

THE WAKF AND TRUST COMMISSION

ACT NO. 2 OF 2007

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ACT NO. 2 OF 2007

I ASSENT

**{AMANI ABEID KARUME}
THE PRESIDENT OF ZANZIBAR AND CHAIRMAN OF THE
REVOLUTIONARY COUNCIL**

21ST March, 2007

**AN ACT TO ESTABLISH THE WAKF AND TRUST COMMISSION
AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH AND
INCIDENTAL THERETO**

ENACTED by the House of Representatives of Zanzibar.

**PART I
PRELIMINARY PROVISIONS**

Short title and commencement. 1. This Act may be cited as the Wakf and Trust Commission Act, 2007 and shall come into operation upon being assented to by the President.

Interpretation. 2.(1) In this Act, unless the context otherwise requires:
"estate" means all property movable and immovable of a deceased person, which is chargeable with and applicable to the payment of his debts and legacies, or available for distribution amongst his heirs and next-of-kin;

"Board" means the Governing Board of the Commission as created under section 5 of this Act;

“Commission” means the Wakf and Trust Commission;

“Executive Secretary” means an officer of the Commission appointed under section 9 of this Act;

“Gazette” means the Government official Gazette.
“Hajj” means the pilgrimage to Makka made at least once in a lifetime by able bodied Muslim who can afford it;

“letters of administration” include any letters of administration, whether general, or with a copy of the will annexed, or limited in time or otherwise;

“Minister” means the Minister for the time being responsible for the Wakf Commission;

“next-of-kin” includes a widower or widow of a deceased person, or any other person, who by law would be entitled to letters of administration in preference to a creditor or legatee of the deceased;

“President” means the President of Zanzibar and 2 Chairman of the Revolutionary Council.

“Private Wakf” means a property dedicated as Wakf and administered by a private individual and not Commission.

“taxing officer” means a Registrar of the Court or Registrar of the Region or such other officer as the Chief Justice may either specially or generally appoint;

“Trust property” means any property or interest in property owned by person or institution, whether known or unknown, and which has been placed under management, supervision or control of the Commission.

“trustee” includes any person or persons in control of any Wakf property whether properly appointed or not or any person in receipt of the rents and profits thereof;

“Wakf” means a transfer of the origin of the Property in order that the benefits from that property are used for the purpose of Islamic religion.

“Wakf Property” means any property which the original owner based on Islamic religion grounds has devoted it to help religious cause or to cater for specific matters or specific persons.

PART II ESTABLISHMENT AND ADMINISTRATION

Establishment of the Commission.

3.(1) There is hereby established an Agency called the Wakf and Trust Commission.

(2) The Commission shall be a body corporate having perpetual succession and a common seal.

(3) In its corporate name, it shall be capable of suing and being sued and subject to the provisions of this Act any other law relevant in that respect, it shall be capable of acquiring, purchasing and alienating or disposing any property, movable or immovable and of entering into contract for any of the purposes for which it is capable.

(4) The common seal shall be used in a manner provided by the Board.

Functions and powers of the Commission.

4.(1) The Commission shall have the following functions:

(a) to administer:

(i) Wakf property;

(ii) Trust property; and

(iii) Estate of deceased Muslim.

- (b) to coordinate Hajj activities in relation to pilgrims from Zanzibar and to regulate individuals, firms or associations providing travel and other service to pilgrims;
- (c) to coordinate and regulate the provision, collection and distribution of zakkas and other charitable gifts, provisions and offerings for religious purposes or cause;
- (d) to coordinate national Idd prayers and Idd Baraza.

(2) The Commission shall have power to conduct in its name any of the matter that it has power to coordinate or regulate under this Act.

(3) The Commission shall conduct, coordinate or regulate its functions in accordance with the provisions of this Act, Islamic law, rules and good practice.

(4) The Commission shall, in discharging any of its functions, have power to issue such rules, guidelines and directives as are necessary for better carrying out of its functions and such rules, guidelines and directives shall be lawful order for the purpose of the Penal Act.

Governing Board.

5.(1) There shall be the Governing Board of the Commission composed of the Chairman, Executive Secretary as ex officio member and not less than three and not more than five other members.

(2) The Chairman shall be appointed by the President from amongst persons of sound integrity and adequate Islamic religious knowledge with sufficient leadership experience.

(3) Members of the Board shall be appointed by the Minister and in appointing such members the Minister shall have regard to the following requirements:

- (a) at least one member is a qualified lawyer and has at least three years experience in the field;
- (b) at least one member is a qualified civil engineer or a university graduate in real property management;
- (c) at least one member is a University graduate in public administration, financial administration or economics.

(4) The term of office of the Board shall be three years but the chairman and members shall be eligible for reappointment for one more term.

(5) There shall be Secretary to the Board appointed by the Board from among the senior staff of the Commission.

Functions and powers of the Board.

6.(1) The Board shall be an overall in charge for powers of the administration and execution of the functions the Commission and without prejudice to the general function, the Board shall, in particular, have the following functions: -

- (a) to advise the Minister on any matter that require Ministerial or government intervention;
- (b) to make or where appropriate to approve policies, work plans, recruitment, procurement, acquisition, disposal and decisions relating to the functions and powers of the Commission;
- (c) to recruit regular staff and part time employees or consultant;
- (d) to appoint head of sections or Units;
- (e) to deal with promotion, discipline and welfare of staff;
- (f) to approve budget of the Commission including source of funds and expenditure;

(g) to ensure that the Commission sustains its operation;

(h) to do any other thing that is incidental or related to its functions.

