

Zanzibar WAQF and Trust Fund at The Time of British Protectorate (1890-1963): A Historical Study and Its Challenges To The Muslim Development

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Abstract:

This paper seeks to assess the Historical study and its challenges to the Muslim Development of the Waqf and Trust fund at the time of British Protectorate in Zanzibar (1890-1963). Its major aim is to assess the strategies that had been taken by British colonial rule to change the whole system of Waqf and Trust Fund in Zanzibar. Before British colonial rule, The Waqf and Trust Funds was under the Sultan office and himself was the head of Waqf in Zanzibar. The properties like cloves and coconut plantation, houses and other properties released from private ownership for the Waqf and Trust for the sack of Allah. It is hoped that, the paper will contribute for the reference of the history of Waqf in Zanzibar and related documents for Islamic educational

institutes, governments and other who anger to study about History of Waqf in Zanzibar. The paper used various techniques to collect data. Interviews, participatory group discussion, field survey and documentary review provided valuable and reliable information for this paper. The findings indicate that there is a significant change that hindered the development of Waqf in Zanzibar. As a result, Muslim of Zanzibar perceives very poorly on Waqf and Trust fund.

Keywords: Waqf, British Protectorate, Sultan of Zanzibar, Muslim.

Introduction:

Zanzibar is an East African Muslim Isles. It consists of two significant Islands named them Unguja and Pemba however, has many other small Islands. Some of these small Islands have people settlements and others have not. 99% of the peopling of Zanzibar are Muslims of different sects. Majorities are follower of Shafi jurisprudence followed by Ibadhi, Hanafy and even Maliki school of thought. It is believed that, the aborigin of Zanzibar are Muslims. Islam has very long History in these Islands of East Africa. Various research works have been worked in the Island that proved the oldest history of Islam in this area. Various Islamic institutions were introduced in Zanzibar since at the time of introduction of Islam. Among them are Islamic Schools (Madrasa), Mosques, Islamic courts and Waqf and Trust Fund.

Waqf means the permanent dedication by any person professing the Muslim faith of any property for any purposes recognized by Muslim law as religious, pious or charitable¹. Basically, Waqf is an Arabic word, which means relies on, hold, solidify or stop. In the wording of Islamic law it intends to save, avert or close the idea of property (something) in the risk of Allah (to be duplicated by someone else) by giving.

He yielded his advantages with a specific end goal to pick up God's pleasure². The committed is in forfeit a nonstop (sadaqatul jaariya) which the speculator benefits throughout his life world and forever.

The Waqf properties might be movable like ambulance, car and animals or non-movable like land gathers arrive, structures, trees, lodging houses and other moving articles are the same so and legitimately acknowledged. Land gathers cash, valuable metals, (stock), managing an account (bonds), auto, inventiveness rights, loaning rights and the other versatile items are lawfully acknowledged³. Properties devoted are not permitted to be sold, acquired, dispersed or given a blessing. Introduction of British colonialist in 1890 and her motive shake the Muslim community and their institutions.

¹ Kamisheni ya Wakfu na Mali ya Amana Zanzibar, Muongozo wa Kuweka na Kusimamia Mali za Wakfu, (2013),

²Ibid

³ Ibid

Establishment of British Protectorate in Zanzibar (1890)

Historically, Zanzibar was under British colonial rule from 1890 to 1963. When the British established their domination in Zanzibar they observed that there is a lot of wealth on Waqf Properties. These include moveable and non-moveable properties like plantations, (cloves and coconuts), houses and other products. That Waqf was for families, social services (mosques and Madrasa) and freed slaves. She doesn't want to lose that wealth that is why they intervened the Waqf in order to collect the taxes. The British colonial with her policy of indirect rule started to restructured Waqf and Trust Fund to give the impression of being the way to collect tax from the Waqf Properties.

The Sultans Administered Waqf and Trust fund from (1832 – 1890). In 1832 A.D Sayyid Said receptacle Sultan who was the leader of Oman exchanged his home office to Zanzibar. Amid the rule of Sultans, the supervision of Waqf property was under the Minister "Wazir el Waqf". This was the fantastic Sheikh of Zanzibar who delighted in the certainty of His Highness the Sultan. The general goal was to secure the riches and resources of the Muslim Community, to improve the religious, social and instructive establishments in Zanzibar and to lighten destitution among Muslims. The British Administration of Waqf (1890-1963). After the demise of Sultan Hamoud bin Mohammed (1896-1902), Prince Ali bin Hamoud (1902-11) who was under 14 years old was assigned by the British to be the Sultan of Zanzibar. This was a prevail opportunity to British Resident in Zanzibar Mr. Rogers to be the Prime Minister and went about as the re-ge nt until the point that Sayyid Ali bin Hamoud achieved the age of 18 years in June 1905. As Mr. Rogers had the full specialist of the decision in Zanzibar around three years, he figured out how to roll out improvements. It was amid this period when Sultans lost every one of their forces to the British who his heads were dug in the different government offices and drove them. It appears that the foundation of the Commission of Waqf and Trust Property in 1905 by the British organization was the set down of arrangements that would guarantee control over the legacy and all waqf properties gave or committed by Muslims. Since that time until the point that 1963 they made Laws that guaranteed their full control over the Waqf Commission.

