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Women's Legal Agency and Property
in the Court Records of Late 19th-Century Brava

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Abstract

Drawing on the Islamic court records of Brava, a small Indian Ocean port city on the southern Benadir coast of Somalia, dating from the period 1893-1900, this essay analyzes the legal agency and economic roles of the women of Brava and sheds new light on social (especially family) relations in this town. The qāḍī's court records give evidence of married women's fully recognized (even if qualified) legal personhood and their full-fledged financial and economic agency. The free, married women of Brava of this period contributed fully and autonomously to the economic endeavors of their families and also interacted with non-related businessmen in and beyond Brava. They also had the legal and social capacity to defend their interests in court and to get a fair hearing in accordance with the law. Given that both Somali women's history and East African legal history suffer from a scarcity of concrete evidence for this time-period, the aspects of everyday life in Brava that come into view in the town's qāḍī's court records are of great interest.

INTRODUCTION¹

¹ We thank SHARIAsource, the research venture of the Islamic Legal Studies Program at Harvard University, and reviewers for *History in Africa* for helpful comments.

This essay analyzes the legal agency and economic roles of women in Brava, a small port city on Somalia's Indian Ocean coast (south of Mogadishu) in the period 1893-1900. It largely bases itself on a very specific set of sources, namely the *sijill* or *daftar* (record book) containing the civil case records of Brava's Islamic court for this seven-year period.²

Brava takes up a distinctive position on this Indian Ocean coast. With its own town language – Chimiini or Chimbalazi, a language related to Swahili with about 30% Somali vocabulary – it has historically formed part of the wider Swahili coast. Yet, with an urban population that consists of Somali Tunni and Arabian immigrants who have for generations intermarried with these local Tunni, Brava is also part of Somalia and Somali history. This multi-faceted connectedness makes the findings of this study about Brava relevant to our understanding of the wider region.

As a study based on Islamic court records, this essay enters in conversation with a range of studies about Ottoman qāḍī's courts and scholarship using Islamic court records for East African (Swahili) history. In the case of the Ottoman studies, the legal agency and socio-economic roles of women in Brava confirm many aspects of their findings, but with interesting exceptions.³ As for the studies of the Swahili

² Alessandra Vianello and Mohamed M. Kassim, eds. *Servants of the Sharia: the Civil Register of the s' Court of Brava, 1893-1900*. 2 vols. (Leiden: Brill, 2006). The last case of this *sijill* dates from 30 Rabi` al-Awwal 1318/28 July 1900, but there was a second register for 1900-1905, which was lost during Somalia's civil war. However, because Vianello studied this second *sijill* in the 1980s and translated its very first part, i.e. the cases dating from 24 July 1900 to 30 January 1901 (27 Rabi` al-Awwal 1318 to 9 Shawwal 1318), her notes on the latter are part of the source base of this essay. When giving case numbers we refer to the two *sijills* as QR ('s Records) and QR II ('s Records II).

³ For Ottoman areas, see Iris Agmon, *Family and Court: Legal Culture and Modernity in Late Ottoman Palestine* (Syracuse, NY: Syracuse University Press, 2006); Beshara Doumani, "Adjudicating family: the Islamic court and disputes between kin in Greater Syria, 1700-1860," in *Family history in the Middle East: Household, Property, and Gender*, ed. Beshara Doumani (Albany: State University of New York Press, 2003), 171-200; Bogaç Ergene, "Pursuing Justice in an Islamic context: Dispute Resolution in Ottoman Courts of Law," *Political and legal Anthropology Review*, 27, no. 1 (2004): 51-71; Mary Ann Fay, "Women and Waqf: Toward a Reconsideration of

coast, their focus lies on women's use of qāḍī's court after the transformation of the judicial system by British colonial rule;⁴ by contrast, the analysis of women and the 's court of Brava in this essay allows glimpses of a period in which colonial (in this case Italian) impact on social relations and the administration of Islamic law was

Women's Place in the Mamluk Household," *International Journal of Middle East Studies*, 29, no. 1 (Feb., 1997): 33-51; Haim Gerber, "Social and Economic Position of Women in an Ottoman City, Bursa, 1600-1700," *International Journal of Middle East Studies* 12, no. 3 (Nov., 1980): 231-244; Wael B. Hallaq, "The Qāḍī's Diwan (Sijill) Before the Ottomans," *Bulletin of the School of Oriental and African Studies* 61, no. 3 (1998): 415-436; Ronald C. Jennings, "Limitations of the Judicial Powers of the Kadi in 17th C. Ottoman Kayseri," *Studia Islamica*, 50 (1979): 151-184; Margaret L. Meriwether, *The Kin Who Count: Family and Society in Ottoman Aleppo, 1777-1840* (Austin: University of Texas Press, 1999); Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley: University of California Press, 2003); Judith Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* (Berkeley: University of California Press, 1998); and *Women, Family and Gender in Islamic Law* (New York: Cambridge University Press, 2008), and Dror Ze'ev, "Women in 17th-Century Jerusalem: Western and Indigenous Perspectives," *International Journal of Middle East Studies*, 27, no. 2 (May 1995): 157-173.

⁴ For East Africa, see Susan F. Hirsch, "Kadhi's Courts as Complex Sites of Resistance: the State, Islam, and Gender in Postcolonial Kenya," in *Contested States: Law, Hegemony and Resistance*, ed. Mindie Lazarus-Black and Susan F. Hirsch (New York: Routledge, 1994), 207-230; and *Pronouncing and Persevering: Gender and the Discourses of Disputing in an African Islamic Court* (Chicago: University of Chicago Press, 1998); Elisabeth McMahon, *Slavery and Emancipation in Islamic East Africa* (New York: Cambridge University Press, 2013); Gabrielle E. O'Malley, "Marriage and Morality: Negotiating Gender and respect in Zanzibar Town." Ph.D. dissertation, University of Washington, St. Louis, MO, 2000; Alyson Purpura, *Knowledge and Agency: The Social Relations of Islamic Knowledge in Zanzibar Town*. Ph.D. dissertation, City University of New York, New York, 1997; Elke E. Stockreiter, "'British Kadhis' and 'Muslim Judges': Modernization, Inconsistencies and Accommodation in Zanzibar's Colonial Judiciary," *Journal of Eastern African Studies* 3, no. 3 (2010): 560-576; and *Islamic Law, Gender and Social Change in Post-Abolition Zanzibar* (New York: Cambridge University Press, 2015), and Erin E. Stiles, *An Islamic Court in Context: An Ethnographic Study of Judicial Reasoning* (New York: Palgrave MacMillan, 2009).

still minimal. As such its insights are relevant to the early-colonial history of Swahili women.

As a study of women, this essay also speaks to Somali women's history, scholarly studies of which have had to rely for this very early colonial period on Somali-language orature and insights from ethnographic studies conducted much later.⁵ The urban women of Brava fit the picture that has emerged from this scholarship, namely that of competent, astute, resilient, and hard working contributors to the economic life and social cohesion of their families and communities. However, Brava's women, notably those who were married and not enslaved, give evidence of female legal agency and financial autonomy that has neither been documented for the other towns on the Benadir coast nor for rural Somali contexts of this period. The new data on the women of Brava presented in this essay therefore adds a new dimension to Somali women's history.

The structure of this essay is as follows. We will first introduce the town of Brava in this time-period (1893-1900), its neighborhoods, the composition of its population, and its recent political and economic history, especially the decline of the political overlordship of the Busaidi sultans of Zanzibar and beginning of Italian rule. Then we will introduce the qāḍī's records on which this study is largely based, including their strengths and blind spots, and their rewards and challenges for the historian. The main body of this essay is a detailed study of what the qāḍī's records

⁵ See for example, Cawo Abdi, "Convergence of Civil War and the Religious Right: Reimagining Somali Women," *Signs* 33, no. 1 (2007): 183-207; Francesca Declich, "Poesia Religiosa Femminile – Nabi Ammaan – nel Contesto Rurale della Somalia," *Africa* 51, no. 1 (1996): 50-79; "Sufi Experience in Rural Somalia: a Focus on Women," *Social Anthropology* 8, no. 3 (2000): 295-318; and "'Gendered Narratives,' History, and Identity: Two Centuries along the Juba River Among the Zigula and Shanbara," *History in Africa: A Journal of Method* 22 (1995): 93-122; Lidwien Kapteijns, with Maryan Omar Ali, *Women's Voices in a Men's World: Women and Tradition in Northern Somali Orature, 1899-1980* (Portsmouth: Heinemann, 1999); and "The Discourse on Moral Womanhood in Somali Popular Songs, 1960-1990," *Journal of African History* 50 (2009): 101-22; and Hamdi Mohamed, "Multiple challenges, multiple struggles: a history of women's activism in Canada." Ph.D. dissertation, University of Ottawa, Ottawa, 2003.

tell us about women and property: how women acquired property and what kinds of property they owned. The financial transactions by women that gave rise to the legal records under study are woven into the narrative throughout.

In the conclusion, we will evaluate both the nature of Brava's qāḍī's court and women's impressive, even if qualified, legal personhood and their economic and financial agency and place it in the context of the different historiographies outlined above. While the court records give evidence of free, married women's autonomy in dealings with unrelated business men and financial agents, even more striking are women's roles as economic partners in family business endeavors, as financial sponsors and supporters of male relatives, including husbands and brothers, and as benefactors of younger female and male relatives who would not have received a share of their estates in intestate succession. Women also emerge as major property owners, especially of real estate, which they leveraged financially to create more wealth and appear to have valued as 'a place of their own' and security against the vagaries of life.

Brava in Regional Context

The last decade of the nineteenth century witnessed the beginnings of the formal establishment of European colonial rule in East Africa and the Horn -- Britain, France, Germany and Italy all claiming a share. However, European exploration and political and economic interventions dated from much earlier in the century and had intersected with regional developments that in themselves too contributed to the expanding scale and scope of local events and actions. Thus nineteenth-century Zanzibar, seat of the Busaidi sultans of Oman since the 1830s, developed (clove) plantation agriculture and, supported by a network of Indian and Swahili financiers and traders, became a center of global trade with Europe, Asia and the United States. At the same time it established its political hegemony over a large part of the East African coast. It was in this context that the East African slave trade and the institution of slavery first reached unprecedented heights and then, under European pressure, were forcefully suppressed and gradually abolished. Nevertheless, the

middle of the century marked for Brava a moment of relative peace and political stability. By 1837, the Sultan of Zanzibar had firmly established himself as overlord of the Benadir coastal towns, and in 1843 Sultan Yusuf Mahmud of the inland sultanate of Geledi had defeated the competing city-state of Baardheere, which had imposed its power and reformist Islamic ideology on Brava. As the Geledi Sultanate itself gradually declined, Brava's autonomy received a further boost.

The sultans of Zanzibar were interested in the Benadir chiefly for commercial reasons. Each of the Benadir towns had a Zanzibari governor (*wali*), who, supported by a military garrison that had grown to 150 soldiers by the 1890s, was responsible for maintaining law and order and supervising the collection of import-export taxes that represented Zanzibar's main revenue from Brava. Nevertheless, led by a council of local elders representing the main sections of the urban community, Brava retained a high degree of administrative autonomy. This meant that the many sultanic decrees promulgated at Zanzibar under pressure of the British, including the momentous ones concerning the abolition of the slave trade and slavery and the changes in the administration of Islamic law, were not implemented in Brava itself. On the contrary, as, from the late 1870s onwards, constraints on the slave trade increased in the Sultan's dominions further south, the illegal slave trade to the Benadir coast - both by land and by sea - continued and intensified for several decades.

Developments in the second half of the nineteenth-century affected Brava negatively. Even after Baardheere had been defeated, its former allies, the Bimaal of the Merka area, remained hostile. This caused over land travel between Brava and Mogadishu to almost cease. Moreover, in the mid-1870s, Bimaal obstruction of the Webi Goofka destroyed the irrigation crucial to Bravanese fields, negatively impacting exports of sesame and maize. The rinderpest of the late 1880s decimated herds of cattle and goats in Brava and its hinterland. International demand for orchella⁶ dwindled and its price fell by half when the U.S. and European textile industry turned to chemical dyes. Meanwhile, Brava's economic lifeline, the caravan

⁶ *Rocella tinctoria*, a lichen that grew wild in the hinterland of the Benadir.

routes to Baardheere and Luuq, was disrupted as a result of, on the one hand, extended conflict between Somali and Oromo nomadic groups in the area around the Juba River (with Somalis pushing Oromos as far south as the Tana) and, on the other hand, the relentless Abyssinian raids on Somali-inhabited areas from the west.