(2) In conducting its functions the Board may form committees and the Board shall exercise its powers through resolutions and decisions of the Board.

Meetings and Procedure of the Board.

7.(1) The Board shall meet at least twice every year.

(2) The procedure, including quorum, notice of meeting, minutes and the manner of decision making, delegation of powers to the Board Committees and other matters incidental to the procedure of the Board shall be made by the Board by way of Regulation approved by the Minister.

(3) Allowances and other remuneration payable to the Members of the Board and staff in relation to the functions of the Board shall be proposed by the Board and approved by the Minister.

(4) The first meeting of the Board shall be convened by notice of the Executive Secretary in consultation with the Chairman.

(5) Business of the Board shall, prior to the existence of the Rules, be conducted in a manner decided by the Board.

Functions of the Secretary to the Board.

8.(1) The Secretary to the Board shall generally perform all duties which are normally performed by a Secretary to the Board.

(2) Without prejudice to such general functions the Secretary to the Board shall in particular do the following:

(a) keep minutes of the Board in a manner approved by the Board;

- (b) keep register of resolutions and decisions of the Board;
- (c) make all necessary preparations for the meetings of the Board;
- (d) inform relevant officers of the decisions and resolutions of the Board;
- (e) do any other thing directed by the Board or Executive Secretary in that respect.

Executive Secretary.

9.(1) There shall be Executive Secretary of the Commission appointed by the President.

(2) A person shall not be eligible to be appointed the Executive Secretary unless he holds the following qualification:

- (a) is of sound integrity;
- (b) has sufficient knowledge in Islamic law and other religious matters to the extent of understanding and dispose matters undertaken by the Commission; and
- (c) sound experience in administration.

Functions and powers of the Executive Secretary.

10.(1) The Executive Secretary shall be the chief executive officer of the Commission responsible for the following functions.

- (a) day to day administration of the Commission;
- (b) enforcement of staff, financial and other regulations;
- (c) preparation of work plans, budget and other administrative matters;
- (d) preparation of reports as may be required by the Board or the Minister.

(2) In executing the functions, the Executive, Secretary shall have power on behalf of the Commission to issue such orders, notices, transfer employees and take disciplinary measures within his powers.

(3) The Board shall determine the manner in which the powers of the Executive Secretary shall be exercised in his temporary absence from the office.

Remuneration and terminal benefits.

11.(1) The Executive Secretary shall be paid salary and other benefits as proposed by the Board and approved by the Minister.

(2) The Executive Secretary shall upon retirement, be paid terminal benefits in accordance with relevant scheme in the public sector.

(3) Where the Executive Secretary was not, prior to his appointment, in the public sector, his terminal benefits shall be determined by Chief Secretary upon proposal made by the Board.

Principal Assistant in Pemba.

12.(1) There shall be an officer in Pemba who shall be the principal assistant of the Executive Secretary and shall undertake such functions and exercise such powers on behalf of the Executive Secretary.

(2) A person shall not be qualified to be appointed a principal assistant of the Executive Secretary in Pemba unless he holds such qualification that closely resemble those of the Executive Secretary.

(3) The principal assistant of the Executive, Secretary in Pemba shall be appointed by the Board on such terms and conditions as it may deem appropriate.

Other Units and Sections of the Commission.

13.(1) The Board shall establish Units or sections within the Commission that are necessary for:

- (a) administration of the Commission;
- (b) finance, account and financial discipline in terms of revenue collection, expenditure and financial accountability;

(c) enforcement, compliance and legal matters;

(d) each of the functions of the Commission.

(2) The Board shall appoint heads of the Units or Sections on such terms and conditions as it may deem appropriate.

(3) The Board shall determine benefits and remuneration to be paid to the heads of the Units or Sections.

Other staff
of the
Commission.

14.(1) The Board shall appoint such number of staff as are necessary for the proper management of the Commission.

(2) Whenever it finds it necessary the Board shall propose to the Minister the restructuring or the reduction of the number of staff and upon the approval of the Minister such restructuring shall be enforced in a manner provided under relevant labour laws.

(3) For the purpose of employment and termination of service, employees of the Commission shall be treated as employee of public corporation.

Regulations
by the Board.

15.(1) The Board shall make staff regulations which shall become effective upon approval of the Minister.

(2) The Board shall make other regulations that are necessary for proper carrying out of the functions of the Commission and those regulations shall be effective upon approval of the Minister.

PART III ADMINISTRATION OF WAKF AND TRUST PROPERTY

Vest of power
to administer
Wakf property.

16.(1) There is hereby vested into the Commission to administer as trustee all Wakf property which, prior to the commencement of this Act were subject to the administration of the Wakf Commission.

(2) Where any property was subject to the administration by the Wakf Commission, but was for any reason whatsoever not actually administered by the Commission shall notwithstanding anything be subject to the administration by the Commission.

(3) The Commission shall take all necessary measures to recover and take over administration of the property mentioned under subsection (2) of this section.

(4) The Commission shall give a notice of not exceeding one hundred and eighty days to the person in charge of the property mentioned under subsection (2) of this section to deliver the same to the Commission on a specified date.

(5) Any person who contravenes the provisions of subsection (4) of this section or who restrain the Commission to recover the property shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years.

