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G.I.D. 62

Zouzibar

22, 1949 ✓

In the Privy Council.

No. 81 of 1947.  
UNIVERSITY OF LONDON  
W.C.1.  
3 A. 1951  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

ON APPEAL  
FROM THE COURT OF APPEAL FOR EASTERN AFRICA.

BETWEEN

FATMA BINTI HAFIDH (Plaintiff) - - -

AND

THE ADMINISTRATOR-GENERAL, Administrator of the  
Estate of Hafidh bin Muhammad el-Busaidi, deceased  
(Defendant) - - - - - Respondent

UNIVERSITY OF LONDON  
W.C.1.  
6 AUG 1953  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

RECORD OF PROCEEDINGS

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INSTITUTE OF ADVANCED  
LEGAL STUDIES,  
25, RUSSELL SQUARE,  
LONDON,  
W.C.1.

22, 1949

In the Privy Council.

31957 No. 81 of 1947.

ON APPEAL  
FROM THE COURT OF APPEAL FOR EASTERN AFRICA

UNIVERSITY OF LONDON  
W.C.1.  
- 6 AUG 1958  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
*Appellant*

BETWEEN  
FATMA BINTI HAFIDH (Plaintiff) - - -

AND

THE ADMINISTRATOR-GENERAL, Administrator of the Estate  
of HAFIDH BIN MUHAMMAD EL-BUSAIDI, deceased (Defendant) *Respondent.*

# RECORD OF PROCEEDINGS

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25, RUSSELL SQUARE,  
LONDON,

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# In the Privy Council.

## ON APPEAL

FROM THE COURT OF APPEAL FOR EASTERN AFRICA.

BETWEEN

FATMA BINTI HAFIDH (Plaintiff) - - - Appellant

AND

THE ADMINISTRATOR-GENERAL, Administrator  
of the Estate of HAFIDH BIN MUHAMMAD  
EL-BUSAIDI, Deceased (Defendant) - - - Respondent.

10

# RECORD OF PROCEEDINGS

No. 1.  
PLAINT.

*In H.H.  
The Sultan's  
Court for  
Zanzibar.*

IN HIS HIGHNESS THE SULTAN'S COURT FOR ZANZIBAR.

In the High Court Holden at Zanzibar.

Civil Case No. 31 of 1945.

FATMA BINTI HAFIDH - - - Plaintiff

*versus*

ADMINISTRATOR-GENERAL, Administrator of  
the Estate of HAFIDH BIN MUHAMMAD  
EL-BUSAIDI, Deceased - - - Defendant.

No. 1.  
Plaint,  
4th  
August  
1945.

20

1. Plaintiff is an Arab Mohomedan subject of His Highness the Sultan and resides at Zanzibar. She is about 37 now. Defendant is Administrator-General Zanzibar Protectorate and is administering the estate of the late Hafidh bin Muhammad el-Busaidi who died in Zanzibar in or about December, 1944, leaving assets within the jurisdiction of this Honourable Court.

2. The deceased Hafidh bin Muhammad el-Busaidi was a Mohomedan of Ibadhi Sect. Plaintiff is daughter of the said deceased by one Panya binti Hassan who lived with him and was his "Suria" according to Ibadhi law.

30

*In H.H.  
The Sultan's  
Court for  
Zanzibar.*

No. 1.  
Plaint,  
4th  
August  
1945,  
*continued.*

3. Plaintiff was brought up by Muhera binti Juma Mpemba mother of the said Hafidh bin Muhammad el-Busaidi. Plaintiff has the same features and appearance as her father the said deceased.

4. The plaintiff as daughter of the deceased as aforesaid is entitled to inheritance from his estate. She applied to defendant to admit her as heir according to law; defendant has referred her to Court as some of the heirs do not admit plaintiff's claim.

5. Plaintiff is unable to state the exact amount to which she will be entitled to as such heir but estimates it to be over Shs.40,000/-.

(Intd.) I. R. GREENE. 10


Plaintiff therefore prays:—

(A) For a declaration that she is the daughter of the said deceased Hafidh bin Muhammad el-Busaidi and as such entitled to inheritance.

(B) That defendant as administrator of this estate be ordered to give her her share of inheritance according to Ibadhi law.

(C) Such further or other order as to this Honourable Court may seem meet and for

(D) Costs.

Left thumb  print of 20

FATMA BINTI HAFIDH.

Witness : (Sgd.) M. H. KASSAMALI.

Prepared and filed by:—

(Sgd.) M. C. PATEL,  
Plaintiff's Advocate.

I, Fatma binti Hafidh the plaintiff above-named declare that what is stated above is true to the best of my knowledge, belief and information.

Left thumb  print of

FATMA BINTI HAFIDH.

Witness : (Sgd.) M. H. KASSAMALI. 30

Dated at Zanzibar this 4th day of August, 1945.

---

No. 2.  
SUMMONS.

In H.H.  
The Sultan's  
Court for  
Zanzibar.

HIS HIGHNESS THE SULTAN'S COURT FOR ZANZIBAR.

In the High Court.  
Holden at Zanzibar.

Civil Suit No. 31 of 1945.

No. 2.  
Summons,  
4th  
August  
1945.

FATMA BINTI HAFIDH - - - - Plaintiff

*versus*

10 ADMINISTRATOR-GENERAL, Administrator of  
the Estate of HAFIDH BIN MUHAMMAD EL-BUSAIDI,  
Deceased - - - - Defendant.

To

Administrator-General, administrator of the estate of Hafidh bin  
Muhammad el-Busaidi, Deceased, Mambo-Msige, Zanzibar.

Whereas the plaintiff above-named has instituted a suit against  
you (A) For a declaration that she is the daughter of Hafidh bin Muhammad  
el-Busaidi—Deceased and as such entitled to inheritance, (B) that the  
defendant be ordered as administrator of this estate to give her share of  
inheritance according to Ibadhi law, (C) Such further or other order as to  
20 this Honourable Court may seem meet and for (D) Costs as per plaint  
herewith. (V.S.M. Shs.5000/-).

You are hereby summoned to appear in this Court in person, or by an  
advocate duly instructed, and able to answer all material questions relating  
to the suit, or who shall be accompanied by some person able to answer  
all such questions, on the 20th day of August, 1945 at 10 o'clock in the  
forenoon, to answer the claim ; should you appear and dispute the claim  
the Court will proceed to give directions for the disposal of the suit but in  
default of your appearance on the day before mentioned the suit will be  
heard and determined in your absence.

30 Given under my hand and the seal of the Court this 4th day of August,  
1945.

(Sgd.) J. F. DASTUR,  
Registrar.

s/s T. Shs.  
& Plt. 155/s.  
(Intd.)  
P.F.B.

NOTICE.—1. Should you apprehend your witnesses will not attend of  
their own accord you can have a summons from this Court to compel the  
attendance of any witness, and the production of any document that you  
have a right to call upon the witness to produce, on applying to the Court  
and on depositing the necessary expenses.

2. If you admit the claim you should pay the money into Court  
40 together with the costs of the suit to avoid execution of the decree which

*In H.H.  
The Sultan's  
Court for  
Zanzibar.*

may be against your person or property or both. Court Commission at the rate of 10 cents for each Shs.10 or part thereof with a minimum of 25 cents should be added to any sum paid into Court.

*(On the reverse side.)*

No. 2.  
Summons,  
4th  
August  
1945,  
*continued.*

I hereby acknowledge the receipt of a duplicate of this summons.

(Sgd.) R. M. SETHNA,

Administrator-General's Agent.  
9.8.45.

This summons was served by me on the above-named defendant on the 9th day of August, 1945, by delivering a copy thereof to him and 10 requiring his signature hereon.

The defendant was personally known to me.

Dated this 11th day of August, 1945.

(Sgd.) H. NASSOR,

Process Server.

No. 3.  
Written  
Statement  
of Defence,  
13th  
September  
1945.

No. 3.

**WRITTEN STATEMENT OF DEFENCE.**

The defendant abovenamed states as follows :—

1. As regards paragraph No. 1 of the plaint he denies that the plaintiff is an Arab subject of His Highness the Sultan and puts her to the strict 20 proof thereof.

He has no knowledge of her age and wants her to prove the same. He admits the rest of the paragraph.

2. As regards paragraph No. 2 of the plaint he admits that the deceased Hafidh bin Muhammed el-Busaidi was a Mahommedan of Ibathi sect.

He denies in toto that the plaintiff is a daughter of the said deceased by one Panya binti Hassan who did not live with him and was not his "Suria" according to Ibathi law, as alleged.

3. He denies the allegations contained in paragraph No. 3 of the 30 plaint and puts the plaintiff to the strict proof thereof.

4. He denies the allegations contained in paragraph No. 4 of the plaint and states that he refused to admit her alleged claim because all the heirs (and not some of the heirs as falsely alleged) deny her claim in toto.



5. As regards paragraph No. 5 of the plaint he submits that the plaintiff is not entitled to any of the reliefs prayed for either in fact or in law.

The plaintiff has no cause of action.

It is therefore prayed that the suit be dismissed with Court and Counsel's costs to scale.

(Sgd.) J. PARNALL,  
Ag. Administrator General.

*In H.H.  
The Sultan's  
Court for  
Zanzibar.*

No. 3.  
Written  
Statement  
of Defence,  
13th  
September  
1945,  
*continued.*

The defendant abovenamed declares that what is stated herein is true to the best of his information and belief.

(Sgd.) J. PARNALL,  
Ag. Administrator General.

Filed by

(Sgd.) GHULAM ALI KADER BHOY,  
Advocate for the Defendant.

Zanzibar 13th day of September, 1945.

Received copy hereof.

(Sgd.) M. C. PATEL,  
Plaintiff's Advocate,

20 17th September, 1945.

No. 4.

PROCEEDINGS before the Hearing

7/8/45

Plaint admitted.

(Sgd.) I. R. GREENE,  
Acting Judge,

7.8.45.

No. 4.  
Proceedings  
before the  
hearing,  
7th  
August  
1945 to  
21st  
February  
1946.

13/8/45

Upon the letter of the Defendant's advocate filed herein.

30 ORDER: Call attention of the Plaintiff's advocate to the under-valuation of relief claimed by Plaintiff and ask him to correct the valuation and pay balance of summons fee.

(Sgd.) I. R. GREENE,  
Acting Judge,

13.8.45.

*In H.H.* 20/8/45  
*The Sultan's*  
*Court for*  
*Zanzibar.*

Patel and Ahmed for Plaintiff.

Ghulam Ali for Defendant.

No. 4.  
 Proceedings  
 before the  
 hearing,  
 7th  
 August  
 1945 to  
 21st  
 February  
 1946,  
*continued.*

Mr. Patel applies for permission to amend para. 5 of the plaint to read Shs.40,000 in place of Shs.5,000.

Mr. Ghulam Ali has no objection. Order accordingly.

(Sgd.) I. R. GREENE,  
 Acting Judge.

Written Statement within 4 weeks. Mention 24.9.45.

(Sgd.) I. R. GREENE, 10  
 Acting Judge,  
 20.8.45.

24/9/45

Ahmed for Plaintiff.

Ghulam Ali for Defendant.

For Mention 1.10.45.

(Sgd.) I. R. GREENE,  
 Acting Judge,  
 24.9.45.

1/10/45

Ahmed for Plaintiff.

Ghulam Ali for Defendant.

For Mention 3.10.45.

(Sgd.) I. R. GREENE,  
 Acting Judge,  
 1.10.45.

3/10/45

Ahmed for Plaintiff.

Ghulam Ali for Defendant.

For Mention 10/10/45.

(Sgd.) I. R. GREENE, 30  
 Acting Judge,  
 3.10.45.

10/10/45

Patel & Ahmed Ayub for Plaintiff.

Ghulam Ali for Defendant.

For Mention 17.10.45.

(Sgd.) I. R. GREENE,  
 Acting Judge,  
 10.10.45. 40

17/10/45

Patel & Ahmed Ayub for Plaintiff.  
Ghulam Ali for Defendant.  
For Mention 24.10.45.

(Sgd.) I. R. GREENE,  
Acting Judge,  
17.10.45.

*In H.H.  
The Sultan's  
Court for  
Zanzibar.*

No. 4.  
Proceedings  
before the  
hearing,  
7th  
August  
1945 to  
21st  
February  
1946,  
*continued.*

24/10/45.

10 Patel & Ahmed Ayub for Plaintiff.  
Ghulam Ali for Defendant.  
For Mention 19/11/45.

(Sgd.) I. R. GREENE,  
Acting Judge,  
24.10.45.

19/11/45

Ahmed Ayub for Plaintiff.  
Ghulam Ali for Defendant.  
By consent, set down for hearing in the February list.

(Sgd.) E. D. W. CRAWSHAW,  
Acting Judge.

20

6/2/46

Ahmed Ayub for Plaintiff.  
Ghulam Ali for Defendant.  
By consent hearing 21/2/46.

(Sgd.) J. M. GRAY,  
C.J.  
6.2.46.

21/2/46

30 Ahmed Ayub for Plaintiff.  
Ghulam Ali for Defendant.  
Ahmed Ayub.  
Plaint and W.S. read.

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No. 5.  
ISSUES.

Is Plaintiff entitled to share of inheritance in estate of Hafidh bin Mohammed el-Busaidi ?  
Onus on Plaintiff.

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No. 5.  
Issues,  
21st  
February  
1946.

*In H.H.  
The Sultan's  
Court for  
Zanzibar.*

No. 6.

**EVIDENCE of Fatuma binti Hafidh.**

**FATUMA BINTI HAFIDH (Moh.), duly sworn, states—**

*Plaintiff's  
Evidence.*

Fatuma binti Hafidh. My father was Hafidh bin Mohamed el-Busaidi. My mother was Panya binti Hassan. My parents are both dead. I know Muhera binti Juma Pemba. She was the mother of my father. I was born at Muhera's house. She was my grandmother. I was brought up in her house. The one who brought me up was one of her slaves called Situnu, who is now dead. I am married. My eldest child was 16 years old when my father died and now she is 17 years old.

10

*Cross-Examination.*

No. 6.  
Fatuma  
binti  
Hafidh,  
21st  
February  
1946.  
Examina-  
tion.  
Cross-  
Examina-  
tion.

I do not know when my mother Panya died. I do not know how old I was when my mother died. I cannot guess how many years ago my mother died. I was born in reign of Seyyid Ali bin Hamud (1902-1911). I was born at the beginning of his reign. I cannot say how many years after he came to the throne it was that I was born. My grandfather was Hassan Kingaranga. He was the slave of Binti Juma. I do not know when he died. I cannot say how many years ago he died. My maternal grandmother was Hawezayi (HAWEZAYI). She is used to be called Kabwa but her real name is Hawezayi. I do not know of her being called by any other name. I have not heard that she was called Chikanawo. She was also a slave of Binti Juma. I never saw her in her lifetime. I cannot remember when my mother died. I learnt the Koran at Binti Juma's house. I do not know Maalim Maka. I only learnt the Koran—nothing else. My father Hafidh was a very rich man. If I win this case, I do not know what my share of the inheritance will be. I know Mohamed the son of my father. I am much older than he is. He was sent to India for education. I know Zakiya the daughter of my father. She is now dead. She was sent to Egypt for education. He had another daughter Fathiya. She went to St. Jospeh's School. When she went to this School, I was grown big and Binti Juma did not want me to be educated in this way. I was not sent to any school. There were not many schools in those days. Before I was born no other child was born to my father Hafidh. When I got married, I was 20 years old. It is an advanced age for marriage. My first child was born one year after my marriage. Her name is Aziza. Her birth is registered. I was married at Binti Juma's house. My father Hafidh was present. Sheikh Burhan, Bwana Salim and Sheikh Tahir were also present. There was no gathering of Arabs there. There was a feast. Women were invited to the feast. No men were invited. I know Sheikh Hafidh, my father, was ill in hospital before he died. I do not remember the number of days he was there but I used to go to the hospital to see him. I have never been called Fatma binti Hassan. My husband's name is Jusab Tharis. When I married him, he had another wife and he still has another wife. Jusab Tharis is a Memon. He is an Indian. He was an old man when he married me. He had children by his other wife when he married me. I do not know the age of the eldest child of this other marriage. I know Nasibu Yangu. She was the wife of Hassan Kingaranga. She is alive. I cannot guess how long ago she married my grandfather. I do not know who was Sultan when she married him. My mother died in the reign of present Sultan.

50

*Re-Examination.*

My father's son Mahomed was sent to India after I had been married and had given birth to a child. Zakiya went to Egypt at the same time as Mahomed went to India. Fathiya went to the Mission School when I had been married a long time. I do not remember when Arab Government Girls' School was started. Fathiya is still a small child.

*Examination by the Court.*

Mahomed's mother was Bibi Paka. She was my father's wife. Zakiya's mother was Bibi Sheloni. She was my father's wife. Fathiya's mother  
10 was Bibi Cacho. She was my father's wife.

*In H.H.  
The Sultan's  
Court for  
Zanzibar.*

No. 6.  
Fatuma  
binti  
Hafidh,  
21st  
February  
1946,  
*continued.*  
Re-examina-  
tion.  
Examina-  
tion by the  
Court.

## No. 7.

## EVIDENCE of Matika binti Ambari.

MATIKA BINTI AMBARI (Moh.), duly sworn, states :—

Matika binti Ambari. I knew Muhera binti Juma Pemba. She was mother of Hafidh. I was a slave of Binti Juma Pemba. I know Plaintiff. She is daughter of Seyyid Hafidh. Her mother was a slave girl given to him by his mother to keep as a concubine. Her name was Panya binti Hassan. Plaintiff was born in Binti Juma's house in the reign of Seyyid Ali. Plaintiff was brought up in Binti Juma's house.

No. 7.  
Matika  
binti  
Ambari,  
21st  
February  
1946.  
Examina-  
tion.

20 *Cross-examination.*

Plaintiff was not called Fatma binti Hassan. She is married to Jusab Tharia. She was not called Fatma Jusab after her marriage. Plaintiff's mother was given as a slave girl to Seyyid Hafidh in the reign of Seyyid Ali. I cannot say when Seyyid Ali came to the throne. When Seyyid Ali abdicated (sc. 1911), Plaintiff was a big girl and playing out of doors. She was a big sized child, walking in and out of the house, climbing the stairs and running about. I do not know the name of Panya's mother. She lived on a shamba. I knew Hassan Kingaranga. He was the father of the mother of Plaintiff. He used to live at Kibweni. Plaintiff's mother  
30 used to live at Kibweni and then she lived in the town. When she fell sick, she was sent to her father at Kibweni and died there. I cannot say when Plaintiff's mother died. It was long ago.

Cross-  
Examina-  
tion.

*Re-examination.*

I cannot say how old I am. When I became grown up, Seyyid Hamed bin Thweni was Sultan (1893-1896).

Re-examin-  
ation.

In H.H.  
The Sultan's  
Court for  
Zanzibar.

No. 8.

## EVIDENCE of Kidawa binti Mamba.

KIDAWA BINTI MAMBA (Moh.) duly sworn, states :—

Plaintiff's  
Evidence.

No. 8.  
Kidawa  
binti  
Mamba,  
21st  
February  
1946.  
Examina-  
tion.

Kidawa binti Mamba. I do not know my age. I know Plaintiff. She was born at Binti Juma's place. Binti Juma was mother of Seyyid Hafidh. Plaintiff is Fatuma binti Hafidh. Her mother's name was Panya binti Hassani. Panya was the slave of Binti Juma. Then Binti Juma took Panya from the shamba called Kombeni when she was very young so as to bring her up in the town. When Panya attained puberty the Bibi gave her to her son Hafidh as a concubine. Then the Plaintiff was 10  
born at the Bibi, Binti Juma's house. Plaintiff was brought up in that selfsame place until she grew up. I know Plaintiff married an Indian called Jusab Tharia. She has had children by Jusab Tharia.

Cross-  
Examina-  
tion.