The decline of Zanzibar as a regional power under the successors of Sultan Barghash bin Said (died 1888) opened the way for the expansion of European colonialism to southern Somalia. Barghash himself had granted the administration of the Benadir ports to the Imperial British East Africa Company (IBEAC) and in 1889 Great Britain transferred this right to Italy.⁷ In the short term, these treaties and agreements had no practical impact, since the IBEAC had no immediate interest in the Benadir and Italy lacked the financial and organizational means to establish a colonial administration in the region. Eventually, the Italian government opted for a temporary solution that would not involve any major financial burden to its treasury. In May 1893, it signed a three-year contract with Vincenzo Filonardi, an Italian who had opened a trading house in Zanzibar and was acting as the Italian Consul there. Thus Filonardi came to administer the Benadir ports of Warsheikh, Mogadishu, Merka, and Brava. In return for the right to collect all customs duties, he was expected to make an annual payment of 160,000 rupees to the Sultan of Zanzibar, while receiving a subsidy from the Italian government. Formally the Benadir ports continued to be part of the Zanzibar dominions; Zanzibari walis and customs masters remained in office and the local qāḍīs continued to administer justice according to the Shari'a. This put limits on the changes the embryonic Italian administration might have wanted to introduce.

In 1896, when the contract of the Filonardi Company expired, Italy's colonial future in the Horn looked very bleak. Abyssinian forces resoundingly defeated Italy at Adowa in March, while, in November, Somalis massacred Antonio Cecchi, Filonardi's successor, together with other Italians, at Lafoole, in the Benadir. The Italian government was in the process of transferring the administration of the

⁷ In 1889 Italy concluded protectorate treaties with what were then called the sultanates of Obbia and Migiurtinia to the north of the Benadir Coast.

southern Somali coast to another commercial company, the Società Anonima Commerciale, which maintained the administrative structure of the Filonardi years and even kept on some of the local Italian personnel. It was not until 1905 that the Benadir coast came directly under the Italian government, which combined all its Somali territories into a colony called Somalia Italiana in 1908.

Given all this, it is remarkable that only the faintest echoes of this enormous turmoil can be discerned in the qāḍī's records of Brava. This may be in part because no major incidents of violence or episodes of unrest occurred in the town of Brava itself, which in this period remained the only town in the Benadir where the lives of Europeans were not at risk. However, a more compelling explanation has to do with the nature of the qāḍī's records as a source, for these records, as we will see below, are most pertinent to the inner workings of the town and the routine legal and financial interactions individual residents had with each other.

The Town of Brava

Nineteenth-century European travel accounts give a good picture of what the town of Brava looked like in the period under study.⁸ Brava had developed along the seashore from north to south, expanding from its more ancient core built on slightly higher rocky ground (the Mpaayi quarter) to a larger and lower area along the sandy beach (Biruni). A town wall surrounded these two moieties, enclosing the town on three sides but leaving it open to access from the sea. Some parts of the main quarters had particular names, notably the "Hatimi area" in Mpaayi and Madransani in Biruni. A large cemetery and a market for the sale of cattle were located outside the city walls, as were workshops for the curing and tanning of

⁸ See, for example, Charles Guillain, *Documents sur l'histoire, la Géographie et le Commerce de l'Afrique Orientale*, Partie II, Tome 2 (Paris: A. Bertrand, 1856), 165-167; Luigi Robecchi Bricchetti, *Somalia e Benadir* (Milano, Carlo Aliprandi, 1899), 78-79, 81; and Giorgio Sorrentino, *Ricordi del Benadir* (Napoli, Tip. A. Trani, 1912), 230, 331. See also Marina Molon and Alessandra Vianello, "Brava, Città Dimenticata," *Storia Urbana: Rivista di Studi sulle Trasformazioni della Città e del Territorio in Eta Moderna*, 53 (1990): 199-240.

hides. Most houses of Mpaayi and a good number of those of Biruni were built of coral rag. The second common type of dwelling in Brava was the *`arīsh*, built of wattle-and-daub and with a sloping reed-covered roof. An *`arīsh* consisted of one or more rooms that opened onto a fenced courtyard and could serve both as living areas and commercial spaces (such as shops or oil mills). Women living in *`arīsh* – many of whom were not part of the elite and included freed slaves – were much less tied by rules of seclusion and thus much more visible, both at home and in public places such as the market, from which women of higher social status were excluded. Local custom barred *all* women from attending prayers or other functions in the mosques.⁹ In fact, the *qāḍī*'s court of law was the only public place to which law and custom sanctioned women's full access.

The People of Brava

At the turn of the twentieth century, the town of Brava had approximately 5,000 residents, including some 400 slaves, mostly brought from the Swahili lands farther south, with only a few individuals – mainly women – of Oromo extraction.¹⁰ The freeborn population formed different named social groups. First, there were groups claiming to have originated in different regions of the Arabian peninsula (the Hatimi and the Bida/Barawi). Together these identified themselves as “*Waantu wa Miini*” (“People of Brava”), thus stressing their common residence in the town.¹¹ Second,

⁹ This exclusion from mosques was typical of many other East African coastal towns (John Middleton, *The World of the Swahili: An African Mercantile Civilization* (New Haven, CT: Yale University Press, 1992), 115). Compare Peirce, who refers to fatwas according to which husbands could not forbid wives from attending court personally or by proxy (*Morality Tales*, 153).

¹⁰ Many more slaves owned by Bravanese lived and worked in the countryside. Luigi Robecchi Bricchetti, *Dal Benadir: Lettere Illustrate alla Società Antischivista d'Italia* (Roma: La Poligrafica, 1904), 203, listed in 1903 434 slaves in Brava and 395 in the rural areas near Brava. Brava also had residents considered low-caste, such as the ironworkers.

¹¹ Somali outsiders called them “*Reer Baraawe*,” with the same meaning.

there were the “Somalis of Brava,”¹² mainly the urban Tunni, a confederation of five groups (*shan gamas*) historically constituted from different Somali as well as Oromo, Bajuni, and possibly other Bantu-speaking elements.¹³ These *gamas* were the Dafaradhi, Goigali, Dakhtira, Wirile and Hajuwa. The fact that these two largest groups – the Bida/Barawi and the Tunni - had come into being as confederations means that, unlike the Somali clans, they made no reference to common ancestors; lineages became important only at a sub-segmental level (the *reer*) within each *gamas* or as sub-divisions of the Bida/Barawi sections. Third, some families of Ashrāf – people who claimed descent from Prophet Muḥammad through his grandson Ḥusayn - had settled in the town since the seventeenth and eighteenth century, and in the last twenty years of the nineteenth century new waves of migrations from southern Arabia (the Hadramawt) – both of individuals and of groups – added to the town population. All these town-dwellers shared the use of the local Bantu vernacular, Chimiini, as their first or second language.

In Brava, as in other East African coastal towns, the named social groups articulated their identities and laid claim to social and cultural prestige on the basis of geographical provenance and ethnicity. This was of special importance in the context of marriage alliances. Since all groups were strictly patrilineal, a person’s social identity and standing was formally linked to that of his or her father, irrespective of the female line.

An aspect of social hierarchy that Brava shared with the other East African coastal towns was the distinction between the free and the enslaved. Members of the elite were called *waungwana* (Chimiini *walungaana*).¹⁴ They formed the backbone of the mercantile class and also included the town’s qāḍīs and religious scholars (*ulama*). On the Swahili coast the concept of *waungwana* referred to people who were seen as the quintessential expression of the urban way of life, which combined birth, learning, and good upbringing. Its translation as “patricians” and

¹² This term is for example used in QR168.1.

¹³ Massimo Colucci, *Principi di Diritto Consuetudinario della Somalia Italiana Meridionale* (Firenze: Società Editrice “La Voce,” 1924), 108-109.

¹⁴ Middleton, *The World*, 57 and *passim*.

“upper class” is for Brava perhaps misleading, as this implies political and economic dominance, which, as a group, the waungwana of Brava did not have.¹⁵ Here individual waungwana could be poor without losing their place in this social hierarchy, while the urban Tunni included individuals (and families) who were very wealthy and politically influential without being included in the waungwana. In Brava, unlike the Swahili coastal towns further south, it was the Somali element (the Tunni), not the waungwana, who were politically the most important. Of the seven members of the town’s ruling council five represented the five gamas of the Tunni and most of the population of the surrounding region belonged to the same confederation. Because of the commonalities between the Tunni of Brava and those in the surrounding countryside, town-country relations that were so disruptive for other Benadir port towns such as Merka and Mogadishu were overall excellent in Brava and contributed to its security and prosperity.

As a port city, Brava had an ever-changing, diverse, and partly transient population. This included the ethnically diverse crews of sailing ships, their *nakhodas* (captains), and some Arab and Indian traders. From the immediate countryside men and women daily brought farm and other products (fodder, firewood, milk) to the town market. From farther inland caravans brought valuable commodities for export by the traders of Brava, mainly to the Zanzibar market. While contacts with the Indian merchants of Zanzibar were very important for the economy of Brava, the town, unlike other centers of the Swahili coast, hosted very few Indian residents.¹⁶ These latter were not representatives of Zanzibar firms

¹⁵ Patricia W. Romero, *Lamu: History, Society, and Family in an East African Port* (Princeton, NJ: Markus Wiener, 1997), 27 uses “upper-class.” Reese uses the term “patricians” and characterizes them as “a hereditary oligarchy that dominated the town” (Scott S. Reese, “Patricians of the Benaadir: Islamic Learning, Commerce and Somali Urban Identity in the Nineteenth Century,” Ph. D. dissertation, University of Pennsylvania, Philadelphia, 1996, 81).

¹⁶ The qāḍī’s records only mention `Abd Ḥusayn bin Shams al-Dīn, a Bohra Indian whose descendants remained in Brava and integrated fully in the local community, and `Abd al-Karīm bin `Abdallah al-Hindī al-Makkāwī, who lived in Brava with his Indian wife Fatima bint Ajmal Khan but had no children.

(which appointed Bravanese men as their commercial agents) and did not play a central role as either financiers or competitors of the local mercantile class.

The Qāḍī's Register (*Sijill*)

This essay is based on the sijill or register in which the qāḍīs of Brava on a day-to-day basis recorded all legal acts pertaining to the administration of civil law individuals brought before them in the period 20 November 1893 - 28 July 1900 (11 Jumāda I 1311 - 30 Rabī` I 1318).¹⁷ Civil suits and disputes occupy only a small part of the extant 989 pages of this register and are only a fraction of its 1,924 records. The bulk of the records deal with financial transactions (such as sales and donations) and the financial debts and obligations the parties wanted to have officially recorded, that is to say, in legal form and in writing.

TABLE 1
Legal records and lawsuits per year

Year	total records	of which lawsuits
1311*	110	33
1312	119	18
1313	70	15
1314	70	9
1315	192	25
1316	280	46
1317	715	30
1318**	368	13

* The records concern only the last seven months of the Islamic year.

** The records concern only the first three months of the Islamic year.

The sharp increase in the frequency with which individuals chose to create such legal records in the last two years of the period under study points at a gradual

¹⁷ Except for a very short period around the middle of 1894, the records are in chronological order.

shift in what constituted authoritative evidence in Brava.¹⁸ This suggests that, instead of oral testimony, townspeople increasingly began to depend on written records as “textual memory” of kinship and property relations.¹⁹ This emphasis on the written document is line with what Bishara has documented for developments in Indian Ocean transactions more generally.²⁰ It can also be related to the pressures historically exercised by modernizing states. Both the Ottoman state and East African colonial administrations pressured qāḍīs of this period to give priority to written evidence at the expense of the oral testimony of witnesses so fundamental in Islamic law.²¹ In Brava’s court records the impact of such pressure appears to have been gradual but real. The frequency with which the qāḍī’s court of Brava recorded notarial acts increased (probably in part as a response to Italian influence), but the rules of evidence they applied strictly followed the legal texts of the Shāfi’ī school and, with very few exceptions,²² were based on the oral testimony and legal oaths of upstanding Muslims.²³

¹⁸ Similarly, over time the records that identified individuals by ethnic affiliation became increasingly common. Compare Stockreiter, *Islamic Law*, Chapter 9, 203 ff., 241.

¹⁹ The term is Doumani’s, “Adjudicating Family,” 196.

