

Muslim personal law in Kenya and Tanzania: Tradition and innovation

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Abstract:

This article is based on a comparative case study of Common Law jurisdiction involving case law in Kenya and Tanzania where both or either of the parties are Muslims. The status of Muslim Personal Law and its applicability in both jurisdictions raises various issues of conflict. The article analyzes contentious matters arising from such conflicts and suggests possible ways to reconcile between the two judicial trends, taking into consideration the contributions made by modern Muslim scholars such as Rashid Ridha and Imam Muhammad Abu Zahra. The article further points to the influence of Common Law principles on cases that involve Muslim disputants that has led to conflicts in areas such as presumption of Common Law marriage which cannot be accommodated in the Shari'ah. The article attempts to argue that in issues that Muslim scholars are silent or have divergent opinions, reconciliation between the Shari'ah and Common Law principles can be effected. These include, inter alia, adopting the progressive approach in evaluating domestic services and contributions of the wife in divorce settlements, and granting the right to custody of children to either of the parents under the welfare principle. Contemporary Muslim legal scholars need to accommodate these notions without sacrificing their religious values.