*Cross-examination,*

I was a slave of the father of Seyyid Hafidh. Bibi Binti Juma did not bring up any Swahili children at her place. She used to bring up her own slave girls. When a girl was born to her slaves, she used to bring the girl up. A lot of slave girls used to sleep in the same room as Binti Juma. I know Nunu binti Hamud. She was a cousin of Seyyid Hafidh. She was first of all married to Seyyid Hafidh. She was his first wife. His 20  
second wife was Bibi Paka. His third wife was Haliya binti Ali bin Said. His fourth wife was Shiloni binti Mohamed. Panya's mother lived on the shamba at Kombeni. I do not know her name. She lived on the shamba and died there. Binti Juma gave Panya as a concubine to Seyyid Hafidh during the reign of Seyyid Ali.

Re-examin-  
ation.

*Re-examination.*

I knew Seyyid Hafidh very well. Plaintiff resembles in her features Seyyid Hafidh.

Seyyid Hafidh has other children. Three males and two females. I know all these children. There is a resemblance between them and 30  
Plaintiff. Fathiya resembles her and so does Zein and so does Mohellem.

Examina-  
tion by the  
Court.

*Examination by the Court.*

I was born during the reign of Seyyid Burghash bin Said (1870-1888). I was still a girl—quite a young girl when he died.

(Witness slow in uptake.)

No. 9.  
Khamisi  
bin Jeta,  
21st  
February  
1946.  
Examina-  
tion.

No. 9.

## EVIDENCE of Khamisi bin Jeta.

KHAMISI BIN JETA (Moh.), duly sworn, states :—

Khamisi bin Jeta. I knew Binti Juma Pemba. I knew her son Seyyid Hafidh. I knew him very well because he was my master. I know 40  
Plaintiff very well. I know her parents. Her mother was Binti Hassani. Seyyid Hafidh was her father. The mother of Binti Hassani gave birth to Hassani. Then mother of Binti Hassani gave birth to a slave girl who was given to Seyyid Hafidh as a concubine. I only knew the name of the slave girl as Binti Hassani. She was given as a concubine to Seyyid

Hafidh during the reign of Seyyid Ali. Plaintiff was born at Binti Juma Pemba's place. She was brought up at Binti Juma's place. Plaintiff's mother, Binti Hassani, is dead.

*In H.H.  
The Sultan's  
Court for  
Zanzibar.*

*Cross-examination.*

*Plaintiff's  
Evidence.*

No. 9.

Khamisi  
bin Jeta,  
21st  
February  
1946,  
*continued.*  
Cross-  
Examina-  
tion.

Binti Hassani was given to Seyyid Hafidh as a concubine by Binti Juma. When he received her as a concubine, he took her to his bed with him. He took her to his bed on the same day as she was given to him as a concubine. Binti Juma used to bring up a lot of slave girls. She owned many slaves—male and female. Not many of the slave girls gave birth to children at Binti Juma's house. I do not know when Binti Hassani died. Plaintiff is married to Jusab Tharia. She was married during the clove season when I was at Pemba. I cannot say how long it was after Binti Hassani was given as a concubine that Plaintiff was born. It was only about a year after she was given as a concubine that I saw the child in the house. Binti Hassani's father lived at Kibweni. Binti Hassani lived in Binti Juma's house. Seyyid Hafidh had a house of his own. I was present when Binti Hassani was given as a concubine to Seyyid Hafidh. Anasi was also present. Only I and Anasi were present. Anasi is now dead.

20 *Re-examination.*

Re-examin-  
ation.

I know witnesses Kidawa and Matika. They were present when Binti Hassani was handed over to Seyyid Hafidh as a concubine. Hafidh had a house of his own. The house is at Mkunazini. It was his own house.

*Examination by the Court.*

Examina-  
tion by the  
Court.

After Binti Hassani was given as a concubine she continued to live with Binti Juma. After she was given as a concubine Hafidh used to visit Binti Juma about twice a year. (Witness elderly and garrulous. Does not listen to questions.)

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No. 10.

**EVIDENCE of Anasi bin Feraji.**

No. 10.  
Anasi bin  
Feraji,  
21st  
February  
1946.  
Examina-  
tion.

ANASI BIN FERAJI (Moh.), duly sworn, states:—

Anasi bin Feraji. I was a slave of Seyyid Hafidh. Know Plaintiff. I knew her mother. Her name was Panya binti Hassani. Her father was Seyyid Hafidh. Panya was a slave woman. She was the slave girl of Binti Juma, the mother of Seyyid Hafidh. Seyyid Hafidh was my master. I remember his features. Her features are just the same as those of Seyyid Hafidh. Plaintiff was born at the house of Binti Juma. She was brought up at Binti Juma's house. Panya and Seyyid Hafidh lived together here in Zanzibar in the house where Inspector Sultan now lives. Panya was his concubine. Binti Juma, mother of Seyyid Hafidh, gave Panya to him as his concubine. Seyyid Hafidh's father was Mahomed. When Seyyid Hafidh took Panya as his concubine he was poor and had no property. It was after Plaintiff's birth that Seyyid Hafidh inherited property from his relatives.

*In H.H. Cross-examination.*

*The Sultan's  
Court for  
Zanzibar.*

*Plaintiff's  
Evidence.*

No. 10.  
Anasi bin  
Feraji,  
21st  
February  
1946,  
*continued.*  
Cross-  
Examina-  
tion.

Binti Juma gave Panya as a concubine to Seyyid Hafidh. I was present when she gave her as concubine. I and last witness were present when she was given as concubine. One Kidume was also present but he is dead. I remember no others. This took place at Kajificheni in the house where Inspector Sultan now lives. Binti Juma said "This slave girl is the concubine of my son." Seyyid Hafidh had no wife at that time. I know Nunu binti Hamoud. Seyyid Hafidh married her after Panya had been given to him as a concubine. No, Seyyid Hafidh divorced Nunu and then took Panya as a concubine. I make a mistake. I did not understand. He took Panya as a concubine a long time after he divorced Nunu. It was not twenty years after. I cannot say if it was fifteen years after. When Hafidh divorced Nunu, Seyyid Ali was Sultan of Zanzibar. I cannot say how long after this divorce Seyyid Khalifa came to the throne. I know Bibi Paka binti Mohamed el Shaksia. She was a wife of Seyyid Hafidh. She had not yet married him when Panya was given as a concubine to Seyyid Hafidh. I do not know how long after Plaintiff's birth he married Bibi Paka. I cannot say if it was two or three years after Plaintiff's birth. I do not know the name of Panya's mother.

10

Re-examin-  
ation.

*Re-examination.*

Know witnesses Kidawa and Matika. They were present when Binti Juma gave Panya as a Suria (concubine) to Seyyid Hafidh.

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Examina-  
tion by the  
Court.

*Examination by the Court.*

I was born on mainland. I was born in Unyanyembe. I was born in Unyanyembe before the Germans reached that place. I do not remember the name of the Arab Liwali at Unyanyembe. I came to Zanzibar in time of Sultan Seyyid Khalifa bin Said (1888-1890) when I was (as demonstrated by witness) about 7-8 years old.

Adjourned to 22/2/46.

(Sgd.) J. M. GRAY,

30

C.J.

21.2.46.

No. 11.  
Fatuma  
binti  
Sultan,  
22nd  
February  
1946.  
Examina-  
tion.

No. 11.

**EVIDENCE of Fatuma binti Sultan.**

FATUMA BINTI SULTAN (Moh.), duly sworn, states :—

Fatuma binti Sultan. Know Plaintiff. I know Seyyid Hafidh. I knew his mother Binti Juma Pemba. I taught Plaintiff the Koran at Binti Juma's house at Mbaraka Arabu in Zanzibar. I taught her in the year of the "Guns of Sunday" (sc. year of attack of Konigsberg on H.M.S. Pegasus at Zanzibar in September 1914). I taught her during the last war. I cannot guess how many years ago it was but I know it was the year of the Guns of Sunday. I think it was about 32 years ago but I am only making a guess. Binti Juma herself asked me to teach Plaintiff the Koran. When she asked me to do this, she said "Teach my granddaughter." I taught Plaintiff the Koran for two years. After I had taught her I received money from the Bibi and the Bwana. In all there

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were four persons present at the payment. The Bibi was Binti Juma. She gave me Rs.50/-. Bwana Hafidh also gave me Rs.50/-. I and Plaintiff were present when these payments were made. I taught Plaintiff from 8 a.m. to 12 noon.

*Cross-examination.*

I taught Plaintiff alone, but I used to teach other girls at other times. I used to teach other girls. I did not keep a Koranic school. I used to go to people's houses and teach. I used to teach Comorian girls and Arab girls, whenever I was sent for to teach them. I can tell you the names of  
 10 other girls I taught at this time but I cannot say whether they are living or not. One was an Arab girl called Jokha and another Arab girl called Salma. I was also teaching Comorian girls. I did not teach any other girl at Binti Juma's house at Mbaraka Arabu. I never taught any slave girl of Binti Juma's. Binti Juma and her slaves used to live in this house at Mbaraka Arabu. The Guns of Sunday had already been fired when I started teaching Plaintiff. I cannot say how long after the Guns of Sunday I began teaching her. When I began teaching her, Plaintiff was  
 20 according to my guess about 7 or 8 years old. I cannot remember when Binti Juma died, but she is dead. I cannot say how many years it is since she died. I remember the Sultan's Jubilee (1936). I cannot say whether she died before or after the Jubilee. I knew Plaintiff's mother. Binti Juma said "Teach my granddaughter." I have not made a note of it anywhere. Why should I write a note of it ?

No re-XN.

*Examination by the Court.*

I cannot remember exactly how long after the Guns of Sunday I began teaching Plaintiff but I think it might be about a year after that happened.

Case for Plaintiff.

*In H.H.  
The Sultan's  
Court for  
Zanzibar.*

No. 11.  
Fatuma  
binti  
Sultan,  
22nd  
February  
1946,  
*continued.*  
Cross-  
Examina-  
tion.

Examina-  
tion by the  
Court.

No. 12.

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**EVIDENCE of Nasibuyangu binti Hamisi.**

NASIBUYANGU BINTI HAMISI (Moh.), duly sworn, states :—

Nasibuyangu binti Hamisi. (Witness deaf.) Knew Binti Juma. She was my mistress. Hassani Kingaranga was my husband. I know Plaintiff. I knew Plaintiff's mother. She was the daughter of Kingaranga. Plaintiff's mother's name was Panya. I knew Panya's mother. Her name was Simtovu. That is the only name I knew her by. When my husband Kingaranga was alive, I lived at Kibweni. Panya was born in the reign of Seyyid Hamud bin Mohammed (1896–1902). Panya was a slave of  
 40 Binti Juma. Plaintiff was born in the reign of present Sultan (sc. 1911 or after). I never knew Plaintiff's father. I cannot say who he was. I know all about Panya's pregnancy. When the father of Panya married me, I was with Panya and I cannot recollect that she was made a concubine of Seyyid Hafidh. In front of our house there was a Manga's house. Panya used to go into the Manga's house. This was at Kibweni. Then Panya conceived and we all came back with the Bibi, Binti Juma, to the town of Zanzibar. Then the Bibi called me. I went to see her. At her command

*Defendant's  
Evidence.*

No. 12.  
Nasibuy-  
angu binti  
Hamisi,  
22nd  
February  
1946.  
Examina-  
tion.

*In H.H.  
The Sultan's  
Court for  
Zanzibar.*

*Defendant's  
Evidence.*

No. 12.  
Nasibuy-  
angu binti  
Hamisi,  
22nd  
February  
1946,  
Examina-  
tion,  
*continued.*

*Cross-  
Examina-  
tion.*

I examined Panya and found she was pregnant. The Bibi got angry. She sent for Panya's father, Hassani Kingaranga. Then she went and stayed with her father till she gave birth to Plaintiff. Then Plaintiff was brought up. Later Jusab used to come to our house to do some work there. He saw Plaintiff and fell in love with her. Then he asked the Bibi to give Plaintiff in marriage to him and she agreed to do so. The Bibi said she wanted Rs.300/- to give Plaintiff in marriage and Jusab brought Rs.300/-. Then Jusab asked the Bibi who was the father of the girl and the Bibi placed her hand on a chest and said "Her father was a chest." After the marriage had taken place, Jusab wanted his wife. Then the Bibi gave him 10 his wife and the marriage was consummated in a small house belonging to one Mane. This is what I know. Plaintiff used to be called Fatuma with no other name. I have heard that Plaintiff is called Binti Abdulla but we had no Abdulla in our house. When I examined Panya, others were present—Riziki, Zena and myself and the Bibi.

*Cross-examination.*

I know Plaintiff has a grown up daughter. I do not know the daughter's age. She may be about 17. Plaintiff married Jussab during present Sultan's reign. I cannot guess how long ago the marriage took place. I do not know how long the Sultan has reigned. Plaintiff was born 20 in Binti Juma's house and was brought up there in that house. She was taught the Koran in the house of Binti Juma Pemba. I see Fatuma binti Sultan. She did not teach Plaintiff the Koran. She was taught the Koran at Ngambo by a Comorian who I think was called Mother Fatuma but I am not sure of the name. From time of her birth to her marriage Plaintiff was brought up in Binti Juma's house. I cannot say how long ago Plaintiff married Jusab. Plaintiff was grown up when she married Jusab. I know Matika and Kidawa. I know Khamisi bin Jeta, and Anasi bin Feraji. All four were often in Binti Juma's house. They are related to Hassani Kingaranga. They are related because they all belonged to the 30 Bibi and worked for the Bibi. Panya binti Hassani who was at Bibi's house at the same time as all these people. They were at the Bibi's house when Plaintiff was born. There are some children who resemble Bwana Hafidh. I see Plaintiff. She does not resemble Sheikh Hafidh. She is the daughter a short Manga Arab named Hamisi. This Manga Hamisi is dead. He was living at Kibweni. Plaintiff was living with Jusab when Panya died. I live now at Kombeni on the shamba of Seyyid Hafidh. Nobody looks after me. I simply reside there. I have lived there from the beginning. I have simply remained on the shamba since Seyyid Hafidh's death. I have been called by the Government to give evidence. I do not know who called 40 me The children—no, Mohammed bin Hafidh—asked me to come and give evidence. He did not take me anywhere before I came to Court to give evidence. After her marriage to Jusab Plaintiff never once set foot again in the Bibi's house right up to the death of the Bibi. I was not present at Plaintiff's marriage. Whilst Plaintiff was being brought up in Binti Juma's house, Seyyid Hafidh used to visit Binti Juma.

*Re-examin-  
ation.*

*Re-examination.*

When Plaintiff got married, she was about 15 years old.

*Examina-  
tion by the  
Court.*

*Examination by the Court.*

Mohammed bin Hafidh asked me to come and give evidence. Plaintiff 50 is older than him. Mohammed bin Hafidh was the oldest of Seyyid Hafidh's children.

## No. 13.

## EVIDENCE of Zena binti Abdulla.

ZENA BINTI ABDULLA (Moh.), duly sworn, states :—

*In H.H.  
The Sultan's  
Court for  
Zanzibar.*

*Defendant's  
Evidence.*

No. 13.  
Zena binti  
Abdulla,  
22nd  
February  
1946.  
Examina-  
tion.

Zena binti Adbulla. I knew Binti Juma and Seyyid Hafidh. I was purchased by Binti Juma. I knew Hassani Kingaranga. I knew Panya. She was daughter of Hassani Kingaranga. Panya's mother was called Chekanawo. She used to be called Kubwa also. I know Plaintiff. Plaintiff was born in the reign of present Sultan. Her mother was Panya. I do not know who her father was. She is not related to Seyyid Hafidh.

10 I know about Panya's pregnancy. I saw Plaintiff's mother had conceived and she hid it. After five months people saw she was pregnant. They told Binti Juma. Panya was called and was examined. She had a bandage round her stomach. The bandage was untied and I was called and so was Nasibuyangu and Riziki. The Bibi slapped Panya. She asked Panya who had made her pregnant. Then somebody was sent to call Panya's father from Kibweni. When her father came, the Bibi told him his daughter was pregnant. The father said "What can I do?" He asked her who had made her pregnant and she would not say who it was. Then Panya was allowed to remain in the house. When she was near delivery, she was

20 sent to her father at Kibweni and was delivered there. Then in the fourth month Panya came with Nasibuyangu and her daughter and lived in the Bibi's house in the town. Then Plaintiff was brought up in the Bibi's house until she grew up. When she had grown up, she was given a husband. Jusab came and saw Plaintiff and said he wanted a wife. The Bibi said she would speak to Plaintiff's mother and her grandfather. The mother and grandfather were sent for. The Bibi told them Jusab wanted to marry Plaintiff. The mother said "I do not want Jusab. He is a bad man." The grandfather told the Bibi "You had better give her in marriage. Her mother has no sense." Then on Friday Sheikh Tahir

30 came and performed the marriage. No other Arab was present at the marriage. Seyyid Hafidh was not there. Plaintiff was taught the Koran at Finya by Malim Maka. Panya was not related to Seyyid Hafidh. Plaintiff is known as Fatuma binti Hassani.

*Cross-examination.*

*Cross-  
Examina-  
tion.*

She has always been called Fatuma binti Hassani. Some people used to call her Fatuma wa Jusab. She was called Fatuma binti Hassani when she married Jusab. I now live at Ngambo. Mohammed bin Hafidh, Seyyid Hafidh's son, told me to come here and give evidence. He is the only man who came and asked me to give evidence. Plaintiff was brought

40 up in Binti Juma Pemba's house by Binti Juma. When she ceased to suckle, Plaintiff first of all lived with her mother at Ngambo. Then her mother took her to a Koran school at Ngambo. Then she was brought up by a woman at Kajificheni. When the woman with whom she lived at Kajificheni found that she was grown up, she brought Plaintiff back to the Bibi, Binti Juma's house. I know Matika binti Ambari and Kimbawa binti Mamba and Khamis bin Jeta and Anasi bin Ferarji. Anasi and Kamasi used to live on the Shamba. Matika and Kimbawa used to live at Ngambo and come to the Bibi's house by turns. I know Plaintiff has now got a grown up daughter. I know when the daughter

50 was born.

*In H.H.  
The Sultan's  
Court for  
Zanzibar.*

*Defendant's  
Evidence.*

No. 13.  
Zena binti  
Abdulla,  
22nd  
February  
1946,  
Examina-  
tion,  
*continued.*  
Examina-  
tion by the  
Court.

She was born in reign of present Sultan. I saw with my own eyes that Plaintiff was born during the reign of the present Sultan. I cannot say how long the Sultan has reigned but Plaintiff was born two years after this Sultan came to the throne (sc. in 1913). I cannot say when the Sultan came to the throne because—I cannot read or write. When Plaintiff was living in Binti Juma's house, I was there. I was living with the Bibi before Plaintiff was born and before her mother was born. I was living with Binti Juma when Plaintiff was living with her. Plaintiff used to sleep in the same room as the Bibi but so did others. Binti Juma had no more interest in Plaintiff than in the others. There were a number of children 10 in the house like Plaintiff—I mean, a number of children of other slave girls. The slave girls were married but I do not know the names of the fathers of the children. Plaintiff got married when she was about 13 years old.

No *Re-xn.*

*Examination by the Court.*

I was bought as a slave by Binti Juma in the reign of Seyyid Ali bin Said (1890–1893). I was nine years old when she bought me. Panya was born during the reign of Seyyid Hamoud bin Mohammed (1896–1902). I cannot say how old Panya was when Plaintiff was born. She was young 20 when Plaintiff was born. Panya was born soon after the war in which the Beit El Ajaib was bombarded—the guns of Thursday (sc. August, 1896). Binti Juma was very angry with Panya for becoming pregnant. I know Panya objected to Plaintiff marrying Jusab because I was there. Jusab was told to bring a dowry. I was told this by my mistress.

No. 14.  
Riziki binti  
Feruzi,  
22nd  
February  
1946 to  
23rd  
February  
1946.  
Examina-  
tion.

No. 14.

