

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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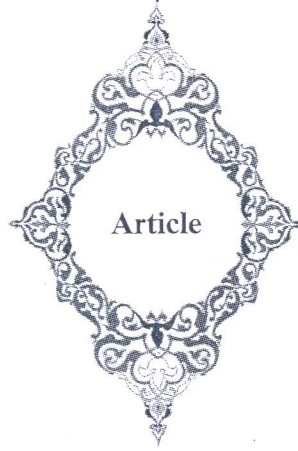
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## **Administration of Waqf Institutions in the Kenyan Coast: Problems and Prospects**

By: **Abdulkadir Hashim<sup>(1)</sup>**

### **Introduction**

Waqf institutions in the Kenyan coast existed since the establishment of the Sultanate of Zanzibar in 1832 A.D. The Sultan of Zanzibar administered the *bayt al maal* (public treasury) that catered for Waqf properties before the formal establishment of Waqf institutions. The first Waqf legislation along the East African coast was enacted by the Sultan of Zanzibar in 1900. In Zanzibar the first formal Waqf institution was established in 1904 under the title "The Commission of Waqf and Trust Property" to administer inheritance and all Waqf property donated by Muslims.

In Kenyan, the Waqf Commissioners Act was enacted on 8<sup>th</sup> June 1951.<sup>(2)</sup> The Act establishes the Waqf Commissioners of Kenyan as an independent body with corporate powers to administer Waqf properties. The Waqf Commission of Kenyan consists of eight persons, all government appointees, including the Chief Kadhi and the Provincial Commissioner of Coast province. The Provincial Commissioner of Coast province has the upper hand in nominating the other six members for appointment by the Minister (currently the Attorney General) "after taking into consideration Muslim opinion."

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(1) University of Nairobi

(2) Chapter 109 of the Laws of Kenya

## **1. Challenges facing the Waqf Commission in Kenyan**

There are a number of challenges that face Waqf institutions in Kenyan. The article will briefly explore below some of the challenges facing the Waqf Commission of Kenyan and suggest means of overcoming them.

### **a. Application of the Waqf Commissioners Act of 1951**

Due to the political set up of the Kenyan coast, the Act only applies to the Coast province as provided by the Legal Notice 124 of 1964 subject to Section 1 of the Act that states “shall apply to such areas as the Minister may direct”. This was because the Sultan of Zanzibar was ruling the ten-mile coastal strip of Kenyan as part of his dominion until he surrendered it to the new independent Kenyan in 1963. On the other hand, the British established the Colony of Kenyan beyond the ten-mile coastal strip. Application of the Act is only confined to the Coast province.

Owing to the demographic set up of the Kenyan Coast, definition of the terms such as “Muslim” has led to a legal debate. For instance, the 1951 Act defines a “Muslim” to be “a member of the Twelve Tribes, a Baluchi, a Somali, a Comoro Islander, a Malagsy or a native of Africa, of the Muslim faith”. Definition of Muslim in the Act is restrictive and discriminative to the extent that it leaves out Muslims of the Asian, European American and other descent. Uncertainty in defining such terms seemed to have paved the way for incorporating a policy of favouring a particular section of the Muslim community.<sup>(3)</sup>

### **b. Management of Waqf properties**

Establishment of Waqf institutions was intended to be distant from the State control but with the lapse of time, States gained control of such benevolent institutions. Muslim countries have established Ministries and Directorates of Waqf to manage Waqf properties. Another challenge that faces Waqf institutions in Kenyan is the lack of efficient management that can take full control of the Waqf properties. Due to lack of logistics, the Waqf Commission of Kenyan is unable to ascertain and identify Waqf properties before registering them. There is no accurate statistics which show the exact number of existing Waqf properties. Identification of Waqf properties on the ground could help in the process of registration of all Waqf properties and determine the operational income and expenses of such properties.