Formation of private Wakf.

17.(1) Any private Wakf created before the commencement of this Act shall be registered with the Commission providing all relevant details and status of the Wakf.

(2) No effect shall be given to private Wakf unless registered with the Commission under subsection (1) of this section.

(3) The creation of any private Wakf after the commencement of this Act shall be invalid unless registered by the Commission.

Invalidation of certain Wakf.

18. No effect shall be given to the dedication of any Wakf if compliance with such intention involves the payment of any money or benefit or the performance of act outside Zanzibar unless the Commission gives express consent to the execution of such intention.

Registration of private Wakf.

19.(1) The Commission shall keep, or cause to be kept, in such manner as the Commission may direct, a

Register of all such properties as are or may be from- time to time dedicated as Wakf and also a Register of all buildings and occupancies of whatever kind of Wakf lands.

(2) All persons owning buildings on Wakf land or in occupation of Wakf land shall forthwith register with the Commission such ownership or occupancy; giving such particulars relating hereto as may be required by the Commission.

(3) No person shall be allowed to use any land or property dedicated as wakf without a written consent of the Commission and in the event of any such property being used without such consent, the Commission may require that property to be returned and if that property is a land demolition of any building erected without a consent.

(4) Notice of the transfer of ownership of any building on Wakf land shall be given in writing to the Commission by the transferor within thirty days of such transfer, and a record thereof shall be in the Wakf Register.

(5) Any person failing to comply with any of the provisions of this section shall be guilty of an offence and shall be liable on conviction thereof to a fine not exceeding two million shillings or to imprisonment for a term not exceeding two years.

Power of Commission to call for accounts in respect of Wakf property.

20. The Commission may call upon the trustee or any person in control or possession of any Wakf property to account for his control or administration thereof, and in that behalf may call upon such trustee or person to produce any books or documents, whether of account or otherwise relating thereto, in his control or possession.

Power of Commission to assume control of Wakf property in certain circumstances.

21.(1) It shall be lawful for the Commission to assume control of any Wakf property whereof there may appear in their opinion to be properly appointed trustee or whereof the trustee (if any) appears in their opinion to have acted or be acting in an improper, certain unauthorized or unlawful manner, and then and in any such case the Commission after giving the trustee an opportunity to show cause to the contrary, may make an order to be published in the Gazette,

vesting the said property in the Commission and administer the same themselves or appoint a trustee or trustees thereof in that behalf.

(2) Any person aggrieved by the said order may appeal to the Minister to have the matter reconsidered by him.

Administration of Wakf properties.

22.(1) All Wakf properties vested in any manner in or under the control of the Commission shall be administered in strict accordance with the intentions of the dedicator thereof, whether such intentions be traditional, or otherwise ascertained upon the best evidence obtainable, provided that the same be practicable and lawful according to the laws of Islam.

(2) In any case where it may, in the opinion of the Commission be impracticable or unlawful to carry out such intentions, or if the same be unascertainable, or if after the due carrying out thereof there remain any surplus revenue in respect of the particular Wakf property concerned, it shall be lawful for the Commission to make such arrangement for the due administration of such property or surplus revenue, as the case may be, for such good, lawful and charitable uses for the benefit of the holders of the tenets of Islam as they may deem advisable.

Power in certain cases to sell Wakf properties.

23. In any case wherein it may be established to the satisfaction of the Commission that the intentions of the dedicator of any property as Wakf cannot reasonably be carried into effect, it shall be lawful for the said Commission, upon and with the approval of the Minister, to cause the said property to be sold and thereupon the proceeds of sale shall be applied as in section 22 of this Act.

Alienation, etc., of Wakf properties.

24.(1) No contract, agreement or order of any description purporting to sell, lease or otherwise alienate any Wakf property for any period exceeding one year shall be valid unless the sanction in writing of the Commission shall have been first obtained.

(2) Notwithstanding any law to the contrary for the time being in force, no title to any Wakf property the time being in force, no title to any Wakf property shall as and from

the date of this Act be conferred upon any person or persons by reason of adverse possession thereof or prescription.

Transitional termination of leases contract.

25.(1) For the purpose of enabling the Commission to administer Wakf and Trust Properties in proper and orderly manner, all contracts of leases of Wakf and Trust properties are hereby terminated from the three hundred and sixtieth day of the commencement of this Act, whether such lease was properly made or not and whether it is a lease, sublease or licence.

(2) Termination of lease under subsection (1) of this section shall be effective whether notice of such termination was served or not.

(3) The Commission shall, within thirty days of the Commencement of this Act, give notice of termination to all tenants or lessee of properties.

Creation of new leases.

26. The Commission shall prepare new lease agreement which shall take into account:

- (a) existing lawful tenants; (b) market rate of rent;
- (c) regular review of rent;
- (d) convenient, prompt and advance recovery of rent.

Term of Lease of Wakf and Trust Properties.

27.(1) No lease of Wakf or Trust property shall be for a term exceeding one year unless specific consent of the Board is obtained and in any case such term shall not exceed five years.

(2) Any lease on Wakf or Trust property which is for a term of more than five years shall be invalid for the whole term.

(3) Rent on the lease of Wakf and Trust properties may be reviewed by the Board in such term and manner provided in the lease agreement.

(4) Notwithstanding any law, review of rent shall not be subject to restriction except in a manner provided under this Act and lease agreement.