**EVIDENCE of Riziki binti Feruzi.**

RIZIKI BINTI FERUZI (Moh.), duly sworn, states :—

Riziki binti Feruzi. Knew Binti Juma Pemba. She was my mistress. I knew Seyyid Hafidh and Hassani Kingaranga. Know Plaintiff. I knew 30 her mother. She was called Panya. Panya's mother was called Chekanawo. I knew her. She was called also by some shenzi name I have forgotten. Panya was the slave of Seyyid Hafidh's mother. I do not know who is Plaintiff's father. During reign of present Sultan I discovered Panya was pregnant and I told the Bibi. The Bibi sent for Zena and Nasibuyangu. Panya was taken into a room and made to strip. The Bibi was very angry and said "Look at this younger generation. Here is a little girl become pregnant." She was very angry and she slapped Panya. The Bibi then sent for her father and told him "Look at your daughter. She wants to kill herself. She is pregnant." She stayed in the 40 house until she was about to deliver and then her father took her to the shamba. Then news came from the shamba that she had been delivered of a child. In the third month Panya was brought with her child back to the town to the Bibi's house. She then stayed in the Bibi's house and we brought Plaintiff up there. Panya was delivered of this child in the reign of the present Sultan.

Adjourned to 23/2/46.

(Sd.) J. M. GRAY, C.J.

22/2/46.

23/2/46.

Advocates as before.

RIZIKI BINTI FERUZI, recalled on former oath, states :—

*Cross-examination.*

I know Matika and Kidawa. They were living with the Bibi. They lived at Ngambo and used to come to her house during the day time. Each would come one day and rest the next day. Panya binti Hassani died at Makadala in the town of Zanzibar. She died in a house which Jusab gave her to live in—no, she was married and had a husband. I did not go to her funeral. I did not go to the place where she died. I know where Panya was born. She was born at Kambani on Binti Juma's shamba. I do not know how old Panya was when she died. Binti Juma Pemba had an older sister. She was also called Binti Juma. I have forgotten her first name. Hafidh's mother was Mwanamaka and also known as Muhera binti Juma Pemba. I was the slave of Mwanamaka's sister and not of Mwanamake herself. I do not know the sister's name because I was quite young when she died. She was called Bibi wa Kichucachi and also Bibi Zwena. Nasibuyangu married Hassani Kingaranga after the death of his first wife. I cannot say when Bibi wa Kichucachi died. She died during the reign of Seyyid Hamoud bin Muhammed (1896–1902). Seyyid Hamoud succeeded Seyyid Hamed bin Thweni. I received a summons to give evidence. Mohammed bin Hafidh asked me to come and give evidence. He is a grown man. I cannot say how old he is. He came alone to me. I live in the same house as he does.

*Re-examination.*

Plaintiff does not resemble Seyyid Hafidh.

(New matter but Ahmed Ayub does not Re-xxn.)

*Examination by the Court.*

Panya died at Kombani—no, at Makadala. I am not certain where and where Panya died. I only heard that she was dead. She was not a friend of mine. I am old enough to be her mother. Panya was not married. Plaintiff was taught the Koran. I was not taught the Koran. I know witness Zena. She was not taught the Koran. I know Nasibuyangu. She was not taught the Koran. Panya was not taught the Koran. Her mother was an Abembe. I do not know what tribe Hassani belonged to. Malim Maka taught Plaintiff the Koran at Mzee Finye's at Ngambo. Her mother paid to teach her the Koran. She was young and got the money to teach her. She was a prostitute but she taught her daughter the Koran. I do not know Fatuma binti Sultan. I know this because I was in the house of Binti Juma and I heard that Panya had taken Plaintiff to Ngambo to the Koran School.

*In H.H.  
The Sultan's  
Court for  
Zanzibar.*

*Defendant's  
Evidence.*

No. 14.  
Riziki binti  
Feruzi,  
22nd  
February  
1946 to  
23rd  
February  
1946,  
*continued.*  
Cross-  
Examina-  
tion.

Re-examin-  
ation.

Examina-  
tion by the  
Court.

*In H.H.  
The Sultan's  
Court for  
Zanzibar.*

No. 15.

**EVIDENCE of Mahomed bin Burhan.**

MAHOMED BIN BURHAN (Moh.), duly sworn, states :—

*Defendant's  
Evidence.*

No. 15.  
Mahomed  
bin  
Burhan,  
23rd  
February  
1946.  
Examina-  
tion.

Mahomed bin Burhan bin Abdul Aziz. My father was a Kathi in Zanzibar. I knew Binti Juma Pemba. She was my step-mother. I used to go to her house. I used to work for her. I used to write receipts for the house rent which she collected. I knew Seyyid Hafidh bin Hamed bin Ahmed el Busaidi. He is not of the Aulad Imam but he is an el-Busaidi. I have heard that Hamed bin Ahmed was a Wazir of Seyyid Hamed bin Thweni (1893–1896). My age is 48 years. I was born in December, 1898. 10  
Seyyid Hafidh was older than me. I cannot say how much older he was than me—but I should guess about five years older than me. I knew Panya binti Hassani. She was the slave of Seyyid Hafidh's mother. She had no other relationship with him. I think Panya and I were about the same age. There might be one year's difference. I know Plaintiff. I do not know who her father is. Her mother was Panya binti Hassani. Plaintiff was known in the family as Fatuma wa Binti Hassani. I have a sister who was the daughter of a Suria (Concubine) of my father. She is regarded as my sister. She is just the same as me. Plaintiff has a husband. He is Jusab Tharia. He is outside the Court. I have only 20  
heard that Sheik Tahir performed the ceremony of marriage between Plaintiff and Jusab but I was not present.

*Cross-  
examina-  
tion.*

*Cross-examination.*

Panya binti Hassani died in Zanzibar. I do not know where she died. I do not know where she was born. I cannot say Seyyid Hafidh was poor during the reign of Seyyid Ali bin Hamoud (1902–1911). He had two buildings which he inherited from his father. One was in front of Punja Nathoo's house. The other was a small house near Inspector Sultan's house. In those days these houses would let at not less than Rs.60/- per month. Seyyid Hafidh sold those houses. I cannot say when he sold 30  
them. He may have sold them in the reign of Seyyid Ali bin Hamoud. He had no other property after he had sold this property. Jusab Tharia is a very wealthy man—a builder and contractor. He owns both shambas and houses. He also has property at Dar es Salaam. In 1937 he sent two sons to England to be educated. One son—Ibrahim—is a Captain in R.E. and is now at Cairo.

No *Re-wn.*

*To Court.*

I am a shamba owner. I have plenty of shambas and live on the income. Panya binti Hassani was living at Binti Juma's house when 40  
I knew her. I first saw her there when I was about 8 or 10 years of age and first went to Binti Juma's. She stayed there all her life. Plaintiff stayed at Binti Juma's from the time I first remember until she got married. (Not an impressive witness.)

No. 16.

## EVIDENCE of Isa bin Said el-Kindi.

ISA BIN SAID EL-KINDI (Moh), duly sworn, states—

Isa bin Said el-Kindi. I knew Seyyid Hafidh. I was employed by him as a clerk from October, 1939, until the time of his death in December, 1944. I do not know Plaintiff. Seyyid Hafidh's family did not keep under hi jabi (veil) from me. I do not remember ever having seen Plaintiff at Seyyid Hafidh's house.

10 I see Exh. 1. It is a book in which a number of entries have been made. I see the entries marked 54 and 55 in Exh. 1. They are in my handwriting. Exh. 1 was in the hands of Seyyid Hafidh. I see entry marked 45 in Exh. 1. I do not know who wrote this entry. I see entry marked 49. I do not know who wrote it.

*Cross-Examination.*

Except the entries I have written myself, I do not know who made the entries in Exh. 1.

No *Re-xn.**Examination by the Court.*

20 Exh. 1 begins with a list of questions and answers of the Fikh. At the back end of the book there is a sort of a diary. I see entries 50 and 51 in Exh. 1. Entry 50 is not in the handwriting of Hafidh bin Muhamed, nor is the entry 51. The record and the signature in each case is in one hand. Neither entry is in the handwriting of Hafidh bin Mohamed. I do not know whose handwriting it is. I know Hafidh bin Mohamed's handwriting. Entry 48 is in Hafidh bin Mohamed's handwriting. I cannot see any other entry in his handwriting. The word " wife " does not appear in the entry. I do not know who Seyyida Nunu was. It appears to me different people have made entries at different times in Exh. 1. The handwritings vary. Case for Defendant.

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*Defendant's  
Evidence.*

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Said  
el-Kindi,  
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Examina-  
tion.

Cross-  
Examina-  
tion.

Examina-  
tion by the  
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30

No. 17.

## JUDGE'S NOTES of Addresses by Counsel.

GHULAM ALI—

Plaintiff's witnesses contradict each other. Hamisi Jecha and Anasi contradict each other. Nasibuyangu, Riziki & Co. contradict their evidence of Plaintiff's witnesses. Z.L.R.I. 526 (*British Resident v. Hafiz b. Mohamed*). Age of Hafiz born in 1895 (per Cur :—Facts stated in that report are not evidence in the present case. Facts adduced in evidence in that case must be adduced in evidence in the usual way in this case. That case is a *res inter alios acta*). I leave the matter to the Court. Defence

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witnesses should be believed. Defence show Fatuma (Plaintiff) was not taught Koran by Fatuma binti Suleman.

Plaintiff's witnesses say Seyyid Hafidh visited his mother's house only twice a year.

Balance of evidence is that Panya lived at Kibweni or at Binti Juma's. Paternity of Plaintiff unknown. Nasibuyangu is step mother of Plaintiff and should be believed.

After birth of Plaintiff deceased became rich and there was no celebration according to usual Arab rites at her wedding.

No resemblance in features.

10

Slave Trade Prohibition Decree s. 4 "Obtaining Slaves" was prohibited. (Has this legal point been pleaded?)

Section 5 of Decree refers to inheritance not to obtaining.

Abolition of Legal Status of Slavery Decree—preamble.

Decree 20/1934 (repealing certain previous enactments).

Decree of 1897, s. 3.

Slavery Decree, 1909, s. 7. "All concubines lawfully held." Panya was not lawfully held as a concubine.

Person to give in marriage—*El Nil* VIII p. 63. Law as to Ibathi.

As to concubines—*El Nil* III p. 317. Plaintiff's evidence is that Binti Juma gave Panya as a concubine. No evidence of a gift of girl from mother to son.

(Had Plaintiff any warning of this point as to gift from mother to son?)

It appears in the pleadings.

*Jawhar el Nidham* II. 243.

#### AHMED AYUB—

Defence has failed. Simple issue in case is whether Plaintiff daughter of Hafidh or not? Defence evidence unsatisfactory.

Preponderance of evidence in favour of Plaintiff.

Nasibuyangu contradicted herself.

30

Special status given to Plaintiff by Binti Juma.

I had no notice of legal argument in this case.

Slavery Decree 1890 is to prohibit slave trade.

Slavery Decree 1897—s. 2 (courts not to enforce contracts of slavery).

Slavery Decree 1897 s. 5 recognises status of concubines (repealed in 1909).

Slavery Decree 1909 s. 7 replaces last enactment. Children of concubines do not have their right forfeited.

Concubine has status of a wife in Mohommedan law.

Gazette—January 27, 1909—(slavery and sexual intercourse sufficient to make concubine) *Tuffa v. Rashid*. I could have called evidence on points raised in support of allegation of illegality.

C.A.V.

(Sgd.) J. M. GRAY,

C.J.

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## No. 18.

## REASONS for Judgment of Chief Justice Sir John Gray.

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The defendant is administering the estate of one Hafidh bin Muhammed el-Busaidi who died in December, 1944. The plaintiff claims to be the daughter of the deceased by a concubine named Panya binti Hassani and to be entitled to the same share in his estate as a daughter by a lawful wife. The legitimate children of the deceased dispute this claim and in the circumstances the defendant has declined to admit the plaintiff's claim without strict proof thereof in a court of law.

10 The Arabic word "Suria" is doubtless quite accurately translated by the English word "concubine," but the relationship which the plaintiff says existed between her mother and the deceased was one which, until the abolition of the legal status of slavery, was accorded legal recognition by Mohommedan law. The relationship arose when a free person cohabited with one of his female slaves. In such case the woman became a kind of secondary wife of her master and, though her rights and privileges fell short of those of a lawfully wedded wife, the son or daughter of such a union was entitled to the same share of the father's inheritance as the son or daughter of a lawful wife. As Indian decisions show, such was the  
20 position in India prior to the abolition of the legal status of slavery in 1843 (*Fyaz Ali Khan v. Mussumaut Fatima Khatoon* (1811) 6 Indian Decisions (Old Series) 350, *Mihr Ali v. Kureemounisa Begum* (1814) *ibid* p. 466, *Syud Mohummod v. Syud Ihait* (1848) 10 Indian Decisions (Old Series) 15, MacNaughten—Precedents of Inheritance—Cases IV and XVIII).

In this case the alleged father was an Ibathi. Therefore by reason of section 7 of the Succession Decree Ibathi law applies to the facts disclosed in the evidence, subject nevertheless to any modification of that law as  
30 may have been effected at any material time in this case by the Decrees of the Sultan of Zanzibar. It has not been alleged that, with regard to the question of inheritance by the child of a concubine, Ibathi law is in any way different to that laid down in the Indian decisions. I have on this point consulted the learned Ibathi Kathi, Sheikh Said bin Rashid el-Gaithi, who states that in his opinion Ibathi law is in this respect the same as that of other Mahommedan Schools.

Legal concubine-age presumably came to an end with the abolition of the status of slavery in Zanzibar, but until then it was legally possible to create the relationship between a man and his female slave. Article 5. of the Slavery Decree, 1897, enacts that—

40 "Concubines shall be regarded as inmates of the harem in the same sense as wives, and shall remain in their present relations unless they should demand their dissolution on the ground of cruelty, in which case the District Court shall grant it if the alleged cruelty has been proved to its satisfaction. A concubine not having borne children may be redeemed with the sanction of the Court."

The use of the word "redeemed" in this last sentence would appear to show that the "present relations" mentioned in the previous sentence are those of master and slave.

50 Articles 2 and 8 of the Slavery Decree, 1909, as read together enact that from and after July 6, 1909, courts are to cease to recognise the status

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of slavery. Article 7 of the same Decree repealed Article 5 of the previous Decree, "provided that all concubines lawfully held at the commencement of this Decree (sc. on July 6, 1909), although free, shall continue to be entitled to all the rights and privileges which they had previously enjoyed under Mahommedan law except that any concubine who shall leave her master without his consent shall sacrifice all such rights and privileges, including her right to the custody of her children by him. For the purpose of this article the word "concubine" shall mean "a female member of the household who is an inmate of the harem." It would appear therefore that from and after July 6, 1909, it was no longer possible to form a legal union of concubinage, though all such unions legally formed before that date were still legally recognised as conferring certain rights and privileges. 10

Before examining in detail the evidence in this case, it is perhaps desirable to consider what kind of evidence is sufficient to establish the plaintiff's claim.

*Gopalswami Chetti v. Arunachellam Chetti* (1903) 27 Med. 32 was a Hindu case in which the plaintiff claimed a share of inheritance as the illegitimate son of a deceased person. A Full Bench of the Madras High Court held that "the onus of establishing that he is the son of Chidambaram Chetti is clearly on the plaintiff and he cannot simply by proving that his mother was the Chetti's concubine shift the onus on to the other side to disprove his paternity. The legal presumption as to paternity raised by section 112 of the Indian Evidence Act is applicable only to the offspring of a married couple. A person claiming as an illegitimate son must establish his paternity like any other disputed question of relationship and can, of course, rely upon statements of deceased persons under section 32, clause 5, for opinion expressed by conduct under section 50 of the Evidence Act and also upon such presumptions of fact as may be warranted by the evidence." 20

Reported Indian decisions with respect to claims to inheritance under Mahommedan law by the child of a concubine were given prior to the enactment of the Evidence Act, but they show that it was deemed necessary to prove the paternity of the child as well as the fact that the mother was the concubine of the alleged father. 30

In *Fyaz Ali Khan v. Mussumaut Fatima Khatoon* (*supra*) the plaintiff-respondent claimed to be the posthumous child by a concubine of a deceased zemindar. There was evidence that her mother was a slave of the zemindar, that, when her mother was found to be pregnant, the zemindar admitted his responsibility and that he "had caused to be provided, at a considerable cost, the things necessary for performing the ceremonies usual amongst Moosulmans at 7 months' pregnancy," and that the respondent was born two months after the death of the zemindar. The appellate court directed the taking of further evidence, "which tending to confirm the former testimony respecting the birth of the plaintiff, and the acknowledgment of the zemindar that she was his daughter, the court held that she was entitled as a daughter to a share of the zemindar's estate." 40

In *Syud Mohummud v. Syud Ihait* (*supra*) there was evidence that the alleged father had admitted that the plaintiff-respondent was his son "by a slave." The appellate court referred with approval to Case IV 50

in Sir William MacNaughten's *Precedents of Inheritance* which reads (8th Ed. p. 85) as follows :—

“ All the children of a person deceased, whether they are the offspring of a slave girl or a free married woman, are without distinction entitled to succeed to their respective shares, according to the Law of Inheritance. But to establish the parentage of children by slave girls, it is necessary that the father should acknowledge them, if they are by different mothers ; but if they are by the same mother, the acknowledgment of the first-born is sufficient.”

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10 After referring to this passage, the appellate court said : “ In the present case, the acknowledgment has been publicly made ; and of the right to succeed no doubt can exist.”

From these decisions it would appear clear that the plaintiff in this case must prove not only that her mother was the suria, or slave-concubine, of her alleged father, but also that her alleged father acknowledged her as his child. The reasons for requiring this measure of proof in a case of this description appear to be obvious and in accordance with common sense.

At the same time I am of opinion that the acknowledgment need not  
20 necessarily take the form of an express declaration by the alleged father to that effect. The Privy Council case of *Khajah Hidayut Oolah v. Rai Jan Khanum* (1844) 18 E.R. 510 dealt with the question of acknowledgment of paternity as proof of a marriage. In the judgment of the Board (at p. 520) Dr. Lushington held that there need not necessarily be evidence of an express acknowledgment of paternity and that the evidence might be “ that which at least is tantamount to oral evidence of any declaration,” such as, for example, in the case of an alleged marriage evidence of treatment by the alleged father of both mother and child over a period of years. In *Mahomed Bauker v. Shurfoon Nissa Begum* (1860) 19 E.R. 481  
30 at p. 489 Knight Bruce L.J. emphasised the fact that the Board was “ not denying or questioning the position that, according to Mahomedan law, the law which regulates the rights of the parties before us, the legitimacy or legitimation of a child of Mahomedan parents may properly be presumed or inferred from circumstances without proof, or at least without any direct proof, either of a marriage between the parents, or of any formal act of legitimation,” but held in that case that there was “ an absence of circumstances sufficient to found or justify such a presumption or such an inference.” Reference should also be made to a passage in the Privy Council's judgment in *Ashrufood Dowlah v. Hyder Hossein* (1860) 20 E.R. 37  
40 at p. 45 :

“ A child born out of wedlock is illegitimate ; if acknowledged, he acquires the status of legitimacy. When, therefore, a child really illegitimate by birth becomes legitimated, it is by force of an acknowledgment, express or implied, directly proved or presumed. These presumptions are inferences of fact. They are built on the foundations of the law, and do not widen the grounds of legitimacy by confounding concubinage with marriage. The child of a marriage is legitimate as soon as born. The child of a concubine may become legitimate by treatment as legitimate. Such treatment  
50 will furnish evidence of acknowledgment.”

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Each of the three cases just cited dealt with the question of acknowledgment of paternity as proof of a marriage, but it seems clear to me that no stricter form of proof ought to be required to prove the acknowledgment of paternity of a child by a concubine and that, in the absence of evidence of an express oral declaration, such a declaration may be inferred from surrounding circumstances. The question as to what circumstances justify the drawing of such an inference must of course always be one of fact depending upon the whole of the evidence in each particular case.

