

'THERE IS NO STRANGER TO MARRIAGE HERE!': MUSLIM WOMEN AND DIVORCE IN RURAL ZANZIBAR

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Many disputes in rural Zanzibari Islamic courts concern whether or not a divorce has taken place outside of court. Zanzibari men have the right to divorce their wives unilaterally through repudiation without the approval of the wife or the court. The wife need not be present at the episode of repudiation for it to be legally valid, and it is therefore common for men to divorce their wives while away from them. As a result, women often rely on the structural events of divorce rather than an actual statement of repudiation as evidence of the end of a marriage. These structural events are the prominent experiences that a rural Zanzibari woman undergoes at the time of divorce. The most important are leaving her husband's home to return to her family and the removal of her marriage goods from her husband's home. Disputes about divorce arise when women want to remarry or when men ask their former wives to return to them and resume married life. While some women agree to return, others seek official validation for the alleged divorce in Islamic courts by requesting an official divorce receipt. This article examines women's divorce experience and analyses three court cases to demonstrate how disputes about alleged divorce arise and what happens when they are taken to court.

One of the cases was opened by Shindano, a woman about sixty years old, who came to court to ask for a receipt verifying that she had been divorced by her husband, Abu Bakr. She related her husband's many violations of his marital duties and the anguish he had caused her. She said he divorced her, but later he came to her home and announced that they were still married and demanded that she return to him. She said, 'He chased me out of his house, he got rid of all my *vyombo* (marriage goods) that were in the house and put them outside, and now he says that he didn't divorce me!' In court, the clerks asked her for Abu Bakr's written statement of repudiation as proof of divorce. She did not have such a paper, and so the clerks told her to bring her husband to court. When he came to court, Abu Bakr said that he had not divorced her and had never intended to do so.

The second case was opened by a young woman called Zaynab, in her early twenties, who had a similar story. She came to court claiming she was divorced because her husband, Rashidi, had told her to leave his home. She left, and when she went back to ask for the divorce paper, he refused. She said that he told her to go home again and insulted her

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by calling her a 'dog'. Rashidi denied that he had divorced her when he came to court.

Jabu, also in her twenties and married to her second husband, opened the third case. She told the court that her first husband, Rajabu, whom she had not seen in years, had recently come to the home of her second husband to demand that she return to him. Jabu claimed that Rajabu had divorced her: he sent her out of his home years ago and told her to return to her parents. Like Abu Bakr and Rashidi, Rajabu came to court and said that he never divorced her. He also argued that she had remarried unlawfully and was therefore committing adultery.

In cases such as these, the kadhi does not validate alleged divorces without proof of repudiation, which is most often in the form of a written statement of divorce or witness testimony verifying the divorce pronouncement. However, the kadhi does not dismiss the cases as simple misunderstandings. Rather, he stresses the preservation of the marriage bond through reframing the cases as disputes about marital rights and spousal obligations under Islamic law. In these situations, women do not normally press the validity of the alleged divorce. Rather, they acknowledge the kadhi's move to a discourse of rights and obligation, and assert their rights under Islam and local norms to request either better maintenance from their husbands or a court-ordered divorce based on the husband's violation of his marital duties.

In Zanzibar, women today use the courts to a much greater extent than in the past. While some men and women lament this because they feel there is shame in airing one's family problems in public, many women regard increased access to the courts in a positive light. In addition to presenting ethnographic data on divorce practice and court usage in Zanzibar, this article contributes to recent scholarship on women and law that explores and explains how women use law and legal institutions to their advantage. Many scholars studying women and courts in Africa and elsewhere have emphasized the necessity of studying law courts as arenas of resistance, and several have examined the ways in which women strategically resist patriarchal norms through legal means (Griffiths 1997). Hirsch (1997), Mir-Hosseini (2000), and Antoun (1991), among others, have noted that Muslim women often achieve success in Islamic courts, contrary to stereotypes about the patriarchal nature of Islamic law, and use them to assert control over their marital relationships. Hirsch has demonstrated how women resist patriarchy in marital life through taking disputes to the Kenyan Kadhis' Courts, where they very often win cases (1994, 1997).

ISLAM AND KNOWLEDGE IN ZANZIBAR

Zanzibar is a semi-autonomous coastal region of Tanzania which consists of two major islands, Pemba to the north and Unguja to the south. The population of the islands is approximately one million, and the vast majority of Zanzibaris are Muslim. Zanzibar has its own president, parliament and legal system, and Islamic courts are part of

the legal system at the primary and appellate levels. The jurisdiction of the Islamic courts is limited to family and personal status matters, and Muslims may bring such disputes only to these courts. This article is based on ethnographic field research conducted in 1999–2000 and 2002 in the Mkokotoni Islamic court and in the surrounding community. The Mkokotoni court serves the Northern A administrative district of the island of Unguja – a poor rural region of about 85,000 people. Although the court hears cases concerning marriage, divorce, child custody, and inheritance, the vast majority of cases involve marital disputes. Among these, divorce suits, maintenance claims, and pleas for the return of absent wives are common. Of the seventy-seven cases opened in the Mkokotoni court in the period from January 1999 to July 2000, seventy concerned marital disputes; women were the plaintiffs in fifty-eight, or about 80 per cent.¹ These numbers are typical of the twelve year period from 1989 to 2002 in Mkokotoni – on average, about forty cases are opened per year, 90 per cent of these are marital disputes, and most are opened by women.