(5) Lease of Wakf and Trust properties including the tenancy created thereby shall not be subject to the restrictions provided under the Rent Restriction Board Decree.

(6) Notwithstanding any law to the contrary any dispute including on breach or termination of tenancy, enforcement of eviction order in relation to Wakf property shall be entertained by Regional Magistrate Court.

(7) Any dispute or disagreement between the Commission and the tenant on the review of rent shall be decided by the Minister.

Unfair dealing with Wakf or Trust property.

28.(1) Any dealing with Wakf or Trust property which include, but not limited to:

- (a) sublease not authorized by or under the lease agreement;
- (b) any undisclosed dealing with the property which enable any party or third party to make undisclosed profit or gain;
- (c) any disclosed dealing of such property that enable any person to make undisclosed profit or gain, shall be an offence.

(2) Any officer of the Commission or any person contracted or acting as agent of the Commission whether formally appointed or not who commits an offence under subsection (1) of this section shall on conviction be liable to a fine of not less than five million shillings or to imprisonment for a term of not less than two years and in addition to such fine or imprisonment he shall be ordered to pay to the Commission the whole amount so gained.

(3) Any person, other than those mentioned under subsection (2) of this section, who commits an offence under

subsection (1) of this section shall on conviction be liable to a fine of not less than three million shillings or to imprisonment for a term of not less than one year and In addition to such fine or imprisonment, the person shall be ordered to pay to the Commission the whole amount so gained.

Administration of Wakf by private person.

29.(1) The Commission may enter into agreement with any person, firm or organization to manage any Wakf property in accordance with terms of such agreement.

(2) Any agreement under subsection (1) of this section shall first be approved by the Board and shall be for a period not exceeding ten years with option to renew at the absolute discretion of the Commission.

Trust and charitable property.

30.(1) The Commission shall deal with any trust property in accordance with intent and mandate of the trust.

(2) The Commission may hold in trust any charitable property and shall manage such property in accordance with the terms of the trust.

(3) The Commission shall supervise all Islamic trusts and charitable property in Zanzibar or any of such property outside Zanzibar whose terms are for the sole and direct benefit of charitable purpose in Zanzibar.

(4) In exercising its functions under subsection (3) of this section the Commission shall have the following powers:

- (a) to intervene and take temporary control of property where it is satisfied that the property is not properly managed, is being abused, there is a dispute in its management that threatens the property or is being managed contrary to the terms and purpose of the trust;
- (b) shall register all the properties and issue certificate of registration in such format as shall be prescribed by regulations made by the Board;

- (c) give such instructions, notice and guidelines or administration of such properties as the Board may deem appropriate;
- (d) do any other thing incidental to or necessary for the proper administration of such properties.

Mosques and Madrassas.

31.(1) The Commission may apply in its name for a plot of land for the construction of mosque or Madrassa in any part of Zanzibar and upon the completion of construction such mosque or madrassa shall be managed in terms approved by the Commission.

(2) No person the dedicator of property as Wakf or a trustee of such property shall build or cause to be built a mosque unless, prior thereto he shall first have obtained the consent in writing of the commission in that behalf upon having satisfied the Commission that the proposed mosque is or is about to be so well and sufficiently endowed as to provide for its due maintenance and good order.

PART IV ADMINISTRATION OF ISLAMIC ESTATES

Power to administer estate.

32.(1) The Executive Secretary, on behalf of the Commission, shall have the sole power to administer all estates of muslim deceased persons in Zanzibar who:

- (a) died intestate;
- (b) having made a will devising or bequeathing his estate in any manner whatsoever;
- (c) has appointed the Commission or any other person to be the sole, partial or joint administrator of his estate;
- (d) died outside Zanzibar but all or majority of the beneficiaries live in Zanzibar.

(2) Any deed or will appointing any person other than the Executive Secretary to be an administrator of the estate shall be interpreted that the person so appointed is responsible to report the matter to the Executive Secretary.

(3) Upon the death of any person who leaves assets in Zanzibar or a resident of Zanzibar who leave assets outside Zanzibar, it shall be the duty of the spouse, father and mother of the deceased, the immediate next of kin, occupier of the property of the deceased and any person who has been placed on or has taken custody or charge of the property of the deceased, to give notice to the Executive Secretary.

(4) Subsection (3) of this section applies if the assets left by the deceased is of such value as shall from time to time be, determined by the Board.

(5) Where the value is below amount prescribed under subsection (4) of this section the Executive Secretary may, call for information on such estate and may take over as administrator as he may deem fit.

(6) The Commission shall have power:

- (a) to enter and take over property which is part of any estate whether notice has been given or not;
- (b) give any directive deem necessary for preservation or better management of the estate;
- (c) take any action necessary for recovery or preservation of estate.

(7) Where a notice has not been given after the expiry of thirty days, the Commission shall, upon obtaining information or the existence of any estate subject to its administration, direct any person assuming responsibility over the estate to furnish information on the estate within prescribed time failure of which the Commission shall take control.

(8) The Board shall, from time to time, make Rules on the manner and procedures for administration and final discharge of deceased estates.

(9) Any person who:

- (a) willfully conceals the existence of any estate or any assets belonging to the, deceased estate or fails to give notice to the Executive Secretary under subsection (3) of this section;
- (b) dispose, alienate, unlawfully retain, or willfully destroy any asset or instrument of such asset which belongs to the deceased estate;
- (c) obstruct or restrain, in any manner, the Commission or its officers from performing its duties in relation to the estate, shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding three million shillings or to imprisonment for a term not exceeding three years or both.

