

# An Evaluation of Level of Competence of *Kadhis* in Handling Marriage Dissolution in Urban West District of Zanzibar

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**Abstract:** *In recent years, there has been a great discussion on the issue of marriage dissolution in Zanzibar and several cases about marriage keep increasing. The study was conducted to evaluate the competence of Kadhis in handling marriage dissolution in Urban West District of Zanzibar. The objective of the study was to examine the competence of Kadhis in handling marriage dissolution in Urban West Unguja. Based on questionnaire survey the relevant data were collected and analysed based on the descriptive techniques. The findings showed that Kadhis have got adequate skills and experience, hence competence in handling marriage dissolution by 44% of the respondents. In addition the result indicates that Kadhis were found to have adequate knowledge at all levels. The study recommends that the Kadhis should initiate measures to fill up arising gaps that will determine personnel inventory and career paths that continuing to provide training opportunities to legal professionals, administrative and support staff and other officers of the Court.*

**Keywords:** Competence of Kadhi, Talaq and Marriage Dissolution

## 1. Introduction

Marriage is a social institution that unites people in a special form of mutual dependence for the purpose of establishing and maintaining a family. As a social practice entered into through a public act, religious or traditional ceremony, it reflects the purposes, character and customs of the society in which it is found (Pathfinder International, 2006). Marriage does not only serve to satisfy the fundamental biological need of sexual gratification through a socially acceptable way, but, also helps the individual to achieve a higher level of personality maturation as cited by Fagan and Churchill, (2012). From the Islamic perspective, marriage (*nikāh*) is an act of Islam and is a legal and social contract between two individuals. Omar (2007) said that, marriage in Islam is treated as an everlasting institution with specific rights and responsibilities assigned to each partner. Normally, indifference between these two contractual parts may lead to termination of the marriage institution.

Divorce, on the other hand, is a legislatively created, judicially administered process that legally terminates a marriage which is no longer considered viable by one or both of the spouses and that permits both to remarry (Levy, 2009). However, divorce has pervasive weakening effects on the family (Fagan and Churchill, 2012). Thus, it is one of the major troubles that affect the family system. The increase in divorce cases has been one among the most visible features of the recent decades of family change at global level. Some have seen this as a sign of social and moral disruption with a potential to shatter the family institution and the foundation of society itself. Others have celebrated these trends as signaling increased individual liberty and the loosening of

suffocating social values. However, the increasing acceptance of divorce has dramatically altered the marriage situation, which is acknowledged to be the second most traumatic event after death. Härkönen, (2013).

Like other countries' experiences, Zanzibar had her own history concerning divorce cases. Nearly 700 divorce cases are reported in each year to District Kardhi Courts (Revolutionary Government Gazette, 2017), indicating an increasing trend of the problem than elsewhere on the Swahili Coast and it is not strange for couples to divorce and remarry several times. The dimension of gender disparity in Zanzibar is manifested in the peculiarity of divorce where men have the right to unilaterally divorce their wives by way of *talak* without the wife's consent.

Therefore, for this study, divorce can be referring to the result of the process wherein married couples have their marital relationship and obligations legally severed. A divorce is the cancelling of a legal marriage contract between partners.

Muslim populated countries have established shari'ah court in order to manage the divorce cases. For many countries these days, it is very common that a divorce requires the approval of the legal system of the country or fundamental bases of religious aspect of the society supported by Distribution Government Agencies or Institutions related to marriage matter (Morgan, 1991).

### 1.1 Divorce Cases in Zanzibar

Before Zanzibar became a Protectorate, the Sultanate did not interfere with the internal affairs of the subject towns,

including dispute resolutions. It was common practice for the local elders to settle disputes arising in their midst (*streets/villages/community*). Such affairs were based on the recognized traditions and legal claims as the law was locally conceived and practiced (Wanyonyi, 2016).

The introduction of Islam to the early inhabitants of Zanzibar by the visitors laid the foundation for institutionalizing the earliest forms of dispute settlement of the *Wakilis* and set the main foundation upon which the application of Islamic law in the legal system is founded (Othman and Shahid, 1981).

Currently, Zanzibar is one among the countries that have adopted Kadhis Court as one of the initiatives established by the government of Zanzibar and it has played a major role in solving various problems associated with marriage dissolution. A total of 6,755 divorce cases were reported to Kardhi's District Court in the recent past especially from 2010. This depicts how serious the problem of marriage dissolution is in Zanzibar as portrayed in Table 1.1.

**Table 1.1:** Divorce Cases Reported to Mwanakwerekwe Kadhi's Court

SN	Year	Reported Divorce cases before 2020
1	2010	594
2	2011	720
3	2012	855
4	2013	795
5	2014	666
6	2015	669
7	2016	789
8	2017	791
9	2018	876
	TOTAL	6,755

Source: Mwanakwerekwe Kadhi's Court, (2018)

Therefore, the main objective of this study is to evaluate the Competence of Kadhi's Court in handling marriage dissolution in Urban West District of Zanzibar. Apart from this introduction, the paper comprises of the literature review, methodology, results, discussion, conclusion and recommendations.