Divorce is common in Zanzibar, as elsewhere on the Swahili coast (Anderson 1970; Strobel 1979; Swartz 1991; Middleton 1992; Hirsch 1994; Caplan 2000). Although women may file for divorces in court and receive them on a variety of grounds, most divorces take place outside of court through repudiation. Although a man may enact such a divorce through writing or speaking the divorce statement, writing a divorce is more common in Zanzibar; this is true even among illiterate men who often ask someone to write the statement on their behalf. Because divorce statements are sometimes delivered to a woman by a third party (or not at all) many women are divorced without immediate knowledge of the repudiation and without seeing the kind of proof of divorce, such as a written statement, that would stand up in court. Although all marriages and divorces must be registered with government authorities, only a few out-of-court divorces are reported in a timely manner, if at all. Legally, a receipt of divorce called the *cheti cha talaka* must be presented to the marriage official before a new marriage can be authorized. Despite the fact that some officials require only a woman's word that she is truly divorced, the power of the divorce receipt as a document is widely recognized.

Many cases involve women who are seeking a receipt to validate an alleged out-of-court divorce by repudiation. Of the seventy marital dispute cases opened between January 1999 and July 2000, a total of twenty-five (34 per cent of the total cases) involved a dispute about whether or not a man had validly divorced his wife by repudiation. Nine of these were opened by a woman's direct request for a divorce receipt based on her conviction that she had already been divorced; Shindano

¹ This percentage is close to what Hirsch found in a Kenyan Islamic court (1998). Wurth has similar numbers from her Yemeni data (1995), as does Peletz from courts in Malaysia (2002).

and Zaynab were two of these. The others were opened with different foci, but essentially revolved around alleged divorce, as in Jabu's case.

At first glance, it might appear that the frequency of disputes about alleged divorce is the result of gender differences in legal and religious knowledge among rural Zanzibaris. Is it possible that women and men have different views of divorce procedure or that women do not understand what a lawful Islamic divorce entails? Several scholars have addressed the subject of religious and customary knowledge among Swahili men and women. Eastman (1984, 1988) and Strobel (1979) have suggested that religious law, *sheria za dimi*, was the provenance of men in coastal Kenya, and that *mila*, an ambiguous term often defined as 'custom', was the domain of women. Middleton has criticized the clear-cut association of women with *mila* and men with *sheria*. He has written that *mila* is 'part of permitted Swahili religious practice, and efforts to regard it as forming part of a distinct female subculture are unfounded: both men and women accept and practice it' (Middleton 1992: 119). Middleton argued that these earlier distinctions of knowledge were problematic because they drew sharp lines between kinds of knowledge and access to modes of learning, which do not necessarily exist in such a clear cut fashion. Caplan has made similar claims about men and women on the Tanzanian island of Mafia, who do not use concepts of *mila* and *sheria* along gender lines (1995), and Purpura has made comparable observations in her work on Islamic knowledge and scholarship in Zanzibar Town (1997).

I have found no indication that the people of rural Unguja think of *mila* as the domain of women and *sheria* that of men. Furthermore, it does not appear that women suffer from a greater lack of useful knowledge about Islamic divorce than do men, or that they lack the ability to acquire it. Education is highly valued among Zanzibaris, even in rural areas. Girls and boys attend both secular and Qur'anic schools at about the same rate (Montresor et al. 2001), and young Zanzibari women are as likely as men to pursue the study of religion in their adult years. Women do not generally attend mosque sermons, but many women cite the radio as an important source of information regarding religion and law. Most households have access to a radio, and many women listen for hours each day when batteries are available. In rural areas, Radio Zanzibar is very popular, and the station schedules several programmes of a religious nature that address issues of Islamic family law, including women's rights and obligations in marriage.

