COLONIAL LAND LAW AND MUSLIM SOCIETIES IN COASTAL KENYA, 1895-1930S

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Abstract

Kolonialisme membawa bersama falsafah, pandangan, perundangan, kebudayaan serta amalan kuasa kolonial untuk dipaksa guna pakai di sesebuah tanah jajahan. Artikel ini bertujuan untuk memberikan penganalisisan ke atas kesan terhadap masyarakat Islam di Pantai Kenya apabila kuasa kolonial memperkenalkan dan mengimplementasikan perundangan tanah kolonial. Amalan penduduk Islam yang bertentangan dengan falsafah serta perundangan yang berkaitan dengan tanah sememangnya telah memberikan kesan yang mendalam bukan sahaja dari segi ekonomi tetapi juga dari segi sosial dan politik. Oleh itu sesetengah penduduk Islam tempatan mula cuba menyesuaikan diri dengan perundangan baru tersebut yang dilihat boleh menguntungkan kedudukan mereka. Artikel ini mengenengahkan pandangan bahawa pengenalan perundangan tanah kolonial bukan sahaja memberikan kesan yang mendalam dari segi ekonomi tetapi yang lebih penting lagi telah mempengaruhi perkembangan sosial seperti isu tentang identiti dan etnik.

INTRODUCTION

Before the colonial period, land matters in the coast were administered under several forms of law notably *Shari'a* law, *mila*, and customary law. However, British colonialization in the areas arrived together with their own legal philosophy which cut across and contradicted the practices of the local land cultures. This paper attempts to examine the impact of the colonial land laws toward the Muslims and their cultural and social life as land was one of the central elements in their daily lives. Implementation of the Land Titles Ordinance (LTO) in 1908 by the British will be

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analyzed not only to show the changes it made but more importantly to show how the law was introduced to create a new social and cultural fabric in the life of the Muslims on the coast of Kenya that suited the perceptions of the colonizer.

The failure to uphold their promises that *Shari'a* law would be the fundamental law, strongly affected the lives of the Muslims in the region not only politically and economically, but more importantly in terms of their culture and social life. The implementation of the colonial land laws made the Muslims realized that the colonial land law contradicted not only *Shari'a* law but the customs they practised and in fact it altered their culture in regard to land tenure. Under the colonial land law, identities and ethnicity played a major role in the process of land claims which subsequently changed the cultural and social conditions and situation within the Muslim communities on the coast of Kenya. Furthermore, the failure of the colonial government to recognize customary law practices among Muslim communities not only undermined the custom and cultural practices of the Muslims on land, but more importantly it also denied the assimilation of Islamic law and customary law that occurred with the spread of Islam as part of the social fabric of the coastal life that had existed for centuries.

On the coast of Kenya, as happened elsewhere in Muslim communities throughout the world, the actual application of *Shari'a* law was modified according to local custom.[1] Trimingham's *Islam in East Africa* admits that the questions related to customary law and *Shari'a* law are very complicated, and argues that the degree to which customary law was practised within the Muslim communities depended on the influence of Islam on the area.[2] However Pouwels commented that within the Muslim community itself, the boundaries between customary law and *Shari'a* law were ambiguous to form the idea on the level of islamization as suggested by Trimingham and others.[3] Furthermore, the failure to recognise customary law practices among Muslim communities not only undermined the various practices under the local land tenure systems, but also denied the assimilation of Islamic law and customary law that occurred with the spread of Islam.[4]

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1 C.K. Meek (1995), *Land Tenure and Land Administration in Nigeria and the Cameroons,* London: Colonial Research Studies, No. 22, p. 163; I.M. Lewis (1966), 'Introduction', in I.M. Lewis (ed.), *Islam in Tropical Africa,* Oxford: Oxford University Press, pp. 45-6; R.L. Pouwels (1986), *Horn and Crescent: Cultural Change and Traditional Islam on the East African Coast, 1800-1900,* London: Cambridge University Press, pp. 67-9.

