

## Searching for religious authority (*marji'iyah*): Muslims and religious leadership in Kenya

### *The right to give religious verdict (fatwa)*

The responsibility of delivering fatwa in Kenya used to be solely upon the Chief Kadhi who assumed the role of *Sheikh al-Islam* or *mufti*. This was the case during the British rule and later the Busaidi sultanate in the coastal strip of Kenya. The famous issue of moon sighting for the starting and ending of the month of Ramadhan was centralised in the Chief Kadhi's office. However, after independence, the delivering of fatwa was decentralised in various fraternities which led to much a controversy on the issue of moon sighting. This article seeks to trace the background of the institution of religious authority (*marji'iyah*) in Kenya and its development in the post-independent era.

### *Muslim religious leadership in the colonial period*

*Ulamaa* have been spearheading the intellectual scholarship in the East African Coast since the colonial periods. This was apparent with the Chief Kadhis who apart from their official duties as judicial officers, had enormously contributed in various disciplines including mosque-seminars, published literature and poetry. This legacy has been maintained through a scholarly chain stretching from the end of the nineteenth century to the middle of the twentieth century. Due to their intellectual works, the Chief Kadhis earned reputable recognition from the State and society. They used to serve and socialize extensively with the public in various spheres hence enjoyed public recognition.

British adopted an indirect rule policy in the East African Protectorate. The *ulamaa* were accommodated within the colonial framework and occupied a significant place in the Protectorate. The British used titles such like *Sheikhul Islam and Kadhis* to refer to these scholars. One of the earliest regulations promulgated by the British was the 1897 Regulations which provided for the Mussulman Ecclesiastical Courts. The 1897 Regulations established the offices that accommodated these scholars in the following provisions:

A court is hereby constituted, to be called the Chief Cadi's Court. It shall be presided over by a Chief Cadi for the whole of the Coast region, who shall be called the *Sheik-ul-Islam*. The *Sheik-ul-Islam* shall be appointed by the Commissioner, but all other Cadis shall be appointed by the Sub-Commissioners of provinces<sup>1</sup>

*Ulamaa* of the that time occupied the dual role of *kadhis* and *muftis*. With pass of time, this position of the *ulamaa* was to change hence raise the need to search for a 'new' religious authority (*marji'iyah*). The colonial state gradually reduced the significance of *ulamaa*, a legacy that was to be inherited in the post-independent era.

### *Establishment of the Majlis Ulamaa in Kenya*

Office of the Mufti has occupied a significant place in the history of Islam. The primary function of this office was to give religious opinions (*ifta*). Through the process of *ifta*, Muslim rulers strove to exert control over the scholars to assure the smooth running of state affairs. The status of scholars was therefore to "serve as shields behind which the powers-that-be could tighten their grip on the process of *ifta*"<sup>2</sup>.

---

<sup>1</sup> Sec. 56 The East Africa Order in Council 1897

<sup>2</sup> Bang, Anne, K. "Intellectuals and civil servants: Early 20<sup>th</sup> century Zanzibar 'Ulamaa and the colonial state" *Islam in East Africa: New Sources* (Archives. Manuscripts and Historical Sources. Oral History. Archaeology) International Colloquium: Rome, 2-4 December 1999, Ed. Bianca Maria Scarcia Amoretti: Herder Roma 2001 pp.13

In Kenya, the responsibility of giving fatwa on religious matters used to be the prerogative of the Chief Kadhi who has been throughout appointed by the State. However, religious verdicts of the Chief kadhi, especially related to the issue of moon sighting, were always a subject of controversy within the Muslim circles. This was partly due to the fact that the Chief kadhi is viewed to be a state-scholar with little recognition from some circles that enjoy Muslim popular support. Other religious institution such as the Supreme Council of Kenya Muslim (*Supkem*) were not spared from this criticism despite the fact that this umbrella body is said to be independent of state interference. Under this climate, an interesting development has emerged recently with the birth of an embryonic institution of Majlis al-ulamaa-Kenya. The establishment of Majlis ulamaa in Kenya seems to be triggered by the lost of confidence of some Muslim circles on the state-appointed institutions for along time as the Editorial of a Muslim journal points out:

“For years, it was an acknowledged fact that for the community to effectively gain its place in society, it had to have a firm basis of unity. Various attempts were made to attain this goal but unfortunately, they all came to naught”<sup>3</sup>

There have been three attempts to establish a majlis ulamaa that aimed to involve Muslim scholars countrywide. The first initiative was pioneered by the Supreme Council of Kenya Muslims (*Supkem*).<sup>4</sup> The Council brought together Muslim organisations from various parts of the country to form an umbrella body that will represent Muslims in the government. *Supkem* was set up by Muslim organisations in Kenya which form the members at the grassroots. It is purely independent and the one that negotiates issues with the government on behalf of the Muslims in Kenya. It also serves as a liaison between the Muslims and the government and the foreign missions. The set up of this umbrella body differs from its counterparts in the East African region for instance the Muslim Council of Tanzania (*Bakwata*) which is set up by the blessings of the government.