Although I see no evidence that men and women have different understandings of what religiously appropriate divorce entails, it is true that they experience divorce differently. As a result, they emphasize different events in describing their own experiences. In her work on similar disputes in Kenyan Islamic courts, Hirsch observes that while both men and women make use of several legal discourses, which include those of Swahili ethics and Islam, men are more likely to begin with Islamic law, and women more likely to move to religious law after utilizing other discourses of marital disputing (1998). Because of this, she writes that the discourse of Islamic law is 'masculine' and men

should be viewed as proprietors of Islamic law more so than women (Hirsch 1998: 111). In rural Unguja, women may interpret specific structural events as indicative of divorce, regardless of whether or not they see or hear evidence of repudiation. However, when asked what a lawful Islamic divorce by repudiation entails, women and men give a similar answer: a man must either write or speak the divorce statement. Moreover, when women take such issues to court, they do not deny that these events constitute a lawful Islamic divorce; they rather attempt to legitimize the structural events of divorce through obtaining a divorce receipt. Like the Kenyan women in Hirsch's study, Zanzibari women draw on local marital norms in presenting their claims. However, this is not because men hold more claim over or knowledge of Islamic law but rather because women experience certain structural events of divorce directly, but may not witness the actual repudiation.

WOMEN AND DIVORCE

Interview data illustrate which events women regard as most significant at the end of a marriage. I interviewed approximately seventy-five women; about half were involved in marital disputes at the time of the interview, and the others had been divorced out of court at least once. The women were between eighteen and ninety years of age and had varying levels of secular and religious education. Although I expected a woman's age and religious education to influence her potential involvement in a disputed divorce, this was not the case. While women under thirty-five were much more likely to have had religious and secular education, disputes over whether or not a divorce occurred happened in all age groups, as illustrated by the age difference between Shindano (around sixty), and Jabu and Zaynab (early twenties).

Most women reported that there was little communication and no mutual decision-making in out-of-court divorces. Few women were informed in advance of their husbands' intention to divorce them, and none indicated that the matter was discussed beforehand. A common reply to my questions about why a marriage ended was, 'Well, the marriage was just over. *Basi!* (That's it!) There was nothing left to say to each other because the marriage was over.' Or, 'It was fate. Our love had ended.' Patima, in her seventies, said, 'He just divorced me. There was no reason. He wrote the paper. No . . . I didn't feel bad. I just left. I took the children and went home. He just divorced me, that's all.' Although some women like Patima noted that their husbands 'wrote the divorce', others never heard the words of a divorce pronouncement or saw the written divorce paper. As a result, several did not get the kind of 'proof' of divorce that is favoured in court.

Many women regarded divorce as unavoidable and said that they expected to be divorced at some point, and perhaps without their knowledge. Women of all ages were fatalistic about marriage and divorce, though this should not be interpreted as a lack of emotional response to divorce. Even though divorce is commonplace, many

women reported that they were surprised and upset when divorced. Tumu, twenty-seven, told me that she was surprised when her husband divorced her because she had no way to assess how the marriage was going. Mwajuma, in her mid-forties, was divorced three times by her first husband. When I asked her if she questioned her husband about the divorce, she said she had not.

He just divorced me without a reason and that was it. The way I see it, I was already divorced and I didn't have any reason to ask him – what would it change? I was angry, though, that he divorced me without a reason and never came back.

Pili, a spry woman in her seventies who had been married and divorced three times, told me that she was surprised when her second husband divorced her. She had gone to live on the island of Pemba with him, and the divorce happened when she returned home to Unguja to give birth.² She had the baby, and was waiting for him to take them back to Pemba when she received word from a third party that he had divorced her. She had no idea why, and had no proof of divorce: 'I didn't know that I'd been given a divorce. I just waited for him. I had already given birth and he didn't come to get me to go back to Pemba.' She was upset and told me that she still wanted him, but she never saw him again. When I asked her if she thought about going back, she said, 'No, if he has already divorced you then, *basi*, he won't support you again.'

Some older women suggested that later in life they learned to accept divorce as a matter of course and therefore learned to protect their material interests. Tatu, a quick-witted woman of sixty, had been divorced by two husbands. She said she was upset about the first divorce. She had married the man when she was very young, and he divorced her after only one year of marriage – when she was seven months pregnant. She was shocked, and said that she cried and refused to leave his house. Finally, her grandmother came to her and told her that she had to leave his house because she was divorced. Tatu said that she complained to her parents, but they advised her to 'forget it'. They told her that her marriage was over because fate dictated it and there was nothing she could do. Her description of her second divorce twenty years later was quite different. This time she did not talk about her emotional reaction, but about her plans to ensure that her husband did not take advantage of her financially.

Women and kadhis tend to blame men for the prevalence of sudden, unexplained divorces. They often attribute it to men's inherent irresponsibility and their lack of commitment to support a wife. A derogatory term sometimes used by women for the men with whom they are involved is *mwongo*, 'liar'. One woman in her early thirties, Mwanahawa, referred to her fiancé solely by this term for months when he continued to postpone their wedding. Once married, she used his

² Women in Zanzibar usually return to their mothers to give birth.

given name, but when he divorced her a year later she reverted to calling him *mwongo*. Men, on the other hand, tended to describe their divorce as the reasonable outcome of non-ideal marriages. Mzee Omar, in his seventies, told me that he divorced one of his three wives because she was always away from home running errands or visiting. He explained:

If [I] went out for two or three days when [I] got back she wouldn't be there! She just went her own way and this did not make me happy ... She'd just go everywhere. I'd get home and want food and she wouldn't be there. It was as if she wasn't my wife. She just went out to see her kids and wherever else.