2 Trimingham (1964), *Islam in East Africa,* Oxford: Clarendon Press, pp. 149-162.

3 Pouwels, *Horn and Crescent,* pp. 67-9; Meek, *Land Tenure,* p. 163.

4 Aziz Esmail (1975), 'Toward a History of Islam in East Africa', *Kenya Historical Review,* Vol. 3, No. 1, pp. 147-158.

One of the most extensive studies on the application of *Shari'a* law in Africa is Anderson's *Islamic Law in Africa*. Regarding the coast of Kenya, Anderson comments that despite the fact that *Shari'a* law was the main ('fundamental') law of the region, its application among Muslims was limited to personal matters such as inheritance, marriage and divorce. The Native Courts which used *Shari'a* law were presided over by the local officials, such as the *Liwali*, *Qadhi*, and *Mudir*. However, these courts had very little power to adjudicate other issues, such as determining land ownership.[5] Anderson's study also showed that not all Muslims along the coast of Kenya were administered under the *Shari'a*; Muslim Mijikenda were administered under customary law, including land issues.[6] When the local economic situation changed and favoured *Shari'a* law, Muslim Mijikenda would enlist practices under *Shari'a* law against the imposition of customary law.[7]

For the colonial officials conversion to Islam added yet another complication when dealing with land issues and officials argued that the application of *Shari'a* law among Muslim Mijikenda would undermine 'traditional' Mijikenda society and 'customary law'.[8] More likely, the admission of claims by Muslim Mijikenda under *Shari'a* law would jeopardize the newly introduced land reform. In theory, it was the intention of the colonial government that the Land Title Ordinance (LTO) would regularize the position of land title at the coast and bring to an end the confusing situation where land transactions might take place under *Shari'a* law, through *mila* settlements, or under customary law. In practice, the Ordinance was introduced to protect not only the colonial economic interests but importantly to achieve the dream of colonial societies.

THE COLONIAL DISCOURSE: THE PROBLEMS OF LEGAL SPHERES

Prior to the introduction of the LTO, three distinct, but overlapping, systems of land law were practised in different parts of the coastal region. Islam dominated the major coastal townships such as Mombasa, Malindi and Lamu, and in these places *Shari'a* law was accepted. In the countryside outside the townships, communal ownership was the norm. The law, which governed land disputes in the Swahili areas, was known as *mila*. Under *mila*, land could be owned individually, and bought and sold;

5 J.N.D. Anderson (1970), *Islamic Law in Africa,* London: Frank Cass, p. 83.

6 Anderson, *Islamic Law,* p. 5.

7 Lewis, 'Introduction', p. 46.

8 Trimingham (1964), *Islam in East Africa,* p. 47.

but transactions could not take place without the consent of the elders of the community that cultivated the area.[9]

Islam had been practiced at the coast since the ninth century, but it was only in the nineteenth century that the religion spread beyond the walls of the larger coastal towns and into the countryside. This was stimulated by the increasing prosperity and economic growth that came with the rise of plantation agriculture, supported by slave labour. Increasing trade between the coast and the hinterland began before the mid-part of the nineteenth century, and was furthered by European commercial penetration from the 1880s onwards.[10] This expanding economic sphere brought many more African communities into closer contact with Islam. David Sperling argues that the conversion to Islam among Mijikenda[11] groups such as the Digo, for example, only intensified from the 1890s. With the spread of Islam came new values, and the practice of *Shari'a* law. By the time of the proclamation of the British Protectorate over East Africa in 1895, Islamic values and laws were already being taken up by Muslim converts among Mijikenda. Over the next twenty years the spread of Islam would be very dramatic.[12]

This rapid growth of Islam among the Mijikenda at first went virtually unnoticed by Protectorate officials. The official description of Vanga district stated that there were nearly 4,000 Muslim in the area to the south of Mombasa. However, official reports at this time most commonly viewed Muslim Mijikenda as being 'Swahili', without any analysis of the implications of the assumption that a change of religion implied a change of ethnicity.[13]

The impact of Islam on the social life of the Muslim Mijikenda - in this case the Digo - was made in 1908, when an officer was sent to report upon the creation of

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9 See M. Ylvisaker (1979), *Lamu in the Nineteenth Century: Land Trade and Politics,* Boston: Boston University Press; A.H.J. Prins (1961), *The Swahili Speaking Peoples of Zanzibar and the East African Coast,* London, International African Institute.