Registration of Wakf Property

Since 1905 the organization of Waqf Institution in Zanzibar has experienced distinctive encounters. It was the time of the His Highness Sayyid Ali bin Hamoud (a 14 years young Sultan of Zanzibar) who takes the thrown after the death of his father Sayyid Hamoud bin Mohammed. The British colonial administration took this opportunity of youngest sultan Ali bin Hamoud to change and transferred the administration of Waqf from Sultan Office to the first minister office that was British and non-Muslim. From this time numbers of decrees was introduced to control the Waqf for collections taxes and other income in the British colonial government. British observed that: the way of Waqf law as they have been it that time was difficult, it has been ordered that, reinstated and revoked as takes after: Waqf Decree no. 2 of 1905 was introduced with the aim of registered all Waqf properties in Zanzibar. The Decree has the following points:

All person being subjected of His Highness the Sultan of Zanzibar who are trustee or in charge of the property in the island of Zanzibar and Pemba which has been dedicated Wakf by Muhammadan natives, or has become Waqf by process of law are required before First Rabial al akhir 1322 (15th June 1904) to sent in to the office of the Regents and first minister of Zanzibar government full particular of such property.⁴

Such particular shall be in the case of immovable property, specify the boundary thereof and the term upon which the same on leased or occupied including the rent, and in the case of moveable property the manner in which it was invested and the income thereof.

The copy of the deed, will or other documents dedicating the property as Waqf should also be sent in, and a copy of any lease or other documents affecting the property.

Any subject of H.H. the Sultan of Zanzibar failing to comply with the term of this decree shall on conviction before the Regent and first minister be liable to fine or imprisonment or both⁵. This Decree was prepared and signed by A. S. Rogers, Regent and First Minister of Zanzibar 25th May 1904. It was the first time to Wakf to be intervened by non-Muslim throughout of its history in Zanzibar.

The registration has the following particular

Example:

Serial No.	Nature of Waqf	Particular of Waqf	To what purpose dedicated	By whom dedicated	Nature of Trustee	Amount Revenue derived	Date of Registration
1	Ali bin Wazir Plantation	Coconut & cloves at Fuoni	To earned the product	Bahati	free slave	1.5 shilling	14 August 1928
2.	Zahra bint Abass, Salma bint Alyas and Fatma bint Alyas	House at Mchangan i	To earn the rent fee	Mosque	Islamic instituti on	1.5 shilling	1 st November 1929

In this programme the number of properties was registered. To fail to register made the Wakf supervisor to face the problem and they supposed to pay a significant amount of money and to be jailed.

Types of Wakf in Zanzibar

⁴ The official Gazette, vol. Xxv- No. 1249, Zanzibar, January 3, 1916, PRIGE 12 GENT

⁵ The Laws of Zanzibar, Wakf Validating (Principal Legislation), Cap 104, by Government Printer, Zanzibar (1946), 2

It is found that, Wakf Properties in Zanzibar was released to the following classification

- 1) Waqf for families
- 2) Waqf for Social services and religious institutions
- 3) Waqf for freed slaves

Waqf Administration at the Time of British

Waqf Property (Amendment) Decree of 1909 was the second step to the British colonial government to control the Waqf Properties in Zanzibar. The aim of this Decree was to introduce the Waqf Commission with regard to commissioners appointed from British colonial office in Zanzibar thereunder. It is hereby decreed that:

Waqf commission consists of: Two European officers of our (British colonial) government, One Kadhi (Sunni), One Kadhi (Ibadhism). At the sport in this decree he started to announce the commission of the Wakf and Trust Fund in Zanzibar.

