili coast. Lynn Welchman kindly offered her expertise in Islamic law when this project was in its dissertation stage, while Jim Brennan kept pushing me to draw broader conclusions. Over the years, Anne Bang and Scott Reese have provided not only great intellectual but also moral support.

I have presented parts of this project to various audiences to whom I owe my awareness of disciplinary myopia and my decision to foreground the law with its technicalities. My sincere thanks extend to Sean O'Fahey, Knut Vikør, Anders Bjørkelo, and Elena Vezzadini for making my sojourn in Bergen a rewarding and delightful experience. At the Zentrum Moderner Orient in Berlin, Katrin Bromber, Kai Kresse, Roman Loimeier, and Marloes Janson provided intellectually stimulating and entertaining company. At the University of Iowa, the History Department has truly lived up to its collegial reputation. Many thanks to all of you! I am particularly grateful for the support from Jim Giblin,

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In Zanzibar, I am much indebted to the Zanzibar National Archives for their cooperation. My sincere thanks go to the director and all the staff for facilitating my research. Without Omar S. Khamis, who became an invaluable source of support and a dear friend, I would not have been able to complete this project. My special thanks also extend to Bwana Makame Mtwana Haji for his endeavour in making case files appear from the remotest corners of the archives. The archival staff not only provided efficient archival services but also assisted in many of my enquiries. At *Mambo Msiige*, I would like to thank Bwana Rajab Khatib Mwinyi for providing access to the marriage and divorce certificates, as well as Bwana Omar Juma Haji and Zahran Nassor Mauli-di for sharing their office with Sh. Mahmoud Mussa, who skilfully embarked on the task of transcribing these certificates.

Whenever around, Abdul Sheriff was very generous with his time and I particularly would like to thank him for help with contacting people and contextualising photos. My sincere gratitude goes to all the interviewees for whom I have created pseudonyms to protect their privacy. My thanks are also directed to Abdulkadir Hashim for generously sharing his material with me. I would also like to express my gratitude to the wives of Omar S. Khamis, Mariam and Zena, and their children.

My parents and friends watched me moving in and out of this project and also moving between countries and continents. I am thankful for the friendships that have endured and cherish memories of

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Notes on Transliteration

The transliteration of Arabic words follows the guidelines of the *International Journal of Middle East Studies* (*IJMES*). *Hamza* is transcribed as /ʾ/, although customarily omitted at the beginning of a word, and ʿ*ayn* as /ʿ/.

My attempts of achieving consistency in the spelling of proper names have been thwarted as they appear with different spellings due to variations in pronunciation and localised forms of names (for example, Fatuma and Asha rather than Fāṭima and ʿĀʾisha) as well as spelling mistakes. I have transcribed the names of the sultans and *kadhi*s in Arabic but have rendered litigants' proper names in Swahili. Names of Arab kin groups may appear in various spellings. For the sake of simplicity, the *nisba*-ending /-ī/, such as in al-Barwānī, is used for both feminine and masculine.

I have been consistent with my rendering of Swahili and Arabic words, but quotes may contain variant forms. Apart from the Arabic "qāḍī" and Swahili "*kadhi*," the reader will encounter the colonial spelling "*kathi*." Following the *IJMES* guidelines, I use shaykh, while other authors use the spelling sheikh, more familiar to Anglophone readers.

I have applied my discretion whether to use a term in English, Arabic, or Swahili. I have opted for "*kadhi*'s courts," since this is the term applied by Swahili speakers. As Swahili versions of legal terms

are rarely used, I have provided the Arabic versions. Save for ʿulamaʾ, I have Anglicised the plural of both Swahili and Arabic nouns.

The word "judge" always refers to a British judge, whereas *kadhi* designates a Muslim judge. I have decided to keep the term used in Zanzibari Arabic for slave, *khādim*. *Bin* (Ar. son) and *bint* (Ar. daughter), abbreviated as /b./ and /bt./, were used in the vast majority of the records, such as Taibina bt. Hija, and reflected the Arab and Swahili patronymic use at the time. Names of female interviewees are preceded by Bi, for *bibi*, the term of respectful address for women. For legal reasons, the names of the interviewees are fictitious. Recordings of interviews referenced are in my possession, as are transcripts of the sample of marriage and divorce registers.

It has been my responsibility to decipher and translate the languages that have informed this study. The bulk of the sources are court records written in Arabic that I have translated myself unless indicated otherwise. If a case went on appeal, all documents had to be provided for the judge or magistrate in English. These English documents and transcripts, which I have used to save time, are usually contained in the file. Colonial court staff produced accurate and entirely satisfactory English translations, which exist for HC5 and HC8 cases and for some other cases where I have indicated that the original was in English. Letters by litigants were sometimes written in Ajami, that is, Swahili in Arabic script. I mostly relied on Omar S. Khamis to confirm and correct my reading of these letters. All correspondence between British colonial officers and that directed to them was in English. I delegated the extremely time-consuming task of transcribing the marriage and the divorce certificates to one of the few people in Zanzibar familiar with deciphering Arabic manuscripts: Sh. Mahmoud Mussa. I am most thankful to him for sharing his vast cultural knowledge with me, as well as for his meticulousness and quick adaptation to my research interests.

The Islamic months *Dhū l-Qaʿda* and *Dhū l-Ḥijja* are consistently given in the original documents as *al-Qaʿda* and *al-Ḥajj*; I have corrected these idiosyncracies. For converting hijra dates, I have used a converter provided on the Web, which has a small probability of error of one day, http://www.islamicfinder.org/Hcal/index.php.

Glossary and Abbreviations

If a word is listed in Swahili and Arabic, both versions occur in the text.