As already stated, in addition to proving acknowledgment of her 10 paternity, the plaintiff must in my opinion prove that her mother was the suria, or concubine, of her alleged father. In a case of a disputed marriage cohabitation and a general reputation of marriage has been held sufficient to prove such marriage. In the words of Lord Cottenham L.C. in *Hoggan v. Craigie* (1839) 9 E.R. 350 at p. 361, "it is not necessary to prove the contract itself; it is sufficient if the facts of the case are such as to lead to satisfactory evidence of such a contract having taken place; upon this principle, the acknowledgment of the parties, their conduct towards each other, and the repute consequent upon it may be sufficient to prove the marriage." 20

I venture to think that evidence of a similar kind ought to be deemed to be sufficient to prove concubinage, provided that in addition to proving cohabitation the evidence is also sufficient to prove that the relation, in which the persons so cohabiting stood to one another, was that of master and slave. As pointed out in a footnote to *Fyak Ali Khan v. Mussumaut Fatima Khatoon* (1811) (*supra*), it is not enough to show that the woman was a concubine and a slave; it must be shown that she was the slave of the man to whom she became a concubine. The *Ibathi* commentary *El Nil* III-317 declares the law on this point to be as follows:—

"It is not lawful for a person to keep a 'Surriyah' except a 30 slave girl who is his own property. If a person lends a slave girl, it shall not be lawful for you to take her as a concubine because pudenda are not to be lent and if a slave girl is lent to you, it is not lawful for you to have intercourse with her nor touch her with lustfulness nor look at her with a lascivious eye. She will have to be considered as slave girl of the other person."

"If a person gives you his slave girl on condition that you have to restore her, in my opinion it is lawful for you to take her as a 'Surriyah' if you so desire. Because whosoever is given a thing which he has to restore, such thing is deemed to be his property and 40 it is not incumbent upon him to return the very same thing even if such thing is existing with him. But it is lawful for him to return the like provided the thing has not become defective, but if it becomes defective then he shall not return the thing unless the owner agrees."

"If a person returns the very same slave girl which was given to him, after he has had carnal connection with her; such return shall mean, he has thus excluded the girl from his property and restored her to the ownership of the previous master."

Most of the evidence in this case is to the effect that the plaintiff's 50 mother "was given to Seyyid Hafidh as a concubine." Under cross-

examination Anasi bin Feraji, one of the plaintiff's witnesses, said the original owner said "This slave girl is the concubine of my son." The matter was not pursued further in cross-examination of this witness and it is not clear whether the witness meant that these words were uttered at the time of transfer or at some other time or whether they were all that was said on the occasion in question. Another witness (Matika) said also in cross-examination, "Plaintiff's mother was given as a slave girl to Seyyid Hafidh in the reign of Seyyid Ali." In examination-in-chief the same witness said she was "given to him by his mother to keep as a concubine."

10 None of the evidence called by the plaintiff goes into any further details than this and the truth of that evidence is disputed by the defendant. Assuming for the present purposes that such evidence is true, is this evidence sufficient to support the plaintiff's claim ?

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In Volume 16 of the Halsbury-Hailsham edition of the Laws of England, at p. 599, Article 932 reads as follows :—

"Where there is evidence of a ceremony of marriage having been gone through, followed by cohabitation of the parties, everything necessary for the validity of the marriage will be presumed, in the absence of decisive evidence to the contrary, even though it may be necessary to presume the grant of a special licence."

20

That statement was quoted with approval by Lord Merrivale in *Spivack v. Spivack* (1930) 142 L.T. 492 at p. 495. As pointed out by the learned President in that judgment, this was the basis of the judgment of the House of Lords in *Piers v. Piers* (1849) 9 E.R. 1118, a case in which a marriage was held to have been valid although there was no proof of the special licence without which such marriage could not have effectually taken place. Once a ceremony of marriage is proved, then, as said by Lord Merrivale, "the burden of impeaching the marriage lies on the party impeaching it. It is valid unless it can be displaced."

30

In the present case, if it is at all arguable that the evidence which I have just cited does not prove *per se* that there was any transfer of ownership of the slave girl from mother to son, nevertheless, if believed, it does prove that there was a ceremony by which it was intended that the slave of the mother should become the concubine of the son. That being so, I am of opinion that, as in a case of marriage, the presumption to be made is that everything necessary for the validity of the transaction will be presumed, even though it may be necessary to presume a proper transfer of ownership of the slave, that the burden of impeaching the validity of the transaction rests on the person seeking to impeach it and that the evidence to impeach it must, in the words used by the Lord Chancellor in *Piers v. Piers* (*supra*), "be strong, distinct, satisfactory and conclusive."

40

Turning to consider the evidence in this case, the parties have called evidence alleging that the plaintiff either resembles or does not resemble her alleged father in personal appearance. With regard to such evidence it is enough to say that, whilst it is admissible, its evidential value has always been held to be very slight indeed (*Russell v. Russell and Mayer* (1923) 129 L.T. 150). It is particularly dangerous to act upon such evidence when the court is dependent upon the testimony of witnesses of varying standards of intelligence, not to speak of credibility, and is unable to

50 make the necessary comparisons itself.

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The evidence given on behalf of the plaintiff was that of the plaintiff herself, of four ex-slaves of the family of her alleged father, and of a certain Fatuma binti Sultan.

The evidence of the plaintiff herself is that she was brought up in the household of Muhera binti Juma Pemba, who was generally referred to by the witnesses as Binti Juma and who was the mother of her alleged father. The person who had charge of her in Binti Juma's household was a slave of Binti Juma named Situnu. The plaintiff says she stayed in Binti Juma's house until her marriage and, whilst living there, she was taught the Koran. She did not marry until she was about twenty and then 10  
married as his second wife an Indian Memon named Jusab Tharia. According to her, her alleged father was present at the marriage as were Sheikh Burhan, Bwana Salim, and Sheikh Tahir. Her alleged father was ill in hospital for some time before he died and she used to visit him there. It is not disputed that the plaintiff was taught the Koran, though it is denied that this teaching took place at Binti Juma's house. It is denied that the alleged father was present at the plaintiff's marriage.

The next witness, Matika binti Ambari, was a slave of Binti Juma. She deposed to the fact that the plaintiff was born in Binti Juma's house and brought up there. She said the plaintiff was born in the reign of 20  
Seyyid Ali bin Hamoud. When Seyyid Ali abdicated in 1911, "Plaintiff was a big girl and playing out of doors. She was a big sized girl, walking in and out of the house, climbing the stairs and running about." It is this witness who deposed in cross-examination that "Plaintiff's mother was given as a slave girl to Seyyid Hafidh." This witness was between sixty and seventy years old, but none the less quite alert mentally.

Kidawa binti Mamba was about the same age as the last witness, but whether from deafness or some other cause more slow in grasping the questions put to her. She was at one time a slave of the father of Seyyid Hafidh. Her evidence goes into less detail but is to the same purport as 30  
that of the previous witness.

The next witness, Khamisi bin Jeta, appeared to be about the same age as the two previous witnesses. He suffered from loquacity and it was very difficult to get him to listen to questions. In cross-examination he made the somewhat surprising statement that the witness, who followed him in the witness box, was dead. This I think is enough to show that his testimony has no real value.

The next witness, Anasi bin Feraji, was of about the same age. He was formerly a slave of the alleged father, Seyyid Hafidh. He deposed that Binti Juma gave plaintiff's mother as a concubine to her son and 40  
that after that the plaintiff's mother and alleged father cohabited in a house in the town of Zanzibar. He says that at the time the alleged father took the plaintiff's mother as a concubine he was poor and had no property. After the plaintiff's birth the alleged father inherited property from his relatives. This witness was cross-examined. He said he himself, the preceding witness, and one Kidume (now deceased) were present when the plaintiff's mother was handed over to the alleged father as a concubine at the house, where he says the two subsequently cohabited. In re-examination he said the witnesses Kidawa and Matika were also present. In cross-examination he deposed that Binti Juma said : " This 50  
slave girl is the concubine of my son." He was also cross-examined about

the alleged father's legal wives. It was very clear that he was hazy as to the dates of certain marriages and divorces and as to the dates of the reigns of certain Sultans.

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Before passing to the evidence of the next witness I would observe that it is true that the evidence of Anasi bin Feraji is contradicted in certain details by that of the witness who immediately preceded him, but I have said I regard that witness as unreliable. Obviously, the fact that a witness is contradicted by an unreliable witness is not proof of the unreliability of the witness thus contradicted. Again, Anasi bin Feraji was clearly hazy as to dates, but a man's recollection of what he saw take place may often be perfectly clear, though he is less clear as to the date at which the event took place. In this connection it is to be noted that this witness never attempted in examination-in-chief to fix even approximately the date of the plaintiff's birth. The witness in fact appeared to me to be an honest witness trying to depose to events, which admittedly happened many years ago, to the best of his recollection.

The next witness was Fatuma binti Sultan. She is a teacher of the Koran. She deposed to the fact that she taught the plaintiff the Koran at a house belonging to Binti Juma in Zanzibar. This instruction lasted two years. Binti Juma asked her to instruct the plaintiff and said "Teach my granddaughter." At the end of the instruction the witness was paid Rs.100/-. Of this sum Binti Juma paid Rs.50/- and the plaintiff's alleged father Rs.50/-. The witness endeavoured to fix the date of the plaintiff's instruction with reference to "the guns of Sunday," i.e., to the date of the attack of the German warship Koenigsburg on H.M.S. Pegasus off Zanzibar on September 20, 1914. She said in examination-in-chief she taught the plaintiff in the year of "the guns of Sunday." At a guess she thought it was "about thirty-two years ago" (sc. about 1914). In cross-examination she said she began teaching after the "guns of Sunday." At a guess it might have been "about a year after that happened." When she began teaching the plaintiff, she would, as a guess, say the plaintiff was seven or eight years old. This last estimate would make the date of the plaintiff's birth about 1907 or 1908. It has to be compared with the evidence of Matika as to the size of the plaintiff in 1911.

This particular witness came to court veiled and only unveiled to give her evidence. She is a teacher of the Koran and clearly belongs to a class in society which do not at all like the publicity of the law courts. She is therefore hardly the sort of person one would expect to come and commit perjury on behalf of a comparative stranger. I was in fact favourably impressed by her manner of giving her evidence. She struck me as being a conscientious and truthful witness. Her refusal to be positive as to the exact date, when she began to instruct the plaintiff, showed that she was impartial.

The first three witnesses for the defence were ex-slaves of Binti Juma. One of these, Nasibuyangu, was the second wife of the father of Panya binti Hassani. Their evidence is to this effect:—

(1) The plaintiff was born in the reign of the present Sultan, that is to say, not earlier than 1911.

In this connection, Zena says "I cannot say how long the Sultan has reigned but plaintiff was born two years after the Sultan came to the throne." She also said the plaintiff was 13 years old

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at the time of her marriage. Nasibuyangu said first of all that the plaintiff was "grown up" and then that she was 15 years old at the time of her marriage.

(2) The plaintiff's mother was never the concubine of the alleged father.

(3) The name of the plaintiff's father is not known. Her mother was discovered to be pregnant, but refused to disclose the name of the father of the child. This greatly incensed her mistress, Binti Juma.

(4) The plaintiff was not born in Binti Juma's house, but in the 10 house of her mother's father, Hassani.

Though this was alleged by Nasibuyangu in her examination-in-chief, she stated in cross-examination that the plaintiff was born in Binti Juma's house. Zena and Riziki asserted in examination-in-chief that the plaintiff was not born in Binti Juma's house and were not cross-examined as to this point.

(5) The plaintiff was not taught the Koran either by Fatuma binti Sultan or in Binti Juma's house.

In this connection it should be noted that Nasibuyangu first of all said "she was taught the Koran in the house of Binti Juma" 20 but, on being asked if Fatuma binti Sultan taught her, said she did not and that the plaintiff was taught at Ngambo. Zena said the plaintiff's mother arranged for her daughter to be taught the Koran. Riziki said the same as Zena and suggested that the tuition fees were found out of the mother's immoral earnings, though earlier in her evidence she did attribute to the mother the respectability of having died a married woman.

(6) Whilst in Binti Juma's house, the plaintiff was not known, as she alleges, as Fatuma binti Hafidh.

Nasibuyangu said "Plaintiff used to be called Fatuma with 30 no other name. I have heard the plaintiff is called Binti Abdulla, but we had no Abdulla in our house." Zena said she was known as "Fatuma binti Hassani."

(7) The alleged father was not present at the plaintiff's marriage.

Nasibuyangu asserted this, but subsequently admitted she was not present at the marriage. Zena, who also asserted this, was not questioned as to whether she was present.

The next witness Mahomed bin Burhan was a stepson of Binti Juma. He was born in 1898 and thinks the plaintiff's alleged father was about five 40 years older than himself. He first saw the plaintiff at Binti Juma's house when he first went there, when he himself was about eight or ten years old. If that were so, it would suggest that the plaintiff was born c. 1906-1908. The plaintiff's mother was about the same age as the witness; there might be a year's difference between them. The witness says the plaintiff's mother was never the concubine of the alleged father and the plaintiff was always known as Fatuma wa Binti Hassani (Fatuma, daughter of the daughter of Hassani). He was not present when the plaintiff got married. He admitted that the plaintiff's husband is a very wealthy builder and contractor. In cross-examination he also admitted that during



the reign of Seyyid Ali bin Hamoud (1902–1911) the alleged father owned only two houses yielding an income of about Rs.60/–, which he sold at some date and that after he sold them he had no other property. I cannot say I was at all favourably impressed by the demeanour of this witness when giving his evidence. If one has to accept literally everything that the witness says, then the plaintiff's mother would not have been more than some eleven years old at the time of the plaintiff's birth. That I do not believe.

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10 Isa bin Said el Kindi was a more or less formal witness. He produced a book which appears to contain a number of questions and answers relating to *fikh* (jurisprudence). In it are a number of manuscript entries. Two (54 and 55) were inserted by himself on the instructions of the alleged father and refer to the birth of two legitimate children to the alleged father in 1942 and 1943. Two other entries (50 and 51) purport to be signed by the alleged father, but neither the entries or the signatures are in his handwriting. They may have been written by somebody else on his instructions. They refer to marriages contracted by him in 1926 and 1932 and a divorce in 1931. One other entry (48) is in his handwriting and refers to the death of Seyyida Nunu binti Hamoud bin Ahmed in 1914. This lady was a  
20 lawful wife of the alleged father. Other entries in unknown hands record births, marriages, divorces and deaths in the family of El-Busaidi and events of public importance in Zanzibar. There is no entry in the book relating to either the plaintiff or her mother and the entry in the alleged father's handwriting has to be considered with respect to the cross-examination of the plaintiff's witness, Anasi bin Feraji.

30 It will be seen from a summary of the evidence that there is very little of the evidence given on behalf of the plaintiff which is not vigorously contradicted by the evidence called for the defence. None the less a few facts have not been contradicted. It is not denied that the plaintiff's mother was a slave of Binti Juma. It is also not disputed that from a very early age the plaintiff was brought up in Binti Juma's house. The plaintiff says she was in charge of another slave of Binti Juma, who was not her mother. This statement has not been contradicted. It is further not denied that the plaintiff did receive instruction in the Koran, though the name of her instructor and the place of her instruction are in dispute. In addition, the plaintiff has not been contradicted when she says she visited her alleged father in hospital when he was on his death bed.

40 It is clear that the evidence as to the instruction of the plaintiff in the Koran must have an important bearing on the result of this case and that it is a question as to which of two conflicting versions of the facts one believes. I have no hesitation in saying that in this respect I believe the evidence of Fatuma binti Sultan. I have no hesitation in saying that I do not believe the defence witnesses in regard thereto. Not only did these witnesses make little attempt to conceal their bias; but they also told a story which is inherently improbable. According to them the plaintiff's mother, who was at one time a slave and who according to them bore none too good a moral character, went to the trouble and expense of giving her daughter religious instruction, that is, to giving her daughter a form of education which was not usually given to persons of slave origin. This  
50 story would in any event have been difficult to believe. When such evidence is contradicted by the evidence of a witness of the character of

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Fatuma binti Sultan, one says without the slightest hesitation that it ought not to be believed.

This evidence clearly has considerable significance. As already said, in a claim of this description it is essential that the plaintiff should prove an acknowledgment of paternity by the person from whom he or she claims to inherit. That acknowledgment need not be oral or express. It may be inferred from surrounding circumstances. In particular, it may be inferred from conduct of the alleged father which is more consistent with his being the father of the child than with any other explanation. Here, when the plaintiff was about nine or ten years old, her alleged father paid Rs.50/- for her past instruction in the Koran. If, as the defence alleges, the plaintiff was merely the daughter of a slave girl of Binti Juma by an unknown father, it is difficult to understand why Seyyid Hafidh went to this trouble and expense. The only reasonable explanation appears to be that he thereby admitted that he was under an obligation to have the plaintiff educated because he was her father. I am therefore of opinion that evidence of this payment is evidence of acknowledgment of the paternity of the plaintiff. 10

Turning now to consider the plaintiff's own evidence, the general principle regarding evidence of claims against the estates of deceased persons is that laid down by Sir John Hannen in *Re Hodgson—Beckett v. Ramsdale* (1885) 31 Ch. D. 177 at p. 183 : 20

“ The statement of a living man is not to be disbelieved because there is no corroboration, but we must take into account the necessary absence through death of one of the parties to the transaction, and in considering the statement of the survivor it is natural to look for corroboration in support of it ; but if the evidence given by the living man does bring conviction to the tribunal which has to try the question, then there is no rule of law which prevents that being acted upon.” 30

Here, it would appear to me that if the plaintiff had been really intending to fabricate her present claim, she would in the witness box have told a story which far more strongly supported her claim than that which she actually told. I was favourably impressed by her manner of giving evidence, but this was obviously a case in which court should look for corroboration of her story—not because that story comes from a tainted source, but because it is a very sound rule of caution to look for corroboration of claims of this description. Here, Fatuma binti Sultan clearly affords the necessary corroboration and I have no hesitation in preferring the plaintiff's evidence to that of the already discredited defence witnesses in regard to certain other matters in dispute. 40

The plaintiff says she was brought up in Binti Juma's house by a slave named Situnu. This statement has in fact not been directly contradicted. I regard it as of some importance. As already said, I do not believe the story that the plaintiff's mother arranged for her daughter's education. Nor do I believe the equally improbable story that she objected to her daughter, who according to the defence evidence was the daughter of a slave girl by an unknown father, marrying a wealthy Indian contractor. Apart from the fact that the witnesses who depose to these things are discredited by other witnesses, their stories are inherently improbable. On the other hand the evidence, which I do believe goes to show that the 50

plaintiff's mother faded out of her daughter's life at a very early stage of the latter's life. She ceased to have the custody of the child and left her in the keeping of the family of the alleged father. In this connection it is to be noted that as Article 7 of the Slavery Decree, 1909, shows, a concubine had a right to the custody of her child, but after the commencement of that Decree she forfeited that right if she left the father's household without his consent. There is no direct evidence that this is what actually happened, but it is one of the probabilities to be considered in this case.

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The plaintiff also says her alleged father was present at her marriage. As she is corroborated in a material detail of her evidence and as the witnesses who contradict her are discredited, I accept the plaintiff's evidence on this point. By itself it would probably be insufficient to justify the inference of an acknowledgment of paternity, but it adds weight to other evidence from which such an inference may be drawn. I also accept the uncontradicted evidence of the plaintiff that she visited her alleged father in hospital shortly before his death.

Matika, Kidawa and Anasi, are not witnesses, who by any rule of law or of practice require corroboration, but the evidence of Fatuma binti Sultan gives support to their evidence and I am satisfied that they ought to be believed when they say the plaintiff's mother was given by Binti Juma as a concubine to the alleged father. I am also satisfied that, as Anasi says, the plaintiff's mother and the alleged father subsequently cohabited in a house in Zanzibar. I also believe the evidence of all three witnesses when they say the plaintiff was born in Binti Juma's house. I do not believe the story of the defence that the plaintiff was born at her maternal grandfather's place, whither her mother had been sent in disgrace.

With regard to dates, I have already pointed out that Anasi bin Feraji is clearly very hazy as to the dates of other events in the alleged father's family, but, as said already, a man may be able to depose with absolute truth and certainty to the fact that a number of years ago a certain event happened without being equally certain as to how many years ago that event happened. Neither in examination-in-chief nor in cross-examination did Anasi attempt to assign even an approximate date for the plaintiff's birth or the giving of her mother as a concubine. Fatuma binti Sultan's evidence confirms the main and central fact of his evidence, namely, that at some date (not stated by the witness) the plaintiff's mother was given as a concubine to the alleged father.