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(3) Saad S. Yahya, (1995) “The Uses and Abuses of Wakf”, in *Islam in Kenya*, Proceedings of the National Seminar on Contemporary Islam in Kenya Edited by Mohamed Bakari and Saad S. Yahya, Mombasa: Mewa Publications, p.214

Waqf properties are underutilised and proper valuation of the properties is not done. This in turn results into renting such properties at a relatively lower rate as opposed to its real market value. The samples of income from some Waqf properties below illustrate the low turnover of rents obtained from Waqf properties. Waqf institutions have confined their efforts to retain the inherited properties with very limited efforts on acquiring new ones. Despite investment opportunities, such as developing housing estates, educational institutions and recreational facilities, Waqf institutions have been unable to create a convenient and attractive environment for potential investors available locally and abroad.<sup>(4)</sup>

#### **c. Funding the Waqf Commission of Kenya**

Although there is a number of Waqf properties in the Kenyan coast, strikingly enough funding is considered to be a major obstacle in developing the Waqf sector. Most of the Waqf properties in the Kenyan coast are lying idle due to legal provisions that prohibit change of ownership or inheritance of these properties. Low class and even poor people who seldom pay their rents occupy most of the Waqf properties. Cases of abuse of Waqf properties have been noted where people with adequate income reside in Waqf houses paying relatively lower rents. This under utilisation of Waqf properties results in the “underlying proposition that Waqf assets are not realising their full potential with a consequential financial loss to the beneficiary facilities and families or individuals.”<sup>(5)</sup> The Waqf Commission of Kenya relies on fees charged on Waqf properties for running expenses of the Commission. The Commission charges on monthly basis 15% from properties under the category of *Waqf khayri* (public Waqf) registered with the Commission and 35% from *Waqf ahli* (private Waqf).<sup>(6)</sup>

#### **d. Composition of the Waqf Commission of Kenya**

In Kenya, the appointment of Waqf Commissioners is done by the Government after taking into consideration the Muslim opinion. Despite the good charitable work done by the Waqf institutions, Muslim community regards Waqf institutions as Government organs which contribute towards lack of public confidence and trust. It is therefore imperative that the Waqf Commission should first restore the public confidence as part of its reformation process.

The Waqf Commission of Kenya consists of eight persons, all government appointees, including the Chief Kadhi and the Provincial Commissioner of Coast Province as *ex-officio* members. The Provincial Commissioner of Coast Province has the upper hand in nominating the other six members for appointment by the Minister (currently the Attorney General) “after taking into consideration

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(4) Yahya, *Uses and Abuses*, 218

(5) Yahya, *Uses and Abuses*, 220

(6) Interview with Executive Officer, Wakf Commission of Kenya, Mombasa, 3rd January 2008

Muslim opinion". Composition of the Waqf Commissioners calls for reorganization. By virtue of his office, the Chief Kadhi of Kenyan chairs the Waqf Commission, in addition to his busy schedule in the courts and other religious functions. Establishment of the Mufti's office in Zanzibar, the Mufti has replaced the Chief Kadhi in chairing the Waqf Commission.<sup>(7)</sup> The Mufti's Act has altered the composition of the Waqf Commission by substituting the Mufti as the Chairman of the Waqf and Trust Commission in the place of the Chief Kadhi as was the case earlier under the Revolutionary Council Decree No.5 of 1980.

Chairing the Waqf Commission by such Government officials assuming dual roles impedes the efficient and smooth running of the Waqf institutions. Instead, an independent member from amongst the commissioners who is qualified and enjoys religious support could chair the Waqf Commission. One of the ways to make the Waqf Commission of Kenyan efficient is to re-constitute membership of the Waqf Commission. Qualified and business minded commissioners could be appointed in order to make decisions based on commercial considerations in conformity with spirit and rules of Islamic law. Muslim professional with sound knowledge of Islamic law that include lawyers, architects, surveyors, accountants etc. should be engaged in the management of Waqf properties.

#### **e. Awareness on the significance of Waqf institutions**

Another neglected significant area is the lack of efficient outreach programmes that educate the society on the role and importance of Waqf institutions. Due to the negative image borne in the minds of the people, large part of the society is ignorant of the significance of Waqf institutions.

## **2. Prospects for Waqf Institutions in Kenyan**

Waqf institutions have confined their efforts to retain the inherited properties with very limited efforts on acquiring new ones. Despite investment opportunities such as developing housing estates, educational institutions and recreational facilities, Waqf institutions have been unable to create a convenient and attractive environment for potential investors available locally and abroad. In Kenyan the Waqf Commissioners are given the power "to place on deposit in any bank, or to invest in and upon such investments and securities as are allowed by law for the investment of trust funds"<sup>(8)</sup> Such options for investment can be properly utilised to comply with Islamic rules of transaction in dealing with Islamic financial institutions. Investment in housing estates, educational institutions, recreational facilities and other acceptable and viable investments opportunities which are Sharia compliant.