(10) The Commission may appoint any person or designate officer as its agent in furnishing information on estates.

Application
for grant in
certain cases.

33. Where the Commission is of the opinion that grant in certain is entitled to administer the deceased estate but - cases.

- (a) the value of the estate exceeds forty million shillings;
- (b) there is any doubt as to the jurisdiction of the Commission;
- (c) some of the assets of the estate are outside Zanzibar;

the Executive Secretary, shall apply to the court for letters of administration and the court may grant such letters of administration accordingly.

Agent of the Commission.

34.(1) The Commission may appoint such person or persons, as it shall think fit, to act as its agent or agents in the administration of estates of deceased persons, and, at its discretion, may delegate to them any or all of the powers and duties conferred or imposed upon it by this Act.

(2) Any such delegation of powers and duties shall be notified by publication in the Gazette and in at least one of the Kiswahili newspapers read in Zanzibar.

(3) Agent or agents appointed in under subsection (1) of this section shall, in all respects, act in such matters, under the direction of the Commission which shall not be answerable for any act or omission on the part of anyone of these agents and which is not in conformity with the power or duty delegated by the Commission or which shall not have happened by the Commission own fault or neglect.

Procedure when Commission applies for letters of administration.

35.(1) The Commission shall serve a notice of its intention to apply for letters of administration upon all executors and next of kin of the deceased, known to it to be resident in Zanzibar and shall cause such notice to be published in the Gazette or in any of the Kiswahili newspapers which is widely read in Zanzibar.

(2) After the expiration of fourteen days from the date of such publication described under subsection (1) of this section the Commission shall apply to the court for letters of administration of the estate of such deceased person; and the said court shall, if satisfied that the case is within the provisions of this Act, make such order upon the petition of the Commission accordingly, subject nevertheless to any orders which may from time to time be made by the court on petition as hereinafter mentioned, touching the same or the administration thereof.

(3) The court may order such further notice as it may think fit to be given before making any order; and provided

further that it shall not be necessary for the Commission to serve such notice under subsection (1) in any case in which the Commission shall have obtained the consent in writing of the executors (if any) or of all parties interested in the estate (other than creditors), as the case may be.

District
Commissioner
may take
possession
of property.

36. In the case of deceased persons leaving assets in Zanzibar, the District Commissioner may, when he shall deem it advisable for the protection of possession of such assets, take possession thereof; and in such case property. he shall within thirty days report his action to the Commission which shall give such directions and take such proceedings in the matter as it shall think fit.

Administration
and distribution.

37.(1) The Commission may, except as hereinafter provided, convert all movable property of the estate which it is administering, unless order to the contrary be made by the court, and may with the consent of the court convert into money all or any part of the immovable property of such estate:

- (a) where the Commission is satisfied for reasons to be recorded by it in writing that the conversion into money of immovable property would be to the advantage of the estate, it may without the consent of the court sell any immovable property forming part of the estate to an amount not exceeding ten million shillings in gross value;
- (b) if all parties interested in the said immovable property consent in writing to its conversion into money by the Commission the consent of the court as hereinbefore provided shall be unnecessary;
- (c) for the purposes of the land Tenure Act the Commission while administering the estate shall be deemed to be owner of the land.

(2) The Commission shall cause advertisements to be published in the Gazette and in such other manner as it shall

deem expedient, calling upon the creditors of the persons whose estates it shall be engaged in administering to come in and prove their debts before it within the space of two months from the date of publication.

(3) It shall, at the expiration of such period, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as it has notice of, and if the whole thereof cannot be paid it shall pay a dividend thereon; if it shall collect any further assets after making such payment, it shall, in case any part of the debts proved remain unpaid, pay the same, and any debts subsequently proved before it, or a dividend thereon; but such debts as shall be subsequently proved, shall first be paid a dividend in proportion to their amount equal to dividend paid to creditors having previously proved their debts.

(4) After payment of all debts, fees and expenses incident to the collection, management, and administration of such estate, the Commission shall pay over the residue to the persons beneficially entitled thereto.

(5) Where such persons are resident outside the Zanzibar payment may be made to any agent or representative duly authorised to receive the same; or remittances made by registered letter shall be deemed equivalent to payment.

(6) For the purposes of subsection (5) of this section the consular officer of a State, shall be deemed to be a duly authorised agent of any person resident in that State who is entitled to the residue of an estate, of a deceased who was a national of that State.

Assets
unclaimed
for 12 years
to be
transferred to
Government.

38.(1) All assets, in the charge of the Commission, which have been in its custody for a period of twelve years or upwards without any application for payment thereof having been made and granted, shall be transferred, in the prescribed manner, to the account and credit of the Government.

(2) This section shall not authorise the transfer of such assets as aforesaid if any suit or proceeding is pending in respect thereof in any court.

Power of the Minister to dispose of assets.

39. It shall be lawful for the Minister to order disposal either the whole or any part of any assets transferred to the Government under the provisions section 38 of this Act.

Court may appoint person to receive minor's shares in certain cases.