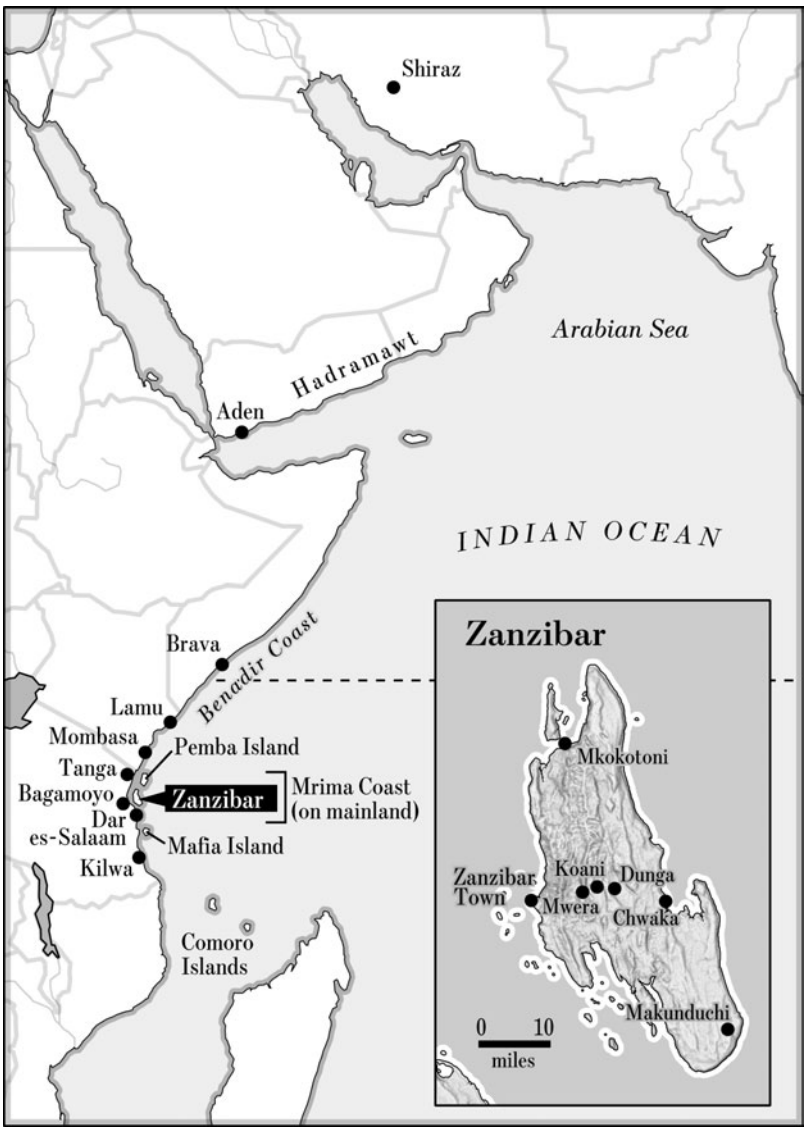
Swahili	Arabic	
	bayt al-māl	public treasury
	faskh	judicial dissolution of a marriage
	hadith	accounts of the deeds and sayings of the Prophet Muhammad
	ʿidda	waiting period of three menstrual cycles for women after their divorce, or four months and ten days after their husband's death, to establish pregnancy, in which case this period lasts until delivery
jamaa		person with whom one is connected, such as through friendship or client–patron relations rather than kinship
kabila		ethnic group; race; Arab patronyms, such as al-Harthi or al-Riyami, are called *kabila* in Swahili

kadhi	qadi	Muslim judge
	kafāʾa	concept of equality between the spouses
	khādim/a (m./f.)	slave
khuluu	*khulʿ*	separation of the spouses in which the wife redeems herself from her husband for a material consideration
liwali		provincial governor
	mawlā	slave; client; master; patron
mila		customary law
	mubāraʾa	divorce in which husband and wife release each other from remaining obligations
mudir		person in charge of one of the districts (*mudirias*) into which Zanzibar was divided under British rule
mwinyi mkuu		ruler of the Hadimu, one of Zanzibar's indigenous groups, who lived in the centre and eastern parts of the island
mwungwana		free, civilised person as opposed to *mtumwa*, slave
ngoma		dance and music performance
	nisba	literally: relation(ship); as an adjective (ending in /-ī/) it indicates people's origin in terms of place, ethnicity, and so on
	sayyid/-a	(term of honour for) a man or woman claiming descent from the Prophet's grandson Husayn; title of the sultan of Zanzibar; master or mistress

shamba		field; plantation
	shariʿa	Islamic law
	sharīf/-a	(term of honour for) a man or woman claiming descent from the Prophet through his daughter, Fatima
	shaykh	honorific title for an elder person or someone learned; a leader
sheha		village or town elder; a political appointee, in charge of a district
suria		concubine; woman of slave status
talaka	*ṭalāq*	divorce pronounced or written by the husband
	ʿulamaʾ	Muslim scholars
ustaarabu		civilisation
uungwana		the state of being free; cf. *mwungwana*
wakf		religious endowment
	wakīl	literally: representative, proxy; in Zanzibar used for lawyers in the *kadhi*'s courts
	wālī	legal guardian; person who gives a woman into marriage
yaya		nanny

Abbreviations

Ar.	Arabic
CUL	Cambridge University Library
EI²	*Encyclopaedia of Islam*, second edition
EI³	*Encyclopaedia of Islam*, third edition
NAK	The National Archives, Kew, UK
Rs.	Rupees: Zanzibar's currency until 1936
Sh.	shaykh
Shs.	Shillings: Zanzibar's currency from 1936
SOAS	School of Oriental and African Studies, University of London
Sw.	Swahili
ZNA	Zanzibar National Archives



Map of Northwestern Indian Ocean and Zanzibar Island