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(7) Establishment of the Office of the Mufti Act No.9 of 2001

(8) The Wakf Commissioners Act, Chapter 109 of the Laws of Kenya Sec.21(2)

Despite the challenges facing Waqf institutions in Kenyan, the Waqf Commission owns several immovable properties that could be invested in development projects. Currently, Waqf properties which are only confined in the Kenyan coast are mainly for the maintenance of Mosques, reciting *maulidi*, *khitma*, maintenance of cemeteries and performing of pilgrimage. There is a need to shift focus of Waqf investments from ritual services to utilization of Waqf funds for various humanitarian purposes e.g. elimination of poverty, eradication of ignorance and alleviating of suffering.

Waqf institutions in Kenyan can borrow from the successful experiences in the Muslim world. Such experiences can help Waqf institutions in the East African Coast to overcome its challenges and shortcomings found in its legislation. For instance, the Indian Waqf Act 1995 provides that the Waqf Council is to be appointed by election of eleven members from the Parliament, Federal Legislative Council, Judicial Council, *mutawalis*, Muslim organizations, Muslim jurists, and the Regional Government. The Act also provides that no Waqf is to be rented unless it has been advertised locally. Furthermore, deserving students are entitled to scholarships through the various State Waqf Councils.<sup>(9)</sup>

In Sudan, an independent Islamic Endowments Corporation was established in 1989. The Corporation owned all Waqf properties. The Sudan experience has revealed that reviving the Waqf institution started by reforming the legislation, the administrative structure and freeing it from the government bureaucracy. The Corporation supported a wide range of activities that included educational institutions, *dawa* programmes and charitable organizations, colleges for memorizing Quran, repairing mosques, and assisting the poor.<sup>(10)</sup> Waqf institutions in Kenyan can also benefit from the South African experience of managing Waqf properties on commercial basis by mobilizing community-based fund raising programmes e.g. credit/recharge-card based on bulk purchasing of fuel, supermarket shopping and Muslim human resource pool.

Although majority of Muslims in the East African coast follow the *Shafi'i madh-hab*, Waqf institutions could consider adopting the concept of Waqf of usufruct (*Waqf manafi'*) known in the *Maliki madh-hab* to increase venues for income. This may cover potential opportunities such as toll way charges, parking fees, authorship and patents rights.<sup>(11)</sup> Waqf institutions needs to go beyond the traditional boundaries by contributing in the socio-economic sector such as supporting programs

(9) Mahdi, M. Ahmad., (ed.) 1423 A.H., *Nidhamu al-waqf fi al-tatbiq al-Muasir*, Seminar Proceedings No. 45, Jeddah: Islamic Research and Training Institute, p.128

(10) *ibid* pp.112

(11) Khan, M. Fahim., *Integrating Faith-based Institutions (Zakah and Wakf) in Poverty*

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related to poverty alleviation and providing health care to the poor. Waqf funds can also be utilised in periods of famine and other crisis to assist the needy persons.<sup>(12)</sup>

### 3. Samples of Income from Waqf Properties in Coastal Kenya

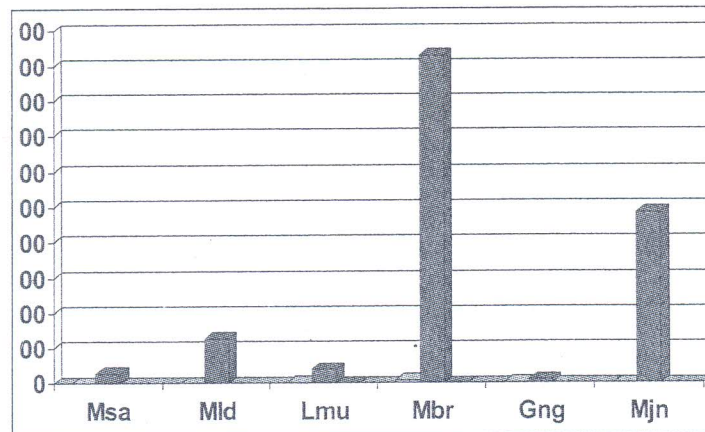
**Table A: Annual rent from agricultural land owned by Waqf Commission of Kenyan**

Town	Acreage	Current annual rent	Market annual rent	Percentage difference
Mombasa	5.6	750*	28,000	3%
Malindi	18.76	600*	127,568	0.5%
Lamu	10.04	1,370*	40,160	4%
Mambrui	154.66	8,575*	927,960	1%
Mjanaheri	82.2	400*	484,300	3%
Gongoni	115.3	3,125*	10,000	31%