In our conversation, he stressed that he divorced her properly: he wrote the repudiation statement on a piece of paper and sent a child to deliver it to her. It is important to note that his view of a proper divorce involved divorcing her from afar and sending the paper by a third party.

Two structural events are prominent in women's experience of divorce. These are (1) leaving the husband's home to return to her family; and (2) removing her marriage goods, the *vyombo*, from the husband's home. When these events occur, women assume that a divorce has taken place. In court, the kadhi and clerks stressed clarifying the actions surrounding these events in divorce disputes: Was a woman sent home or did she go of her own accord? Did she remove the *vyombo* on her own initiative or at her husband's command? According to both Islamic law and Zanzibari marital norms, a man is responsible for the financial maintenance of his wife and children. While many women complained about lack of maintenance from their husbands or abandonment, women did not specify these events as definitive indicators of divorce. Rather, maintenance problems were offered as supporting evidence of the reality of an alleged divorce.

The most important event of divorce for a woman is leaving her husband's home to return to her family, usually her mother and father but sometimes other relatives, for support. If her parents are still alive but divorced, a woman will usually live with her mother. Caplan has noted similar circumstances on Mafia (1997). Newly married couples in rural Zanzibar live often virilocally, and ideally a man will build a new home for himself and his wife. Although some men indicated that they felt uncomfortable about moving new wives into their parents' homes, the practice is not uncommon. Because of the prevalence of virilocality, when a man tells his wife *nenda kwenu*, 'go home', she may interpret it as divorce, regardless of whether or not she receives a divorce paper or hears a pronouncement. This is indicated in the cases of Shindano, Jabu and Zaynab. Jabu explained that she was 'sent home' by her husband, and did not see him again for years. She believed that she was divorced (as did her parents and community) and remarried. Shindano also said that her husband told her explicitly to leave his home. Zaynab came to court and stated that she was divorced because her husband told her to leave his home and return to her parents.

Several other cases in the Mkokotoni court were opened in the same way, and 'returning home' is also common theme among women who

never went to court. Kaeni, in her late forties, said that she was not just told to go home, but was actually taken there by her husband. When her husband suggested they visit her parents, she was worried. He had not mentioned a divorce, but why else would he want to go to her parents? Kaeni explained that when he took her home, he gave a paper to her father, who read it and confirmed her suspicion that she was divorced.

In conversations about marriage and divorce, children and teenage girls stressed many of the issues that were important to the adult women.³ Many girls focused on how quickly a woman could be divorced by her husband. Sixteen-year-old Rehema said, 'She could be divorced right there at her own wedding!' In a group discussion with adolescent girls, the girls were emphatic about what happens when a couple divorces. They said that there is always a great deal of yelling and arguing, and eventually the woman goes *kwao* (literally, 'their place'), to her parents' home. Mwashamba, a precocious girl of eleven, eagerly acted out a typical divorce. She stood up and yelled at her imaginary wife, '*Nenda kwako, na usije, usije, usije, tena!*' (Go home, and don't ever, ever, ever come back!) It is important to note that her performance of divorce did not emphasize the written or spoken divorce statement, but rather the act of a man sending a woman to her parents' home.

Children's play showed similar understandings of marriage and divorce. I recorded a number of improvised skits when Rehema suggested acting out short plays (*michezo*) for my tape-recorder. The activity was extremely popular, particularly with the girls, and after a few evenings I had watched and recorded about fifteen short skits concerning family life. Girls took the lead in play-acting, and they addressed many of the issues emphasized by older women. Most of the skits involved family disputes, and the children did not act out 'writing' or 'speaking' the divorce statement in any of them. However, they all featured a man chasing his wife out of the home and sending her back to her parents. In the first play, a fourteen-year-old boy named Farid played the husband. He told his wife that he was tired of the constant presence of her girlfriends in the house. 'Are your girlfriends still here?' he asked. 'You don't listen! I'm going out on an errand and when I come back I'm going to chase you out and divorce you!'⁴

In another, Rehema played the wife, and a boy named Juma played her husband. The skit opened with Rehema sweeping and singing to herself. The husband knocked on the door, and greeted her, 'Hello, my wife - ' but before he could finish the sentence, Rehema cut him off. 'Your wife!?' she yelled, 'I'm not your wife! You divorced me two years

³ Hirschfield has lamented the lack of attention paid to children by ethnographers. 'Lack of appreciation for children's rich cultural competencies and ignorance of the wealth of cultural forms that children create and sustain on their own have obscured how central an anthropology of childhood . . . would be to any understanding of cultural reproduction' (2002: 615).