10 For a general reference on history of Islam in the coastal areas of Kenya, see Trimingham, *Islam in East Africa;* Pouwels, *Horn and Crescent;* R.L. Bunger, *Islamization Among the Upper Pokomo,* Syracuse: Syracuse University Press, 1979; D.C. Sperling (1988), 'The Growth of Islam among the Mijikenda of the Kenya Coast, 1826-1933', Ph.D Dissertation, University of London.

11 Mijikenda is a confederation of nine groups of Bantu speaking people comprising the Giriama, Digo, Kauma, Chonyi, Jibana, Kambe, Ribe, Rabai and Duruma.

12 Sperling, 'The Growth of Islam', pp. 78-80.

13 KNA(Nbi), PC/Coast/1/1/157, Military Handbook Description, enclosed in G.R. Breacking to S.L. Hinde, 4 November 1909. This information was collected by the Intelligence Branch of the War Office.

Reserves in the area south of Mombasa. He noted that Islamic values were increasingly accepted among Digo and acknowledged that majority of the Digo still retained what he termed them as "tribal constitution". Specifically in relation to land, the official argued that most Digo still "view the land as communal rather than individual" despite the fact that some Digo had acquired land as individual owners, but he assured the Government that these lands lay "outside the tribal limit" and therefore would not affect the creation of a Native Reserve.[14] The reports indicated that by 1908, Muslim Mijikenda in the southern part of the coastal area were claiming to hold land under the terms of *Shari'a* law. In fact, by this time many Muslim Mijikenda had already adopted individual ownership of property in regard to farm lands as well as houses at the coast. And, in common with their fellow coastal Muslims (Arabs and Swahilis), many had taken out legal mortgages on their properties.[15]

By 1909, the colonial government had come to realize that individual land ownership among Mijikenda posed a problem to the implementation of both the L.T.O and the Native Reserves policy. But what worried the government most was that the validity of claims on land granted to Europeans in the southern part of the coast. Counter-claims from Muslim Digo would jeopardize European claims and deter further investors especially in areas such as Tiwi, Waa and Cheteni where Muslim Digo were then beginning to lodge claims to individual ownership. The colonial officials proposed solution to deny the legitimacy of these Islamic-based claims, and simply insist that all Mijikenda could only hold lands under customary terms. The neat legal categories that colonialism was seeking to create did not conform to the complexity of African reality. "I do not think", wrote one official "that the right of the natives [Muslim Mijikenda] to sell land would hold good in a Court of Law as this is not the custom of the tribe, and the custom of the tribe can hardly be changed by a change of religion."[16]

Later in the same year, another official submitted a further report on the issue of land ownership among the Muslim Mijikenda and argued that the influence of Islam, especially on the practice of individual land ownership among the Muslim Mijikenda had already created a situation where local people had committed themselves to what were, in terms of British colonial jurisdiction, "illegal land sales". According to colonial officials the problem arose because there was neither geographical boundary

14 KNA(Msa), CY/1/2, Report by Mr. Reddie (P.C. Tanaland), 7 March 1908.

15 PCLO(Msa), Kwale Register Book no. 1, Reg. No. 1A of 1903 to 23A 1928.

16 KNA(Nbi), PC/Coast/1/11/22, Memo. by A.C. Hollis, 4 March 1909; PCLO(Msa), file no. 34, R.O.T. to C.S., 14 January 1913.