With regard to the date of the delivery of the plaintiff's mother as a concubine we have the evidence, which I have already set out, of Matika binti Ambari as to the plaintiff's size at the time of the abdication of Sayyid Ali bin Hamoud in 1911 and of Fatuma binti Sultan as to the plaintiff's apparent age when the witness began teaching her the Koran. For present purposes it is enough to say that this evidence, when construed in the light most favourable to the defence, goes to show that the plaintiff was born in or about 1908 and before the coming into force of the Slavery Decree, 1909, on July 6, 1909 and that cohabitation between her mother and father must have begun some months before her birth.

The evidence for the plaintiff may therefore be summed up as follows :—

(1) The plaintiff's mother was given as a concubine to her alleged father.

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(2) The plaintiff's mother and alleged father subsequently cohabited in a house in Zanzibar.

(3) The plaintiff was born in the house of the alleged father's mother.

(4) The plaintiff was not brought up by her mother, but was brought up in the house in which she was born and resided there until her marriage.

(5) The alleged father paid Rs.50/- towards the plaintiff's education.

(6) The education was of a kind not usually given to the 10 children of slaves.

(7) The alleged father was present at the plaintiff's marriage.

(8) The plaintiff visited her alleged father shortly before his death in hospital.

With regard to this evidence, I have already indicated that, (A) assuming that there is no actual evidence on the point, I am entitled to assume that everything was done which was essential to the validity of the transaction whereby the plaintiff's mother was made a concubine, and (B) an acknowledgment of paternity may be inferred from the conduct of the alleged father.

20

I have already indicated my own opinion as to the credibility of the evidence called by the defence. The only grounds upon which the plaintiff's story could conceivably be impeached is that certain facts suggest its distinct improbability.

The facts to support this suggestion appear to be that—

(1) The plaintiff has married an Indian who belongs to a non-Arab sect of Islam.

(2) It is improbable that she would not have married until she attained 20.

(3) Neither her name nor that of her mother appears in the 30 family register (Exh. 1).

(4) She did not receive the same education as other children of her alleged father.

(5) Except for paying her tuition fees and attending her marriage, the alleged father is not proved to have shown any interest in the plaintiff.

With regard to all these facts, it may possibly be said that they are none of them in conformity with usual custom, but that does not mean that they are wholly improbable or are so inherently improbable as to impeach the credibility of otherwise credible witnesses. It may be 40  
unusual for an Arab girl to marry as late as 20 and to marry somebody not belonging to her race or sect, but it is not so unusual as to be inherently improbable. Article 6 of the Slavery Decree 1890 goes to show that this has happened in the past. Again, the fact that the alleged father never entered the birth of a child by a concubine in the family register does not appear to me to have any particular significance. The other facts, which are relied upon to impeach the credibility of the prosecution witnesses, appear to me only to go to show that, after his lawful wives had given birth to children, the

plaintiff's father ceased to have much interest in his child by a slave concubine.

In this case I am satisfied upon the evidence that the plaintiff's mother was the concubine of Hafidh bin Mahomed and that Hafidh bin Mahomed acknowledged paternity of the plaintiff. In my view the evidence, upon which I am prepared to act, fully answers and outweighs all evidence to the contrary.

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A legal objection has, however, been taken to my granting the plaintiff's claim. As I understand the objection, it comes under two  
10 heads, namely, (A) that the evidence does not show that there was the transfer of ownership of the plaintiff's mother as a slave which was an essential condition precedent to her becoming a concubine and alternatively, (B) that, assuming that there was a transfer of ownership, it was a transaction which at the material time in this case had been declared to be unlawful by Article 3 of the Slavery Decree, 1890.

One must first of all examine the pleadings and see to what extent the defendant raises the defence of illegality. He only does so in para-  
graph 5 of his written statement where he says "the plaintiff is not entitled to any of the reliefs prayed for either in fact or in law." In its context  
20 that can only mean that, even assuming that the plaintiff is the daughter of the deceased by a *suria*, she is none the less not entitled in law to a share of the inheritance, but, as I understand, that has never been alleged as a matter of law by the defence.

With regard to an illegality which is not specifically pleaded the rule is as laid down by Viscount Haldane L.C. in *North Western Salt Co. v. Electrolytic Alkali Co.* (1914) A.C. 461 :—

"It is no doubt true that where, on the plaintiff's case, it appears to the Court that the claim is illegal and that it would be  
30 contrary to public policy to entertain it, the Court may, and ought, to refuse to do so. But this must only be when either the agreement sued on is on the face of it illegal, or where, if the facts relating to such an agreement are relied on, the plaintiff's case has been completely presented. If the point has not been raised on the pleadings so as to warn the plaintiff to produce evidence which he may be able to bring forward rebutting any presumption of illegality which might be based on some isolated fact, then the Court ought not to take a course which may easily lead to a miscarriage of justice. On the other hand, if the action really rests on a contract  
40 which on the face of it ought not to be enforced, then, as I have already said, the Court ought to dismiss the claim irrespective of whether the pleadings of the defendants raise the question of illegality."

I have already intimated that, in my view, once it was proved that the plaintiff's mother was handed over by Binti Juma to her son as a concubine, then everything essential to the validity of that transaction may be presumed until rebutted by strong and cogent evidence and that the burden of rebutting that presumption is on the defence. Whether I am right or wrong in so holding, I am quite satisfied that the defendant cannot, in the absence of any specific pleading to that effect, impeach the  
50 validity of the forms and ceremonies of the transaction. The written statement seeks to put the plaintiff "to the strict proof" of two specific

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matters and "wants her to prove" her age, but it does not call for any kind of proof that the forms and ceremonies essential for the validity of this transaction were in fact carried out. In the absence of such specific pleading the defendant certainly cannot be heard to impeach the validity of the transaction which has been testified to by the plaintiff's witnesses.

On the other hand, it was essential to the validity of the transaction, on which the plaintiff relies, to show that Binti Juma transferred to her son her rights of ownership in the plaintiff's mother. If the plaintiff is to succeed in her claim, she must rely on this transfer of ownership of a slave. One has therefore to consider whether at the material time in this case that transaction was illegal and whether it would be contrary to public policy to entertain a claim arising therefrom. This leads to a consideration of the Slavery Decree of 1890. As will be seen, that Decree was what may be described as a step towards the total abolition of the status of slavery. Total abolition of the status did not take place until the coming into force of the Slavery Decree of 1909. In interpreting the earlier Decree of 1890 one has to remember that it was intended to alter the law relating to an institution which was at the time perfectly legal according to the fundamental law of Zanzibar. Ethically, the possession and ownership of a human being as a slave is of course quite indefensible but, if the fundamental law of the land allows such rights of ownership, a court of law cannot do otherwise than enforce them (*The Slave Grace* (1827) 166 E.R. 179). Here, the Slavery Decree, 1890, was designed (*inter alia*) to curtail the proprietary rights hitherto enjoyed by masters in respect of their slaves by prohibiting certain acts and in some cases by imposing penalties for the doing of acts thus declared to be prohibited. Therefore two rules of interpretation have to be borne in mind. 10 20

In the first place the Slavery Decree, 1890, is, in the words of Turner, L.J. in *Hughes v. Chester and Holyhead Railway Co.* (1861) 31 L.J. Ch. 97 at p. 109, one "which interferes with private rights and private interests, and which ought, therefore, according to all decisions on the subject, to receive a strict construction so far as those rights and interests are concerned. This is so clearly the doctrine of the Court that it is unnecessary to refer to the cases on the point; they might be cited almost without end." In the second place, in so far as the Decree is a penal enactment, "we are bound to take care that the party is brought strictly within it, and to give no effect beyond what it is clear that the legislature intended" (*per Pollock C.B.* in *Parry v. Croydon Commercial Gas Co.* (1863) 15 C.B.N.S. 568 at p. 575). 30

Article 3 of the Decree is the Article upon which the defence relies. It should be read with Article 4. The two Articles read as follows:— 40

"3. We absolutely prohibit from this date all exchange, sale, or purchase of slaves, domestic or otherwise. There shall be no more traffic whatever in slaves of any description. Any houses heretofore kept for traffic in domestic slaves by slave-brokers shall be for ever closed, and any person found acting as a broker for the exchange or sale of slaves shall be liable, under our orders to severe punishment, and to be deported from our dominions. Any Arab or other of our subjects hereafter found exchanging, purchasing, obtaining, or selling domestic or other slaves shall be liable under our orders to severe punishment, to deportation, and the forfeiture of 50

all his slaves. Any house in which traffic of any kind in any description of slave may take place shall be forfeited."

"4. Slaves may be inherited at the death of their owner only by the lawful children of the deceased. If the owner leaves no such children, his slaves shall, *ipso facto*, become free on the death of their owner."

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Reading the two articles together, I feel no difficulty at all in holding that, despite the penal nature of the enactment, the gift of a slave by one person to another would render a person liable to punishment for  
10 "obtaining" a slave and that such a transaction is one prohibited by Article 3, but it does not follow therefrom that a slave, who is thus illegally obtained, thereby becomes automatically free. The person so obtaining a slave is declared to "be liable under our orders to severe punishment, to deportation, and the forfeiture of all his slaves." Article 5 enacts that "any Arab or other of our subjects who shall habitually ill-treat his slaves, or shall be found in possession of raw slaves, shall be liable under our orders to severe punishment, and in flagrant cases of cruelty, to the forfeiture of all his slaves." This and Article 3 are the only Articles which refer to forfeiture of slaves and in neither case is the forfeiture automatic upon conviction.  
20 The offender is only liable to such forfeiture "under our orders."

Other sections of the Decree deal with certain cases which lead to the automatic enfranchisement of slaves. Thus, as seen, Article 4 declares slaves to be "*ipso facto* free" on the death of their owner without children. Articles 6 and 7 enact that slaves owned by the persons therein mentioned "are now declared to be free."

Article 8 enables a slave "to purchase his freedom at a just and reasonable tariff." It makes provision for the giving of "a paper of freedom" to a slave who thus redeems himself and proceeds to declare that  
30 "this protection shall also be especially extended to all slaves who may gain their freedom under any of the provisions of this Decree." But, subject to the foregoing, as Article 2 declares, "all slaves lawfully possessed on this date by our subjects shall remain with their owners as at present. Their status shall be unchanged."

Therefore, according to my interpretation of the Decree, a slave might be the victim of an "obtaining" in contravention of the provisions of Article 3 of the Decree and yet would not be entitled to freedom, unless and until a special order of forfeiture was made. There is of course no evidence of any such forfeiture in the present case. Therefore notwithstanding the violation of the Decree the victim of the offence  
40 remained a slave.

Article 3 of the Decree punishes the obtaining by gift or otherwise of a slave as a criminal offence. That being so, could the person obtaining a slave by gift plead his own illegality as a defence to an action brought by the slave? Though I have no evidence and have not been referred to any law on the subject, I will assume that in a transaction of this nature the consent of the slave (for what it may be worth) was essential to the validity of the transaction. As Article 7 of the Slavery Decree of 1909 shows, a woman lawfully held as a concubine had certain legal rights. The article shows that she had a right to the custody of her child. A  
50 Hadith or tradition, which is cited in the Dictionary of Islam, p. 597,

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declares that, "when a slave girl has a child by her master, she is free at his death." From this it follows that she could not be disposed of by sale or otherwise during her owner's life. If therefore in this case, there had been no abolition of the legal status of slavery in 1909, and the plaintiff's mother had endeavoured to enforce her rights as a concubine, could the plaintiff's father have pleaded his own illegal act as a defence to her claim ?

I am quite satisfied that he ought not to have been allowed to do so. The law on the point was laid down by Lord Mansfield C.J. in *Browning v. Morris* (1778) 98 E.R. 1364 as follows :—

"The rule is, *in pari delicto, potior est conditio defendentis*, 10  
and there are several maxims of the same kind. Where a contract  
is executed, and the money paid in *pari delicto*, this rule, as  
Mr. Dunning contended, certainly holds and the party who has  
paid it cannot recover it back. For instance, in bribery, if a man  
pays a sum of money by way of a bribe, he can never recover it in  
an action ; because both plaintiff and defendant are equally criminal.  
But, where contracts or transactions are prohibited by positive  
statutes, for the sake of protecting one set of men from another  
set of men ; the one, from their situation and condition, being  
liable to be oppressed or imposed upon by the other ; there, the 20  
parties are not *in pari delicto* ; and in furtherance of these statutes,  
the person injured, after the transaction is finished and completed,  
may bring his action and defeat the contract."

This principle was re-affirmed by Fry L.J. in *Kearley v. Thomson* (1890) 24 Q.B.D. 742 in the following words :

"As a general rule, where the plaintiff cannot get the money  
which he seeks to recover without showing the illegal contract,  
he cannot succeed . . . To that general rule there are undoubtedly  
several exceptions, or apparent exceptions. One of these is the case 30  
of the oppressor and oppressed, in which case usually the oppressed  
party may recover the money back from the oppressor. In that  
class of case the *delictum* is not *pari*, and therefore the maxim  
does not apply. Again, there are other illegalities which arise  
where a statute has been intended to protect a class of persons, and  
the person seeking to recover is a member of the protected class."

Here, the defendant stands in the shoes of the deceased person whom he represents. He cannot plead a defence which was not open to that person to plead. As it is abundantly manifest that the whole intention of the Slavery Decree, 1890, was the protection of slaves, neither the slave owner, nor his legal personal representative, could have been allowed to plead 40  
the illegality of the act of the slave owner in answer to a claim by a plaintiff,  
who was the slave and concubine of the slave owner. On the other hand,  
the present plaintiff must on principle clearly be allowed to stand in the  
same position as her mother. If, notwithstanding the fact that the  
transaction which led to her becoming a concubine, the mother could have  
enforced her rights as a concubine, it follows on principle that the plaintiff  
is entitled to enforce any rights which may be derived by her from her  
mother's status. I am therefore satisfied that, notwithstanding anything  
contained in Article 3 of the Slavery Decree, 1890, this is a claim which this  
Court can and ought to enforce. 50



I therefore make a declaration that the plaintiff is the daughter of Hafidh bin Muhammed el-Busaidi by his *suria* Panya binti Hassan and as such entitled to a share of the estate of her deceased father and order the defendant to transfer such share accordingly. The defendant will also pay the plaintiff's costs.

(Sgd.) J. M. GRAY,  
Chief Justice.

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10

No. 19.

## DECREE.

HIS HIGHNESS THE SULTAN'S COURT FOR ZANZIBAR.

In the High Court.

Holden at Zanzibar.

Civil Suit No. 31 of 1945.

FATMA BINTI HAFIDH - - - - - Plaintiff

*versus*

ADMINISTRATOR-GENERAL, Administrator of  
the Estate of HAFIDH BIN MUHAMMED  
EL-BUSAIDI, Deceased - - - - - Defendant.

20

This Cause coming on for final disposal before His Honour Sir John Milner Gray, Kt., Chief Justice of this Court in the presence of Mr. Ahmed Ayub on the part of the plaintiff and Mr. Ghulam Ali Kader Bhoj on the part of the defendant, it is hereby declared that the plaintiff is the daughter of Hafidh bin Muhammed el-Busaidi by his *suria* Panya binti Hassani and as such entitled to a share of the estate of her deceased father the said Hafidh bin Muhammed el-Busaidi and that the defendant is hereby ordered to transfer such share accordingly.

30 It is further order that the defendant do pay to the plaintiff the sum of Shs.873/- for Court costs including the cost of this Decree and Shs.610/25 for Counsel's costs; in all Shs.1483/25.

Given under my hand and the Seal of the Court this 25th day of March, 1946.

(Sgd.) J. M. GRAY,  
Chief Justice.

L.S.

Issued this 13th day of May, 1946.

*In H.H.  
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No. 20.

**PROCEEDINGS AFTER JUDGMENT.**

4.5.46.

Upon taxation of Plaintiff's Bill of Costs.

Ahmed Ayub for Plaintiff.

Ghulam Ali for Defendant.

No. 20.  
Proceedings  
after  
Judgment,  
4th May  
1946.

**AHMED AYUB:** I apply for amendment of the Bill of Costs as follows :—

By introduction of additional items :

- (1) For receiving instructions from client as to matters contained in the Written Statement .. .. . Shs.22.50 10
- (2) For attending to approval draft Decree .. ,, 7.50
- (3) For disbursements being amount paid to Court for drawing decree and taxation of Bill of Costs .. .. . ,, 19.00

**GHULAM ALI:** I consent to amendments applied for.

**CERTIFICATE.**

I hereby certify that I have taxed the Plaintiff's Bill of Costs and have allowed the same at Shs.1483/25 (Shs.610/25 for Counsels' Costs and Shs.873/- for disbursements).

(Sgd.) J. F. DASTUR,  
Registrar,  
High Court.

20

*In His  
Majesty's  
Court of  
Appeal for  
Eastern  
Africa.*

No. 21.

**MEMORANDUM OF APPEAL.**

**IN HIS MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA,  
AT MOMBASA.**

Civil Appeal No. 26 of 1946.

From Civil Case No. 31 of 1945 of the High Court of His Highness the Sultan of Zanzibar.

30

**THE ADMINISTRATOR-GENERAL OF ZANZIBAR**

as Administrator of the estate of HAFIDH BIN MUHAMMAD EL BUSAID, deceased - - - Appellant.  
(Original Defendant.)

*versus*

**FATMA BINTI HAFIDH** - - - Respondent.  
(Original Plaintiff.)

The Appellant appeals from the judgment of Sir John Milner Gray, Chief Justice of Zanzibar, delivered in the High Court of His Highness the Sultan of Zanzibar in Civil Case No. 31 of 1945, on the 25th March, 1945 on the following grounds :—

- 1. The learned Judge erred in finding that Panya, the mother of the Plaintiff was the slave and Suriya of Seyyid Hafidh bin

No. 21.  
Memoran-  
dum of  
Appeal,  
24th June  
1946.

Muhammad el Busaid at the time of the conception and birth of the Plaintiff.

2. The learned Judge erred in finding that Muhera binti Juma Pemba had made a valid gift to her son Hafidh of her slave Panya, as Section 4 of the Slave Trade (Prohibition) Decree, 1890 precluded the transfer of the property in the slave.

3. The learned Judge should have found that if Panya was the concubine of Hafidh, she was unlawfully held by him.

10 4. The learned Judge has misread the statute law and Decree of Zanzibar relating to the abolition of slavery and misdirected himself as to the changes effected by these decrees upon the Ibathi law of concubinage.

5. The learned Judge should have found that the Plaintiff, if born of the union of Hafidh and Panya, as she alleges, was illegitimate.

6. The evidence does not show that Seyyid Hafidh ever acknowledged or regarded the Plaintiff as his daughter. It merely shows that she was the child of his mother's slave Panya. Thus it is proven

20 (1) That the Plaintiff lived as a child in the house of Bibi Muhera among the slaves and female dependents of that lady.

(2) That she was not treated as a princess of the royal house of Busaid and did not receive the sort of an education given to the children of Seyyid Hafidh.

(3) That the Plaintiff unlike Arab ladies of good family did not marry until she was twenty years of age.

(4) That she was permitted to marry an old Memon who already had a wife and children.

30 (5) That the marriage ceremony was devoid of the pomp and circumstances befitting the wedding of a daughter of a Busaid prince and a rich man.

(6) That Panya's alleged relationship to Seyyid Hafidh and the birth and marriage of the Plaintiff were not records in the family register of Seyyid Hafidh (Exhibit 1).

(7) The learned Judge erred in assuming that the Koran would not be taught to a girl who was merely the child of a slave girl. This he did in the absence of any evidence and in ignorance of the practice in Arab households in Zanzibar.

40 8. The learned Judge has misconstrued the law and misdirected himself and his findings of fact are inconsistent with the evidence.

WHEREFORE THE APPELLANT PRAYS that the judgment complained of be set aside and that he be allowed his costs in this Honourable Court and in the Court below.

CHRISTIE & BRYSON,  
Advocates for the Appellant.

Mombasa, this 24th day of June, 1946.