²⁰ Ahmad Fahad Bishara analyzes the use of the written document or *waraqa*, pointing out that this contract made it possible for the ownership of assets to change hands without constraints of geography. (In Brava we see this in the case of sales of slaves, where all information was said to be contained in the written document). The *waraqa* also allowed the conversion into capital of assets that were not physically divisible (e.g. fractions of a house). In Brava we see this in many cases of inheritance (“A Sea of Debt: Histories of Commerce and Obligation in the Indian Ocean, c. 1850-1940.” Dissertation, History, Durham, NC: Duke University, 2012, 167).

²¹ Stockreiter, *Islamic Law*, 54; Agmon, *Family and Court*, 88.

²² It is worth noting that for 1318 (1 May 1900 – 22 March 1901) there are a number of lawsuits (7 out of 12) in which no witnesses are mentioned or listed. Though this did not constitute a violation of Islamic law, it may be evidence of a shift from oral to written evidence and of indirect Italian influence. See Vianello and Kassim, *Servants*, 55-56, 63, 68.

²³ On Zanzibar the qāḍīs refused to stop using oral evidence (Elke Elisabeth Stockreiter, “Tying and Untying the Knot: Kadhi’s Courts and the Negotiation of

As a physical object, the register under study is a record book Vincenzo Filonardi, the first Italian administrator of the Benadir, handed over to the Zanzibari wali of Brava on 21 October 1893. It is, therefore, in this sense, one of the earliest legal documents initiated by Italian colonial rule on the Benadir coast. However, this type of legal document was not a colonial innovation. We know that it was used in Brava before the Italian administrative presence, because our source (QR979.2) makes reference to an earlier register (*daftar*) kept by the qāḍīs in 1302 AH (1884-1885). A similar large bound notebook with the same type of records and covering the period February 1900 to June 1903 has been preserved in the Zanzibar National Archives.²⁴ So far no legal documents produced by the Shari'a courts of the other Benadir towns have come to light.

As a source, the record book of the qāḍīs of Brava presents the same challenges as the sijills that have survived in different parts of the Ottoman area. It consists of short summaries of legal cases that reduce complex cases and contexts to a limited set of legal formulae and only present a bare outline of the issues at stake, without giving details of the arguments presented by the parties and their witnesses to support their positions. This produces “blind spots” that limit our knowledge of the social context of the cases (and of any possible collusions between judge and local power-holders).²⁵ Moreover, although the qāḍī recorded the précis of a case after he had given his verdict, these summaries usually make no mention of the reasons or legal principles underlying the legal decision, which the qāḍī, under Shari'a rules, was under no obligation to justify.²⁶

Social Status in Zanzibar Town, 1900-1963.” Ph.D. dissertation, School of Oriental and African Studies, London, 2008, 81; *Islamic Law*, 61-62).

²⁴ Stockreiter, *Islamic Law*, 6-7. Sijills have most commonly survived in Ottoman lands and have given rise to the rich historiography referred to throughout this essay.

²⁵ Tucker, *In the House*, 19.

²⁶ The qāḍīs of Brava gave such justification in only three cases, referring to the Qur'an (QR180.1), the Hadith (QR196.1), and specific legal texts (QR573.1).

However, it would not be fair or accurate to brand the sijill records simply as too cryptic or biased to help us gain any understanding of what happened²⁷ or, even more drastically, to depict them as records of “orchestrated performances” in which “the outcome of the majority of lawsuits was decided prior to the appearances of the litigants before the judge.”²⁸ Instead, while acknowledging that this kind of source has serious drawbacks and limitations, we agree with scholars such as Agmon, Ergene, Peirce, and Stockreiter,²⁹ that it also has unique strengths and that an interpretation of the records in the cultural, socio-economic, and political contexts in which they were created allows us important insights into the local histories to which they speak.

The formal distinction between civil and criminal law was not part of Islamic law and was elsewhere in East Africa too imposed by the colonial authorities.³⁰ In Brava the above-mentioned Italian administrator Filonardi had provided the qāḍīs, together with the civil record-book, a register for criminal cases, which was partly preserved in Brava’s court house until the 1980s.

The Qāḍīs of Brava

Until the arrival of Filonardi in 1893, the Sultan of Zanzibar had appointed the qāḍīs of Brava. Usually two qāḍīs served together. There were no official muftis in either Brava or the Benadir coast as a whole. Despite a heavy workload that occupied the qāḍīs in their capacity as judges and registrars, there was no court personnel that assisted the qāḍīs of Brava. In particular, they did not command the services of any *kātib*s or scribes, who were a permanent fixture of the entourage of qāḍīs elsewhere

²⁷ Agmon, *Family and Court*, 6-7.

²⁸ Doumani, “Adjudicating Family,” 191, 176.

²⁹ Agmon, “Muslim Women, , “Muslim Women in Court According to the Sijill of Late Ottoman Jaffa and Haifa,” in: Amira El Azhary Sonbol (ed.), *Women, the Family, and Divorce Laws in Islamic History* (Syracuse University Press, 1996), 130 ff.,” Ergene, “Pursuing Justice,” 56, 59; Peirce, *Morality Tales*, 12-13; Stockreiter, “Tying and Untying,” 25-27.

³⁰ Stockreiter, “British Kadhis,” 563; *Islamic Law*, 44-45.

in the Islamic world, relieving qāḍīs of lesser tasks such as copying the records into the court registers,³¹ summoning defendants to court,³² and acting as a liaison between the local community (to which such court personnel usually belonged) and the qāḍīs themselves, who were often outsiders, appointed to serve in unfamiliar communities for rather short periods.³³

Instead, for Brava the qāḍī's centrality and the absence of a court hierarchy are well documented. The qāḍī wrote all records "in his own hand;"³⁴ can be seen to go to a defendant's house to take her statement in person (QR206.1), and did not need any assistance in liaising with the local community, since he was an integral part of its elite stratum.³⁵ If this, on the one hand, gave the qāḍīs a unique insight into the workings of the local community and the extra-judicial aspects of the cases brought to their attention, it could, on the other hand, prejudice their attitude in favor of the elite, whose social biases they very likely shared. Some qāḍīs, moreover, held office for very long periods of time. Thus Mohamed bin Haji Maie Omar had not only been qāḍī for more than three years when Filonardi confirmed him in his office in 1893, but, with the exception of the period February 1895 to November 1897, continued to serve for another 23 years, until at least 1916.³⁶ His colleague Wali bin Sheikh Abdurahman was qāḍī for ten years, serving without interruption from October 1897 until his (probable) death in 1907.³⁷

³¹ Hallaq, "The Qāḍī's Diwan," 422.

³² Jennings, "Limitations," 152.

³³ Agmon, *Family and Court*, 54, 71, 96.

³⁴ Each record of Brava's register ends with the formula "written by Qāḍī X in his own hand."

³⁵ A similar situation existed in other East African coastal centers (Stockreiter, "British Kadhis," 561).

³⁶ See QR 30.2, 31.1 and 32.1. He signed cases included in the (now lost) second register covering the period 1900-1905; was officially listed among the qāḍīs in office in 1913 by Guglielmo Ciamarra (*La Giustizia nella Somalia*. Napoli: Giannini, 1914, 386), and signed civil cases that have recently come to light in Brava covering the years 1915 and 1916.

³⁷ Vianello and Kassim, *Servants*, 2109.

However, if qāḍīs as members of the town’s establishment were likely to be pillars of the social status quo, as servants of the Shari`a they were charged with preserving and restoring social harmony. Applying the law was both about establishing the truth and, as Stockreiter put it so aptly for the qāḍīs of Zanzibar, about “bringing people back into working relationships.”³⁸ Even though she spoke of a very different time and place (sixteenth-century Ottoman Aintab), Peirce’s words too ring true for Brava: “The overarching concern of this community – and the aim of its dispute-resolving mechanisms – is to preserve social order. It sees itself as safe when the individual is safe, and the well-being of the smallest is therefore the concern of the greatest.”³⁹ The analysis of the qāḍī’s records of Brava below, including specific examples of *ṣulḥ* or *iṣlāḥ* (mediation) bears this out.

The court of Brava was an enclosed space. It had first been attached to the house of the wali and was later moved to its own space referred to as *maḥkama* (Arabic for court of law).⁴⁰ It was open to all, except to slaves and minors of both sexes.⁴¹ People presented their cases to the qāḍīs in their own language – whether the local Chimiini vernacular, the widely spoken Somali dialects, and occasionally also Arabic – and in their own words.⁴² It was the qāḍī’s task to fit their testimony into a relevant legal mold, capture it in legal formulae, and record the final summary and decision in Arabic in the register.

³⁸ Stockreiter, *Islamic Law*, 53. The same idea is expressed by Agmon, *Family and Court*, 45, 171 and Jennings, “Limitations,” 179.

³⁹ Peirce, *Morality Tales*, 142.

⁴⁰ Vianello and Kassim, *Servants*, 56-57. In Brava, the qāḍīs did not hold court in a mosque as in some Ottoman areas (see Hallaq, “The Qāḍī’s Diwan,” 418) or in an open space or the qāḍī’s residence, as had been the case in Zanzibar before a new courthouse was opened in 1904 (Stockreiter, *Islamic Law*, 30, 47).

⁴¹ Under Islamic law slave men and women constituted property and they feature in the court records only as objects and not as legal actors.

⁴² Agmon emphasizes the “open door” policy of Shari’a courts (*Family and Court*, 199), while Jennings comments on how laymen could address the qāḍīs without having to phrase their case in legal terms or needing lawyers (“Limitations,” 180-181).

The qāḍīs of Brava mostly interacted with the town's urban population, which almost gives the court the feel of a family court. However, they occasionally also dealt with temporary residents, such as foreign merchants and ship captains, and also had authority to hear cases presented by people living in the countryside, which did not have its own qāḍī's courts. They also interacted and corresponded with other qāḍīs in the region, both those in the other coastal towns under Italian administration and those in the still independent interior.⁴³

Both before and during this early colonial period, the qāḍīs of Brava applied no other law than the Shari'a as interpreted and developed by the Shāfi'i juridical school.⁴⁴ The ordinances promulgated by the Zanzibar Sultans had not applied to the relatively distant Benadir coastal towns, while the edicts of the Italian administration were still embryonic. Somali customary law (*xeer*) appears to have been formally acknowledged in the towns' qāḍī's court only in matters related to *diya* or blood money payments.⁴⁵ In East Africa, both British and Italian colonial authorities had a strong bias against the Shari'a, which they considered irrational and "confused and contradictory."⁴⁶ However, they were extremely weary of local resistance that might be provoked by immediate drastic changes in the administration of Islamic law.⁴⁷ Italy had in its convention with the Sultan of Zanzibar agreed to leave the qāḍīs of the Benadir in place and have them decide all

⁴³ For the regional networks to which ulama such as the qāḍīs of Brava belonged, see Anne K. Bang, *Sufis and Scholars of the Sea: Family Networks in East Africa, 1860-1925* (New York: Routledge, 2014), and Scott S. Reese, *Renewers of the Age: Holy Men and Social Discourse in Colonial Benaadir* (Leiden: Brill, 2008).

⁴⁴ In the same period, Ottoman qāḍīs had to enforce a tripartite law, i.e. the Shari'a, Ottoman civil and criminal law (*kanun*), and traditional laws or customs specific to the areas in which they served. See Jennings, "Limitations," 164.

⁴⁵ In QR II, 6.1 the amount of the *diya* and the beneficiaries of the payment were decided "in accordance with current customary law in force between the parties and previously agreed between them."

⁴⁶ For the British, see Stockreiter, "British Kadhis," 561. For the Italians, see Gustavo Chiesi, *La Colonizzazione Europea dell' Est Africa* (Torino: Unione Tipografica Torinese, 1909), 308-309.