*Supkem* organised a meeting that was held at Huruma Secondary school on 27<sup>th</sup> April 1986 where the delegates agreed to form *Majlis ulamaa* “to guide the members where Islamic matters need Quranic guidance”. Delegates constituting 90 scholars covering broad base of Muslims from different affiliations attended. However, the idea materialised on 10<sup>th</sup> August 1994 when the majlis was established and office bearers selected. The executive officers were elected from prominent scholars that included Sheikh Harith Swaleh (chairman), Sheikh Ahmad Msallam (vice chairman) and Sheikh Ali Shee (secretary). First in the agenda of the meeting, the Majlis discussed the issue pertaining to sighting of the moon. *Supkem* offered secretarial services and office for the Majlis. The first meeting was held on 10<sup>th</sup> August 1994 and another was scheduled to take place on 10<sup>th</sup> September 1994 but did not materialise.

The second initiative was spearheaded by *Jumiyatu Al-Duatu Ila Sunnat* that held a gathering of *Ahli Sunna Ulamaa* on the 2<sup>nd</sup> and 3<sup>rd</sup> June 1990 in Mombasa<sup>5</sup>. The Chief Guest was the Religious Attaché of The Royal Embassy of Kingdom of Saudi Arabia. Among the issues deliberated were the need and importance of mediating between disputing Islamic scholars.

---

<sup>3</sup> The Majlis Journal, Rajab-Ramadhan 1426/September-November 2005, p.2

<sup>4</sup>Interview with Prof. Abdulghafur Hemed El-Busaidy, Chairman of the Supreme Council of Kenya Muslims, Nairobi, 23<sup>rd</sup> October 2005

<sup>5</sup>Brief report on the Seminar of Ahli Sunna Scholars held on 2<sup>nd</sup>-3<sup>rd</sup> June 1990 at Madrasatul Munawwarah , Mombasa (in Kiswahili)

The other agenda was to unite Muslim scholars so that they work in co-ordination and speak with one voice on religious matters and the issue of shiaism in the present time. The members agreed to establish a committee of *ulamaa* (*lujnatu ulamaa*) constituting 11 members. The main objective in forming the majlis was to have a special body of “specialists” whereby all *ulamaa* can come together to discuss, plan, give rulings, recommend and inform all Muslims and any other party on issues of religious nature or other matter connected to or affecting the welfare of Muslims.<sup>6</sup> For the second time the establishment of majlis ulamaa was not successful, hence the need to formulate one was still demanding.

The establishment majlis ulamaa finally came to see the light under the auspice of the newly formed Nairobi Masaajid Joint Programme and the stereotype of the South African experience. The Majlis Journal noted “seeds of the Majlis Ulamaa-Kenya were ironically planted thousands of miles away in South Africa two years ago” ...the establishment of the Majlis was a phenomenal occurrence in this country in that it brought together –for the first time in the history of Islam in Kenya – the largest gathering of Islamic scholars from all parts of the country”.<sup>7</sup>

Eleven Muslim professionals from the Nairobi Joint Masajid Programme visited South Africa from 9<sup>th</sup> to 21<sup>st</sup> August 2003 “to acquaint themselves with the extraordinary success which their brothers in the Rainbow nation have undergone”. The group toured the Majlis ulamaa Transvaal Province and was impressed by “the successful organization of the religious structures which have in essence contributed to the growth of the Muslim community in South Africa”.

On their return to Kenya, the Muslim Professionals called for several meetings consisting of Muslim scholars and professionals to discuss the modalities for the formation of the majlis ulamaa. Two significant retreats were organised at Makindu Jamia Masjid in Machakos District famously referred to as the Makindu One 3<sup>rd</sup> -5<sup>th</sup> September 2004 and Makindu Two 8<sup>th</sup>-10<sup>th</sup> October 2004 . After these scholarly gatherings, 11 man-Technical committee was put in place to set up the structure of the Majlis Ulamaa and its draft constitution which was subject to approval by the scholars. Efforts of the Technical Committee culminated in organising, for the first time in the history of Kenya Muslims, a meeting that brought together more than 300 hundred Muslim scholars at the Nairobi Muslim Academy from 15<sup>th</sup> to 17<sup>th</sup> April 2005. Inauguration of the Majlis ulamaa-Kenya was attended by several Muslim dignitaries that included the Chief kadhi of Kenya and Muslim members of parliament on Sunday 17<sup>th</sup> April 2005. The Chief Guest was the National Heritage Minister Najib Balala. The Chief kadhi blesses the inauguration ceremony by mentioning “It is my hope that the Majlis Ulamaa-Kenya would be the unifying vehicle for Muslims in the country. I was myself involved in its formation and I fully support it in its ideals which centre on uniting Muslims of Kenya”