The first commissioners under this decree shall be the four persons following namely: Peter Grain Esq., our legal member of councils. Andre Farre Esq., Assistant Collector. Sheikh Burhani bin Abdul-Azizi. Sheikh Nassour bin Salim. The commissioners and their successors are hereinafter referred to as the commissioner. Every commissioner shall hold the office until he retires or is removed by us (British colonial office), on the advice of our first minister but no person shall be removed except for good. When vacancy among the commissioners occurs by reason of death, resignation or removal from office a successor from the same class shall be appointed by us on the recommendation of our first ministers

The commissioners may from time to time elect sub commissioners but every such election shall subject to the approval of our first minister. In section No. 5. Of the said Waqf Decree No. 2 Of 1907 the words “The Commissioners shall have a common seal for Zanzibar and one common seal of Pemba on such pattern as have already been approved” shall be substituted for the “The commissioners of each commission shall have a common seal of such patterns as may be hereafter be approved” and the word “commissioners” shall be substituted for the words “appointed commissioners”

Establishment of Waqf Commissioners

The Waqf legislative that prepared by colonialist gave the British Resident in Zanzibar the order of selecting Wakf Commissioners before the Sultan, who ritualistically delegates them. Among the intriguing component of this period is that there were trans-maritime associations of Waqf amongst Zanzibar and other Islamic nations and urban communities, particularly Oman, Mecca, Madina and Turkey. In some cases the Muslim Waqf Commissioners confronted the British dangers of halting their stipend paid to them by the legislature and not to be permitted to fill in as officials. Reacting to the danger, two Waqf Commissioners surrendered in the challenge and communicated their perspectives to the legislature.

Appointment of Commissioners

Waqf Property Decree no. 8 of 1916 which has changed the structure of the Commission whereby two branches of Zanzibar and Pemba were blended and the quantity of executives/officials has raised to 8 including Treasurer, the Provincial Commissioner, the Administrative General, the Assistant Administrator General and other four Islamic researchers/sheikhs or Ulamaa who were selected by the Sultan (Laws of Zanzibar 1934). With vivid example the Sayyid Khalifa bin Haroub, Sultan of Zanzibar on the recommendation of the British Resident, hereby appointed Claude Dudley Wallis, Esquire, to be a Wakf Commissioner in the place of Elexander Harold White, Esquire, to date 1st January 1916. Given at Zanzibar under our hand and seal this 3rd day of January 1916.⁶

On this Decree there was a number of administrating changes that introduced by British residence in the Waqf and Trust Fund in order to archive their goals. Among them are a selection of sub commissioners and their day to day duties. The Waqf Commissioners (of whom four shall constitute a quorum on any meeting thereof) shall have power from time to time to elect, subject to the approval of the British Resident. Sub Commissioners who as such shall have such duties power and authority for the purposes of the decree as the said Waqf Commissioners may determine from time to time.⁷

Moreover the Waqf Commissioners shall have the common seal of such pattern as the British Resident may approve and shall be vested with all the rights and liabilities appertaining to the body corporate under or by virtue of any laws for the time being in force in Zanzibar Protectorate appropriate thereto.⁸

The Power to Waqf Commissioners to Call for Accounts for Respect of Waqf Property

The Waqf commissioners by the secretary for the time being to the Waqf commission may call upon the trustee or any person in control or possession of any Waqf Property to account for his control or administration thereof, and in that behalf may call upon such trustee or person to produce any book or documents which of account or otherwise relating thereto, in his control or possession.

It shall be lawful to the Waqf commissioners to assume control of any Waqf Property where of their may appear in their opinion to be appropriately appointed trustee or whereof the trustee (if any) appears in their opinion to have acted or be acting in an improper, unauthorised or unlawful manner, and then and in any such case the Waqf Commissioners after giving the trustee an opportunity to show cause to the contrary, may make on order to be published in the Gazette, vesting the said property in Waqf commissioners and administer the same themselves or appoint a trustee thereof in that behalf

⁶The Official Gazette Vol.xxv-No1249 Zanzibar, January 3, 1916.

⁷ Zanzibar Decrees 1916

⁸ Ibid

Aim and Objectives of Waqf registration

It's clear that the aim and objectives of Waqf registration were to allow British Resident to collect taxes from the Wakf properties. According to a Decree (1916) to make provision for the regulation and conservation of Waqf Property it shows that every person being a trustee of any Wakf property shall register or cause to be registered with the Waqf commissioners, full detail thereof, and every person thereafter shall be or become trustee of any such Waqf property under the will of any testator in like manner register or cause to be registered the details thereof as aforesaid.⁹

The trustee of every such property as aforesaid shall upon registration thereof pay to the Waqf Commissioners from the estate concerned a fee of one shilling fifty cents, or such fee as the British Resident may by notice in the Gazette hereafter notify, and any trustee failing to register any Waqf property as aforesaid shall be guilty of an offence and on conviction personally liable to a fine not exceeding one thousand five hundred shillings.¹⁰

Waqf Validating Decree

In 1946 the British Colonial government in Zanzibar passed the decree for validating Waqf in Zanzibar. The decree mentioned that every Waqf heretofore or hereafter created by any Arab or African professing the Muslim faith, which is in all other respect in accordance with Muslim law, and subject to the provisions of land alienation decree is hereby declared to be a lawful and valid Waqf notwithstanding that it may be, created for the following amount:

- a) For the maintenance and support wholly or partially of his family, children, descendant or kindred and,
- b) Where the person creating the Waqf is an Ibadhi Muslim also for his own support during his life out of the rents and profit so dedicated.