⁴ Hirsch has noted in her work in Kenya that a woman's friends are often considered to 'bring trouble' to a marriage through their words and conversation: 'Many men, including some Islamic judges, agree with the assessment that the meddling of female friends through "bringing words" causes marital conflict and divorce . . .' (1998: 66).

ago. Get out! And, here, take your child with you!’ After a pause, Juma told her he was leaving but that he was going to divorce her. Rehema answered, ‘*Bwana*, you’ve come back to me in a bad way!’ He exited, and the wife’s girlfriend entered, saying that she overheard that she had been divorced. Rehema told her, ‘Well, yes, but that happened a long time ago!’ This skit mirrors the real-life situations that can result in a disputed divorce case in the courts.

The removal of her marriage goods from the husband’s home is another important signifier of a woman’s divorce. Upon marriage, it is the duty of the woman to furnish the house with goods of various kinds, such as pots, dishes, utensils and washing tubs (see also Le Guennec-Coppens 1980). These goods are collectively referred to as the *vyombo*, and are usually provided to a young woman by her parents and relatives. Mboja, a woman in her forties, explained this to me.

In marriage, women must bring all the *vyombo* – all of the things to use in the kitchen. She is supposed to buy a bed; this is often bought for you at *kwenu* (your birth home). Also dishes, an *mbuzi* for grating coconut, mats for the floor; all of these things must be found for you at *kwenu*.

Women own all the *vyombo* that they bring into the marriage and married couples in Zanzibar and elsewhere in coastal Tanzania do not normally hold joint property (Caplan 1984). As a result, it is usually quite clear who owns what in divorce, and I did not witness any court cases in which property was seriously in dispute. The *vyombo* remain the property of the wife, and therefore when a husband removes her marriage goods from his house, or tells her to do so, it is often taken by women to designate divorce. Several women told me that in a divorce a man will try to ‘take everything from his wife – even the clothes off her back!’ except the *vyombo*. In court, the transfer of the woman’s *vyombo* from one home to another is regularly brought up by the court staff when they question litigants about the dissolution of a marriage and alleged divorce.

Shindano repeatedly emphasized the importance of the removal of her *vyombo* from her husband’s home as an indication that she was divorced. The first thing she told me in an interview was that her husband ‘cleared her out of’ his home, and told her to take all of her *vyombo* with her, ‘That husband of mine, he told me “get all of your *vyombo* out of here, and go home to your fellow dogs . . .!”’ She also emphasized the importance of the *vyombo* when she talked about the response of community leaders to her plight. As is typical in marital disputes, she sought the help of the *sheha* (a government-appointed community leader) before going to the kadhi. She told the *sheha* and his aide that she had removed her *vyombo* from her husband’s house, and they said that they would try to prove that she had been forced to remove the *vyombo*. The *sheha* summoned her husband and asked him to explain why he told her to remove her *vyombo*. Abu Bakr denied divorcing her and his response indicated the importance of the removal of the *vyombo* as a cultural signifier of divorce: he answered that he did

not tell her to 'clear them out entirely', but only to 'set them outside'. Therefore, he argued, this did not indicate any intent to divorce her.

Kaeni also highlighted the importance of the removal of the *vyombo* as an important sign of her impending divorce. She said that she had suspected divorce even before her husband took her to her parents. She had been in hospital for some time with a difficult pregnancy and when she got back all of her *vyombo* had been taken out of the house. She asked her husband where they were and accused him of theft. He denied the theft, and when she asked him again where the items were, he said, 'Let's go to your parents'. They went, and she was divorced.

COURT CASES

This section examines how claims of alleged out-of-court divorce are handled in the Islamic court at Mkokotoni. Litigants first present their cases to the clerks, who prepare the claim documents for the *mdai*, the plaintiff, and the counterclaim documents for the *mdaiwa*, the defendant. After this, a hearing with the kadhi is scheduled. Shaykh Haji has been the kadhi of Mkokotoni since the mid 1990s, and he hears cases Monday through Thursday. As shown in the following, although opened as requests for divorce receipts, many cases of alleged divorce eventually take the shape of maintenance cases focusing on what Shaykh Haji perceives to be the underlying problems in the marriage.

Shindano and Abu Bakr

Shindano's case illustrates the way in which Shaykh Haji reframes disputes about alleged divorce to emphasize marital rights and obligations. Shindano's claim document, the *mdai*, stated that she demanded a divorce receipt because she had been divorced by her husband when he told her, 'Leave my house, and go home to your fellow dogs, slatterns, and lunatics!' It was noted that in the eight months since she had been sent home by her husband, he had failed to maintain her. The document concluded with a statement that the defendant divorced her without giving her the proper written divorce paper. Abu Bakr's counterclaim, the *majibu ya mdai* document, stated that he had not divorced his wife, and had not said anything that she might have interpreted as a divorce. He requested that the court order her to return to him.