⁴⁷ See Stockreiter, *Islamic Law*, 52 for British fears of local uprisings on Zanzibar.

matters according to Islamic law. There was, moreover, no pressing need to establish alternative, non-Islamic jurisdictions, since there were still very few Europeans and no Indian Hindu residents. At the same time, the number of Italian administrators was in any case so small that, at that stage, no such change could have been implemented. Therefore, until the general reform of the judiciary of 1911, the qāḍīs officially continued to have full competence to hear and decide on all civil and criminal matters.⁴⁸

In reality, however, the Italian “Residente” (like his counterpart the District Officer in British East Africa) was often a disruptive element in local society and the local balance of power. Although Italian Residents, inexperienced young officers who were only loosely supervised and mostly left to themselves, did not have any formal judicial authority, some occasionally interfered with the qāḍīs’ decisions. The qāḍīs of Brava deeply resented this and in 1904, when the Italian administration gave them the opportunity to register their complaints, they explained why:

Matters that are dealt with in the *barza* [court] are reported to the Resident, but generally the Residents do not take any part in the decisions we make. However, sometimes they to some extent interfere. In Brava, the one who interfered most was Mr. Cappello [the Resident from November 1898], who sometimes changed our decisions saying that they were not just. And this happened at the instigation of Sheikh Faqi [the *shaykh al-balad*], who did so for money or because he had received some presents. However, the whole town population was and still is talking about that. If not for this, he would not have had any interest in constantly meddling in judicial matters. Mr. Cappello trusted him [Sheikh Faqi] completely and blindly accepted whatever he said. Many decisions were taken directly by Mr. Cappello,

⁴⁸ A general re-organization of the judiciary came into force in the Benadir on 16 October 1911, following Royal Decree no. 937 of 8 June 1911.

without any communication with us, and there is consequently no trace of these in our registers.⁴⁹

During the overlordship of the sultans of Zanzibar, the walis had always had a formal judicial role, since they heard appeals from the decisions of the qāḍīs.⁵⁰ The latter nevertheless largely maintained their judicial independence, in part perhaps because their salary came from the court fees and not the coffers of the Sultan. Certainly there is no evidence or memory in Brava of any wali, who was a fellow Muslim, flouting a central and incontrovertible aspect of Islamic law. However, Italian Residents occasionally interfered in flagrant violation of Islamic law. One such incident occurred when Resident Cappello upset the status quo by lending an ear to complaints by free, married women.

As the qāḍīs put it, perhaps using some hyperbole:

Many women used to go to Mr. Cappello with their claims, and not to the barza. No woman came to us any more [...] but, because Mr. Cappello always took their side, directly went to see him after the evening prayer. Of course this gave rise to many rumors in town and people said that these claims were often a pretext [for women] to enter the Resident's premises, where some went to look for unlawful things and receive money in exchange for their favors.⁵¹

The qāḍīs supported their complaint by referring to a specific instance in which the Resident had granted a woman a divorce. A certain Fatima Imanke had gone to

⁴⁹ ASMAI (Archivio Storico Ministero dell' Africa Italiana), file 75/7, 13 May 1904. Our translation from the Italian. The *shaykh al-balad* was the spokesmen of the town elders in dealings with the wali, Zanzibar's governor in Brava.

⁵⁰ Vianello and Kassim, *Servants*, 52-53.

⁵¹ ASMAI, *idem* (our translation from the Italian). In Mombasa women began to send letters to the District Commissioners, as "they perceived the British as new male protectors" (Margaret Strobel, *Muslim Women in Mombasa 1890-1975* (New Haven: Yale University, 1979), 54).

Cappello directly, lodging a claim against her husband and accusing him of beating her. The husband acknowledged this but argued that he loved his wife and did not want a divorce. Cappello, however, immediately granted Fatima a divorce and ordered the husband to pay her thirty *qirsh* within one month.⁵² This violated not only the authority of the *qāḍī* but also Islamic law, which does not necessarily consider a “corrective” beating a ground for divorce and, when a wife-initiated divorce is accepted by the husband, puts the burden of a payment on the woman.⁵³

Although the sources do not provide enough details for us to fully judge this incident, there is no doubt that Fatima Imanke’s maneuver to bypass the *qāḍī* and the Shari`a met with absolute local disapproval and resistance. In their statement before the Italian Consul-General the *qāḍīs* noted that Fatima Imanke had been unable to contract a new marriage, since nobody in Brava believed that a dissolution of marriage pronounced by the Resident legally enabled her to do so. Furthermore, our analysis of the court records as a whole suggests that the *qāḍīs* of Brava, within the limits imposed by the Shari`a and evaluated in that light, did not treat women in court unfairly. This is, for example, evident in the cases in which women applied for the dissolution of their marriage to an absentee husband who had failed to provide for their maintenance (*nafaqa*). In all such cases in the register (14), the *qāḍīs* gave the women their divorce.⁵⁴

⁵² The currency mentioned in the *qāḍī*’s register – and the only one used in the Benadir – was the Maria Theresa thaler, referred to in the records as *qirsh* or *riyāl*. Theoretically it was divided in sub-denominations called *dokra* and *sukra*, but in practice all sums smaller than the thaler were paid in copper coins - called *pesa* in our source – that were imported from India to Zanzibar and whose value fluctuated in relation to the thaler. See Vianello and Kassim, *Servants*, Appendix 9, Currency, p. 2111).

⁵³ ASMAI, file 75/7, 13 May 1904. The *qāḍīs* officially recorded this case in the register (see QR515.3), phrasing it very diplomatically in order not to alienate the Resident.

⁵⁴ Only in one case was dissolution of marriage granted on the basis of the husband’s insanity (QR191.1). For examples of “unsympathetic *qāḍīs*” dealing with the same type of cases in Zanzibar in more recent times, see O’Malley, “Marriage and

WOMEN IN COURT

In Brava, women of all social strata presented their cases and transacted business in the court, either personally or through their representatives, and local custom did not prevent elite women from appearing before the qāḍīs in person. In this Brava differed from other Muslim contexts such as sixteenth-century Ottoman Aintab, where secluded women (*muhaddere*) did not appear before the qāḍīs at all.⁵⁵ Only married women feature in Brava's qāḍī's court records as fully empowered legal actors. Physical and mental maturity alone – the criteria for legal majority in the Shari'a – was in Brava apparently not a sufficient condition for women to appear in court.⁵⁶ In the qāḍī's court records married women constituted 24.34% of all plaintiffs and 11.11% of defendants.⁵⁷ They appeared in court even more often in yet another capacity, namely to officially register their transactions.

Brava's qāḍī's court records show that, in the area of property matters, the court treated women largely the same as men. This historical reality is by now very familiar from the scholarship about the qāḍī's courts in Ottoman areas and is increasingly recognized in such scholarship of the Swahili coast.⁵⁸ All these studies

Morality," 45-47. Her argument that the qāḍīs' attitude stemmed from their desire to reconcile the parties rings true for Brava as well.

⁵⁵ Peirce, *Morality Tales*, 6, 144, 174. By contrast, in Zanzibar women of all social backgrounds made use of the kadhi's court without risk to their respectability (Stockreiter, *Islamic Law*, 76-78).

⁵⁶ See Peirce, *Morality Tales*, 152 for a similar situation. In Zanzibar loss of virginity (i.e. marriage) marked a woman's capacity to act on her own behalf (Stockreiter, *Islamic Law*, 111).

⁵⁷ The same imbalance was noted by Doumani for Tripoli and Nablus ("Adjudicating Family," 177-178) and for Zanzibar by Stockreiter (*Islamic Law*, 81).

⁵⁸ For Ottoman areas, see Agmon, *Family and Court*; Doumani, "Adjudicating Family;" Gerber, "Social and Economic;" Jennings, "Limitations;" Meriwether, *The Kin Who Count*; Peirce, *Morality Tales*; Tucker, *In the House, and Women, Family and Gender*; Ze'ev, "Women," and others. For East Africa, see Hirsch, *Pronouncing and Persevering*, and "Kadhi's Courts;" McMahon, *Slavery and Emancipation*; O'Malley,

also emphasize that this nearly equal legal treatment of women did not negate the fact that local society, in our case, the city of Brava, was nevertheless deeply patriarchal, that is to say, represented a community in which a person's social identity and status was transmitted in the male line and where men monopolized formal positions of leadership and power.

In Brava, the formal complete identification of an individual consisted of his/her personal name, father's name, and grandfather's name, followed by his/her named group affiliation.⁵⁹ Brava's patrilineality and emphasis on the male lineage is of course reflected in the qāḍī's court's "vocabulary of identity;"⁶⁰ as a consequence, an individual's family relationships through the mother and wife often do not come into view. However, even beyond this, the qāḍī's court records often identify women less completely than they do men.⁶¹ Agmon's conclusion in her study of late Ottoman Greater Syria rings true for Brava as well: "These sources clearly emphasize the male lineage of the respective families, so the wives are mentioned without names, daughters are not mentioned at all, and sons are mentioned without specifying the mother."⁶²

Similarly, the qāḍīs of Brava at times omitted in their recordkeeping a woman's grandfather's name and group affiliation and sometimes even more basic information. As a result, there are a number of records in which a woman remains unnamed, has only her first name recorded, or is identified only in relation to others, as a man's mother, daughter, or (divorced) wife.⁶³ Such indirect or incomplete

"Marriage and Morality," Purpura, *Knowledge and Agency*; Stiles, *An Islamic Court*; Stockreiter, *Islamic Law*, and "British Kadhis."

⁵⁹ Peirce noted that the addition of a tribal marker by the Aintab qāḍīs was instead "a label of non-residency" as it was used for tribal nomadic people only (*Morality Tales*, 146).

⁶⁰ The term is Tucker's (*Women, Family and Gender*, 144).

⁶¹ Examples of cases in which a woman's name is incomplete or is given in relation to other people (i.e. as a man's mother, daughter, wife, or divorced wife) are QR174.1, 175.1, 534.1, 702.3, 771.1, and 860.1.

⁶² Agmon, *Family and Court*, 77.

⁶³ See QR174.1, 175.1, 534.1, 702.3, 771.1, 860.1.

identification was not necessarily a sign of disrespect and may rather speak to the centrality of a woman's family (and her position in its hierarchy) to her social identity. By cross-referencing the records, a historian can often get to know a woman as well as a man. However, the patrilineal bias reflected in the records nevertheless limits how the latter identify women in comparison to men.

The qāḍī's records of Brava offer insight into two aspects of legal practice and court procedure that are of direct relevance to this study of women, that of witnessing, an area in which women's participation in court was restricted, and oath taking, in which Bravanese women participated on equal footing with men.

Women as Witnesses

In Islamic law, women's legal capacity and suitability as witnesses is a complex, even fraught, issue.⁶⁴ In the qāḍī's court in Brava, as elsewhere in the Islamic world, there were two types of witnesses. The first kind witnessed that a legal act had taken place. The presence of these case witnesses⁶⁵ and their identification by name at the end of each written record was essential to the validity of the case and, as Peirce put it, a "structural element of the court procedure."⁶⁶ Although they might include people who knew or were related to the parties involved in the legal case, case witnesses were not involved in what was being adjudicated. They witnessed the act and could be called upon at a later date to corroborate that the matter had come to court and the judge had given his verdict. The case witnesses were always free, adult, Muslim men, whose social background and economic status might otherwise vary widely.⁶⁷ In Brava they included relatives of one of the parties,

⁶⁴ Tucker, *Women, Family, and Gender*, 140-149.

⁶⁵ See Agmon, *Family and Court*, 174; Jennings, "Limitations," 161-162, and Peirce, *Morality Tales*, 97.

⁶⁶ Peirce, *Morality Tales*, 146.

⁶⁷ Idem and Mahiudin Abu Zakaria Yahya ibn Sharif En Nawawi, *Minhaj Et Talibin: A Manual of Muhammadan Law According to the School of Shafii*. Trans. from the French edition of L.W.C. Van Den Berg by E.C. Howard (London: W. Thacker, 1914), 500.

neighbors, ulama, merchants, military men of the Zanzibari garrison, and Ashrāf (especially for cases involving marriage), with some men appearing to be regulars.

Potentially more consequential for how women fared in court were the legal rules determining who could serve as witnesses of the second kind, that is to say those individuals who were called to court to provide testimony in support of the claim of one of the parties to a court case. Given the centrality of oral testimony to Islamic law and court procedure, such witnesses were very important, even crucial, to the outcome of a case. They testified in court to the fact that some action (usually outside the court) had or had not taken place at some point in the past and supported one party's assertions about the content, context, and legal implications of this action. Although in the qāḍī's court of Brava, as we will see below, women were prominent as plaintiffs, defendants, and parties to contracts, and were routinely personally present in court, they did not serve as witnesses of this second kind and did not give third-person testimony. They did not even serve as witnesses in the ratio of two women to one man, as was officially allowed in property cases according to both the Shari`a generally and the Shāfi`i legal school in particular. By contrast, the records indicate that even a low-status man such as a freedman could and did serve as a witness (QR359.1).