40.(1) Where any person entitled to a share under the will or otherwise in the distribution of the estate of a deceased person whose estate is being administered by the Commission is a minor, the court may upon the application of the Commission, appoint the father or mother of such minor or some other suitable person to receive the share of such minor on his behalf, and upon such appointment being made, the Commission may pay or transfer the share of such minor to such person on behalf of such minor, and the receipt of such person shall be a full and complete discharge to such person shall be a full and complete discharge to the Commission so far as regards such share:

(2) Where the share of the minor does not exceed two million shillings in value the Commission may, at its discretion, pay or transfer such share to the father or mother of the minor or some other suitable person on behalf of the minor, and the receipt of the father or mother of the minor, or of the other person' referred to herein shall be a full and complete discharge to the Commission so far as regards such share.

Commission to make inventories of estates.

41.(1) The Commission shall make a complete inventory of every estate which it is administering, and shall keep an account of all receipts, payments and dealings with every such estate.

(2) The commission shall retain all letters received and copies of all letters written by the commission and all deeds, writings and papers of or relating to each estate and shall, on application by any person interested in the administration of an estate under his charge, allow the inspection of any document, excluding minutes and private notes, relative to the estate in which the applicant has an interest provided that the document is duly specified in the application.

(3) The Commission shall, on the application of any such person and on payment of the prescribed fees, issue a copy of any document relative to the estate in which the applicant has an interest provided the document is duly specified in the application:

(4) The Commission may, at its discretion, destroy any private papers, bills, receipts, memoranda and other similar documents of no value which it has received along with the estate, and which are not claimed by the beneficiaries, next-of-kin or other persons entitled thereto within six months after accounts have been prepared and the estate finally wound up.

Court
may order
partition of
immovable
property.

42. If Any person beneficially interested in any immovable property vested in the Commission may apply by petition to the court for a partition thereof; and the court if satisfied that such partition would be beneficial to all persons interested, may appoint one or more arbitrators to effect the same of The report and final award of such arbitrators setting forth the particulars of the immovable property allotted to each of the parties interested, shall, when signed by such arbitrators and confirmed by order of the court, be effectual to vest in each allotted party the immovable property so allotted; and if such allotment be made subject to the charge of any money payable to any other party interested for equalising the partition, such charge shall take effect according to the terms and conditions with regard to time and mode of payment and otherwise which shall be expressed in such award.

Liability
of the
Commission.

43.(1) Neither the Commission nor its agent shall be personally liable to any person in respect of goods or chattels in the possession at the time of his death of any person whose estate shall be administered by the any person whose estate shall be administered by the Commission, which shall be sold or otherwise disposed of by the Commission or such agent unless the Commission or agent shall know or has actual notice before the sale or disposal that such goods or chattels were not in fact the property of the person whose estate is being administered by it, and generally neither the Commission nor its agent shall be liable for any act done by it bona fide in the supposed and the intended performance of their duties, unless it shall be shown that such act was done not only illegally, but wilfully or with gross negligence.

(2) In case of any sale by the Commission or its agent of goods or chattels belonging in fact to any third person the amount realised by such sale thereof shall be paid over to the owner upon proof of such ownership, unless the same shall have already been applied in payment of the debts of the deceased, or shall have been distributed according to any will of the deceased in the ordinary course of administration, whilst the Commission or its agent was in ignorance and without actual notice of the claim of such person to the goods or chattels sold.

Power to apply to court for directions.

44.(1) The court may on application made to it, give to the Commission any general or special directions as to any estate in its charge, or in regard to administration of such estate.

(2) Applications under subsection (1) of this section may be made by the Commission or any person interested in the assets or in the due administration thereof.

Power to administer oath.

45. The Executive Secretary may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath (which he is hereby authorized to administer) any person who is willing to be so examined by him regarding such question.

Costs of Commission.

46.(1) If any suit be brought by a creditor against the Commission such creditor shall be liable to pay the costs of the suit unless he proves that not less than one month previous to the Institution of the suit he had given to the Commission notice in writing setting out the amount and other particulars of his claim and had given such evidence in support thereof as the Commission had called upon him to produce, which evidence in the circumstances of the case the Commission was, in the opinion of the court, reasonably entitled to require.

(2) If any such suit is decreed In favour of the creditor, he shall, nevertheless, unless he is a secured creditor, be only entitled to payment out of the assets of the deceased equally and ratably with the other creditors.

Section 60 of the Civil Procedure not to apply.

47. Nothing in section 60 of the Civil Procedure Decree shall apply to any suit against the Commission in which no relief is claimed against its own account.

Fees and expenses.

48. There shall be charged in respect of the duties of the Commission such fees as may be prescribed. Any expenses which might be retained or paid out of any estate in the charge of the Commission if it were a private administrator of such estate, shall be so retained and paid in like manner and in addition to such expenses; such fees, charges and reimbursements shall have priority over all debts of the deceased and may be deducted from any moneys received by the Commission in the course of administration.

Right of Commission to costs.

49. When the court shall order the costs of the proceedings to which the Commission is a party, to be paid otherwise than out of the estate of deceased person which is being administered by the Commission, the Commission shall be entitled to charge ordinary profit costs, whether it has appeared in person or not; and such costs shall be credited to the general revenue of the Commission.

Power of Commission to pay for improvements.

50. The Commission may, in addition to, and not in derogation of, any other powers of expenditure, lawfully exercisable by it, incur expenditure:

- (a) on such acts as may be necessary for the proper care and management of any property belonging to any estate in its charge; and
- (b) with the sanction of the court, on such religious, charitable, and other objects, and on such improvements, as may be reasonable and proper in the case of such property.