When describing her case to the court, Shindano emphasized that although they had had problems in the past, it was 'different this time' because Abu Bakr had specifically told her to leave his home. Shaykh Haji asked Shindano if she had written proof of the divorce, and she said she did not, but re-emphasized the structural events of divorce: her husband sent her away from his home and told her to remove all of her *vyombo*. Abu Bakr testified that he had not divorced her. Furthermore, he argued that he never spoke the insulting words noted in her claim, and that he was prevented from maintaining her because she had herself told him not to visit her.

After hearing their testimonies, the kadhi explained that the plaintiff and defendant were not in contradiction. He said that this was because Shindano did not claim she had heard or seen the divorce statement, and Abu Bakr said that he had not made one. Therefore, Abu Bakr had not divorced Shindano through Islamic repudiation. The kadhi did not, however, dismiss the case, but rather focused on the marital problems that he believed were at the heart of the dispute. In the ensuing discussion, he reframed Shindano's complaint as a request for proper maintenance, even though her *madai* was written as a request for a divorce receipt. Shindano did not protest this explanation, but moved with the kadhi to a discussion of marital rights and duties and emphasized her husband's failure to maintain her properly.

In his written decision, the kadhi did not mention the alleged divorce at all, but rather gave the couple terms of reconciliation called *masharti*, which specified what each party must uphold in the marriage. He instructed Shindano to return to her husband, to cooperate with him and to inform him when she was leaving the home. Abu Bakr was ordered to support his wife according to the law and to cease 'cursing her with foul language'. As usual in such rulings, Shaykh Haji made it grounds for divorce if either party broke the specified terms. To close the case, Shaykh Haji explained to the litigants that Shindano had come to court to claim her rights from her husband, and he emphasized again that they were not divorced. Although Shindano looked displeased, she did not protest and left the court with Abu Bakr. I did not see them in court again.

Zaynab and Rashidi

Zaynab's case was similar to Shindano's. The kadhi again reframed the dispute in terms of rights, and again attempted to reconcile the disputing couple. When Zaynab came to court the first time, she and her father (who always accompanied her) explained that she was divorced because her husband, Rashidi, had ordered her from his home and told her to 'return to her fellow dogs'. Zaynab's *madai* stated that she was seeking a divorce receipt because she had been divorced by Rashidi. Her claim also stated that Rashidi refused to support her after sending her home, and that he refused to give her a written divorce paper. In his counterclaim, Rashidi stated that he had not sent Zaynab home and had not divorced her.

When the litigants came to court together, Shaykh Haji listened to their differing accounts of the events surrounding the demise of their marriage. After hearing both sides, he explained that the essential problem was a disputed divorce: Zaynab said she was divorced, and Rashidi said she was not. However, because there were no witnesses to the alleged divorce or other proof of repudiation, he said that there was no way to establish that it had occurred. As in Shindano's case, the kadhi proceeded to handle the dispute like a wife's claim for maintenance, and moved from talk of divorce to a discourse of rights: he outlined what each party's role in the marriage was, and instructed Rashidi to properly care for his wife. He told Zaynab that she must return to her

husband or 'buy' her divorce through *khuluu* (Arabic *khul'*), a type of Islamic divorce in which a woman compensates her husband financially for a divorce she desires. In Zanzibar, this usually entails a woman returning the money from her *mahari* (Arabic *mahr*), or marriage gift, to her husband.

Zaynab was not happy, and pressed her case for a court-ordered divorce by pursuing the discussion of marital rights and duties that Shaykh Haji had begun. She left behind her account of the structural event of being sent home, and instead argued that the severity of the verbal abuse she suffered violated her wifely rights and justified a court-ordered divorce.⁵ Shaykh Haji replied that any form of abuse was a criminal matter and was thus under the jurisdiction of the police and the secular courts, not the Islamic courts. He said that if abuse was Zaynab's primary complaint, then she should go to the police because it was out of his jurisdiction. He then wrote the couple terms of reconciliation that were very similar to Shindano's. The *masharti* required Zaynab to return to her husband, and it required Rashidi to support her according to Islamic 'laws of marriage'; the terms also stated that if either party broke the terms, they would be divorced. Zaynab broke the terms because she did not return to her husband, and eventually bought her divorce through *khuluu*, as specified in the *masharti*.

Jabu and Rajabu

Jabu's case differs from the other two because she had already remarried following the alleged divorce. Because of this, the kadhi did not seek reconciliation between Jabu and her first husband, but ruled for immediate divorce. Jabu came to court because Rajabu, her first husband, claimed that she was not divorced and insisted that she return to him as his wife. Jabu said she had been divorced three years earlier when Rajabu sent her back to her parents and ceased maintaining her. Some time later, she married another man. After hearing of her new marriage, Rajabu went to her, claimed that he never divorced her, and demanded that she return to him. Jabu refused, and Rajabu went to the Chief Kadhi in Zanzibar Town to request an order stating that she was not divorced and must return to him. In a procedural anomaly, the Chief Kadhi heard his plea and gave him the order requiring Jabu to return to him.⁶ Jabu refused and came to the Mkokotoni court to plead her case and request a divorce receipt. In her argument, she emphasized the structural events of divorce and Rajabu's failure to support her: he had sent her home to her parents, and had subsequently ceased to maintain her.