In restricting women's testimony, Brava was in line with (and went beyond) Islamic legal practice elsewhere in the Islamic world. In *Women, Family, and Gender in Islamic Law*, Judith Tucker discussed this "female disability in the area of legal testimony"⁶⁸ as a far from clear-cut but nevertheless significant aspect of Islamic legal thought in all its historical variations across legal schools and individual jurists. She notes that the issue of women's testimony was "in the hands of most jurists tinted with the notion of female disability," whether they saw women as defective in nature (innate weakness) or because of a "social order that limited the presence and the experience of women in the public space."⁶⁹ She concludes, and this is of immediate relevance to Brava as well, that, while women's roles as legal

⁶⁸ Tucker, *Women, Family and Gender*, 140-149.

⁶⁹ *Idem*, 144.

actors in matters pertaining to themselves were widely accepted, “most jurists were less comfortable with the notion that women could have an equally authoritative legal voice in the affairs of others as witnesses.”⁷⁰

The qāḍī’s court records of Brava show that women did indeed *not* act as witnesses giving testimony in the disputes or other legal issues of other people than themselves. The only mention of a woman serving as a witness together with a man concerned a marriage that was found invalid because it lacked two male witnesses (QR309.1).⁷¹ The qāḍī’s records do not allow us to evaluate whether or to what extent this legal restriction on women’s witnessing had a negative impact on how women fared in court, as suggested by Tucker and asserted by Peirce,⁷² Brava’s small size and its character as a close-knit community in which people, including the qāḍīs, were quite familiar with each other’s affairs, may have served as a counterweight against women’s legal inequality in this respect.

Women and Oaths

In the scholarship about women and Islamic law, the legal practice of oath taking does not get much attention.⁷³ However, the qāḍī’s records of Brava show that it was an important practice that was especially significant for women, because their oath had the same weight and was administered to them by the qāḍīs in the same circumstances as in the case of men; the two-to-one ratio, a common rule governing women’s testimony did not operate here.

⁷⁰ *Idem*, 149.

⁷¹ All legal schools unanimously rejected a woman’s capacity to serve as a witness to a marriage.

⁷² Tucker, *Women, Family and Gender*, 158; Peirce, *Morality Tales*, 176. The Shari`a allowed testimony provided by only women in cases of private bodily or sexual matters such as virginity and birth only.

⁷³ But see Guy Bechor, *God in the Court Room: The Transformation of Courtroom Oath and Perjury in Islamic and Franco-Egyptian Law* (Leiden: Brill, 2012), and Jennings, “Limitations,” 175.

In general, Islamic law does not require parties to a legal case to take an oath when the evidence is complete. However, in special circumstances a judge may ask one of the parties to take an oath before reaching a ruling. In Brava, the qāḍīs administered oaths almost always because of the absence of the defendant and did so only rarely to supplement incomplete evidence. The most common oath that occurs in the records is the *yamīn al-istizhār*, translated by Bechor as “the oath of clarification.”⁷⁴ The qāḍī administered it to the plaintiff in addition to the testimony of two male witnesses, when the defendant was either absent or deceased. When a plaintiff took this oath in these circumstances, swearing that his/her claim against the absent or deceased person was truthful (and that the right (s)he claimed had not already been satisfied or been transferred to someone else), the qāḍīs in all cases ruled in favor of the plaintiff.⁷⁵ It is striking that in Brava male and female plaintiffs were invited to take this oath in exactly the same legal circumstances and that the weight of a woman’s oath was exactly the same as that of a man. Moreover, even when a plaintiff, man or woman, had filed a suit through an agent, s/he took the oath in front of the qāḍī in person,⁷⁶ that is to say, the oath was taken by the principal, not the agent.⁷⁷ Finally, the social background of the women who were given and used this legal option ranged from Sharīfa (QR25.1) to freedwoman (QR387.2). There was no question of any legal disability for women in this regard.

Although Islamic jurisprudence recognizes a range of oaths,⁷⁸ apart from the *yamīn al-istizhār*, the qāḍīs of Brava only exceptionally mentioned other oaths by name.⁷⁹ This is the case with oaths taken when both parties were present in court.

⁷⁴ Bechor, *God in the Court Room*, 273.

⁷⁵ QR 22.2, 25.1, 27.1, 29.2, 33.1, 34.1, 35.1, 48.1, 54.1, 61.1, 66.1, 87.1, 89.1, 147.1, 195.1, 217.1, 242.1, 243.1, 250.1, 310.2, 340.1, 340.2, 348.1, 352.1, 387.2, 439.1, 450.1, 509.1, 728.1, 745.1, 885.1, 970.1, 972.1 and 981.1.

⁷⁶ Compare Stockreiter, *Islamic Law*, 76 for the same practice in Zanzibar.

⁷⁷ See QR215.1 (with 214.1, which specifies the number and gender of the heirs); 338.1, 355.1.

⁷⁸ Bechor, *God in the Court Room*, 262 ff.

⁷⁹ The *yamīn al-tazkiyya* occurs once (QR179.1), while the “oath on the minbar” occurs twice in the records, once (QR5.1) leading to a positive outcome for the male

The qāḍīs might ask one of the parties (male or female) to take the oath if that party had failed to produce a sufficient number of witnesses in support of his/her legal position (whether this was a plaintiff's claim or a defendant's denial). The party invited to take the oath had the option to "re-render" it, that is to say, to refuse to take the oath and ask the other party to do so instead.⁸⁰ Brava's qāḍī's court records show that women took and re-rendered such oaths in perfect equality with men.⁸¹

However, in Brava oaths were not always decisive in producing a positive outcome for the party taking the oath and the qāḍīs apparently had wide discretionary powers, including the option of bringing about a compromise solution acceptable to both parties (*ṣulḥ* or reconciliation).⁸² Striking in this context are the two following cases in both of which the qāḍī appears to have been partial to the female party. In the first case, the qāḍī did *not* rule in favor of a male plaintiff who had taken the oath but gave his verdict in favor of the female defendant (QR257.1). In the second (QR827.2), the qāḍī again ruled in favor of a woman (in this case the plaintiff) and against her husband, even after the latter had taken the oath at the qāḍī's invitation. Whether the qāḍī's decision meant that he favored the women in these two cases or whether he had knowledge of the situation beyond what was presented in court cannot be surmised.

SOURCES OF WOMEN'S WEALTH

plaintiff taking the oath, and once (QR53.3) leading to a compromise solution (*ṣulḥ*) that lowered the amount claimed by the female plaintiff, even though she was the one who took the oath.

⁸⁰ See Bechor, *God in the Court Room*, 258-260.

⁸¹ See QR28.2, where the female plaintiff, who was unable to present any witness and was thus asked to take the oath, re-rendered it to the defendants, who then took it and won the case.

⁸² QR236.1, 248.1, 413.2, 433.2, 451.2, 954.2, 956.2, of which 236.1, 248.1, and 954.2 deal with women. According to Jennings, "Limitations," in 17th-century Kayseri the initiative in requesting to take the oath lay with one of the parties rather than the (175) and, when parties agreed to a *ṣulḥ*, this was always final (179). For Brava the latter is not certain, although we do not have evidence of the contrary.

The six major sources of women's wealth and property that appear in the qāḍī's records of Brava are: (1) *mahr* or dower husbands had to pledge at marriage; (2) inheritance; (3) pious gift (*nadhiri*); (4) *waqf* or Islamic trust; (5) commercial enterprise, and (6) labor.⁸³

Five of these six areas of property acquisition and income generation gave rise to women legal actions in court. Women become visible in the qāḍī's court records as plaintiffs and defendants; to acknowledge debts; to pledge security for their own or other people's debts and loans; to confer powers of attorney; as testators and heirs; as givers and beneficiaries of pious gifts (*nadhiri*), as establishers and beneficiaries of family trusts (*waqf*), and to initiate the legal certification of particular acts and transactions.

1. Mahr

One source of women's property, income, and empowerment was the *mahr* or dower. In Brava, as elsewhere in the Islamic world, the stipulation of a *mahr*, which specified the husband's obligation to pay his wife a certain amount of money or to give her goods of equivalent value, was an essential clause of the marriage contract.⁸⁴ Every woman who entered into a marriage therefore had the *right to receive* a *mahr* (also called *ṣadāq* in the qāḍī's records), which would become her personal property. In Brava, the *mahr* was not normally paid when the marriage contract was concluded and the distinction between the *muqaddam* part of the *mahr*, which was to be paid immediately, and the *mu'akhkhar* or deferred part, due on divorce or at the death of the husband, so common in other parts of the Islamic

⁸³ For Zanzibar Stockreiter mentions three sources of women's wealth: inheritance, dower, and work (*Islamic Law*, 141).

⁸⁴ Tucker, *Women, Family and Gender*, 52; Agmon, *Family and Court*, 12, 130; Peirce, *Morality Tales*, 209.

world, did not exist in Brava.⁸⁵ Questions to be asked in this context are what constituted the mahr in Brava, how and when women actually received the mahr due to them, and how they leveraged the mahr owed to them before they received it.

In Brava, the mahr was generally stipulated as a sum of money, of which the amount did not depend so much on the wealth of individual families as on what was the customary range for the different sections and social strata of the community. In contrast to the findings of Moors in Palestine,⁸⁶ in Brava gold was not central to the mahr. In the few (four) cases in which the mahr was stipulated in kind, it consisted of cattle.⁸⁷ The amounts of mahr recorded in Brava's qāḍī's court records range from the high amount of 100 qirsh to the exceptionally low one of three qirsh, with most mahrs ranging from 30 to 60 qirsh. The qāḍī's court records mention only five cases of 100-qirsh mahrs. In three of these cases both spouses belonged to prominent Ashrāf families, which, representing the most prestigious layer of society, may have wanted to give public expression to their status and wealth in this way.⁸⁸ Another case may reflect some reluctance on the part of the wife's family, as it involved a local Bravanese family marrying a daughter off to a foreign Arab. This reluctance appears to have triggered the demand for an exceptionally high amount of mahr, forty percent of which was moreover immediately due at marriage (QR334.1).

Most common in Brava was the mahr of the middle range: 60 qirsh for women of the Bida and Hatimi sections and the wealthy families of the Tunni, and 30-50 qirsh for middle-level Tunni families.⁸⁹ The lowest amount of mahr mentioned in the qāḍī's records, that of three qirsh, was stipulated as part of a

⁸⁵ Tucker, *In the House*, 52. In Brava, moreover, acknowledgements of mahr debt did not mention any deadline for payment and husbands only rarely promised to pay it by a certain date (QR335.2).

⁸⁶ Annelies Moors, "Women's Gold and Shifting Styles of Embodying Family Relations," in *Family History in the Middle East: Household, Property and Gender*, ed. Beshara Doumani, (Albany: State University of New York Press, 2003), p. 109.

⁸⁷ QR28.1, 371.2, 605.1, 620.2.

⁸⁸ QR313.1, 313.2, and 314.1.

⁸⁹ Vianello and Kassim, *Servants*, 34-35.

marriage of an Oromo (Wardai) freedwoman called Hawa to a Somali (Isaaq) man (QR350.2).⁹⁰ More commonly freedwomen received a mahr of ten qirsh,⁹¹ although freedwomen marrying their former owners or former owners' sons obtained mahrs as high as 30 qirsh and as low as five.⁹²

Women obtained access to their mahrs in different ways. In principle, the mahr was payable to a woman on demand. This indeed occurred and, when it did, women often chose to receive it in the form of productive "capital:" cattle (12 cases), 'arīsh (5 cases), and slaves (3 cases).⁹³ On one occasion a woman was able to buy part of her husband's stone house with the mahr money he owed her (QR326.2). Women of the lower strata appear to have opted for a place of their own in the form of an 'arīsh, whose average value (of 10 qirsh or lower) corresponded exactly to that of their mahr (e.g. QR634.2). That women *chose* not to receive their mahr in money or gold is evident from the fact that several case records note that they "purchased" the cows or 'arīsh from their husbands with the mahr money owed to them (e.g. QR40.2-41.1, 377.1).

However, often the full amount of the mahr was still outstanding at the time a marriage ended in divorce or with the death of one of the spouses.⁹⁴ If the husband

⁹⁰ The mahr for a slave wife was probably paid to the owners, male or female, who also had to give permission for the marriage. In QR432.1 a male owner gives a slave in marriage.

⁹¹ QR345.2, 364.3, 391.1, 594.2.

⁹² QR503.1 (5 qirsh), 603.1 (7 qirsh) 342.1 (30 qirsh).

⁹³ See Vianello and Kassim, *Servants*, Index ("Dower paid in kind").