for the limitation of the sphere of influence between *Shari'a* law and customary law in the coastal areas: one simply blurred into the other, nor any legally defined limit to the communal lands that Mijikenda could claim for themselves. The reports saw these problems as "a fruitful source of litigation" in the area south of Mombasa in coming years and the only solution to those problems were to be containing all Mijikenda claims to land within the realm of African customary law. To *allow* Shari'a law any credibility in these areas seriously undermined the principles governing British rule.[17]

It was easy enough for the colonial government to come to the decision to prevent individual claims within the area of the Native Reserves once these had been demarcated - this was a spatially defined zone where customary law must prevail. It was more problematical, however, to rule that no person defined as Mijikenda could legitimately hold land as an individual outside that Native Reserve. But, as early as 1906, this was the line adopted by government. In effect, any land transaction entered into by any individual Muslim Mijikenda was treated as illegal.[18] In the eyes of government, Muslim Mijikenda conducting land transactions of this kind were seen as taking advantage of their Muslim status and manipulating the practice of *Shari'a* law to alienate communal lands from their non-Muslim fellows. Most colonial officials saw it as their duty to protect the majority from the activities of these 'predators', who were stigmatized as mimicking the practices of other Muslims elsewhere on the coast to gain financial benefits and in the process exploiting their own communities.[19] In reality this policy strongly affected the spread and growth of Islamic cultures among the Muslim Digo.

By the end of 1913, the Digo society was undergoing very rapid social change. "Evidence can in fact be accumulated", one official stated, "to show that the whole social structure is according to the locality in different stages of transition from the Nyika communal to the Mohamedan individual state."[20] While Digo elders strongly supported the notion of communal lands to be administered under customary law,

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17 KNA(Nbi), AG/22/500, Memorandum on Waste Lands in Zanzibar Dominions of Mombasa District, by O.F. Watkins, 11 November 1909, enclosed in A.D.C. Rabai to P.C. Coast, 11 November 1909.

18 KNA(Nbi), PC/Coast/1/11/204, P.C. Coast to A.G., 25 March 1914.

19 KNA(Nbi), AG/22/500, Memorandum on Waste Lands in Zanzibar Dominions of Mombasa District, by O.F. Watkins, 11 November 1909, enclosed in A.D.C. Rabai to P.C. Coast, 11 November 1909; KNA(Nbi), PC/Coast/1/11/312, Principal Registrar of Documents to P.C. Coast, 14 April 1913.

20 KNA(Nbi), AG/22/506, Report on Land South of Mombasa, by O.F. Watkins, 3 December 1913, enclosed in P.C. Coast to C.S., 17 December 1913.

officials acknowledged that these same men stood to benefit from the maintenance of this system. On the other hand, a number of the younger generations were keen to advance individual rights under *Shari'a*. It was clear that under the rapidly growing influence of Islam, "the Digo law of today is not likely to be the law of tomorrow" as Islamic culture was becoming more dominant in the daily life of the Digo.[21]

The spread of Islamic culture on land tenure among the Digo clearly undermined the notion of colonial society. For the colonial government the spread and strength of Islamic culture among the Digo must be addressed as it could jeopardized their economic, administration and social policies. By 1915 another official was sent to Cheteni, Mtongwe, Likoni, Pongwe, Tiwi, Magogoni, Waa, Matugas and Ngombeni to solve the problem of land ownership among the Digo. The new reports indicated the widespread support for the maintenance of Mijikenda custom, and concluded that Islam was not yet deeply rooted in Mijikenda culture.[22] According to the report, few Mijikenda Muslims seemed to practise Islam thoroughly, and fewer still had any liking for the idea that *Shari'a* law should be imposed upon them totally. With no support for the wholesale application of Islamic practice, the reports gave the reason that why a few individuals should be allowed to select one aspect of *Shari'a* law which suited a particular purpose whilst ignoring the rest. The report findings were unequivocal:

> "The people are in no wise ready for a departure from their own customs and laws, and on the other hand the retention of a system of law common and acceptable to the whole tribe will much facilitate its administration. In view of that and the fact that Mohamedans themselves ask that they should retain Digo law and custom, I would ask that it should be recognised for the future that Mohamedan law does not obtain among the Mdigo."[23]

Finally, the colonial government appears to have succeeded in persuading Muslim Digo that their rights would be maintained within the Native Reserves and consequently all Muslim claims were withdrawn and the government refunded the application fee (Rs.1) to each person.[24] The policy of not allowing the Muslim Digo

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21 KNA(Nbi), AG/22/506, Report on Land South of Mombasa, by O.F. Watkins, 3 December 1913, enclosed in P.C. Coast to C.S., 17 December 1913.

22 KNA(Nbi), DC/Msa/3/4, Mombasa PRB.

23 KNA(Nbi), DC/Msa/3/4, Mombasa PRB, D.C. Mombasa (C.C. Dundas) to P.C. Coast, 1 July 1915.

24 KNA(Msa), CY/2/11, Short Outline of the History of the Coast Land Settlement, by A.J. MacLean, 8 October 1918.

to claim land individually defined for south Mombasa was subsequently extended to all the Mijikenda areas of the coast.[25]

While this prevented Muslim Mijikenda from owning land individually in the name of maintaining 'custom' and 'tradition', the government was positively encouraging other sections of the coastal population to move toward individual title as a means of fostering economic development, a move that subsequently destructed the social fabric of Muslim societies at the coast.

THE WASSINI ENQUIRY: THE REALITY OF COLONIALISM

The extent to which the LTO provided a solution to competing land claims among the Muslims along the coast and its impact on the social relations among the Muslim societies was put to the test in the area south of Mombasa in the Wassini enquiry of 1931. The area of land concerned was known as the Shimoni Peninsula. The population of the area was by the 1930s made up of Segeju,[26] the majority of whom were Muslim, Swahili, and Arabs from Wassini Island.

When the LTO was applied in this area in 1919, 31 individual claims were lodged.[27] But, as happened in Lamu and Mombasa, communal claims were also submitted. One of these was lodged by the "watu wa Wassini" (people of Wassini) on behalf of the Arab community of Wassini Island. Subsequently, the 31 individual claims initially recorded were incorporated within this Wassini communal claim. The District Commissioner, acting in his capacity as Deputy Recorder of Titles, at first rejected the Wassini communal claim on the grounds that the land claimed also covered areas occupied and cultivated by Segeju. Later, a revised communal claim - labeled by officials the 'omnibus claim' - was put forward under the name of Alawi family, who were reputed to be the original Arab rulers of the island.[28]

Administrative delays meant that this claim was only adjudicated in 1926. Majority of the lands claimed by the Wassini Arabs were in fact occupied by Segeju.

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25 KNA(Msa), CY/2/22, L.O. to Gov., January 1916.

26 The Segeju were one of the Bantu-speaking peoples who occupied areas to the south of Kenya's coast and north of Tanganyika's coast. See A.H.J. Prins (1952), *The Coastal Tribes of the North Eastern Bantu,* London: International African Institute, p. 35; Sperling, 'Growth of Islam', pp. 24-25.

27 KNA(Nbi), PC/Coast/2/11/16; DC/KWL/4/3, Evidence of the Wassini Inquiry.

28 The claim of Watu wa Wassini was registered as A/C no. 1/26 and the Alawi Family's claim was registered as no. 38/12238, see KNA(Nbi), PC/Coast/2/11/16; DC/KWL/4/3, Evidence by E.B. Lloyd (Ag. R.O.T.).