Shaykh Haji could not reopen a case on which the Chief Kadhi had already ruled and he told Jabu she must file for divorce from Rajabu

⁵ Hirsch describes the significance of reported abusive speech in Kenyan courts (1998: 214).

⁶ This is highly unusual. Technically, the Chief Kadhi only hears appeals cases. I was never certain why Rajabu went to the Chief Kadhi before a primary kadhi, or why the Chief Kadhi was willing to hear his case.

if she wanted to open a case in his court. She did so, and with the advice of the court clerks her *madai* was prepared as a simple request for divorce on grounds of incompatibility with her husband. The *madai* did not mention that she had already been divorced and that she had married another man. Rajabu's rejoinder, however, cited her second marriage several times. His document stated that he could not agree to divorce his wife because 'she had unlawfully married another man', and had therefore 'broken the laws of Islam'. He asked the court to order her to return to him as her 'true' husband.

During the hearing, Jabu said that she was suing for divorce based on incompatibility because she was told to do so by the court staff. However, she also explained that Rajabu had divorced her years ago and, like Shindano and Zaynab, emphasized that he sent her home to her parents. Rajabu countered that they had simply 'left each other years earlier when she went back to live with her parents'. He said that she had asked him for a divorce, but he did not give it to her. At this, Jabu asked him why he was lying, and Rajabu contradicted himself by replying, 'You should have asked me for a divorce before going off and marrying another man!'

Shaykh Haji patiently listened to Jabu's account of the alleged divorce, but continued to try the case as a simple suit for divorce. At his request, the litigants brought their elders to court. However, he did not ask them to testify as witnesses as he usually did. Rather, he explained that the situation was simple and required a simple solution: Jabu did not want to return to Rajabu, but he did not want to divorce her. Therefore, he decided that they should have a *khuluu* divorce. The elders deliberated over the appropriate amount of compensation, but Rajabu eventually announced that he did not want money and would divorce Jabu for 'free'. Shaykh Haji did not prepare an official written decision, although the clerks noted the divorce in the case file.

This case differs from Zaynab's and Shindano's because Jabu had already remarried. Although she followed the advice of the court clerks and opened her case as suit for divorce on grounds of incompatibility, her narrative of the alleged divorce still played a part in the proceedings. The kadhi could not uphold Jabu's allegation of divorce without proof, but he did not discredit her experience of the events that led her to believe she was divorced. Although he normally encouraged reconciliation, even when couples had been living apart for a long time, in this case he deemed it impossible because Jabu had married another man. He could not validate the second marriage because he had no proof that Rajabu had divorced her, so Shaykh Haji ordered a divorce. Moreover, he disregarded Rajabu's repeated assertions that Jabu had unlawfully married her second husband and therefore committed the criminal offence of adultery. He did not encourage Rajabu to pursue the matter with the police, as he did in other cases when litigants brought forth potentially criminal matters (e.g. when Zaynab cited verbal abuse by her husband). According to Shaykh Haji, there was no unlawful intent in Jabu's second marriage because she believed she had been divorced, which nullified the potential criminality of the act.

DISCUSSION

The prevalence of cases concerning alleged out-of-court divorces appears to stem from the different divorce experiences of women and men. Because men maintain the right to divorce their wives unilaterally through repudiation, many divorces take place out of the wife's presence. Therefore, women focus on the structural events associated with divorce. By taking their alleged divorces to court, women seek to legitimize the structural events of divorce. The prevalence of these disputes does not indicate that Zanzibari women are not familiar with Islamic divorce law. Legal and religious knowledge concerning marriage and divorce is not gendered in the sense that men and women have different access to or interpretations of such knowledge. Rather, a woman's journey to court to request a divorce receipt indicates her perception of an unregistered divorce: the structural events of divorce are there, but the 'proof' of repudiation is not; Caplan has noted apparently similar ambiguity about 'proper' divorce among women on Mafia island (1997).