⁹⁴ The records include examples of mahrs unpaid at the time of the husband's death (e.g. QR162.2, 290.1, 570.3, 697.1), at the time of the wife's death (QR330.1, 371.1), and at the time of a wife's repudiation (QR296.2). In the many cases in which husbands acknowledged debts of mahr for marriages contracted earlier, it is evident that the whole amount of the mahr was still outstanding (See Vianello and Kassim, *Servants*, Index, "Acknowledgement of debt of mahr"). The few cases in which women made a nadhiri of their mahr debt in favor of their fathers while the marriage was still in force also show that the whole amount was still owed them (e.g. QR291.2, 326.1). Occasionally husbands made partial payments of mahr during the marriage (e.g. QR692.1), but this is rare in the records and we do not know the details of the circumstances in which this occurred.

died first, the wife was entitled to be paid her mahr out of his estate before the heirs received their shares of the inheritance. If the family was relatively well off, the mahr amount paid to the widow might be as significant as her share of her husband's estate. For example, in a case of 11 November 1899, a wife was awarded the 60 qirsh of her mahr and an almost equal share of inheritance for a total of 127½ *riyāl* (QR697.1-698.1). Another way of assessing the significance of the mahr as a source of wealth for women is comparing it to what they left at death.

Although the number of records specifying women's estates are limited and thus not statistically significant, they suggest that, measured this way, mahr could represent a high percentage of a woman's estate and thus, by implication, probably a significant source of wealth during her life. For women of moderate wealth (QR167.1, 228.1, and 330.1), whose mahr was most likely 60 qirsh, the mahr represented respectively 27, 33, and 42 percent of their estates of 220, 180, and 142 qirsh. In the case of a woman whose mahr had been stipulated at the lower amount of 19 qirsh, the mahr represented 51 percent of her much smaller 37 qirsh estate (QR371.1), while for the woman who left the largest estate recorded, her 60 qirsh mahr would have represented only 5.45 percent of her 1100 qirsh estate (QR186.1). This confirms Tucker's statement that for poorer women the mahr as measured by the wealth they owned at death represented a more important source of property than for wealthier ones.⁹⁵

In case of divorce, the wife had an immediate right to the full amount of the mahr, but in reality she sometimes received it from her ex-husband in small installments (QR452.2, 476.1). The same appears to have occurred when couples were poor or of low status.⁹⁶ In such cases the mahr served for a while as a small source of income for the former wife and a contribution to her basic daily needs. When a marriage ended without the mahr having been paid, women sometimes chose to take their case to court. If need be, especially if the former husband or the late husband's estate was not in Brava, women conferred powers of attorney to

⁹⁵ Tucker, *In the House*, 57.

⁹⁶ QR402.2 records a mahr to be paid in installments to the master of a slave wife; QR368.3 records a mahr to be paid in installments to a freedwoman.

obtain the mahr owed to them. The records indicate that in such cases they sometimes chose relatives (especially a brother) as formal legal representatives, but even more often engaged non-related men, perhaps because these latter had more familiarity with court procedure or had the required connections to the place in question.⁹⁷

One special use women made of their mahr was *not* to claim it and use relinquishing their right to mahr as a source of empowerment. By formally releasing a husband from the mahr debt, women could obtain a divorce. At issue here are the two wife-initiated forms of divorce called *mubāra'a* and *khul'*. According to Welchman, writing about Egypt, *mubāra'a* took the form of a *ṭalāq* (repudiation) by the husband in exchange for a general renunciation of any remaining financial rights by the wife.⁹⁸ In *khul'*, the spouses agreed on a divorce settlement effected by the husband's pronouncement of a single, irrevocable *ṭalāq* in return for "a consideration," that is to say, a payment by the wife whose amount could be specified by either party.⁹⁹ Most cases in the qāḍī's records of Brava follow the pattern of *mubāra'a*, in which the wife released the husband from the obligation of paying her mahr in return for an irrevocable divorce.¹⁰⁰ In the two cases of *khul'* (QR141.1 and 220.1), the wife obtained an irrevocable divorce by releasing her husband from the outstanding mahr debt plus a further consideration, which took the form of an acknowledgement of a debt in one case and a payment of an extra ten qirsh in the other. A third case appears to be a *khul'* but took the form of a *nadhiri*

⁹⁷ QR23.2 and 98.1 (brother); QR726.1, QR733.2, QR827.1 (unrelated men).

⁹⁸ Lynn Welchman, *Women and Muslim Family Laws in Arab States: a Comparative Overview of Textual Development and Advocacy* (Amsterdam: Amsterdam University Press, 2007); Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1984 (1964)), 164.

⁹⁹ Welchman, *idem*, 112. According to Welchman, *mubāra'a* differed from *khul'* in that it was based on a renunciation of outstanding rights rather than on the return of rights already received by the wife, notably the dower already paid to her. See Stockreiter (*Islamic Law*, 176-182) for a discussion of both forms of divorce in the context of Zanzibar. For *khul'*, compare Tucker, *In the House*, 95-100.

¹⁰⁰ The records include ten cases of *mubāra'a* (QR 5.1, 376.1, 385.1, 415.1; 425.1, 426.1, 514.1, 536.2, 586.2, 723,1).

by which the wife released her husband from a debt of 70 qirsh (probably representing her mahr of 60 qirsh and another 10 qirsh he owed her), immediately followed by his divorcing her (QR91.1). In none of the cases of wife-initiated divorce is there any mention of custody rights and child support; these were probably handled out of court.¹⁰¹ The custody of children never comes up in the qāḍī's records of Brava.¹⁰²

In the cases of mubāra'a, the records do not refer to this noun itself but use a legal terminology that uses the verb (*abra'a*) and verbal noun (*barā'a*). For example, in a case of 24 July 1899 (QR586.2), a husband divorced his wife, Asha bint Abdinur, "after she released him from her dower of the amount of 7 riyāl through a valid, legal release (*ba'damā abra'athu min ṣadāqahā mablagh riyāl 7 barā'a ṣaḥīḥa shar'īyya*). These records also show that the wife sometimes released her husband from outstanding debts only *after* the latter had formally pronounced the irrevocable divorce before the judge (QR425.1 and 514.1).

The two khul' cases, like those of mubāra'a, do not use the noun form of the root but the verbal forms. Thus in a case of 1 November 1894, Kusey bint Osman rejected her husband's demand for *mu'āshara* (intimate relations) with the words (note the root kh l `): "*urīd al-'ikhtilā' min zawji*" ("I want to be divorced from my husband"). The record notes: "And the above-mentioned husband performed the khul' (*khāla'a*), saying 'I divorced my wife (*ṭalaqta zawjatī*), the above-mentioned Kusey, with three repudiations, for thirty silver qirsh'" (QR141.1).

In both cases of khul', the wife's initiative in bringing about the divorce is explicitly expressed through the record's use of direct speech. Thus, in the case referred to above, the qāḍī reported Kusey's words as follows: "I want to be divorced from my husband." The second record, dated 3 November 1895, states:

¹⁰¹ This in contrast to Ottoman Aintab, where women often formally gave up such rights in this context (Peirce, *Morality Tales*, 231-232).

¹⁰² Compare Peirce (*Morality Tales*, 220), who states that in Ottoman Aintab women served as guardians more often than men, and Stockreiter, who states that the guardianship of children hardly features in the records for Zanzibar (*Islamic Law*, 81).

“...After the marital relations between Sayyid Ahmed bin Abasheikh bin Haji Talha and his wife Halima bint Abanur bin Sheikh, both Hatimis, had deteriorated and the dissension and the ruin of family harmony had become apparent, the wife divorced herself from her husband [*ikhtala`at nafsaḥā min zawjihā*] by stating clearly and addressing him directly: “I divorced myself from you (*ikhtala`ta nafsi minnak*) for 70 silver riyāl. And the husband accepted this from her” (QR220.1).

The two khul’ cases discussed above suggest that in Brava the amount to be paid for a khul’ divorce could be established by either the husband or the wife.¹⁰³ However, we cannot surmise from the records whether the amount to be paid was agreed upon before the divorce was registered in court, possibly in negotiations facilitated by family members or the qāḍī.

It is worth noting that in Brava, unlike Zanzibar, divorce by mutual consent did not result in a wife repaying sums of money she had already actually received from her husband as dower. In this context, Stockreiter’s suggestion for Zanzibar that qāḍīs might support women’s requests for khul’ “in order to help men raise the dower for another wife” makes no sense for Brava, where a man did not need to pay mahr at the time of marriage but only incurred the legal obligation to pay it at a later time.¹⁰⁴

It is in the nature of the court records that they only document the bare transaction and leave us guessing at the circumstances of the divorce. For example, in another case of 27 August 1898, one wonders whether the woman who proved in court, to the qāḍī’s satisfaction, that her husband had repudiated her but who nevertheless released him from the mahr debt of 60 qirsh, acted out of love for him, out of desperation to be free from him, or because of family pressure (QR425.1)? That kind of texture the qāḍī’s record book cannot provide. However, it is clear that

¹⁰³ According to Schacht, the husband determined the amount (*Introduction*, 164).

¹⁰⁴ Stockreiter, *Islamic Law*, 191.

in Brava the mahr was both a source of women's income and property and a real factor in their empowerment.

2. Inheritance

According to the qāḍī's records, most of the estates left at death consisted of a range of property items, including real estate, slaves, gold and silver jewelry, money in cash, commercial goods and agricultural produce, livestock, and household and personal effects.¹⁰⁵ When somebody died leaving a number of male and female heirs, the qāḍī had the duty to give each heir his or her legitimate share. His first task was to determine which properties were part of the estate and which might not be because the deceased had dealt with them by will, nadhiri, or waqf. After the qāḍī had assessed the total value of the estate, he and the heirs usually proceeded in one of three ways. First, the qāḍī sold the estate (sometimes through auction) to pay the deceased's debts and divide the rest of the money among the heirs (e.g., QR389.1-390.1, 391.1). The second way was for the heirs to sell the estate to one or more individuals amongst them (QR 214.1) or to a third party (QR231.1, 249.1, 376.2), after which the qāḍī would give each his or her share (one half, one-sixth, one eighth, and so forth) of the money. Third, heirs sometimes chose to remain co-owners of particular parts of an estate such as a house or slaves (e.g. QR386.1).

Shāfi'i legal texts recognize seven categories of legitimate female heirs of a deceased individual: the daughter; the daughter and other female descendants of the son provided they are agnates; the mother; the grandmother and other female ancestors; the sister; the surviving wife (if not divorced or repudiated), and the female patron (former owner of a freed slave).¹⁰⁶ The qāḍī's records include 67 cases in which women obtained property through inheritance. It is not surprising that women inherited most often from (in this order) fathers and husbands, mothers, and brothers, with women inheriting from a grandmother or sister in only

¹⁰⁵ Only occasionally did the estate consist of only one item, e.g. a stone house (QR916.1), a slave (QR988.1) or a woman's outstanding debt of mahr (QR985.1).

¹⁰⁶ En Nawawi, *Minhaj*, 250.

one single case each.¹⁰⁷ In five cases women inherited from daughters and sons who had died before them.¹⁰⁸ Only in very few cases was a woman the sole heir of her deceased parents: usually the families were large, as evident also from the number of children listed as heirs in the qāḍī's records (e.g. QR159.1, 186.1, 338.1).

We have no legal record of widows acting as executors, distributing shares of inheritance to other heirs. However, the records do include cases in which the qāḍī describes children's portions of an estate as being "in the possession (*bi-yad*)" (QR390.1) of their widowed mother, handed over to her "to be kept in trust for them" (QR395.1). That such shares could represent a substantial amount of property is evident from the estate of Moallim Omar Aboke (Barāwī). After all outstanding debts had been paid, the qāḍī left in the possession of the pregnant widow: 17 riyāl and 39 dokra, one male and three female slaves, gold jewelry valued at 130 riyāl, and a plot of land in Biruni valued at 30 riyāl. Of this, the qāḍī noted, "one-eighth is her own share and the rest she holds in trust (*wadī'a*) for her children, a male getting double the share of a female" (QR389.1-390.1). The records do not tell us how the widow managed her children's wealth and whether the absence of the formal title of "guardian" indeed prevented her from spending it on her children's maintenance or investing it productively.

Women regularly conferred power of attorney to a third party to obtain their share of a particular estate. This appears to have occurred most commonly when the estate was held outside of Brava, and the men women chose as their legal representatives were in this context most often not relatives.¹⁰⁹

Everything in the qāḍī's records suggests that women received their shares of estates in accordance with the Shari`a.¹¹⁰ However, women's rights to their shares

¹⁰⁷ QR211.1 (sister), 428.1 (grandmother).