## 2. Literature Review

### 2.1 Marriage Dissolution

Firm union of the husband and wife is a necessary condition for a happy family life. A marriage may dissolve (i) by act of God that is Death of the husband or wife or (ii) by act of the parties i.e. divorce. In Islam, divorce is considered as an exception to the status of marriage. The prophet declared that, among the things which have been permitted by law, divorce is the worst. When presiding over a Supreme Court session on marriage dissolution in India, Justice Nariman argued; "Indeed Prophet Mohammed had declared divorce to be the most disliked of lawful things in the sight of God". He added that "The reason for this is not far to seek, divorce breaks the marital tie which is fundamental to family life in Islam" The Indian Express <https://Indianexpress.com/article/India/prophet-declared-divorce-as-most-disliked-of-lawful-things-accessed->

Thursday.24.09.2020-20:44. Divorce being an evil, it must be avoided as far as possible. But sometimes, the evil becomes a necessity when it is impossible for parties to carry on their union with mutual love and affection. It is better to allow them to be separated, instead of compelling them to live together in an atmosphere of hatred and sufferings (Angorok, 2010).

Divorce, or dissolution, as it is increasingly becoming known, a legislatively created, judicially administered process that legally terminates a marriage no longer considered viable by one or both of the spouses and that permits both to remarry (Levy, 2009). Divorce involves a number of life events concentrated within a short time; it also can create strains that persist over the haul (Amato, 2010).

### 2.2 Competence of Kadhis in Kadhi Courts

The determination of incompetence is a judicial decision that is decided by the court. An individual adjudicated by the court as incompetent is referred to as *de jure incompetent*. One is presumed to be competent unless demonstrated to be otherwise. In fact, it may be offensive to and indeed inappropriate to some Muslim groups for non-Muslim adjudicators to administer Islamic law for Muslims in family matters without training in Islamic law.

Of course, non-Muslim adjudicators may get formal training and become well versed in the application of Islamic law principles, but it is those who have been groomed in and practice the religion that are likely to have an added advantage. Wanyonyi (2016), when assessing the Kadhi Courts in Kenya toward enhancing justice to Muslim women noted that, the Kadhis as professionals and their knowledge is marginally limited to those areas or stations the Kadhis come from and may not be representative of the whole country.

Specifically, in Zanzibar, for one to qualify to be appointed as a Kadhi of whatever level, one has to profess and follow Islam as well as possessing recognized qualifications in Islamic Law from any institution approved by the Council of Ulamaas established under the Provisions of the Establishment of the Office of Mufti Act, 2001 (RGoZ, 2012). Majamba, (2005) when surveying the Kadhi Courts in Zanzibar with the view of establishing the Kadhi Court in Mainland, made a clear statement during his survey that, individual Kadhis retain as much autonomy or self-determination as is legally possible as the law requires. The appointed Kadhi must be a Muslim who has a fairly firm grip of the principles of Islamic Law. A selected one at least should have formal training in Islamic Law.

It is therefore safe to assume that, it is easier for the Kadhis to understand and correctly apply concepts and principles of Islamic law in the cases that they preside over. It is very likely that where the system is applied or introduced in a jurisdiction where the majority of judges are predominantly non-Muslim, problems are likely to occur.

### 3. Methodology

Mixed research design was used in this study in order to explore the phenomena of interest, explain and interpret the data widely and easily. The study was conducted in Urban West District of Zanzibar. The main reasons leading to the selection of this region was that, the area has largest number of divorce cases in Zanzibar. A total of 110 respondents of disrupted marital status together with employees were involved to provide information about the investigation. These respondents were selected because they had been married for longtime and they had also faced several challenges in their marriage lives. Purposive sampling method was used in this study to select the respondents for the questionnaire survey. This method was used because the researchers were able to represent not only the overall population, but also the key subgroups of the population, especially small minority groups who were already married. Data collection was done by distributing questionnaires to the targeted population in the research area. The descriptive analysis was used in data analysis.

### 4. Results and Discussion

#### 4.1 Descriptive Statistics

The study sought information from a number of respondents of various demographic characteristics including but not limited to gender, age, marital status, educational level and length of time in marriage wedlock. Table 1 is depictive of the characteristics of the respondents.

**Table 1:** Demographic Characteristics of the Respondents

Variable	Category	Frequency	Percentage
Gender	Male	58	52.7
	Female	52	47.3
Age	20-30	18	16.4
	31-40	30	27.3
	41-50	35	31.8
	51 and above	27	24.5
Marital status	Single	8	7.3
	Married	76	69.1
	Divorced	26	23.6
Educational Level	Secondary	13	11.8
	College	44	40.0
	University	53	48.2
Length of time in a marriage wedlock	1-5 years	28	25.5
	6-10 years	29	26.4
	11-15 years	27	24.5
	16 years and above	26	23.6

Source: Field data, 2019

**Table 2:** Competence of *Kadhis* in handling marriage dissolution

Scale	Variables	SDA		DA		SW		A		SA		Total		Mean	Std. Deviation
		F	%	F	%	F	%	F	%	F	%	F	%		
1	Adequate, capable, skilled and experienced staff	8	7	8	7	21	19	48	44	25	23	110	100	3.67	1.126
2	Adequate professional Islamic faith and technical skills	1	1	18	16	19	17	52	47	20	18	110	100	3.65	.990
3	Religious education back ground	3	3	22	20	12	11	30	27	43	39	110	100	3.80	1.233

Source: Field data, (2019)

Table 2 is depictive of the Mean of the findings of this study. According to Anthony (2011), Mean is the sum of values divided by the number of values. In this case the mean was generated from SPSS v. 20 for each variable.