Source: Ali Hemed Awadh “*Al Awqaf wa dauruha fi Sahil Kenyan: Dirasa tahliliyya taqwimiyya*”, PhD thesis, International University of Africa, Khartoum, 2007, p.68

\* Figures reflecting the current annual rent (as provided by the researcher) seem to be on the lower side. However, even if the annual rent would be multiplied by the acreage, still the current annual rent is far below the market rent. (NB: 1 US \$ is currently equivalent to Kshs.77)

**Graph A: Annual rent from agricultural land owned by Waqf Commission of Kenyan**



(12) Reductions Strategies (PRS)

(13) Mahdi, M. Ahmad (ed.) 1423 A.H., *Nidhamu al-wakf fi al-tatbiq al-Muasir*, Seminar

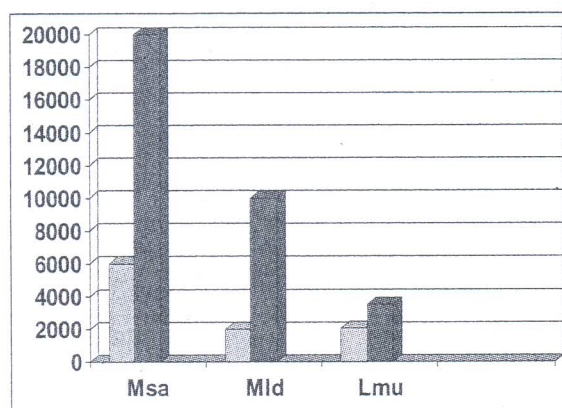


**Table B: Average monthly rent from residential houses owned by Waqf Commission of Kenyan**

Town	No. of houses	Average current monthly rent	Average market monthly rent	Percentage difference
Mombasa	49	6,000	20,000	30%
Malindi	17	1976	10,000	20%
Lamu	215	2046	3,500	58%

Source: *Ibid.* p.87

**Graph B: Average monthly rent from residential houses owned by Waqf Commission of Kenyan**

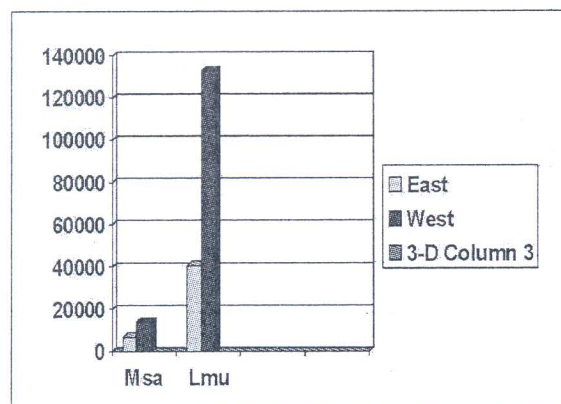


**Table C: Monthly rent from rented houses owned by Waqf Commission of Kenyan**

Town	No. of houses	Current monthly rent	Market monthly rent	Percentage difference
Mombasa	14	40,680	133,000	31%
Lamu	3	6,750	14,000	48%

