

A CRITICAL ANALYSIS OF THE CONTROVESY OF KADHIS' COURTS IN MAINLAND  
TANZANIA

BY

BARTHOLOMEW LUCAS SEGU

SUBMITTED TO THE FACULTY OF THE  
SCHOOL OF THEOLOGY OF THE UNIVERSITY OF THE SOUTH  
IN PARTIAL FULFILMENT OF THE REQUIREMENTS  
FOR THE DEGREE OF

MASTER OF SACRED THEOLOGY

MAY 2015

APPROVED:

DATE:

1. \_\_\_\_\_

\_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_



## **Acknowledgment**

This project has reached its completion due to profound support and help from individuals and groups who sacrificed their various resources required for its success. I am so grateful to God for using these people for the success of this vital project. My sincere thanks go to my wife, Mary, for her great encouragement in taking care of our five boys and praying for me during my two years' stay in the United States for my study; my bishop, the Rt. Rev. Dr. Sospeter Ndenza, for allowing me to come to the United States for my study; the School of Theology, University of the South, through its Dean, the Rt. Rev. Dr. J. Neil Alexander, for its generous financial scholarship for my degree program and other related needs, including this project; the Rev. Canon James F. Turrell (Associate Dean for academic Affairs at the School of Theology) for his introductory letter to the Tanzanian government, which enabled me to secure research permits; the Tanzania government for research permits; the academic committee at the School of Theology for its approval of my thesis proposal; the Rt. Rev. Dr. James Tengatenga (my thesis supervisor) and Dr. Amy Patterson (a second reader of my thesis); Dr. James Dunkly for the correction of grammatical, bibliographical, and typing errors; the entire School of Theology community for prayers and words of encouragement; and my respondents for their willingness to participate in interviews.



## **Abstract**

This study analyses the demand for kadhis' courts in Mainland Tanzania. The controversy of kadhis' courts is creating conflicts and tensions between some Christians and Muslims and between some Muslims. The Muslim demand is complicated by the failure of the government to demonstrate its clear position on this matter. The controversy raises issues about constitutionalism, secularism, justice, and Christian-Muslim relations. Some Muslims in Tanzania want to include kadhis' courts in the constitution; they want the operation of kadhis' courts to be supported by government funds, the national chief kadhi to be appointed by the government, and the president to officially announce the establishment of these courts.

In support of this demand Muslims argue that kadhis' courts are part of Muslim worship; these courts were in operation in Mainland Tanzania prior and during the colonial rule and were abolished after independence in 1963 by the government without consultation with Muslims; kadhis' courts are in operation in some states in which Christianity is predominant; current civil courts have some English, Indian, and Christian elements that are irrelevant to Islam; Muslims are prohibited by their faith from presenting cases related to family matters in civil courts; kadhis' courts will address historical injustices against Muslims by the government and Christians; Christians dominate social, political, and economic opportunities; kadhis' courts will decrease immorality in society, unite Muslims, preserve Muslim beliefs, values, and identities; and advance development in Mainland Tanzania; and kadhis' courts have distinctive features.

In reaction to the Muslim demand, Christians argue that the establishment of kadhis' courts in Mainland Tanzania is against the current constitution, the Muslim demand is intended to Islamize the country, to eradicate Christian influence, to introduce corporal punishments, and

to create employment among Muslims; the demand is influenced by terrorist groups of Al Shaabab and Boko Haram, and some Islamic states in which kadhis' courts are operative and other Islamic extremist groups; the Muslim demand is motivated by religious prejudices, politics, and poor leadership of the government; and kadhis' courts will violate human rights.

My major thesis for this study is that, given that Tanzania is a democratic secular state and signatory of the Universal Declaration Human Rights and African Charter on Human and People's Rights, the current constitution should be amended to allow provisions for the establishment of other courts, including kadhis' courts. Kadhis' courts should deal with Muslim family matters and are to be consulted by Muslims on a voluntary basis. My support for the Muslim demand includes the inclusion of kadhis' courts in the constitution, the appointment of the national chief kadhi by the government, and official announcement of the establishment of these courts by the President. Given that government funds for kadhis' courts will cost all Tanzanians, I propose a national dialogue on this matter involving the government, representatives of all Muslim and Christian groups, other religious communities, and organizations.

My support for the Muslim demand is motivated by my understanding of the holistic nature of Islam, legal recognition of kadhis' courts with government funds in Zanzibar (which is part of the United Republic of Tanzania), my interpretations of constitutionalism, secularism, justice, religious freedom, and human rights, and legal recognition of religious courts in secular states such as the United Kingdom, Kenya, and Uganda. My thesis does justice to all religious groups who want their courts to have legal recognition. In order to test my thesis I carried out field research (in Kigoma and Dar es Salaam) of which this study is a report. The term "kadhi" is used in this study to refer to a Muslim judge and kadhis' courts are Islamic courts.



## TABLE OF CONTENTS

|  |       |
|--|-------|
| <b>ACKNOWLEDGMENT</b> .....  |       |
| <b>ABSTRACT</b> .....  |       |
| <b>LIST OF TABLES</b> .....  |       |
| <b>CHAPTER ONE</b> .....   | 1     |
| Introduction.....  | 1-3   |
| 1.0 Political and Religious Background.....  | 3-7   |
| 1.1 Mainland Tanzania, Zanzibar, Tanzania, Islam, Kadhis, Kadhis' Courts, <i>Shari'a</i> ,<br><i>Figh</i> , Qur'an, <i>Sunna</i> , and <i>Hadith</i> ..... | 7-12  |
| 1.2 Why Study Kadhis' Courts in Mainland Tanzania?.....  | 12-13 |
| 1.3 Statement of the Problem.....  | 13-24 |
| 1.4 Research Questions, Aim, and Objectives.....   | 24-25 |
| 1.5 Research Methods.....  | 25    |
| 1.6 The Scope of Content and Geographical Location of the Study, Sampling, Limitations<br>and Delimitation, and the Organization of the Study.....         | 25-27 |
| <b>CHAPTER TWO</b> .....   | 28    |
| Literature Review.....   | 28    |
| 2.0 Kadhis' Courts and Islamic Law.....  | 28-42 |
| 2.1 Constitutions, Secular Governments, Religious Freedom, Justice and Democracy<br>.....  | 42-46 |
| 2.3 Muslim-Christian Relations.....  | 46-47 |
| 2.4 Contribution to the Study.....   | 47-48 |

|   |         |
|---|---------|
| <b>CHAPTER THREE</b> .....  | 49      |
| Data Collection Report.....   | 48      |
| 3.0 Introduction.....   | 49-51   |
| 3.1 Reports from Dar es Salaam.....   | 51-62   |
| 3.2 Reports from Kigoma.....  | 62-73   |
| 3.3 Summary.....  | 73-74   |
| <b>CHAPTER FOUR</b> .....   | 75      |
| A Critical Analysis of the Data Collection Reports.....   | 75      |
| 4.0 Similarities and Differences among Muslims and Non-Muslim Participant<br>from Dar es Salaam and Kigoma..... | 75-78   |
| 4.1 Constitutionalism, Secularism, Justice, and Muslim-Christian Relations.....                                 | 78-92   |
| 4.2 The Assessment of the Participants’ Views in Light of the Study Objectives....                              | 92-128  |
| <b>CHAPTER FIVE</b> .....   | 129     |
| Conclusion and Recommendations.....   | 129     |
| 5.0 Conclusion.....   | 129-145 |
| 5.2 Recommendations.....  | 145-148 |
| <b>BIBLIOGRAPHY</b> .....   | 149-160 |