Right of interested persons to inspect the accounts.

51. Any person interested in the administration of any estate which is in the charge of the Commission, shall, at all reasonable times, be entitled to information regarding the estate whether it is open or closed, to inspect the accounts relating to such estate; and shall, upon payment of the

prescribed fees be entitled to be supplied with copies thereof, and extracts therefrom.

Final accounts to be filed in court.

52.(1) On the completion of the administration of an estate for which letter of administration was granted the Commission shall file in court his accounts relating to the same, together with an affidavit in verification, and shall give fourteen clear days' notice to all persons interested, who are resident in Zanzibar, by publishing the same in the Gazette or any Kiswahili newspaper widely read in Zanzibar, setting forth the day and the hour to be appointed by the taxing officer for hearing objections, if any, to the accounts or to any item or part thereof.

(2) Any person interested desiring to be heard shall give notice in writing to that effect to the taxing officer at least one day previous to the date appointed for hearing objections.

(3) Upon an objection being filed as aforesaid, the accounts shall be examined and taxed by the taxing officer in the presence of the objector, and the taxation may be brought under review by the court in the same manner, as near as may be, as in the case of any proceedings in court, and the taxing officer or the court shall certify that the accounts have been examined and found correct.

(4) Where no objection has been filed, the taxing officer shall certify that the accounts have been unchallenged.

(5) A certificate to the effect that the accounts have been passed and found correct or that the accounts have been unchallenged, shall be a valid and effectual discharge in favour of the Commission, as against all persons whatsoever.

Assets of persons not resident in the Zanzibar.

53.(1) When a person, not having residence in Zanzibar has died leaving assets in Zanzibar, the Commission after having given the prescribed notice for creditors and others to send in to it their claims against the estate of the deceased, and after having discharged at the expiration of the time therein named such lawful claims as it may have notice of, may, instead of distributing any surplus or residue of the deceased's assets to persons residing out of the

Protectorate, who are entitled thereto, transfer, with the consent of the executor or administrator if any, as the case may be, in the country of the domicile of the deceased, the surplus or residue to such executor or administrator for distribution to such persons:

(2) Where such deceased person was domiciled in a foreign state, such transfer may be made to a consular officer of such State, whose receipt shall be full and complete discharge to the Commission in respect of the same.

False evidence.

54. Whoever during any examination authorized by this Act, makes upon oath a statement which is or does not believe to be true, shall be deemed to have intentionally given false evidence in a judicial proceeding.

**PART V
COORDINATION AND REGULATIONS OF SERVICES
RELATING TO HWA**

Power to regulate.

55.(1) The Commission shall be the sole agency responsible for supervision of provision of Hijja services.

(2) Pursuant to subsection (1)of this section the Commission shall have the following functions and powers:

- (a) shall represent Zanzibar in international forum relating to Hijja for which agency of the nature of the Commission are participant;
- (b) shall represent Zanzibar in matters relating to Hijja in which Zanzibar has to be represented;
- (c) shall safeguard the integrity and interest of Zanzibar in matters relating to Hijja.

(3) No person shall provide Hijja services without obtaining a license from the Commission.

(4) The Board shall make regulation for better enforcement of its regulatory function under this section.

- (5) A person who:
- (a) contravenes regulations made by the Board under subsection (4) of this section;
 - (b) restrains, prevents or in any manner impedes the Commission from exercising its functions and powers under this section;
 - (c) makes any false or willful misleading representation that he represents the Commission in its function under this section, shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding two million shillings or to imprisonment for a term not exceeding one year or both.

Hajj Committee.

56.(1) The Board may form a Hajj Committee to execute such functions as the Board shall determine.

(2) The composition of the Committee shall take into consideration sufficient representation of diverse interest and expertise.

Hajj reports.

57. The Commission shall prepare a detail report on Hajj after each Hajj session and submit the same to the Minister.

PART VI SUPERVISION AND REGULATION OF CHARITABLE PROPERTY

Power to supervise charitable property.

58. The Commission shall supervise and regulate charitable property for the purpose of preventing abuse, misuse and embezzlement of such property and to ensure that the property is used in accordance of with the charitable purpose for which it was granted.

Powers in charitable property.

59.(1) In executing its function under section 58 the Commission may exercise any of the following powers with respect to any matter related to charitable property:

- (a) require trustee of a charitable property to furnish any information;
- (b) register all charitable property; (c) appoint temporary trustees;
- (d) to settle any dispute between trustees or any interested parties;
- (e) to take over possession or control of any charitable property in the event such property is abandoned, neglected or in any case when the Commission deems it necessary to do so.

(2) The Board may make regulation for the purpose of prescribing any matter or procedure under this section.

(3) For avoidance of doubt it is expressly provided that the functions and powers of the Commission under this Part shall only extend to the property and not the activity conducted within any such property.

PART VII SUPERVISION OF ZAKKA

Vest of power to supervise Zakka.

60.(1) The Commission shall have power to supervise matters relating to Zakka in a manner that will ensure that:

- (a) general public has sufficient knowledge of all matters relating to Zakka;
- (b) a person liable and willing to discharge his Zakka obligation is assisted to assess his liability;
- (c) Zakka fund and property is properly managed and utilized in accordance with established good practice;
- (d) Regular reports are made available to the public on collection and expenditure of Zakka account.