¹⁰⁸ QR 28.1-28.2, 174.1, 186.1, 253.1, 274.1.

¹⁰⁹ Only QR229.2 shows a woman giving power of attorney to her father. In all other cases the agent was not a relative (QR40.1, 230.2, 686.3 (Merka), 691.2, 794.1 (Mombasa)).

¹¹⁰ Gerber's insistence, in the face of skeptics such as A. Layish, that women in Ottoman Bursa (1600-1900) indeed inherited and, if necessary, sued in court for

of estates were occasionally challenged in court by a fellow heir or an individual whose claim to the inherited property was based on a transaction with a fellow heir. The records include two inheritance disputes in which the parties were brother and sister. The first case is one in which a brother accused his sister of having usurped their mother's estate, allegedly consisting of real estate, some pieces of gold, broken silver, and clothes (QR206.1). The sister refused to come to court and two important men, Sheikh Faqi bin Haji Awisa, the *shaykh al-balad*, and one of the qāḍīs (later listed in the record as case witnesses) went to her home and brought back her reply as well as a piece of golden jewelry weighing one-and-a-quarter *waqiyyas* (35 grams).¹¹¹ The qāḍī recorded the sister's words in direct speech (as reported by Sheikh Faqi):

“This is what I have in my possession of my mother's estate and, except for this, I have nothing else. If my brother, Mohamed bin Maie Bakar accepts, divide this between us; let him keep two-thirds and send me back one-third, on the condition that this will put an end to the lawsuit between us concerning my mother's inheritance. If he does not accept, return the piece of gold jewelry to me. I do not answer to this lawsuit because this has gone beyond the limits of the law (*jāwiz ḥadd al-qānūn*). However, I give my brother this as a gift (*atabarra`u li-akhī*) to have him stop his demands.”

The brother accepted and was given his share of the gold right there and then in the courtroom; his formal declaration before the witnesses that there was no further dispute between him and his sister became part of the case record. As is often the case, the court record does not tell us exactly what happened here. Had the sister actually seized the whole estate and did she get away with paying her brother a trifle? Did she lose two-thirds of a piece of golden jewelry just to put an end to her brother's false claims? Or did both get a fair share? The record does not give us a

their inheritance, rings true for Brava in the period under study (Gerber, “Social and Economic Position,” 232). See also, Tucker, *Women, Family and Gender*, 150-151.

¹¹¹ A waqiyya is the sixteenth part of the *raṭl* or the weight of one thaler (28 grams).

conclusive answer about this. However, it is striking that the qāḍī – perhaps in endorsement of the sister – included in the written record something he did not commonly do, namely the sister’s direct speech, laden with emotion and indignation. All we can say with certainty that the qāḍī and the two prominent men who represented the sister in court went out of their way and managed to solve the case and restore peace.

A second example of the court supporting a sister in an inheritance dispute with her brother (perhaps a brother by a different mother) is that of Sharīfa Mana Nafisa bint Sayyid Habib Makka (QR67.1). She sent a legal representative to court to claim that her brother Sharif Abrar had passed on to another Sharīf (then deceased) her share of the estate of their father and another deceased brother. This share was substantial and consisted of “one hundred thirty-four silver qirsh and a slave (*ra’s khādim*] called Sālimīn, valued at sixty-six silver qirsh.” In his reasoning the qāḍī cited the original record of the division of the estate, which had been handled by the former wali of Brava (Sālim bin `Alī al-Ya`qūbī), in his barza and during his lifetime. He then ruled for Mana Nafisa and against the dead defendant, whose acquisition of Mana Nafisa’s property from her brother he judged illegal. The qāḍī did not rule against the brother and the record does not reveal whether the brother’s behavior was blameworthy.

In her work on Palestine, Annelies Moors found that “urban women refrain from claiming their shares in the estate if their contending heirs are their brothers.”¹¹² The case of Mana Nafisa and her brother appears to belie this for Brava. Women had close relations with their natal family and depended on them in many ways. However, there is no evidence that women refrained from taking on a brother and pursuing their inheritance rights in court.

The cases cited above show that women often won disputes about their rights to property acquired through inheritance. Another such case is that of Mana Lulu bint Sharif Abdalla. Mana Lulu sent a legal representative to court to question

¹¹² See Moors, “Women’s Gold,” 105; Peirce, *Morality Tales*, 227. In 17th-century Bursa, women appear to have sued family members in court on an equal basis (Gerber, “Social and Economic,” 233).

the legality of the sale of a dilapidated house by a Sharīf to a Barawi man, on the basis that she had inherited this house from her father. She was able to bring only one witness, who testified to the fact that she had received it from her father as a gift (*hiba*), but the qāḍī rejected this testimony because it did not pertain to the question at hand, that concerning inheritance. Then Mana’s agent revealed that the Barawi man who bought the house from the Sharīf had initially tried to buy it from Mana Lulu herself! The man hemmed and hawed, but the qāḍī, after making Mana Lulu take an oath, gave a verdict in her favor (QR248.1). The records reveal that Mana Lulu then sold the dilapidated house to a buyer of her choice (another Sharīf), who in turn sold it to the son of the very same Barawi man who had originally tried to buy it (QR370.1).

The court also upheld the rights of Khasuf bint Tahir (Hatimi). In this case, the qāḍī recognized that the heirs of the late Funzi bin Bakar – his widow Khasuf, sister, and paternal relatives – should share the proceeds of the late Funzi’s house, which was sold by auction (QR355.1, 356.1). However, the qāḍī excluded from this division that part of the stone house Khasuf had bought from her husband during his lifetime with the money of her mahr. The record that confirmed Khasuf’s ownership reads as follows and also provides an interesting description of the layout of a Bravanese stone house:

I ascertained with just and legally acceptable evidence that Khasuf bint Ṭahir bin Abu al-Hatimiyya purchased from her husband, the late Funzi bin Bakar, during his lifetime, two stone rooms of his house, one located on the eastern side and the second on the northern side, with an entrance hall that is situated in front of the two rooms, and with three small walls adjoining the entrance on the eastern side near the front door, with their appurtenances of land, buildings, doors, and timber. The right of way and the main door are jointly owned by her and the other heirs (QR326.2).

The records also show women of a wide range of backgrounds leaving property at death, from large estates, such as that of Asha bint Haji Awisa, who left real estate,

money, commercial goods, and miscellaneous items totaling 1100 qirsh (QR186.1), to smaller ones of thirty qirsh (QR236.2 and 301.1). Below we will examine the wide range of property items women inherited and bequeathed in more detail. That inheritance was an important source of women's property ownership is something the qāḍī's records make abundantly clear.

3. Nadhiri

The pledge of a nadhiri (Arabic: *nadhr*) was in Brava a common legal frame for multi-purpose financial transactions. Although it is not documented in this form in studies of Ottoman and East African qāḍī's courts, it features prominently in the qāḍī's court records of Brava. In its core meaning, nadhiri is a solemn vow to do something or make a gift of something in return for God's granting of a wish. In the qāḍī's court records nadhiri takes the form of a formally pledged, legally binding, and irreversible pious donation by which the donor transfers the ownership of something in his or her possession to someone else. The terminology often explicitly asserts the pious nature of the gift: Such and so *nadhara wa tabarrara* ("made this nadhiri as a pious act") "as a sacrifice to be nearer to God," "while in good health and of his/her free will, knowing the meaning of nadhiri, a gift that cancels the right of property (*i` ṭā' yuzīl al-mulk*)."¹¹³

The contexts in which donors made nadhiris varied widely. Occasionally, as we will see below, they appear to stretch the limits of the concept and take the form of a plain financial transaction in which the element of piety is not obvious to the observer. Women took full advantage of this important legal and social practice in Bravanese society acting as givers and receivers alike. Out of the 70 nadhiris that occur in the qāḍī's records, 58 have women as either donors or beneficiaries.

Nadhiris feature in the records most often as gifts by a donor to his or her relatives. In nadhiris by male donors to one or more male relatives, we find fathers

¹¹³ See e.g. QR319.1. Occasionally, the term *hiba* (root *whb*) occurs as the term for gift, as in QR209.1, in which a nadhiri is reciprocated with a counter gift (*hiba*). QR859.3 uses the terms *ṭāḥṭā* and *'a ṭā*.

donating items of property (cattle, land, a slave) to sons, as well as an uncle giving a gift to the sons of a brother.¹¹⁴ In the case of nadhiris by men to one or more female recipients, almost all (15) represent gifts, especially of slaves and livestock, from husband to wife.¹¹⁵ The records give no information about the circumstances in which wives received such gifts, but probable reasons would include affection for the wife (as in QR171.1, which features a wife who is pregnant), and *masayrtir*, a gift to “erase a wife’s jealousy” on the occasion of the husband’s marriage to an additional wife.

The instances of nadhiris from husband to wife contain two special cases. The first one (QR285.1) is a reciprocal nadhiri between husband and wife, whereby the husband released his wife from all her debts while she released him from paying the mahr. Here one may wonder why this settling of debts took the form of a nadhiri and hypothesize that giving up established rights while avoiding an adversarial situation in court might have been seen as a pious act. The second nadhiri is one for which we are able to surmise the circumstances. It is the only nadhiri of our limited set that involves an important amount of gold (twelve waqiyyas or 336 grams) donated to his wife by the wealthy businessman Jabir bin Rufai. The latter was the Bravanese agent of the Indian trader Kanji Rajpar, soon to be disgraced and bankrupted. It is very possible that he made the pious gift to his wife to protect this gold from his creditors and perhaps assure her future maintenance (QR64.1).¹¹⁶

¹¹⁴ QR 290.2, 319.1, 333.1, 496.1.

¹¹⁵ QR64.1, 171.1, 188.1, 193.1, 268.1, 270.2, 272.2, 283.2, 284.1, 285.1 (reciprocal), 357.1, 423.2, 608.1, 660.2, and 871.2. The exceptions are QR53.3 (a man to his sister’s daughters) and QR826.1 (a man to his sister).

¹¹⁶ Jabir bin Rufai went bankrupt when Kanji’s son abruptly recalled the capital his father had advanced to Jabir. Kanji, who had earlier in life worked for the Indian trader Taria Topan, had in the 1890s expanded his independent business activities to the Benadir, especially Brava and Merka. See François Bontinck, with Koen Janssen, *L’Autobiographie de Hamed ben Mohammed el-Murjebi Tippto Tip (ca. 1840-1905)* (Brussels: Academie Royale des Sciences d’Outre-Mer, 1974), 129, and Sorrentino, *Ricordi*, 424.

Although marginal to the wealth that accrued to women by way of nadhiri, some other cases that occur in the qāḍī's records are significant because the nadhiri functions differently in them.¹¹⁷ Here it takes the form of a small monthly or annual amount paid to the beneficiaries (male and female) by a non-related man in return for (and for the period of) his keeping in his possession (and presumably using) money they had inherited. Given that both the amount of capital and the time it would be at the disposal of the donor were significant while the monthly and annual amounts donated as nadhiri were small,¹¹⁸ it is tempting to interpret these nadhiris simply as a hidden form of interest. If this were correct, then we might conclude that the nadhiri of Brava *occasionally* functioned somewhat like the Hadrami transaction called *'uhda* documented by Boxberger in "Avoiding Ribā" and the *bay`khiyār* documented for Oman and East Africa by Bishara. The *'uhda* was a revocable sale of custody of property (usually land or a house) by which the seller received the sale price but retained the right, within a specific period of time, to revoke the sale and recover the property upon repayment of the sale price, while the buyer gained the usufruct of the property, often renting it back to the seller.¹¹⁹ In its usual form (as an irreversible pious gift) the nadhiri has no similarities to the Hadrami *'uhda*, but in the cases described here, it resembles this "revocable sale", even though the cases here do not involve real estate but custody of money. This use of nadhiri also brings to mind the *bay`khiyār* or "conditional sale" Bishara documented for Oman and East Africa, which also involved hidden interest and sidestepped the legal prohibition against it.¹²⁰

If there was a pious or charitable dimension of these nadhiris-by-installment, it might be related to the fact that all four cases deal with inherited money, which suggests that those transferring its usufruct were all bereaved, with one case clearly

¹¹⁷ QR355.1, 659.1, 702.1, 758.2, of which two (355.1 and 758.1) involved a female recipient.

¹¹⁸ In QR 355.1 the female recipient was to receive one-fourth of a qirsh monthly.

¹¹⁹ Linda Boxberger, "Avoiding Ribā: Credit and Custodianship in Nineteenth- and Early-Twentieth Century Ḥaḍramawt," *Islamic Law and Society*, 5, 2 (1998), 197.