As shown in the three cases summarized here, women understand what a lawful Islamic divorce through repudiation entails. Mboja told me that the prevalence of disputes about divorce was due not to misunderstandings of Islamic laws of divorce, but rather to lack of communication between spouses. 'There is no stranger to marriage here,' she said, 'not even one!' By this, she meant that all people understand the laws of marriage and divorce. Kombo, a woman in her twenties who works as a clerk in the Mkokotoni court, held a similar view. She agreed with me that there were many cases involving disputed divorce, and said that women often assumed they were divorced without seeing or hearing proof of repudiation that would hold up in court. When I asked other people why circumstances that result in disputed divorces occur, many blamed men for trying to assert power over their wives or receive financial benefit. Shaykh Haji and other kadhis expressed their sympathy for women, and were quick to blame men for putting their wives in awkward positions by sending them away without stating divorce.⁷ Bwana Fumu, the chief clerk at Mkokotoni, thought that a man might send his wife away and cease to maintain her for financial reasons, but he would not divorce her because he did not want to pay the balance of the *mahari*, which he would owe at the time of divorce if he did not pay it in full at the wedding.

As we have seen, when women take cases to court, the structural events of divorce are not upheld by the kadhi as legitimate divorces. Shaykh Haji's ultimate goal is to preserve the marriage bond, and he makes a clear distinction between what is properly 'Islamic' and what is not. In her work on disputes in Kenyan Islamic courts, Hirsch has written that women are likely to use an Islamic 'legal discourse'

⁷ Several anthropologists have noted Islamic judges' sympathy, or perceived sympathy, for women in courts (Hirsch 1998; Mir-Hosseini 2000).

only after they have tried others – like Swahili ethics or spiritual health (1998). Men, on the other hand, are likely to begin with legalistic language. In this way, she argues that the discourse of Islamic law remains ‘masculine’ and other discourses remain gendered even though both men and women may use them. Like women in Kenya, when Zanzibari women report their problems to the court, they emphasize events that are indicative of divorce to them but not lawful according to the kadhi. However, these discourses do not seem to be as distinct in Zanzibar as those Hirsch observed in Kenya. Zanzibari women use a discourse of ‘rights’ at every stage of the litigation process. When a woman goes to court seeking a divorce receipt based on the occurrence of the structural events of divorce, she is referencing not only Zanzibari norms of marriage and divorce, but also Islamic law concerning proper repudiation and state law concerning the registration of divorces. Moreover, when women do not have evidence of repudiation for the kadhi, they move with Shaykh Haji to a discourse of legal rights and responsibilities in order to claim maintenance or request a court-ordered divorce.

Although women in rural Zanzibar do not ‘win’ cases about alleged divorce without proof of lawful Islamic repudiation, taking the matter to court gives them a forum to highlight a husband’s neglect of his marital duties. Most often, the kadhi seeks to address the problems he considers to be at the heart of the matter and to remedy the situation through reconciliation, as we saw in the cases of Shindano and Zaynab. In Jabu’s case, reconciliation was not possible because she had already married another man. While Shaykh Haji did not validate Jabu’s alleged divorce, he did rule for immediate *khuluu*. In addition, he did not consider the second marriage as adultery because Jabu thought she had been divorced. As Moore has demonstrated in her work in India, women’s legal action challenges the boundaries of male authority both in and outside of the home – even when women are not fully successful in their claims (1994). In the examples presented in this article, women use the courts to make lawful divorce-related actions that occur outside of the court. While they do not always get what they initially sought (a divorce receipt in most cases), by taking the matters to court and working with the kadhi, women hold men accountable for failings in their marital duties.

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ABSTRACT

In Zanzibar, many cases in rural Islamic courts involve disputes about whether or not a divorce has taken place outside of court. Zanzibari men have the right to divorce their wives unilaterally through repudiation; and, because many such divorces take place out of the wife's presence, women interpret certain structural events associated with divorce as divorce even when there is no evidence of lawful repudiation. By going to court, women want to legitimize the events of divorce with a receipt of registered divorce. Although the Islamic judge will not validate alleged divorces without proof of repudiation, he does not dismiss the cases as simple misunderstandings. Rather, he stresses the preservation of the marriage through reframing the cases as disputes about marital rights and obligations. Women acknowledge this shift and move to assert their rights to request better maintenance or a court-ordered divorce.

RÉSUMÉ

Dans les tribunaux islamiques ruraux de Zanzibar, un grand nombre d'affaires portent sur la question de savoir si un divorce a eu lieu ou non en dehors du tribunal. Les Zanzibariens ont le droit de divorcer de leurs épouses unilatéralement par répudiation et, un grand nombre de ces divorces étant prononcés en l'absence de l'épouse, les femmes interprètent comme un divorce certains événements structurels associés au divorce, même lorsqu'il n'existe aucune preuve de répudiation légitime. En se rendant au tribunal, les femmes demandent à légaliser les événements de divorce par un document d'attestation de divorce. Si le juge islamique ne valide pas les divorces prétendus sans preuve de répudiation, il ne les rejette pas pour autant en les qualifiant de simples malentendus. Au lieu de cela, il souligne l'importance de préserver le mariage en requalifiant les litiges de différends liés aux droits et obligations maritaux. Les femmes en prennent acte et poussent pour faire valoir leurs droits à une meilleure pension alimentaire ou à un divorce prononcé par ordonnance du tribunal.