Filed by,  
Messrs. CHRISTIE & BRYSON,  
50 Advocates,  
Mombasa.

*In His Majesty's Court of Appeal for Eastern Africa.*

No. 21.  
Memorandum of Appeal,  
24th June 1946,  
*continued.*

*In His  
Majesty's  
Court of  
Appeal for  
Eastern  
Africa.*

No. 22.

**PROCEEDINGS AND ORDER on application for Leave to Appeal.**

No. 22.  
Proceedings  
and Order  
on  
application  
for leave to  
appeal,  
12th  
August  
1946.

Sheridan, C.J.

Whitley, C.J.

Graham Paul, C.J.

Christie for Applicant.

McRoberts for Respondent (instructed on application).

*McRoberts* : Chitaley 4th Edition.

Vol. III p. 3041-3046.

*Christie* : Application for leave to appeal out of time in hands of other 10 side early July or end of June.

ORDER : The application for leave to appeal out of time is not opposed and this is a reasonable course to adopt on the part of the respondent for it is doubtful if the application is really out of time regard being had to Rule 8 of the Court of Appeal Rules. Leave to appeal out of time is therefore granted in so far as such is necessary. Costs to be costs in the appeal. We direct that the appeal be listed for hearing—last on the list, probably for hearing about 23rd August. If by that date there are adequate reasons for the appeal not proceeding they will be considered and directions given accordingly.

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JOSEPH SHERIDAN, P.

N. H. P. WHITLEY, C.J.

G. GRAHAM PAUL, C.J.

12-8-46.

No. 23.

**JUDGES' NOTES on hearing of appeal.**

(A) Sir George Graham Paul.

23-8-46. Sir Norman Whitley, P.

Sir George Graham Paul, C.J.

Bartley, J.

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Christie for Appt.

Budhdev for Respondent.

Christie for Appellant :—

Reads Plaintiff and Statement of Defence.

Plaintiff must prove :—

1. daughter of deceased.
2. legitimacy by deceased's Suria—i.e. both slave and concubine of deceased.
3. acknowledgment by deceased.

C.J. says so.

Burden of proof on Plaintiff.

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Judges'  
Notes on  
hearing of  
appeal—  
(A) Sir G.  
Graham  
Paul,  
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Decd. Said Hafid : Near relation of Sultan of Zanzibar and his father was Seid Vazir of Zanzibar.

No evidence of relations between deceased and alleged daughter after her marriage—one visit to him in hospital on her own unsupported evidence. Same as to his presence at her marriage which was a mean hole and corner affair.

From marriage to death no evidence of deceased.

Child of Suria—to children of proper wife.

10 Example of sons of Israel and 2 wives and 2 handmaidens, but children all equal.

Concubine strange position their lawful wife. She is there because she's wanted. Evidence for plaintiff read. Points thereon :—

1. Brought up in grand-mother's house. Her mother was the grand-mother's slave so naturally she was brought up in her mother's master's house. Not brought up in her alleged father's house.

2. Evidence that known as Binti Hassani.

20 3. Education : Children of Seid Hafid had expensive education. Sent abroad. She was taught Koran and nothing else. No evidence to support appellant's proposition that teaching of Koran enough to show real daughter of deceased. Members of Muheras household as such would learn the Koran.

4. No evidence treated like other children.

5. No evidence that recognised by alleged father.

No trinkets photos.

No evidence as to quarrel between deceased and Panya.

No explanation as to estrangement from deceased.

Defence evidence. Register. Reference to first wife.

Deceased born between 1893 and 1898.

30 Plaintiff born 1908 according to her evidence.

Deceased took Panya as concubine in 1907 when he was 14.

Married before. Precocious !

Slave Decree of 1909. Important for Plaintiff to make out that mother taken as concubine before that date as it put an end to such relationship.

If concubinage started after dissolution of marriage of decd. with Seyid ? It must have been after 1914.

Deceased couldn't marry ? till 15 or 16.

That being so concubinage couldn't start before 1908.

40 Plaintiff's witnesses 4 aged ex slaves and Arab woman teacher of Koran.

1. Matika binti Ambari : Woman doesn't say present at ceremony of handing over of concubine.

Plaintiff born in house of mother's mistress and not of her father and brought up in mother's mistress house.

2. Kidwa binti Mamba : Another ex slave woman. She does not say present at ceremony of presenting concubine slave to her son.

3. Khamisi bin Jeta : Male ex slave.

50 4. Fatuma Binti Sultan : Education was paid by Binti Juma but does not pay whole fee. Her son pays half. C.J. believed this witness.

*In His Majesty's Court of Appeal for Eastern Africa.*

No. 23.

Judges'

Notes on

hearing of

appeal—

(A) Sir G.

Graham

Paul,

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*continued.*

*In His Majesty's Court of Appeal for Eastern Africa.*

No. 23.  
Judges' Notes on hearing of appeal—  
(A) Sir G. Graham Paul,  
23rd August 1946,  
*continued.*

Plaintiff's evidence ludicrously inadequate having regard to being onus on Plaintiff and the social position of the parties. Judgment re witnesses for Defence. Clerk at p. 25 Grounds of Appeal.

Law : 3 Decrees re Slaves.

1922 Edn. of Laws of Zanzibar Cap. 1.

1. Slave Trade Prohibition Decree 1 Aug. 1890.

Transmission covers gift.

2. Abolition of legal status of slavery decree 1897. Section 3. Old law of slave concubinage no longer existed.

3. 6 July 1909—Chap. 13 of Zanzibar Section 7.

“transmitted.”

Panya illegally held if given “transmitted” after 1 Aug. 1890. 1 Aug. 1890 “inmate of the Harem.”

Even if Plaintiff stay there she was not lawfully held by deceased.

Budhdeo : Deal with law first :—

1890 Decree. Slave trade.

“transmission” not mentioned in body of decree.

Gift not prohibited “obtaining” by *ejusdem generis* implies valuable consideration.

1897 Decree Abolition of legal status.

Suria. Not necessary that she shall be a slave. Suria meaning mistress. Not necessarily slave.

obtain—Webster.

Memo of Appeal.

Ground 1.—She—Panya could have cleared after 1897 but deceased couldn't.

Ground 2.—Question of law. Interpretation of 1890 Decree Transfer by gift or inheritance not affected. Before 1890 widow could inherit or other heirs.

Grounds 3 and 4. Plaintiff born in 1908 and Panya given away in 1907. Even if she were unlawfully held the Defendant as representing estate of deceased could not set up that defence.

Ground 5. Acknowledgment by deceased proved.

Ground 6. (1) Not inconsistent with being daughter of deceased.

(2) No evidence that deceased could afford this. Luck perhaps with father's means—Binti Juma old fashioned views on education.

Evidence at pages 9/10—only in Xn. that education question raised as to Koran education. Nothing to show slaves taught Koran.

(3) Delay due perhaps to her being daughter of concubine.

(4) No evidence as to exact difference in age.

(5) No evidence as to wealth at date of marriage of Plaintiff.

(6) Register. Not a family register but stray notes not in order and not known by whom notes written. Cf. Nos. 47 & 48. Blank periods.

Cf. Nos. 40 & 41 should have come after No. 48.

p. 27.

Not kept in regular course of business.

Ground 7. No evidence that slaves could be taught Koran.

Judgment. Appeal Court won't interfere lightly with findings of fact.

20 Kenya Law Reports part 1 p. 62. Criminal Case. Evidence of Defence as to Binti Juma slapping a naughty Panya was not put to Plaintiff or her witnesses.

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26-8-46—Budhdeo (continuing)

Family Register No. 48. Entry of "wife" not there. Put in at end of case. No opportunity to Plaintiff to ask Plaintiff's witnesses about it. Judgment (continued). All witnesses agree no other slave girl taught Koran Fatuma. Defendant's evidence age of Plaintiff at marriage (15 years—13 years).

p. 17. 18. 20.

Riziki Binti Feruzi 22/23.

Judgment 2nd para.

10 Articles 5 of 1897 decree as to definition of concubines as inmates of Harem. But see Art. 7 of the 1909.

Repeal of Art. 5 by Art. 7. Was there a legitimacy acknowledged by father. Judge at p. 43 (bottom).

Need not be formal. Question of fact for Judge at time.

18 R.R. 510 Sup 33 of Record.

20 E.R. 37 at page 45.

9 E.R. 380 at page 361.

Law: No notice of legal objection based on statute in statement of Defence.

20 Odgers on Pleadings & Practice 202/3 of 8th Edition.

Authorities: Administration certificate dispute clear.

*Middleton v. Pollock* 1876 4 Ch. Div. 49.

1935 A.C. 243.

Streatham Nursing Home Case at 247 and at 249.

Macmillan at 256.

Merely a question of fact and credibility.

Christie in reply:—

30 1. Agree with law laid down by Court below except as to pleading illegality. Para. 2 Plaintiffs putting law in issue. Illegality only appeared when plaintiff's evidence came out as to date.

Judge wrong *ad hoc*.

2. Gift of slave not illegal act?

Under 1890 Decree.

S. 3 of Decree. All slaves to stay with onus—Panya didn't. She was therefore illegally held by Hafidh.

3. Rule in *pari delicto* not applicable as Panya could go free and—

4. Acknowledgment of itself not enough—see law as laid down by Judge in first four pages.

(B) Mr. Justice Bartley.

40 23-8-46.

Whitley, C.J.

Graham Paul, C.J.

Bartley, J.

Christie for Applicant.

Budhdeo for Respondent.

Christie:

Important. Hafidh bin Muhamed died Dec. 1944.

Submits on pleadings Plaintiff must prove she is daughter of deceased as the legitimate daughter. And also that her alleged father acknowledged

*In His Majesty's Court of Appeal for Eastern Africa.*

No. 23.  
Judges' Notes on hearing of appeal—  
(A) Sir G. Graham Paul,  
23rd August 1946,  
*continued.*

(B) Mr. Justice Bartley.

*In His Majesty's Court of Appeal for Eastern Africa.*

No. 23.  
Judges' Notes on hearing of appeal—(B) Mr. Justice Bartley, 23rd August 1946 to 5th October 1946, *continued.*

her to be his daughter as in this respect agrees with Judgment. Said Hafid near relation of Sultan of Zanzibar. Case destitute of any evidence of corroboration of alleged Father and Plaintiff's. No scrap of evidence that alleged father had anything to do with her, except her unsupported evidence that he was on her wedding and visited her before his death. Child of a Suria ranks equal with child of lawful wife—Sons of Israel. Reads Plaintiff's evidence.

Plaintiff's mother a serf of binti Juma so naturally plaintiff lived in her houses—Plaintiff not brought up in harem of alleged father.

Evidence that undoubtful children of Hafidh had expensive education. 10  
Plaintiff taught Koran and nothing else. No evidence to support opinion of Judge that girls of slave classes not taught Koran. Children of household of binti Juma would be taught Koran. If Plaintiff went to Hospital to see alleged father why not supporting evidence—recent event. Is it likely that Seiyd Hafidh would allow her daughter to marry an old man with another wife and children.

Not one notable person in Zanzibar called to say he knew that P. was the daughter of Hafidh. Family Register Item 48 death of first wife in 1914. Plaintiff born 1908 ? Hafidh born 1893 therefore must have taken Plaintiff's mother as concubine when 1914. 20

In view slave Decree 1909 important for Plaintiff to prove that her mother taken as concubine before that date. If concubinage started after dissolution of marriage of Hafidh and Menu it must have started after 1914.

Re Matita Binti Ambari :—another old woman.

Look at evidence-in-chief—old slave.

Kidwa Binti Mamba's evidence important—XXn. line 3 to 6.

Khamisi bin Jeta's evidence. In XX Seyyid Hafidh had a harem of his own. Evidence to Court top 14.

Re Anasi Feraji Org. reference to Hafidh—Panya living together. 30  
In XXn. reference to 1st wife important.

Re Fatuma binti Sultan. Strange transaction re Rs. 100/-. Judge believed her evidence nevertheless and obviously we—not contradicted it.

Re Defences.

Isa bin Said el-Kindi more than a formal entries. Never saw Plaintiff at Hafidh's house from '39 to '44 during her employment.

Re Law : Slave Trade Prohibition Decree of 1-8-90 1922 Ed. Laws Zanzibar Cap. 1. Section (3).

Abolition of Legal Status of Slavery Decree of 7-4-97. Chap. 3 Laws 40 of Z. S. 3 important.

Submits : That decree so changed old law that old law of concubinage no longer existed.

1909 Decree 6-7-09. Ch. 13 of Zanzibar Decrees.

Refers S. 7 "lawfully held."

Assuming Plaintiff's evidence true she was not "lawfully held" —transaction illegal.

Budhdeo : Re Law the '90 Decree only dealt with Slave Trade. Does not deal with gift. S. 3 word "obtaining" ejusdem generis rule.

Submits : 1897. Legal status of slavery abolished. 50



Panya a free woman therefore Panya a free woman when she became a concubine.

Up to 1909 Slave owner could now enforce any rights.

After 1909 the slave could not enforce his rights.

The handing over of Plaintiff's mother was not unlawful.

It merely couldn't be enforced in a Court of Law.

Webster Dictionary "obtain."

Panya lawfully held as a concubine.

Re : Facts Memo. of Appeal.

10 para. 1 short of enforcement of? She was a slave.

Panya given away in 1907.

Submit that Binti Juma's house is same as house called "Inspector Sultan's."

Re para. 5. According to Mohd. Law even if illegitimate father can acknowledge.

Re 6 (2) Hafidh a poor man at the time.

Re 6 (6) Ex. 1 only stray notes—entries not proved.

20 K.L.R. 62. Appeal on facts.

" 56.

20 Defence story never put to plaintiff and witnesses.

26-8-46. Budhdeo continues :—

Re Entry 48 in Ex. 1 word wife in brackets.

That does not appear in original.

Again those entries in Ex. 1 not put to Plaintiff.

Re Defence witnesses.

1st Defence witness Plaintiff married when 15. 2 Def. witness Plaintiff married when 15.

Even defence evidence is that Plaintiff taught Koran in Mohammed bin Hafidh not called as a witness and very significant as he called witnesses.

30 Plaintiff made wealthy marriage p. 24.

#### Re Judgment :

(5) 1893 Decree 13a "Concubines shall be regarded as inmates of the harem."

That was law up to 1909.

Legitimacy or Legitimation ?

Evidence need not be formal.

What circumstances sufficient to prove—a matter for trial.

Judge—fact : If you come to conclusion Plaintiff's mother given as a concubine then the facts that all properly done may be inferred.

40 P. 33 Judgment important.

P. 35 Judgment top of page. Binti Juma gave plaintiff as concubine. Temporary transfer of ownership possible, for purpose of keeping as concubine.

Re Legal objections.

Ogders on P. & P. p. 203 8th Edn.

*Middleton v. Pollock* (1876) 4 Ch. D. 49.

*Powell v. White* 1935 A.C. 243, 247.

#### Christie replies :—

50 Re Legal exception to only one point—pleading illegality.

Refers para. 2 of plaint. I denied that what more could I do ?

*In His Majesty's Court of Appeal for Eastern Africa.*

No. 23.  
Judges' Notes on hearing of appeal—  
(B) Mr. Justice Bartley,  
23rd August 1946 to 5th October 1946,  
*continued.*

*In His Majesty's Court of Appeal for Eastern Africa.*

Illegality only appeared when Plaintiff's evidence given.  
 Re : 1890 Decree Refers Section 3.  
 Slave must remain with owner.  
 How could natives here become Moslems if not taught the Koran.

C. A. V.

No. 23.  
 Judges' Notes on hearing of appeal—  
 (B) Mr. Justice Bartley, 23rd August 1946 to 5th October 1946, *continued.*

5-10-46. Bryson for Appellant.  
 Budhdeo for Respondent.  
 3 Judgments read.

T. D. M. B.

1.10.46. 10

No. 24.  
 Reasons for Judgment—  
 (A) Sir Norman Whitley, C.J.

No. 24.

**REASONS FOR JUDGMENT.**

(A) Sir Norman Whitley, C.J.

I have taken some time to consider what my conclusion should be in this unusual and difficult case because an appellate Court must be reluctant to interfere with a judgment in which every aspect of the matter has been so carefully weighed and exhaustively set out by the Trial Judge. But we are entitled to reverse that judgment and, indeed, it is our duty to do so, if after making every allowance for the advantage which the learned Chief Justice, who tried the case, enjoyed by reason of seeing and hearing the witnesses we are satisfied that he came to a wrong conclusion on the evidence or in law. I have had the opportunity of reading the judgments of the learned Chief Justice of Tanganyika and my brother Bartley and I agree with them that the extremely meagre evidence is insufficient to establish that Seyyid Hafidh did acknowledge the Respondent as his daughter, and that accordingly, since she failed to discharge the heavy onus which rested upon her in a claim such as this, the appeal should be allowed. They have in their judgments dealt with the evidence so comprehensively that no useful purpose will be served by my reviewing it. All I need say is that my opinion as to the weight and sufficiency of the evidence is the same as theirs. In saying that I accept the views given by the learned Chief Justice of Zanzibar of the credibility and reliability of the witness.

The Respondent's case is that she was the eldest child of Seyyid Hafidh and from her evidence it would appear that she was considerably older than any of his children by his lawful wives. If that be so one would have expected him to have taken a lively interest in her especially during the years when she was his only child, but the evidence goes no further than to suggest the most perfunctory interest in her. Seyyid Hafidh belonged to an influential and important family in a small community. If the Respondent were indeed his acknowledged first-born child, that relationship must have been well known not only to his family but to the friends of that family. The evidence of the Respondent's witnesses is to the effect that

there was nothing surreptitious about his relationship with Respondent's mother. Everything was done openly and in those days it was perfectly usual and proper for a man to have a child by a slave concubine. So much so that if he acknowledged the child it would be entitled to share equally in his estate with children by wedded wives. In those circumstances if Seyyid Hafidh did acknowledge the Respondent surely there would be elderly persons of repute, friends of the family, who would know all about it and be available as independent witnesses. Yet not one was called. Fatuma binti Sultan, who taught Respondent the Koran, says that Binti Suma said "Teach my granddaughter" but she does not say that when Seyyid Hafidh paid her half of the fee he referred to that Respondent as his daughter.

*In His Majesty's Court of Appeal for Eastern Africa.*

No. 24.  
Reasons for Judgment—  
(A) Sir Norman Whitley, C.J.,  
*continued.*

It was for the Respondent to prove that Seyyid Hafidh did acknowledge her as his child. Proof of a formal acknowledgement or declaration is not necessary but there must be evidence of circumstances which in the words of Section 3 of the Evidence Decree render it so probable that she was acknowledged by him as his child that a prudent man ought in the circumstances of this particular case, to act upon the supposition that she was so acknowledged by him.

20 Taking into account the significant gaps in the evidence to which I have referred and giving the fullest weight to the teaching of the Koran, presence of Seyyid Hafidh at her wedding, her visits to him in hospital and the other circumstances relied upon by the Respondent I feel that the evidence falls far short of establishing that degree of probability and for that reason I would allow the appeal.

Since in my opinion the Respondent's case must fail on the facts I do not propose to deal with the law at any length but I find myself unable to agree with the learned Chief Justice of Tanganyika in his view that, even if Seyyid Hafidh did acknowledge the Respondent as his daughter, her claim to share in the estate could not be entertained by the Courts for the reason that that claim is based upon an illegal transaction.

The foundation of the claim is the alleged gift of the Respondent's mother Panya to Seyyid Hafidh by his mother Murhera binti Suma as a slave concubine. There was a considerable body of evidence, accepted by the Trial Judge, that Panya was so given. Under the old Ibathi law any child by her born whilst she was his slave concubine and acknowledged by him as his child would be entitled to share in his estate at his death.

At the date when Muhera gave Panya to her son Seyyid Hafidh the Slavery Prohibition Decree 1890 was in force and it is suggested that by reason of the provisions of that decree the giving of the slave was an illegal transaction.