Over the entire area, local colonial officials admitted that Segeju and Arabs were intermingled, and appeared to have been neighbours for generations, cultivating adjacent plots, and intermarriage was common.[29] The potential for conflict was all too clear as the Segeju have become "exceedingly apprehensive" at the thought of the Arabs being granted title to lands which have been in their joint occupation for generations.[30]

When the Arab claims were adjudicated in the L.R.C. in 1926, Muslims Segeju not surprisingly objected.[31] As a compromise solution, local officials suggested that a 'Communal Reserve' be created, with lands secured for the benefit of both the Arab and Segeju communities. At the end of 1926, all parties agreed to accept the idea of a 'Communal Reserve'.[32] Problems emerged when the government tried to form a 'Communal Council' to administer the reserve. While Segeju agreed to the formation of the council, the Arabs refused as several Arab families disputed the disposal of their previous individual claims. The Arabs claimed that their applications that had been withdrawn in 1926 was done without "their own free will and accord". In short, they alleged that colonial officials had forced them to withdraw their claims and to accept the formation of the 'Communal Reserve'.[33]

The issue attracted the attention of the senior officials in Nairobi, not least the Governor himself, when it was raised by the Arab representative in the Legislative Council in July 1931. Governor Byrne instructed the Attorney General to investigate the matter, especially in relation to the circumstances of the withdrawal of claim.[34] A month later a judicial enquiry was begun under Mr. Justice Dickinson, to investigate "the circumstances in which in October, 1926, certain Arabs of Wasin surrendered

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29 KNA(Nbi), PC/Coast/2/11/16, DC/KWL/4/3, Evidence by Mr. Marchant

30 KNA(Nbi), PC/Coast/2/11/16; DC/KWL/4/3, Evidence of the Wassini Inquiry, note on the Communal Reserve Digo District, by D.C. Kwale,

31 KNA(Nbi), CA/10/292, D.C. Digo to Senior Coast Commissioner, 31 August 1926; KNA(Nbi), PC/Coast/2/11/16; DC/KWL/4/3, Evidence of the Wassini Inquiry, the hearing of the Communal Claim, A/C no. 1 of 1926 (Watu wa Wassini), and Claim no. 38/12238 (Alawi), in the L.R.C., 6 October 1926.

32 KNA(Nbi), CA/10/12, Senior Coast Commissioner to C.N.C., 11 October 1926, D.C. Digo to Senior Coast Commissioner, 30 July 1926; KNA(Nbi), PC/Coast/2/11/16; DC/KWL/4/3, Evidence of the Wassini Inquiry; D.C. note on the withdrawal of A/C Cause no. 1/26 in the L.R.C. The withdrawal was signed by 23 Arabs.

33 KNA(Nbi), PC/Coast/2/11/16; DC/KWL/4/3, Evidence of the Wassini Inquiry; P.C. Coast to Colonial Secretary, 12 October 1930.

34 KNA(Nbi), PC/Coast/2/11/16, Gov. to A.G., 18 July 1931.

their individual claims to certain areas of land on the Shimoni Peninsula in the Digo District."[35]

Judge Dickinson heard evidence on the case in the Supreme Court, Mombasa, on 23, 24, 25 and 27 November 1931.[36] In their evidence before Judge Dickinson, almost all of the Arabs witnesses stated that they had withdrawn their individual claims because of threats made by Montgomery. Mohamed bin Nasir said that Montgomery yelled at them, asking to know why they had disobeyed government instructions.[37] Only two of the witnesses called gave a different version of events and one of them claimed that pressure from the muslim Segeju neighbours of the Wassini Arabs had contributed to the decision to withdraw the claims.[38]

The colonial officials claimed that the Arabs had simply lied to the enquiry and further disputed other statements claimed that none of the relevant documents were translated as the document was read over to all the signatories.[39] Evidence given by the seven Muslims Segeju brought before the court contradicted the bulk of the evidence from the Arab spokesmen. They saw no threat in the behaviour of Mr Montgomery.[40]