(2) Any information that will be made available to the Commission in relation to the property, money, account of any person shall be treated with the highest degree of confidentiality.

(3) No authority, except the High court, shall have the power to order the disclosure of any information made available to the Commission in relation to Zakka.

(4) Any person who discloses, circulate or publish any information without the authority of the Commission shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years.

Entity to manage Zakka.

61.(1) The Commission may form a special organization, entity or trust for the purpose of executing all the functions of the Commission under this Part.

(2) The agency created under subsection (1) of this section may involve membership from individuals, private firms, and religious organization as the Commission may deem appropriate.

(3) The agency shall be independent and be managed in accordance with its charter or constitution.

(4) Notwithstanding the provisions of subsection (3) the agency shall:

- (a) prepare regular reports to the Board in relation to its functions;
- (b) advise the Commission on matters relating to Zakka;
- (c) do any other thing that the Board may direct.

(5) Notwithstanding the provisions of subsection (3) the Commission:

- (a) may dissolve the agency when it deems necessary except that prior approval of the

Minister must be obtained;

- (b) may reorganize or restructure the agency;
- (c) may give general policy guidelines;
- (d) may do anything that will improve the performance of the agency.

(6) Upon dissolution of the agency its assets and liabilities shall revert to the Commission and all its activities shall thereafter be conducted by the Commission.

(7) Notwithstanding any provision in this Act, the Commission may grant permission for any organization, entity or trust to collect and distribute zakka in Zanzibar and such permission can be granted for the whole of Zanzibar or for a specific geographical area. Provided that any such organization, entity or trust will be bound by any general or specific directives issued by the Commission.

PART VIII MISCELLANEOUS

Dispute as to the personal status.

62.(1) Where there is dispute as to the legitimacy of a person claiming right of inheritance in a certain estate, the Commission shall refer the matter to the appropriate Kadhi's Court by way of Memorandum of reference.

(2) The Memorandum of reference shall contain all the facts taken by the Commission together with relevant documents and other exhibits.

(3) Upon receipt of the Memorandum the court shall proceed in a manner it deems appropriate.

(4) The Commission shall proceed to deal with the matter upon the decision of court being made and at the expiry of time allowed for an appeal.

Valuation of property.

63.(1) Valuation of any property subject to disposal by the Commission may upon agreement of the parties be made by the Commission and in the event the parties disagree, valuation shall be made by a recognized valuer appointed by the Commission.

(2) In the event of dispute between the parties as to the valuation made by the Commission valuation shall be made by a recognized valuer appointed by the Commission.

(3) The Commission shall not charge any fee for valuation conducted by itself.

(4) Fees charged by any other valuer shall be paid out of the property subject of such valuation.

Source of funds and audit of accounts.

64.(1) The funds and sources of the Commission shall consist of:

- (a) fees and levies collected by the Commission;
- (b) all the payments or property due to the Commission in respect of any matter incidental to its functions; and
- (c) any grants, donations, bequests, or other contributions made to the Commission.

(2) The Commission shall keep books of accounts and maintain proper records of its operations and of all properties ad ministered or controlled by the Commission.

(3) The Controller and Auditor General may as frequently as he sees fit and shall, at least once in every year, audit the accounts of the Commission. Provided that audit shall be carried out at any such time as the Minister may direct:

(4) The accounts of the Commission may at any time and at least once every two years, be audited by a person registered as an auditor, appointed by the Board on such terms and conditions as the Board may determine.

Accreditation of charitable organization.

65.(1) The Commission may issue accreditation to Islamic charitable organization registered in Zanzibar or having been registered in Zanzibar are lawfully operating in Zanzibar.

(2) Accreditation may be issued generally or for specific purpose.

(3) The Board shall make accreditation rules.

Endorsement
for tax
exemption.

66.(1) Except as may be provided by any other law, endorsement for eligibility of tax exemption for any imports or activity made for charitable purpose shall be made by the Commission.

(2) The Commission shall be the sole endorsement authority in that behalf.

Regulations.

67.(1) The Minister may make regulation for the better carrying out of the purpose of this Act.

(2) The Minister may, by regulation, impose fees and charges for any service rendered by the Commission and any revenue collected from such fees and charges shall be paid to the Commission for the use and purposes of the Commission.

Repeal and
saving.

68.(1) The Wakf Property Decree, Chapter 103, the Wakf Validating Decree, Chapter 104 and the Wakf and Trust Decree No.5 of 1980 are hereby repealed.

(2) Without prejudice to subsection (1) of this sections, anything done according to the repealed laws shall be deemed to have been done in accordance with the provisions of this Act.

(3) The Administrator-General's Decree Chapter 23 shall, upon commencement of this Act, not be applicable in the administration of any estate by the Commission.

(4) Section 16 of the Establishment of the Office of the Mufti Act, Act No. 9 of 2001, is repealed.

Transitional
provisions.

69.(1) Notwithstanding the repeals under section 68(1) of this Act, any case, matter or claim shall, if lodged, entertained or filed before the commencement of this Act, be disposed of in accordance with the repealed laws.

(2) Any matter disposed of in accordance with subsection (1) shall be deemed to have been properly disposed of under this Act.

PASSED in the House of Representatives on the 29th day of January, 2007.

{ Ibrahim Mzee Ibrahim }

CLERK OF THE HOUSE OF REPRESENTATIVES ZANZIBAR