Provided that the ultimate benefit is in such cases expressly or (in any case in which the personal law of the person creating the waqf so permits) impliedly reserved for the poor or for any other purposes recognized by Muslim law as a religious, pious or charitable purpose of the permanent character.

No such waqf as is referred to the above section shall be deemed to be invalid merely because the benefit reserved therein for the poor or other religious, pious or charitable purpose of permanent character is postponed until after the extinction of the family, children, descendants or kindred of the person creating the Waqf

Moreover, subject to the other provisions of the decree and save as hereinafter provided the Indian Muslim validating Acts, 1913 and 1930 (Act. VI of 1930 and XXXII of 1930) as in force of British India at the date of the commencement of this Decree shall apply to every Waqf created by any person professing the Muslim faith other than Arab or an African.

⁹ Zanzibar Protectorate legislative, the laws of Zanzibar, chapter103, Government Printers, Zanzibar

¹⁰ Ibid

Provided that nothing herein contained shall be deemed to affect any title to Waqf property which may have been conferred upon any person by reason of adverse possession thereof or prescription on or before the 24th day of September 1916

Nothing in this decree shall be deemed to affect any other custom or usage whether local or prevalent among Muslims of any particular class or sect.

Nothing in this decree shall be deemed to affect any right, interest or estate to or in any property the title to which, whether vested or contingent, and whether in possession, reversion or remainder, accrued or acquired before the passing of this decree by virtue of any final judgement, order or decree of a court of component jurisdiction.

Challenges faced Muslim Community Through those Decrees

The decree gives power in some instances to sell Waqf properties. In any case wherein it may be established to the satisfaction of the Waqf commissioners that the intentions of the dedicator of any property as Waqf cannot reasonably be carried into effect, it shall be lawful for the said commissioners, upon and with the approval with the British Resident, to cause the said property to be sold and thereupon the proceed of sale shall be applied.

The Waqf commission shall keep or cause to be kept due account of all properties administered or controlled by them and such accounts shall be periodically audited at such time as the British Resident may consider advisable by the government auditor.

No contract or agreement of any description purporting to sell, lease or otherwise alienate any Waqf property for any period exceeding one year shall be valid unless the sanction in writing of the Wakf Commissioners shall have been first had obtained. Notwithstanding any law to the contrary for the time being in force, no title to any Waqf property shall as and from the date of the decree be conferred upon any person or persons by season of adverse possession thereof or prescription.

Therefore, no person the dedicator property as Waqf or trustee of such property shall build or cause to be built a mosque unless, prior thereto, he shall first have obtained the consent in writing of Wakf Commissioners in that behalf and have satisfied the said commissioners that the proposed mosque is or is about to be so well and sufficiently endowed as to provide for its due maintenance and good order

Conclusion

This paper launched to link British colonial administration in Zanzibar with associate degree monotheism endowment tradition, called waqf. Over the centuries, the history of this tradition is turbulent however its ability to resist external impediment was remarkable. The results of decrees to control heritage could be a result of waqf ability to survive without total control of Muslims, its rudiments undermined. The genius of waqf tradition lies under the hand

of European non-Muslim colonial administration in its rigorous interaction with the society and the means that of securing taxes for regulation and controlled the Islamic institution.

Properties like land and buildings square measure accustomed generate waqf financial gain to financially support waqf beneficiaries and supply funds for the maintenance and taxes paid to the government. Therefore, the colonial government created a kind of need that definitely makes its un-beneficiaries to pay attention to. And so as for the advantages to continue, the source of the disadvantages ought to keep intact. It's through this simple logic that waqf properties inculcated the British to make sure that did not leave that wealth without intervention and earned from it. Therefore, in keeping with waqf the management may well register. The Waqf management Decrees and British indirect rule policy injected the non-Muslim intellectual to make sure that every single cent should be collected and to be known in the government. Waqf and Trust Fund ought to be attributable to its extremely incredible philosophy of income for Muslim and their institution development. These Decrees hardly gaps for property control. The policy is predicated on strict however un-flexible rules discourage stability and wellbeing of the income of waqf.

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