Beyond the immediate concerns of the case, the Wassini enquiry serves to highlight many of the issues and difficulties raised by the implementation of the LTO Firstly, there was the issue of the different rights invoked under the LTO The Muslim Mijikenda and other Africans were hampered from owning land individually, while their fellow Muslims, namely the Arabs and Swahilis, were given the privilege to do so. Where such people lived in close proximity, the operation of the LTO inevitably undermined the reciprocal relationships between them and could be a source of conflict. Despite sharing the same religion of Islam, and despite intermarriage and close social linkages, the Segeju and the Wassini Arabs were to be treated separately

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35 Report of the Judicial Inquiry into Arab Claims to Land on Wasin Peninsula [Here After Report of the Wassin Inquiry], p. 1.

36 KNA(Nbi), PC/Coast/2/11/16, P.C. Coast to C.N.C., 27 November 1931; Report of the Wassini Inquiry, p.2.

37 KNA(Nbi), PC/Coast/2/11/16; DC/KWL/4/3, Evidence of the Wassini Inquiry.

38 KNA(Nbi), PC/Coast/2/11/16; DC/KWL/4/3, Evidence of the Wassini Inquiry.

39 KNA(Nbi), PC/Coast/2/11/16, Memorandum by Mr. W.S. Marchant, entitled Wassini Inquiry, as his written evidence to the Inquiry; Report of the wassini Inquiry, p. 2.

40 KNA(Nbi), PC/Coast/2/11/16; DC/KWL/4/3, Evidence of the Wassini Inquiry.

in regard to land ownership under the LTO The Segeju could not accept that such a differentiation had any practical meaning. As one Segeju witnesses put it:

> "Mohamed bin Abubakar said the land belongs to me as an Arab of Chichambara. I said no it does not belong to you, it belongs to me. Mohamed bin Nassir and Mkulu bin Nasir and Alaui bin Nasir are my sons. They are the children of my grand-father."[41]

In reality, land ownership at the coast was closely related to colonial perceptions of 'Native' and 'Non-Native'. The Wassini Inquiry reveals how the LTO could open the way to the manipulation of these distinctions for the gain of one group against another. Being treated as 'Native' also meant paying 'Native' taxes - another symbol of inferior status. In his opening statement in the enquiry, Mr. Ross made this point quite explicit:

> "The Grievance of the Arabs is that they considered that either individually or by families they have acquired individual rights to the land and that they object to being swamped or in fact mixed up with Natives."[42]

Lastly, the Wassini enquiry was also an important landmark case in that it was the first time that the land issue was overtly and publicly politicised and strongly affected not only the social fabric and situation of the Muslim Communities but importantly created animosity between people who had previously lived harmoniously and reciprocally for centuries.[43]

CONCLUSION

The Ordinance managed to secure individual title for some people, but others found themselves denied lands they thought they owned. All came to realize that the criteria used by the colonial government in adjudicating land matters bore little relationship to local understandings of custom and rights. The establishment of the geographical and legal boundaries on land ownership at the coast successfully prevented the practice of what government termed 'illegal' land sale. The implementation of the LTO was far from complete but its effects were tremendous. For the majority of the Muslims of the coast, the implementation of the LTO came at a high price. Africans, both

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41 KNA(Nbi), PC/Coast/2/11/16; DC/KWL/4/3, Evidence of the Wassini Inquiry.

42 KNA(Nbi), PC/Coast/2/11/16, Statement by Mr. Ross, Evidence of the Wassini Inquiry.

43 For general information on this issue see Salim, *Swahili Speaking Peo*ples, and *'Native' and 'Non-Native'*"; Kindy, *Life and Politic.*

Muslims and non-Muslims who had lived together for centuries became the victim of the government's failure to grasp the reality of the circumstances. While their Arab neighbours, and in some cases blood relatives enjoyed the privileges conveyed by colonial preference, those Muslim Africans defined as 'Native' was marginalised. The Muslim culture were badly affected and its social relations changed forever.