Evidence from Table 1 suggests that the distribution of the questionnaire to the respondents was done almost on equal basis between males and females with 58 equal to 52.7% and 52 equal to 47.3% representation respectively. Age was another factor measuring the eligibility of being young and adult in the concept of marriage. It is observed from Table 1 that, there is a proportion of the respondents in every age bracket. However, more than half of the respondents (59.1%) belong to the economically most active age group range between 31 and 50 years. For the case of marital status of the respondents, it was also included because it was one of the most important aspects in this paper dealing with divorce cases. Findings show that, 76 equal to (69.1%) were married and 26 equal to (23.6%) were divorced.

As regards to the educational levels of the respondents, it was found out that 53 representing (48.2%) were University graduates and 57 equal to (51.8%) were college and secondary level leavers. Finally, regarding the length of time in marriage wedlock, it was found out that more than half (51.9%) respondents had stayed in their marriage wedlock from 1 to 10 years and the remaining portion of the respondents had stayed in this important social institution for more than 10 years. This timeframe of staying in marriage wedlock by the respondents was critical to this study because it had insights on the status of the respondents as either married or divorced persons in community.

#### 4.2 Competence of *Kadhis* in handling marriage dissolution

A Descriptive analysis was conducted in order to determine the competence of *kadhis* in handling marriage dissolution as the main concern for this paper. Results are depicted in Table 2.

Besides, in this study, scale no. 1 was given to strongly disagree and no. 5 to strongly agree whereas no. 3 was considered to be neutral. Thus the variable statistics were described by mean and standard deviations. As clearly

observed in Table 2, all three questions asked were characterized with small value of mean and standard deviation indicating that, the distribution of data of the questions was normally articulated. And this goes parallel with the results obtained from the findings as illustrated hereinafter:-

As being identified in many studies (such as Were, (2012); Wanyonyi, (2016) and Haji (2016)) adequate capability, skill and experience of *kadhi* was one of the main indicators of competency in handling marriage dissolution. Hence, in this study, the findings revealed that, out of 110 of the total respondent, 73 of the respondents equivalent to (66.36%) agreed that *kadh* had got adequate capability in handling dissolution of marriages (48 and 25 respondents representing 44% agreed and 23% strongly agreed respectively).

The second variable examined the extent to which *Kadh*s at Mwanakwerekwe Court were practicing their work with adequate profess Islamic faith and technical skills. Findings showed that, 52 equivalent to (47%) agreed and 20 respondents representing (18%) out of the total respondents strongly agreed that *kadhi* were competent enough to serve the society.

Last but not the least, this study sought to examine whether religious education background actually did matter a lot in dissolution of marriage. Results revealed that, majority of the respondents 43 equivalent to (39%) strongly agreed and 30 respondents representing (27%) out of the total respondents agreed that, religious education background does matter a lot in handling dissolution of marriage. Haji (2016), identified that *Kadh*s' Courts in Zanzibar is a judicial institution set out to deal with cases arising from limited matters relating to Islamic personal law and their jurisdiction is limited to the matters arising from the Muslim community of Zanzibar.

## 5. Conclusion

Basing on the foregoing analysis, it is concluded that the *Kadh*s are fully committed to administer marriage dissolution, to improve service delivery and to enhance the capacities through their independent judiciary and public confidence over service. Nevertheless, numbers of cases confronting the society of Zanzibar have been identified. Hence, the need to speed up resolution processes in order to reduce congestion of cases that affect the marriage welfare of the society of Zanzibar. These include: lack of commitment of spouse toward their marriage, abandonment, failure to meet family obligations, financial problems and interference from outside such as family members, relatives and parents.

Lastly, *Kadh*s were found to have adequate knowledge at all levels, the *Kadh*s received regular training on professional Islamic faith and technical skills. However, the number of *Kadh*s was found to be inadequate at all levels; prosecutors and other cadres of the legal sector are also inadequate.

## 6. Recommendations

Based on the results obtained in this study, the followings recommendations are made; In the first place, the *Kadh*s should as soon as possible initiate measures to fill up the human resource gaps through conducting a personnel inventory to determine staffing and recruitment patterns, career paths and through continuing to provide training opportunities to legal professionals, administrative and support staff; and other positions within the Court..

Secondly, Government should take part in creating awareness to the divorcing couples by preparing parent education programs aimed at informing the general public about marriage dissolution issues. Specifically, parenting issues that arise during and after divorce should be addressed through media; that is to say TV, radio, newspapers, magazine and the like. Published books and articles that deal with the subject of divorce may also be consulted.

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