Articles 3 and 4 of the Decree read as follows :—

3. "We absolutely prohibit from this date all exchange, sale, or purchase of slaves, domestic or otherwise. There shall be no more traffic whatever in slaves of any description. Any houses heretofore kept for traffic in domestic slaves by slave brokers shall be for ever closed, and any person found acting as a broker for the exchange or sale of slaves shall be liable, under our orders to severe punishment, and to be deported from our dominions. Any Arab or other of our subjects hereafter found exchanging, purchasing,

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*In His Majesty's Court of Appeal for Eastern Africa.*

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Reasons  
for Judgment—  
(A) Sir  
Norman  
Whitley,  
C.J.,  
*continued.*

obtaining, or selling domestic or other slaves shall be liable under our orders to severe punishment, to deportation, and the forfeiture of all his slaves. Any house in which traffic of any kind in any description of slave may take place shall be forfeited."

4. "Slaves may be inherited at the death of their owner only by the lawful children of the deceased. If the owner leaves no such children, his slaves shall *ipso facto* become free on the death of their owner."

I am not satisfied that the giving of a slave by a mother to her son in the circumstances deposed to by the witnesses was an illegal transaction under Article 3. It seems to me that the governing word in that Article is "traffic" which occurs three times and that what is aimed at is to prohibit "trafficking" in slaves. In Stroud's Judicial Dictionary "trafficking" is defined as meaning and including "bartering, selling, dealing, trading in, exposing or offering for sale". In Webster "traffic" means: 1. Passing goods and commodities from one person to another for an equivalent in goods or money; to buy or sell goods; to barter; trade. 2. To engage in any kind of dealing; to deal often meanly or mercenarily; to bargain. 10

It cannot be said that in giving the slave to her son Muhera did any of these things. She committed no offence under this Article for she did not "exchange" or sell or traffic in the slave. If she committed no offence I find it difficult to hold that her son committed an offence in accepting the gift. The Article must I think, be read as a whole and when "exchanging, purchasing, obtaining or selling" is made punishable the word "obtain" should I feel be read as meaning "obtain by trafficking." Article 4 would have permitted him to inherit this slave at the death of his mother. Why then should it not be permissible for him to receive the slave as a gift during his mother's lifetime? 20

The decree is penal and interferes with private rights and interests. In so far as it is penal no effect must be given beyond what it is clear that the Legislation intended (*Parry v. Croydon Gas Co.* 15 C.B.N.S. 568) and in so far as private rights and interests are concerned the decree should receive a strict construction (*Hughes v. Chester and Holyhead Railway* 31 L.J. Ch. 97). 30

Even if receiving the slave from his mother as a gift was an offence under Article 4 I still cannot see how the illegality of her father's act can have the effect of depriving the Respondent of any right to a share in his estate which she would have had under the Ibathi law. That law gave certain rights to any slave girl who was taken as a concubine by her master. One of these rights and one most valuable to the slave girl and doubtless highly prized was the right which any acknowledged child she might have by her master during such concubinage would have to a share in his estate when he died. That such rights continued after the passing of the decree of 1890 is clear from Article 4 of the Slavery Decree of 1909. The 1890 Decree gave new rights to slaves. It did not take away rights which they already enjoyed. I agree with the learned Chief Justice of Zanzibar that even if the transaction which led to Panya becoming a slave concubine was illegal Panya could still have enforced any rights she had as a concubine and that similarly the Respondent is entitled to enforce any rights which she may have derived from her mother's status. 40 50

The Defendant and the legitimate children whom he represents must, it seems to me, stand in the shoes of the deceased father and cannot rely upon any illegal act of his as a defence.

In my opinion there is no obstacle in law to the Respondent's claim but I am in agreement as to her failure to discharge the onus of proof, and I would accordingly allow the appeal with costs here and below.

(B) Sir George Graham Paul, C.J.

As I understand this appeal it raises few issues of fact or law, and these issues are within a very small compass. The respondent as plaintiff in the Court below claimed a declaration that she is the daughter of the deceased Hafidh bin Mohamed and as such entitled to a share of the inheritance of the said deceased's estate which is being administered by the defendant, appellant. The Court below upheld her claim and the defendant, appellant, has appealed to this Court.

It is common ground that the plaintiff, respondent, is the daughter of one Panya who was at one time a female slave of Binti Juma, the mother of the deceased.

The respondent's case may be shortly stated in a number of propositions of fact, or law, or mixed fact and law, in regard to each of which propositions it is clear that the onus of establishing it is upon the respondent. In view of the importance of the claim based upon these propositions it is obvious that the onus is a very heavy one.

These propositions I apprehend to be as follows :—

(1) That Panya was legally and effectually given by Binti Juma to her son the deceased as a concubine and slave.

(2) That the deceased legally and effectually accepted Panya as a concubine and slave and treated her as such.

(3) That the plaintiff was the natural daughter of the deceased and Panya—the issue of the slave concubinage.

(4) That the deceased in his lifetime acknowledged the plaintiff to be his daughter by his slave concubine Panya.

It is not disputed that if the plaintiff established each and every one of these propositions she is entitled to a share of the estate *pari passu* with the legitimate children of the deceased. On the other hand if she fails to establish any one of these propositions her case fails.

As regards the 1st and 2nd of these propositions there is evidence which if believed is sufficient to justify a finding that Binti Juma purported to give and the deceased to accept Panya as a slave-concubine. The learned trial Judge accepted the evidence to that effect and it does not seem to me that this Court can differ from the learned Judge on that point.

There remains however in regard to the 1st and 2nd propositions a question of law raised by the appellant at the trial and before this Court. The point shortly is that by the statutory enactments, the "Decrees," dealing with slavery the alleged gift to, and acceptance by, the deceased of the slave Panya constituted an illegal transaction and that therefore the Courts cannot entertain any claims based upon that transaction.

It was objected by the respondent's advocate in this Court and in the Court below that this legal objection could not be raised by the appellant

*In His Majesty's Court of Appeal for Eastern Africa.*

No. 24.  
Reasons for Judgment—  
(A) Sir Norman Whitley, C.J.,  
*continued.*  
(B) Sir George Graham Paul, C.J.

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No. 24.  
Reasons  
for Judgment—  
(B) Sir  
George  
Graham  
Paul, C.J.,  
*continued.*

as it was not raised in his written statement of defence. There is nothing whatever in that objection for the reason that the point about the illegality of the transaction arose only when the appellant's evidence at the trial disclosed for the first time how and when she alleged Panya became the "Suria" of the deceased. It was therefore quite open to the Court below, as it is to this Court, to consider the point raised as to the illegality of the transaction and the effect of that point on the rights of the parties.

The date of the transaction is of course of importance for it is the law as it stood at that date that governs the transaction. The exact date of the transaction is not very clearly ascertainable from the evidence but it may safely be taken that the date was between 7th April 1897 and 6th July 1909 which is sufficient to determine the material state of the law under the Slavery Decrees. 10

The learned Chief Justice has found—and in my respectful opinion quite rightly found—that the transaction in question was one prohibited by The Slave Trade (Prohibition) Decree of 1st August 1890. It has been argued strenuously before this Court for the respondent that the learned Chief Justice was wrong in so finding on the ground that the Decree in question did not prohibit the "giving" of a slave, that it was aimed only at transmission of slaves for a valuable consideration. This argument was based on the *ejusdem generis* principle as applied to Article 4 of this Decree. But that *ejusdem generis* principle fails in effect in my opinion when the definite express purposes of the Decree (particularly Article 3, 4 and 5) are duly considered—most particularly the most important enactment in Article 5 which is in the following terms:— 20

"Slaves may be inherited at the death of their owner only by the lawful children of the deceased. If the owner leaves no such children, his slaves shall, *ipso facto*, become free on the death of their owner." 30

From the point of view of the slaves that was probably the most important provision of the decree—restricting as it did the duration of their status of slavery to the period of the lives of their particular owner at 1st August 1890 and of his or her lawful children. If the unqualified word "obtaining" in Art. 4 did not include obtaining by gift then any owner by giving away his slaves—perhaps even on his death bed childless—could defeat the emancipation given by Article 5, by passing on his or her slaves to a long line of inheriting owners. For that reason I respectfully concur in the view of the learned Chief Justice as to the meaning of "obtaining" in Art. 4 of this Decree. 40

The result of that reasoning is that the transaction in question was illegal.

Now comes the question whether the illegality of the transaction which is the basis of her claim is fatal to the respondent's claim. The learned Chief Justice has held that it is not. He puts the matter in this way:—

"Here the defendant stands in the shoes of the deceased person whom he represents. He cannot plead a defence which was not open to that person to plead."

With great respect I find myself unable to accept that proposition. It is quite true that an administrator of a deceased person's estate does, 50

broadly speaking, stand "in the shoes of the deceased." That is true as a general proposition but here the real issue is not between the plaintiff and the administrator as representing the whole estate of the deceased. It is quite clearly on the pleadings an issue between the plaintiff and the legitimate children. The administrator is only a nominal defendant in the suit and it is in my view open to the legitimate children to plead as they do through the nominal defendant that their legal rights as such cannot be defeated by an illegal transaction of their father.

*In His Majesty's Court of Appeal for Eastern Africa.*

No. 24.  
Reasons for Judgment—  
(B) Sir George Graham Paul, C.J.,  
*continued.*

10 Moreover it seems to me that where a question of legal status is in issue, and not merely matters of contract, the authorities quoted on this point have no application. No estoppel between persons can be pleaded to bolster up a status illegally acquired. It is easy to conceive examples to illustrate this. If A in his lifetime contracts a bigamous marriage and his children of that union, it would not be open to these children to plead against the children of the first marriage in a question as to rights in A's estate that they were estopped from founding on the bigamous nature of the second marriage because A was a party to it.

20 The learned Chief Justice points out that the deceased in his lifetime would not have been allowed to plead the illegality of the transaction as against Panya. But with respect it seems to me that is quite beside the point here. The legitimate children would surely be entitled if occasion arose during the deceased's lifetime to maintain as against the deceased or as against Panya their rights as legitimate children and to found in any such question upon the illegality of this transaction in question.

It is my view therefore that the respondent could not receive from the Court a declaration as to status based upon the illegal transactions and that for that reason alone the respondent's claim should have been dismissed. She has failed to establish the first and second of the propositions necessary to the success of her claim.

30 As to the 3rd and 4th propositions, that the respondent was the natural daughter of the deceased and Panya and acknowledged by the deceased as such in his lifetime, I would have found it impossible, if the question arose, to accept as sufficient the facts which the learned Chief Justice found proved in regard to these propositions, particularly in regard to the 4th proposition.

40 The respondent was born in 1907 and the deceased died in 1944. That is to say that there was a period of about 37 years during which time the respondent and deceased both lived in a fairly small community in which at least the deceased was a notable figure. There is no suggestion that there even was a quarrel or estrangement between them. That to my mind is the background against which the sufficiency or otherwise of the evidence that the deceased acknowledged respondent as his daughter must be considered. Viewed against that background I find the evidence quite inadequate. The facts found proved *ad hoc* were:—

50 (1) The deceased paid one sum of 50/- being half of the costs of teaching the plaintiff the Koran. It is nowhere in evidence that the deceased in making this payment stated that the respondent was his child. There is evidence that Binti Juma referred to the respondent on that occasion as her "granddaughter" but it is not clear that this was said in presence of deceased or with his concurrence express or implied, and of course Binti Juma's acknowledgment is not enough.

*In His  
Majesty's  
Court of  
Appeal for  
Eastern  
Africa.*

No. 24.  
Reasons  
for Judgment—

(B) Sir  
George  
Graham  
Paul, C.J.,  
*continued.*

(2) Education in the Koran is not usually given to the children of slaves and it was given to the respondent. To my mind the evidence does not go far enough on this point. I should have liked to hear from a reputable disinterested witness from this community that no man in the position of the deceased would pay 50/- towards having a female slave's child taught the Koran unless he were the father of that child. In the absence of definite evidence to that effect I find it impossible to assume it in the respondent's favour.

(3) The deceased was present at the plaintiff's marriage. 10  
I again would have attached weight to this fact if there had been reliable evidence from a reputable disinterested witness that no man in deceased's position would be present at a slave's female child's marriage unless that child were his daughter. For all the evidence shows, this wealthy Indian contractor whom the respondent married might have been a friend of the deceased—in other words the deceased's presence at the marriage may have been as a "friend of the bridegroom." This fact of presence at the marriage I find of little or no weight.

(4) That the respondent visited the deceased shortly before his 20  
death in hospital. That fact stands entirely on the respondent's own evidence. She knew when she went to the hospital, if indeed she did so, and the people who saw her there. The appellant could not know these things so could not bring evidence to contradict the respondent. But all sorts of possibilities are conceivable about the visits to hospital. Her old husband may have taken her for instance. In any case a visit to a sick man in hospital is by no means necessarily an acknowledgment by the sick man that the visitor is his daughter.

These four items to my mind, covering as they do a period of 30  
37 years, are hopelessly inadequate to discharge the heavy onus upon the plaintiff in a claim to set herself up as the deliberately acknowledged child of the deceased. If it had been necessary to decide the case with reference to the 4th proposition, I would have held that the facts as found by the learned Chief Justice did not justify the inference which he drew, namely, that in his lifetime the deceased deliberately acknowledged the respondent as his child.

From beginning to end of the evidence no witness has been able to say that the deceased ever said to anyone that the respondent was his daughter. No witness according to the evidence ever even heard the 40  
deceased refer to the respondent as his daughter. The respondent herself was apparently unable to say that the deceased ever said or did anything in her presence or to her knowledge which could be construed definitely as an acknowledgment of the respondent as his daughter.

It is true that express formal acknowledgment is not necessary and that acknowledgment can be proved by conduct. But the conduct must be such as to show unequivocally a deliberate acknowledgment by the deceased and in my view the unimportant incidents which the learned Chief Justice found proved, taken singly or together, fall a long way short of that standard. In my view therefore the learned Chief Justice was 50  
wrong in inferring from these facts that there had been deliberate acknowledgment by the deceased of the respondent as his daughter.



I would allow the appeal, set aside the judgment of the Court below and substitute therefor a judgment dismissing the claim with costs. I would allow the appellant the costs of this appeal and of the proceedings in the Court below, any costs of the Court below paid by the defendant to be refunded.

*In His Majesty's Court of Appeal for Eastern Africa.*

(C) Mr. Justice Bartley.

No. 24.

The plaint in this case reads :

Reasons for Judgment—

10 " 1. Plaintiff is an Arab Mohamedan subject of His Highness the Sultan and resides at Zanzibar. She is about 37 now. Defendant is Administrator-General Zanzibar Protectorate and is administering the estate of the late Hafidh bin Muhammad El-Busaidi who died in Zanzibar in or about December, 1944, leaving assets within the jurisdiction of this Honourable Court.

(B) Sir George Graham Paul, C.J.,  
*continued.*

2. The deceased Hafidh bin Muhammad El-Busaidi was a Mohamedan of Ibadhi Sect. Plaintiff is daughter of the said deceased by one Panya binti Hassan who lived with him and was his " Suria " according to Ibadhi law.

(C) Mr. Justice Bartley.

20 3. Plaintiff was brought up by Muhere binti Juma Mpemba mother of the said Hafidh bin Muhammad El-Busaidi. Plaintiff has the same features and appearance as her father the said deceased.

4. The plaintiff as daughter of the deceased as aforesaid is entitled to inheritance from his estate. She applied to defendant to admit her as heir according to law ; defendant has referred her to Court as some of the heirs do not admit plaintiff's claim.

5. Plaintiff is unable to state the exact amount to which she will be entitled to as such heir but estimates it to be over Shs.40,000/—.

Plaintiff therefore prays :—

30 (A) For a declaration that she is the daughter of the said deceased Hafidh bin Muhammad El-Busaidi and as such entitled to inheritance.

(B) That defendant as administrator of this estate be ordered to give her her share of inheritance according to Ibadhi Law.

(C) Such further or other order as to this Honourable Court may seem meet and for

(D) Costs."

40 It will be seen that acknowledgment of paternity was not specifically pleaded as in my view it should have been under Order VII rule 1 of the Zanzibar Civil Procedure Rules. A perusal of the very scanty evidence in the examination-in-chief of the witnesses for the respondent gives additional ground for the view that the respondent was not at first aware that she had to establish acknowledgment.

The learned Chief Justice summarized as follows the evidence on which he came to the conclusion that the plaintiff was the daughter of Seyyid Hafidh by his slave concubine and that he acknowledged the paternity :

" The evidence for the plaintiff may therefore be summed up as follows :—

(1) The plaintiff's mother was given as a concubine to her alleged father.

*In His  
Majesty's  
Court of  
Appeal for  
Eastern  
Africa.*

No. 24.  
Reasons  
for Judgment—  
(c) Mr.  
Justice  
Bartley,  
*continued.*

(2) The plaintiff's mother and alleged father subsequently cohabited in a house in Zanzibar.

(3) The plaintiff was born in the house of the alleged father's mother.

(4) The plaintiff was not brought up by her mother, but was brought up in the house in which she was born and resided there until her marriage.

(5) The alleged father paid Rs.50/- towards the plaintiff's education.

(6) The education was of a kind not usually given to the 10 children of slaves.

(7) The alleged father was present at the plaintiff's marriage.

(8) The plaintiff visited her alleged father shortly before his death in hospital."

With regard to (1) I have had the advantage of reading the judgment of the learned Chief Justice of Tanganyika with which I am in complete agreement. With regard to (2) the only evidence of cohabitation given was that of the former slave Anasi bin Feraji who stated "Panya (respondent's mother) and Seyyid Hafidh lived together here in Zanzibar in the house where Inspector Sultan now lives." The learned Chief 20 Justice accepted the evidence of this witness who appeared to him "to be an honest witness trying to depose to events which admittedly happened many years ago." Another witness for the respondent had testified that after Binti Hassani (respondent's mother) was given as a concubine she continued to live with Binti Juma (Seyyid Hafidh's mother). After she was given as a concubine Seyyid Hafidh used to visit Binti Juma about twice a year. This witness also testified that when Seyyid Hafidh took Panya as his concubine "he took her to his bed with him." The learned Chief Justice found that witness to be unreliable. The accepted evidence of cohabitation is very meagre and contains no reference to any period of 30 time. It is of course the case for the respondent that she was born in Binti Juma's house so her mother at that time was not living with Seyyid Hafidh.

With regard to (3) and (4) the respondent's mother had been a slave of Binti Juma before the alleged gift. That other slaves of Binti Juma gave birth to children in Binti Juma's house is testified to by the witness for the respondent Khamis bin Jeta "Not many of the slave girls gave birth to children at Binti Juma's house." Again Matiku binti Ambari giving evidence for the respondent stated "When a girl was born to Binti Juma's slaves she used to bring the girl up." With regard to (5) the 40 payment of Rs.50/-, which it is worth noting was only half the fee paid for the respondent being taught the Koran, is a very different proposition from Seyyid Hafidh acknowledging his paternity and so putting the respondent in a position to claim Shs.40,000/- from his estate.

As to (6) the evidence on this point appears to consist of Fatuma Binti Sultan's evidence that she didn't teach the Koran to any other slave girls in Binti Juma's house and to the evidence that four other named slave girls were not taught the Koran. That evidence in my view hardly establishes that the respondent's education was of a kind not usually given

to the children of slaves. It is worth noting that the respondent's evidence as to being taught the Koran came out in her cross-examination.

As to (7) and (8) which evidence also came out in the cross-examination of the respondent and is unsupported these incidents are the only evidence of Seyyid Hafidh's interest in the respondent over a period of some 36 years.

In my view the evidence is insufficient to establish that Seyyid Hafidh did acknowledge the respondent as his daughter and I would allow the appeal with costs in this Court and the Court below.

*In His Majesty's Court of Appeal for Eastern Africa.*

No. 24.  
Reasons for Judgment—  
(c) Mr. Justice Bartley, *continued.*

No. 25.  
Decree, 5th October 1946.

10

No. 25.