Source: *Ibid.* p.107

**Graph C: Monthly rent from rented houses owned by Waqf Commission of Kenyan**

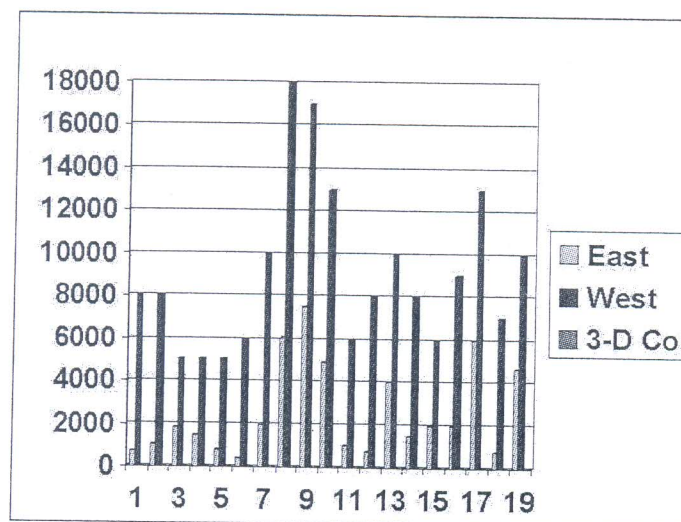


**Table D: Monthly rent from Waqf houses for mosques in Mombasa**

Mosque	Current monthly rent	Market monthly rent	Percentage difference
1	700	8,000	9%
2	1,000	8,000	13%
3	1,800	5,000	36%
4	1,500	5,000	30%
5	800	5,000	16%
6	400	6,000	7%
7	2,000	10,000	20%
8	6,060	18,000	37%
9	7,500	17,000	44%
10	4,900	13,000	38%
11	1,000	6,000	17%
12	750	8,000	9%
13	4,000	10,000	40%
14	1,500	8,000	19%
15	2,000	6,000	33%
16	2,000	9,000	22%
17	6,000	13,000	46%
18	7,50	7,000	11%
19	4,605	10,000	46%
Total	49,265	172,000	29%

Source: *Ibid.* Appendix

**Graph D: Monthly rent from Waqf houses for mosques in Mombasa**



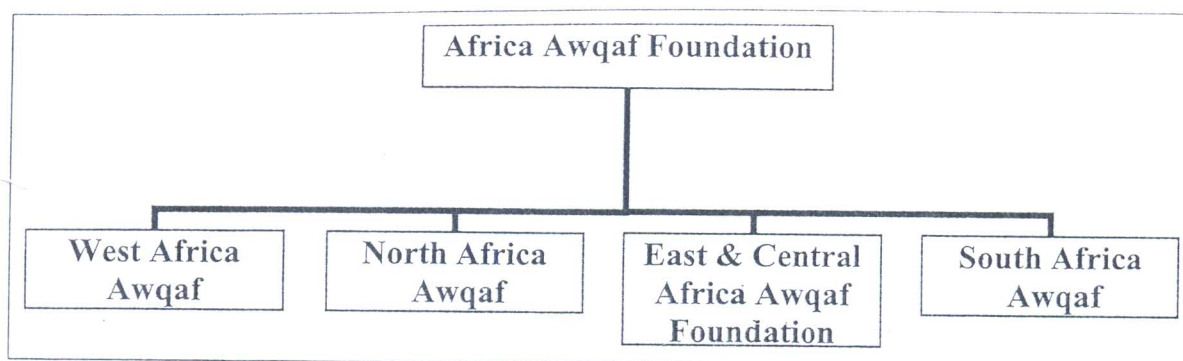
## Conclusion

In countries where the State controls Waqf institutions, logistics to be provided in training Waqf personnel and allow exchange of expertise between these countries. Lack of credibility and professionalism in Waqf institutions has led to the public distrust to such institutions, thereby giving justification to the State control over them. It is therefore imperative for Waqf institutions to be efficient and effective to regain public confidence. This will in turn attract public support, hence allow Waqf institutions to free themselves from the State control and ensure administrative and financial independence. This article proposes that, where possible, non-governmental Waqf institutions to be established and complement the activities undertaken by the existing Waqf institutions administered by the governments. This will provide the public with freedom to give out their charities according to their preference.

The article proposes also the establishment of regional Awqaf foundations to co-ordinate activities of Waqf institutions at the continental level. Geographical as well as demographical factors should be taken into consideration when establishing the regional Awqaf foundations. For instance, in the African continent the following regional Awqaf foundations can be established under the umbrella of the Africa Awqaf Foundation:

- 1) North Africa Awqaf Foundation to cater for countries stretching from Egypt to Mauritania.
- 2) West Africa Waqf Foundation to cover countries from Chad to Senegal.
- 3) East and Central Africa Waqf Foundation to take charge of countries from Sudan to Tanzania including Democratic Republic of Congo.
- 4) South Africa Waqf Foundation to cover countries from Malawi to South Africa.

The above model for establishing regional Awqaf foundations in the African continent could serve as a basis in creating Awqaf foundations in other continents. These regional Awqaf foundations would in turn establish a global Awqaf network and support the noble initiative made by the Islamic Development Bank in establishing the World Waqf Foundation.



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1. Awadh, Ali Hemed “*Al Awqaf wa dauruha fi Sahil Kenyan: Dirasa tahliliyya taqwimiyya*”, PhD thesis, International University of Africa, Khartoum, 2007
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5. –Yahya, Saad S., “The Uses and Abuses of Waqf”, in *Islam in Kenyan*, Proceedings of the National Seminar on Contemporary Islam in Kenyan Edited by Mohamed Bakari and Saad S. Yahya, Mewa Publications 1995