The establishment of the Majlis Ulamaa-Kenya did not pass without criticism. In a pre-recorded message that was read during the inauguration of the majlis, the Chairman of Supreme Council of Kenya Muslims noted that “majlis ulamaa has to have a specific role. What they are trying to do is a non-start taking over what is already there. The most important role they can have is to bring Muslims together in giving fatwa to be accepted by all Muslims” He further noted that “the majlis so far only enjoys the support of those who are affiliated to the same madhab and does not enjoy a popular recognition”. Some Muslims have questioned the rationale of a process to register another institution beside the *Supkem*.

---

<sup>6</sup>Letter from the Chairman of Jumiyatu Al-Duatu Ila Sunnat to the Acting Chairman,  
Supreme Council of Kenya Muslims dated 4<sup>th</sup> October 1990

<sup>7</sup>The Majlis Journal, Rajab-Ramadhan 1426/September-November 2005

However, the majlis has dispelled these fears by stressing that the majlis would work closely with other bodies to bring about development within the Muslim community and that the majlis will supplement on the efforts of other organizations for the betterment of Muslim in the country.

#### *Muslim Personal Law and the referendum on the Constitution of Kenya*

Muslims, throughout Kenya are anxiously waiting for the results of a referendum on the Constitution of Kenya scheduled for 21<sup>st</sup> November 2005. Since independence of Kenya in 1963, the right of Muslims to have their own courts has been constitutionally entrenched. The 1963 Constitution has provided separate articles on the establishment and formulation of the kadhi's courts that have jurisdiction to determine questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion.<sup>8</sup>

The Attorney general of Kenya has published a proposed constitution of which Kenyans are expected to vote for a referendum. Several articles of the proposed constitution have been criticised by Kenyans. Majority of Muslims in Kenya feel that the proposed constitution is not for their advantage. Muslims are dismayed by providing kadhi courts under a blanket article referring to 'religious courts' that includes Christian courts, Kadhi's courts and Hindu courts.<sup>9</sup> Muslims' fear emanates from the fact that the Parliament has been given the power to determine the jurisdiction of the religious courts as well establishing other religious and traditional courts. Others anticipate that once the proposed constitution is adopted, then the religious courts could be easily scrubbed by an act of parliament which requires a simple majority.

For the first time, the Majlis Ulamaa-Kenya has come out with a stand to oppose the proposed constitution. The Amir (chairman) Sheikh Khalfan Khamis of the majlis made a press release after Friday prayers at the Jamia mosque, Nairobi expressing the position of the majlis on behalf of Kenya Muslims. Later, the Chief Kadhi of Kenya Sheikh Hammad Mohamed Kassim made a similar statement that opposed the proposed constitution.

#### *Conclusion*

Since the inception of majlis ulamaa-Kenya on 17<sup>th</sup> April 2005, two events have occurred with a unified voice from the Muslim leadership and majority of the Muslim masses. The first event is the unified stand of opposing the proposed constitution of Kenya that has earned blessings of the Majlis Ulamaa-Kenya and the Chief Kadhi of Kenya. However, the muscles of this voice will be tested on the 21<sup>st</sup> November 2005 after the declaration of results of the referendum. The second incident is the sighting of moon for the end of Ramadhan that was declared on 2<sup>nd</sup> November 2005. For the first time in many years, Muslims of Kenya celebrated Eid ul fitr on Thursday 3<sup>rd</sup> November 2005 with their fellow faithful worldwide. The Chief Kadhi of Kenya declared the eid ul fitr with the support of the Majlis Ulamaa-Kenya and majority of Muslims in the country. These events that could be seen as fruits of the Majlis Ulamaa-Kenya have partly accomplished some of the objectives of the Majlis. It remains to be seen whether the Majlis Ulamaa-Kenya will maintain its momentum with the tide of the time in fulfilling its objectives towards unifying the Muslims of Kenya.

---

<sup>8</sup>Article 66 (5) Constitution of Kenya, 1963

<sup>9</sup>Article 195 (1), Proposed Constitution of Kenya, 2005