**DECREE.**

**IN HIS MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA.**  
Civil Appeal No. 26 of 1946

(From Original Decree in Civil Case No. 31 of 1945 of H.M. High Court of H.H. the Sultan of Zanzibar at Zanzibar)

**THE ADMINISTRATOR-GENERAL OF ZANZIBAR**  
as Administrator of the ESTATE of SEYYID HAFIDH  
BIN MOHAMMED EL BUSAIDI, deceased

Appellant  
(Original Defendant)

20

*v.*

FATMA BINTI HAFIDH - - - - - Respondent  
(Original Plaintiff)

This Appeal coming on 5th day of October, 1946, for hearing before His Majesty's Court of Appeal for Eastern Africa in the presence of Mr. Christie on the part of the Appellant and of Mr. Budhdeo on the part of the Respondent.

It is ordered that the appeal be allowed setting aside the judgment of the court below and substituting therefor a judgment dismissing the claim with costs and that the Respondent do pay to the Appellant the taxed costs of this Appeal.

30

sd. DENIS F. SHAYLOR.

Registrar

H.M. Court of Appeal for East Africa.

Dated this 5th day of October, 1946.

Issued on the 30th day of September, 1947.

I hereby certify that the Bill of costs of the Appellant in the above appeal has been taxed and allowed at Shillings Seven thousand, three hundred and eighty eight and Cents eighty.  
(S. 7388/80.)

40

Dated 30th day of September, 1947.

sd. DENIS F. SHAYLOR,

Registrar

H.M. Court of Appeal for East Africa.

No. 26.

APPLICATION for conditional leave to appeal to His Majesty in Council.

*In His Majesty's Court of Appeal for Eastern Africa.*

IN HIS MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA.  
Holden at Nairobi.

No. 26.  
Application for conditional leave to appeal to His Majesty in Council, 28th November 1946.

In the matter of an Application by Fatuma binti Hafidh El-Busaid of Zanzibar.

In Civil Appeal No. 26 of 1946.

Between THE ADMINISTRATOR - GENERAL  
 ZANZIBAR PROTECTORATE as Adminis-  
 trator of the estate of HAFIDH BIN MOHAMED  
 EL-BUSAID deceased - - - - Appellant 10  
 (Original Defendant)

and

FATUMA BINTI HAFIDH EL-BUSAID of  
 Zanzibar - - - - Respondent  
 (Original Plaintiff)

Take notice that at the next Sessions of this Honourable Court which is fixed to be holden at Nairobi on or about the 15th January 1947 the Court will be moved on behalf of the above named Fatuma binti Hafidh El-Busaidiya of Zanzibar that leave may be granted to her to Appeal to His Majesty in Council from the judgment of the Court of Appeal delivered at Mombasa on the 5th day of October 1946 reversing that of the Chief Justice of Zanzibar. 20

Thumb Print of Fatuma binti  
Hafidah El-Busaidiya.

Dated at Zanzibar this 28th day of November 1946.

To,

- (1) The Deputy Registrar  
Court of Appeal for Eastern Africa  
At Zanzibar.
- (2) The Administrator General  
Zanzibar.

30

Drawn by  
AHMED AYUB,  
Advocate,  
Zanzibar.

sd. P. K. JANI,  
Administrator General's Agent.  
30/11/46.



No. 27.

ORDER granting conditional leave to appeal to His Majesty in Council.

10/2/47. Ahmed Ayub for Applicant.  
Bryson for Respondent.

*In His Majesty's Court of Appeal for Eastern Africa.*

ORDER :

An appeal in this case lies as a matter of right under Article 3 (a) of the Order in Council (The Eastern African (Appeal to Privy Council) Order in Council, 1921).

10 Conditional leave to appeal to the Privy Council is granted, the applicant Fatuma binti Hafidh to furnish security to the satisfaction of the Court in a sum of £400 within 3 months from today for the due prosecution of the appeal and for any costs payable by the applicant in the event of the applicant not obtaining an order for final leave to appeal or of the appeal being dismissed for non-prosecution or of His Majesty in Council ordering the applicant to pay the costs of the appeal.

No. 27.  
Order granting conditional leave to appeal to His Majesty in Council, 10th February 1947.

The applicant to take the necessary steps for preparation of the record and despatch thereof to England within 4 months from today.

Costs to follow the event.

10/2/47

JOSEPH SHERIDAN.  
G. GRAHAM PAUL.  
R. S. THACKER.

20

No. 28.

APPLICATION for final leave to appeal to His Majesty in Council.

ADMINISTRATOR - GENERAL, ZANZIBAR,  
Administrator of the Estate of SEYYID HAFIDH  
BIN MUHAMMED EL-BUSAID - -

Appellant  
(Original Defendant)

*versus*

FATMA BINTI HAFIDH - - -

- Respondent.  
(Original Plaintiff)

No. 28.  
Application for final leave to appeal to His Majesty in Council, 25th June 1947.

30

NOTICE OF MOTION.

TAKE NOTICE that this Honourable Court will be moved at Mombasa on Wednesday the 16th day of July, 1947 at 10.00 o'clock in the forenoon by Counsel for the Respondent above named FOR ORDER THAT—

(1) The time for despatching the record be extended by four months or such further or lesser time as may in the circumstances appear expedient, and

(2) Final leave to appeal to His Majesty in Council from the judgment of this Honourable Court delivered on the 5th October,

*In His  
Majesty's  
Court of  
Appeal for  
Eastern  
Africa.*

No. 28.  
Application  
for final  
leave to  
appeal to  
His  
Majesty  
in Council,  
25th June  
1947,  
*continued.*

1946, be given to the Respondent, who has duly complied with the conditions imposed by the preliminary order giving leave dated the 10th February, 1947, as is evidenced by an affidavit sworn in support hereof on the 25th day of June, 1947, by Ahmed Ayub Esq., Counsel for the Respondent.

(3) Costs of this application be provided for.

Dated at Zanzibar this 25th day of June, 1947.

J. F. DASTUR,

Dy. Registrar,  
H.M. Court of Appeal for Eastern Africa. 10

This Notice of Motion was taken out by :

AHMED AYUB,

Counsel for the Respondent.

To

The Administrator General,  
Zanzibar.

---

AFFIDAVIT.

I, AHMED AYUB of Zanzibar, Advocate of His Highness the Sultan's High Court of Zanzibar, hereby make oath and say as follows :—

1. The Respondent—applicant has duly complied with the require- 20  
ments of the Order made herein on the 10th day of February, 1947, granting  
conditional leave to appeal to His Majesty in Council, save as is hereinafter  
stated :—

2. The record, however, though ready and awaiting despatch, is  
incomplete without inclusion of the Order for final leave to be made  
herein.

3. The next Session of the Court of Appeal for Eastern Africa have  
been fixed to be holden at Mombasa, on the 16th day of July, 1947, and the  
four months within which the record was ordered to be despatched have  
run out on the 9th day of June, 1947. 30

4. It is accordingly submitted final leave herein be granted and an  
appropriate extention of time for despatching of the record be allowed.

AHMED AYUB.

Sworn at Zanzibar this 25th day of  
June, 1947

Before me :

J. F. DASTUR,  
Commissioner for Oath.

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No. 29.

**ORDER granting final leave to appeal to His Majesty in Council.****ORDER :**

We make an order extending the period for despatching the record up to and including the 14th October, 1947. The conditions set out in the conditional order giving leave to appeal have been complied with. In the event of the appellant not proceeding with the appeal the Respondent will have the costs of and incidental to the application for leave to appeal.

Final leave to appeal granted.

10      21st August, 1947.

J. H. B. NIHILL.

G. GRAHAM PAUL.

D. EDWARDS.

*In His  
Majesty's  
Court of  
Appeal for  
Eastern  
Africa.*

No. 29.  
Order  
granting  
final leave  
to appeal to  
His  
Majesty  
in Council,  
21st  
August  
1947.

*Exhibits.*

## EXHIBITS.

No. 1.  
Translation  
of entries  
in Arabic  
in a book  
belonging  
to Hafidh  
bin  
Muhammad  
el-Busaidi  
deceased.

1.—Translation of entries in Arabic in a book belonging to Hafidh bin Muhammad el-Busaidi deceased.

(1) Note : my betrothal to Binti Said bin Sultan, night (preceding) the 27th El-Haj 1281.

Night (preceding) the 14th Rabi El Awal 1281, but the actual consummation on night (preceding) 27th Shaban 1281 and shifted to Bububu night (preceding) 4th Rabi el Awal 1281.

(2) In the name of the most merciful God. A note that one may not forget the birth of Ali bin Hamoud. He was born on the night of Monday the 1st of Rajab 1266 after 12 p.m. May God bless him. 10

(3) Birth of Seif bin Hamoud Wednesday 9th Shaban 1269 at 3.30 o'clock a.m. I was at the time away in Syria but those who were present informed me.

(4) Birth of Bibie—their sister—14th Safar 1281 after 1 o'clock Tuesday. May God bless her.

(5) Birth of Soodu—8 o'clock p.m. the night (preceeding) 21st Safar 1278. May God bless her.

(6) Birth of Nunu—night (preceeding) the 6th El Haj 1280 at 11 o'clock p.m. Thursday night. May God bless her. 20

(7) Birth of Shuweid bin Hamoud—Wednesday 29th Rabi el Akher 1282 at 8 a.m. May God bless him.

(8) Date of the death of Seyyid Hamed bin Thuwein, Tuesday 15th Rabi el Awal 1314 and on the same day Seyyid Khalid bin Bargash took over possession of the palace and entered into war with the English on Tuesday the 17th after 9 o'clock a.m. and Seyyid Hamoud bin Mohamed ascended the throne on the same day after 12 o'clock.

(9) Date of the death of Sharifa binti Hilal bin Ahmed night (preceeding) 11th Muhoram 1322, after 7 p.m. May the Mercy of God cover her. 30

(10) Date of the death of (father) Seif bin Hamoud bin Ahmed Friday 10 a.m. Shaban 1324.

(11) Date of the death of Ahmed bin Seif bin Mohamed 7th Ramadhan 1250.

(12) Date of the death of Hamed bin Ahmed bin Seif—3 o'clock a.m. night preceeding Sunday 24th Rajab 1283 and in the same year died Abdul Wahhab bin Said bin Sultan.



(13) Date of the death of Hamoud bin Ahmed bin Seif—4 o'clock a.m. night (preceeding) Friday 15th Rabi el Akher 1298. May God rest his soul and all the believers.

*Exhibits.*

(14) Date of the death of Methla binti Ahmed bin Seif night (preceeding) 22nd Muhoram 1308.

No. 1.  
Translation  
of entries  
in Arabic  
in a book  
belonging  
to Hafidh  
bin  
Muhammad  
el-Busaidi  
deceased,  
*continued.*

(15) Date of the death of the servant Abdula bin Adam el Ingazi ja night (preceeding) Monday 29th Jamadi el Akher 1308 and in the same month died Feiruz bin Abdulla the servant of Government (Royal Family).

10 (16) Date of the death of Abdulla bin Ali Surur, night preceeding 23rd Rajab 1308.

(17) Date of the death of Seyyid Ali bin Said—the night preceeding Sunday 16th Shaban 1310 after 8 o'clock p.m. So the reader may know.

20 (18) Date of the death of Seyyid Hamoud bin Mohamed bin Said—night (preceeding) Friday 12th Rabi el Akher 1320 at 2 o'clock. And his son Seyyid Ali bin Hamoud ascended the throne on 14th day of the same month after 12 o'clock midday at which time he was away on his second trip to Europe. They were expecting his arrival on the same month. And he returned from his Safari on Sunday 21st day of the same month. And my son Ahmed bin Seif bin Hamoud died on the same month, on Wednesday the 17th 1320 after 8 o'clock a.m.

(19) Date of the death of Ali bin Hamoud bin Ahmed bin Seif 10th day of Ramadhan 1285 and it was the year of the plague. May God protect us from it and all other Colonies.

(20) Date of the death of Seyyid Majid bin Said bin Sultan Friday 11th Rajab 1286 in the same year Seyyid Bargash bin Said ascended the throne.

(21) Date of the death of Zaaфарana binti Abdulla el Habsiya in the month of Jamad el Akher 1296 and Hilal bin Mohamed bin Ahmed died seven days before her death.

30 (22) Date of the cyclone—the night of Monday the 6th of Safar 1289 and in the same year we returned from Pilgrimage in the company of Seyyid Bargash bin Said. We returned from Pilgrimage on the 27th Muhoram 1289 and we left Zanzibar (for Pilgrimage) on the 26th Shawal 1288.

(23) Date of the death of Azza bint Aziz bin Seif Monday 22nd Rabi el Awal 1294 and on the same day sister Khole proceeded to Muscat and accompanied by Binti Ahmed bin Seif and Zaaфарana.

40 (24) Date of the arrival of Shariffa binti Hilal bin Ahmed bin Seif from Muscat in the month of Safar 1295 and accompanied by Jokha binti Matar bin Mohamed and in the same year I married her (Shariffa) also in the same year (mother) Zaaфарan returned from Muscat in her accompanying in Rabi el Awal 1295.

*Exhibits.*

No. 1.  
Translation  
of entries  
in Arabic  
in a book  
belonging  
to Hafidh  
bin  
Muhammad  
el-Busaidi  
deceased,  
*continued.*

(25) Date of the death of Seyyida Moza bint el Imam 12th day of Rabi el Awal 1256. We found it recorded in the handwriting of Seyyid Mohamed bin Said bin Sultan. God rest his soul.

(26) Date of the death of Seyyida Azza binti Seif bin Ali 23rd day of El Haj 1273 half an hour after midday that's how we found it in the writing of Seyyid Mohamed bin Said.

(27) Date of the death of Seyyid Said bin Sultan 19th day of Safar 1273 Sunday after 8 a.m. We found it written in the writing of Seyyid Mohamed bin Said. Copied by the poor in sight of God Seif bin Hamoud with his own hand 1st Jamadil Akher 1299. 10

(28) Date of the death of the learned Sheikh Hamoud bin Seif bin Msellem el Fari—night preceeding Sunday 8th Shaban 1299. May God rest his soul and those of all Moslems.

(29) Date of the death of Seyyid Bargash bin Said—night preceeding 14th Rajab 1305 and in the same year died Seyyid Turkey bin Said in the month of Ramadhan and in the same year died Sheikh Mohamed bin Abdula el Shakshi in Shawal 1305. May the reader note.

(30) Date of the death of Seyyid Khalifa bin Said 20th day of Jamad el Akhar 1307 (?) and in the same year died Sheikh Ali bin Issa bin Salim 25th Ramadhan 1307. 20

(31) In the name of Most Merciful God. A note that I should not forget. The date of the birth of Hamoud bin Seif bin Hamoud, after 8 p.m. on the night preceding 2nd Rabi el Awwal 1289 and the father Hamoud bin Ahmed was in Mecca and went to Beit el Mukaddas. May God bless us with him. Written by Seif bin Hamoud.

(32) Birth of Methle binti Seif bin Hamoud, the night preceeding 9th Rabi el Akher 1297 and in the same year died Shawana.

(33) Birth of Ghaniye binti Seif bin Hamoud, the night preceeding 12th Safar 1298 after 7 p.m. and in the same year died Samira.

(34) Birth of Azza bint Seif bin Hamoud the night preceeding 17th Ramadhan 1298, and in the same year and same month I was suffering from Small Pox and Taimura was born while I was sick. 30

(35) Birth of Ahmed bin Seif bin Hamoud, after 8 p.m. the night preceeding Friday the 12th Rajab 1302 (?). May God bless him.

(36) Birth of Ali bin Seif bin Hamoud, night preceeding Monday the 2nd Jamadi el Akher 1305 after 10 p.m. May God bless him.

(37) Birth of Habshiya bint Seif bin Hamoud, the night preceeding 7th Rajab 1311. May God bless her.

(38) Birth of Mahfudha bint Ali bin Seif bin Hamoud Wednesday 2nd Shaban 1322. May God bless her.

*Exhibits.*

(39) Birth of Shantufa binti Seif bin Hamoud Wednesday 20th day of Shawal 1322. May God bless her.

No. 1.  
Translation of entries in Arabic in a book belonging to Hafidh bin Muhammad el-Busaidi deceased, *continued.*

(40) Birth of . . . bint Seif bin Hamoud the night (preceeding) 12th El Haj 1322, Friday. May God bless her.

(41) Birth of Sweiduu bint Said bin Kinde 20th Rajab 1336. May God bless her.

10 (42) Birth of Kinde bin Said bin Kinde the night (preceeding) Monday 13th el Kaada 1338. May God bless him.

(43) Death of Seyyida Khole bint Hamoud bin Ahmed el Busaidia the night preceeding Tuesday 24th Rajab 1336.

(44) Death of Seyyida Jokha bint Hamoud bin Ahmed the night (preceeding) the 11th Jamad el Awal 1340.

(45) (Mother) Muheira bint Juma bin Said el Mugheria died on the night (preceeding) 3rd Rabi el Awal 1351 corresponding 9th July, 1932.

(46) Seyyid Sir Ali bin Salim bin Khalfan el Busaidi died on the morning of Wednesday 4th Thi el Kaada 1359 corresponding 4th December 1940, at Mombasa.

20 (47) Zakia bint Hafidh died on Sunday noon 30th Rajab 1360 corresponding 24th August 1941.

(48) Seyyida Nunu binti Hamoud bin Ahmed died on Tuesday 17th Jamad el Awwal 1332. (wife). 1914.

(49) Mohamed bin Hafidh bin Mohamed bin Ahmed was born on the night (preceeding) 17th Rabi el Awal 1336 Hijra corresponding 1st January 1918 A.D. and his mother is the daughter of the late Abdulla bin Sallam el Shakshia.

30 (50) I married Fatma binti Seif bin Hamed bin Suleiman el Busaidia on the 9th day of Rabi el Awwal 1345. (Sgd.) Hafidh bin Mohammed, and I divorced her on 7th Shawwal 1350 (meaning Fatuma binti Seif bin Hamed bin Suleiman).

(51) I married Meyya bint Salim bin Khalfan el Busaidi the night (preceeding) 22nd Muhoram 1351 at 9.10 p.m. corresponding 29th May 1932. (Sgd.) Hafidh bin Mohamed bin Ahmed.

(52) Zakia bint Hafidh bin Mohamed bin Ahmed was born on the 10th of January 1928. Her mother is Fatma bint Seif bin Hamed.

*Exhibits.*

No. 1.  
Translation  
of entries  
in Arabic  
in a book  
belonging  
to Hafidh  
bin  
Muhammad  
el-Busaidi  
deceased,  
*continued.*

(53) Fathia bint Hafidh bin Mohamed bin Ahmed was born on 2nd November 1935 corresponding 5th Shabaan 1354. Her mother Meya binti Salim bin Khalfan el Busaidia.

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(54) Zein el Abidin bin Hafidh bin Mohamed el Busaidi was born the night preceeding 25th Rabi el Thani 1361 at 12 midnight. Corresponding 11th May 1942. His mother is Mashaikh Azza bint Salim bin Mohamed el Tobia.

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(55) El Muhallab bin Hafidh bin Mohamed el Busaidi was born on Saturday 26th Shaaban 1362 corresponding 27th August 1942 at 12.30 midnight. His mother is Azza bint Salim bin Mohamed el Tobia.

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(56) Seyyid Hafidh bin Mohamed el Busaidi married Mashaikh Raya bint Sheikh Ali bin Ameir el Marhubia. The betrothal was in the night (preceeding) Saturday the 14th day of Dhi el Kaada 1362 corresponding with 13th November, 1943. Ceremony was conducted by Kadhi Sheikh Said bin Rashid el Geithi. And she shifted into the blessed home on the night (preceeding) 16th Dhi el Haj 1362 corresponding 15th December 1943.

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BHD.

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# In the Privy Council.

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## ON APPEAL FROM THE COURT OF APPEAL FOR EASTERN AFRICA.

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BETWEEN

FATMA BINTI HAFIDH (Plaintiff) - - - - - *Appellant*

AND

THE ADMINISTRATOR-GENERAL, Administrator of the  
Estate of Hafidh bin Muhammad el-Busaidi, deceased  
(Defendant) - - - - - *Respondent*

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# RECORD OF PROCEEDINGS

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CHARLES RUSSELL & CO.,  
37 NORFOLK STREET,  
STRAND, W.C.2,  
*Solicitors for the Appellant.*

BURCHELLS,  
9 BISHOPSGATE, E.C.2,  
*Solicitors for the Respondent.*