¹²⁰ Bishara, "A Sea of Debt," p. 147 ff.

involving underage orphan boys in care of the Italian administration and a second one featuring a fatherless orphan who had just come of age. It is possible that administering the property of such vulnerable individuals and guaranteeing their basic sustenance may have been seen as a pious act.

Women were not only the beneficiaries of nadhiris but also givers of such pious gifts (33 cases). They made nadhiris most often in favor of male relatives (fathers, brothers, sons, grandsons, nephews, and husbands), but also to unrelated men. Their female beneficiaries were daughters, granddaughters, and nieces. The kinds of property they donated in this way included land, stone houses and rooms, `arīsh, slaves, livestock (cows and goats), and gold and silver jewelry.

Women's nadhiris bring into view how multi-purpose a financial instrument the nadhiri was, for they fall into three broad categories, nadhiris of mahr, nadhiris as bequest, and nadhiris as means of terminating a dispute. Women made nadhiris of mahr most often to husbands or former husbands, but the contexts in which they did so varied. One such nadhiri is a clear case of khul`, as the wife released her husband from his debts to her (her mahr of 60 and a further debt of ten qirsh) in return for his agreement to divorce her (QR91.1), but in two other nadhiris a woman donated to the husband or former husband his mahr debt without any explanation of the circumstances (QR 611.2, 512.3). Women also exchanged the husband's mahr debt for a specific property item¹²¹ and used nadhiris of mahr to settle a debt to a third person.¹²² In several cases women donated the mahr their husbands still owed them to their fathers, perhaps in the hope that the latter might more easily obtain it for them or to repay them for earlier disbursements in their favor (QR291.2, 326.1, 338.1).

The cases in which women made nadhiris in the form of bequests are of special interest, for it appears that they used the instrument of the nadhiri to bequeath property to particular individuals at the exclusion of heirs who would

¹²¹ QR 256.1: Exchanging nadhiris, the wife received from her husband a slave and 20 qirsh in return the 60 qirsh he owed her as mahr.

¹²² QR762.1 may have been a debt payment or a "pre-payment" for the man's counter gift of a cow later on (QR786.1).

have inherited this property in case of intestate succession. This particular aim seems clear in the case of the childless Ado bint Dera, who chose to donate one slave each to three female relatives and whose decisions were in part only ascertained after her death (QR221.1, 629.1, and 629.2).

Women and men also made nadhiris as means of dispute resolution and the final stage of the procedure of *iṣlāḥ*, or formal reconciliation and compromise in court. It appears that, when the *qāḍīs* succeeded in reconciling the contestants, they settled the dispute by having the “losing party” make a nadhiri of at least part of what she or he had originally claimed. Here the nadhiri functioned as a way to reach a compromise about the amount of the claim (QR261.1, 257.1), in order to put a definitive end to the dispute and perhaps to avoid explicitly putting the losing party in the wrong (QR257.1). Thus the *qāḍī* confirmed Aisha bint Ahmed, of the Tunni Dakhtira, as owner of a house in her possession but disputed by her nephews, who eventually agreed to settle the matter by donating it to her by nadhiri (QR259.2). The issue of who was right and who wrong did not come up and the nephews may have been able to gain in moral stature or simply save face by committing a pious act. In another case it was the woman who had to compromise: Sudo bint Menye was faced in court by a male claimant who demanded 23 qirsh from her. Although she refused to acknowledge this debt, arguing that she had already repaid him, she made a nadhiri of 14 qirsh and paid him an additional three qirsh in the form of honey (QR261.1).¹²³ A third case of compromise is that of Asha bint Wali, who lived in a house that was claimed by Madho bin Mohamed Nur as inheritance from his father. Asha had to make a nadhiri of the house but got to keep two rooms, allocated to her as part of this compromise solution (QR257.1).

If we take the cases of nadhiri in Brava’s *qāḍī*’s court records as a whole, it is clear that the nadhiri was an important instrument by which women received and donated substantial amounts and different forms of wealth. Its uses, moreover, appear to have been unique to Brava.

¹²³ The compromise may have been a community effort, for three men, including her son, stood surety for this remaining debt.

4. Waqf

Waqf or Islamic trust is an institution known all over the Islamic world. By establishing something as a waqf, an individual allocated in perpetuity the use of, or income from, this trust to either a pious foundation such as a mosque (*waqf khayri*) or particular individuals such as the founder's children and their descendants (*waqf ahli* or family trust).¹²⁴ By establishing a waqf the founder withdrew the property or its income from the possibility of it being bought and sold, claimed by creditors, fragmented through inheritance, or taxed. The qāḍī's court records of Brava mention only family trusts.

The records suggest that individuals who founded waqfs might accomplish three things that other means of disposing and transferring property could not. First, the founder of a waqf could designate beneficiaries of his or her choice to receive the income from (or use of) the waqf after his or her death without regard to the Islamic laws of inheritance. The latter not only stipulated in great detail who would inherit but also allocated to women half of the share of men in the same relation of kinship to the deceased. On the contrary, in a family waqf all beneficiaries – at least potentially and often actually – received equal shares irrespective of their sex. Second, while Islamic law allowed individuals to allocate only one-third of their estate by will to individuals of their choice, a waqf could be applied to the whole estate.¹²⁵ Third, if someone established a waqf before death, this person could continue to use or benefit from it during his or her lifetime.

In Brava, only real estate (mostly stone houses) was turned into waqf property.¹²⁶ While the number of family trusts mentioned in our source is too small to be statistically meaningful, it is noteworthy that the records feature more women

¹²⁴ In QR 303.1 the formula reads: "This house shall pass first to the nearest relatives, then to the [distant] relatives, then to the Muslims."

¹²⁵ See for example, Fay, "Women and Waqf," 36.

¹²⁶ Only QR 375.2 mentions a piece of land as waqf.

than men as founders and beneficiaries of waqfs.¹²⁷ The women who founded waqf houses included Ado bint Dera, who at her death turned her house in the Biruni quarter into a waqf (QR667.1), Abay bint Alinke, who did so during her life-time with a house in the prestigious neighborhood of Mpaayi (QR930.1, QR11 8.1),¹²⁸ and Mana Aisha bint Abu Banali, whose name is associated with two waqf houses, which she probably established herself.¹²⁹ Women were also beneficiaries of waqf houses, as in the case of the house in Biruni that Funzi bin Baghasho Ahmed established as a trust in favor of his wife and children, five of whom were girls (QR303.1). The fact that the qāḍī, in the act recording the founding of this waqf, did not specify that the son was to receive twice the share of the daughters (as qāḍīs always did in cases of intestate succession), suggests that male and female beneficiaries had equal shares in its benefits.

Another waqf house that had female beneficiaries was established at her death by a woman already referred to above, namely Ado (or Adoy) bint Dera, who had no (surviving) children and at the time was most probably widowed or divorced (QR667.1) Ado, a regular presence at court, did not dispose of her whole estate as waqf, but did so with just her house, valued at 120 qirsh, for which she designated as beneficiaries two nieces, daughters of two of her brothers, with their offspring.¹³⁰ She also made a will, in favor of her grandnephew, to whom she left a female slave (QR628.3), and, as we saw above, made three nadhiris (all donations of slaves) to female relatives of a younger generation (QR221. 1, 629.1, 629.2). None of these relatives would have inherited from her in case of intestate succession. In other words, the female relatives who benefited from the house Ado established as waqf (or, for that matter, from her nadhiris) benefited from an estate that, in the absence

¹²⁷ Four waqf houses and one piece of land were associated with men: Haddad bin Bakar (QR159.1, 231.1, 257.1); Funzi bin Baghasho (303.1); Shego bin Aw Ganjo (635.1, 682.2), and Moallim bin Muzammil (826.1).

¹²⁸ This house is mentioned briefly in QR 930.1, while a copy of the original record of the waqf establishment, dated 7 June 1893, was recorded in QR11 8.1.

¹²⁹ See QR59.1, 267.1, 269.1, 295.1, 517.1.

¹³⁰ The qāḍī had assessed the house's value as part of her estate (QR628.2)) before realizing it had been turned into a waqf (QR667.1).

of the legal provisions Ado made during her lifetime, would have gone to other heirs, most likely male agnates.

Someone's motivations for establishing a family waqf might have included the desire to ensure that the beneficiaries and their descendants, whatever their future financial position might be (they could well become very poor), would have a roof over their heads and have no reason or possibility to quarrel about inheritance shares amongst themselves. This was important for widowed, divorced, or unmarried women, who might find themselves without support and a place of their own, and whose share in the estate of parents might be disputed or withheld by brothers. Women's preoccupation with having their own dwelling is evident from cases in which married women tried to secure even one room or an 'arīsh by forfeiting their mahr.¹³¹

The qāḍī's records show that women were active participants in the institution of waqf in Brava and the family trust was a distinct and significant way by which women acquired and transmitted property

5. Commercial Enterprise

Women also obtained wealth by engaging in commercial transactions. For example, women gained income from renting out real estate, whether living or industrial space.¹³² Thus widow Aisha bint Adaw sent a legal representative to court to claim 19.5 qirsh "due as rent of the house in which orchella (a lichen used as a dye to produce violet) is spread out to dry" (QR58.1). Women were also among the owners of oil mills: Amina bint Mohamed Said included in the nadhiri to her brother "a sesame oil mill with its implements" (QR40.2), while Amina bint Shego pledged as security for a four-month loan of 15 qirsh "her `arīsh in which she lives and the oil

¹³¹ QR 326.2 (part of stone house); 437.1, 634.2, and 803.1 ('arīsh).

¹³² In QR654.2 the 4½ qirsh a woman owed to an Arab were to be deducted from the rent of the house she leased to him. In QR252.1 a widow and her daughters and son sold a house to a man who had rented it and donated to him by nadhiri the outstanding rent.

mill that is installed near the aforesaid house, together with its implements” (QR836.2). In another case, a Tunni Dakhtira woman called Fadhumo bint Moallim, pledged as security for a debt of 26.5 silver qirsh and 12 pesa ~~pa~~isa, due on demand, a workshop for the preparation of *ḥalwa* (a sweet traditionally made of ghee, sugar, rose water, and spices). This is how the record described the security she put up: “her `arīsh house that has one room, with its courtyard and hall, and a space for the preparation of ḥalwa, with a bathroom, as well as a large copper vessel called *zena ḥalwa*, three copper pots, a ladle and all other utensils for [preparing] ḥalwa, and eight silver bangles” (QR47.1).

The glimpses the qāḍī’s court records give of women’s trading activities are not many but show that women were routinely involved in large- and small-scale commercial enterprise in and outside of Brava. We see women trade in foreign vinegar worth thirty riyāl (QR372.1); in imported cloth (QR771.1), worth in one case as much as two waqīyyas of gold (QR7.1); in large and small quantities of maize (QR3.1, 445.2); in ivory worth sixty riyāl (QR262.1), in timber, of which a quantity worth 14 qirsh was part of a woman’s estate (QR859.3), and in honey (QR261.1). The large estate of Asha bint Haji Awisa, wife of the most important elder of the Tunni Dfaradhi, included 200 qirsh of (unspecified) commercial goods (QR186.1). Women also formed partnerships with other women (QR855.3) and with (unrelated) men (QR867.1, 870.4).

Although women, like men, often used authorized agents in court, as we will see below, the qāḍī’s court records refer to women’s officially authorized *commercial* agents in only a few cases.¹³³ In one such case, a woman, through her agent in court, gave her father formal power of attorney to buy from her husband commercial goods worth 24 riyāl (QR202.1). This case shows both how close family members often did business together and how the court formalized woman’s autonomous legal personhood. The same is true for a second case, in which a husband, represented in court by his own agent, demanded from his wife, through *her* agent,

¹³³ In QR372.1 Mana Halima bint Moallim Omar had given someone money to buy foreign vinegar for her, but without conferring any power of attorney.

the large amount of 3147.75 kilograms of maize.¹³⁴ The wife's agent acknowledged the debt and was granted twenty more days to repay it (QR3.1). In the cases involving the smaller amounts of maize, as well as the foreign vinegar, ivory, and cloth, women represented themselves. When Sudo bint Menye was confronted in court with a claim for 60 qirsh worth of ivory allegedly entrusted to her by the plaintiff's late father, she not only represented herself but showed full knowledge of her late husband's affairs and answered with great authority. The qāḍī reported:

She replied that her husband, the late Abrar bin Ahmed, had sold this ivory during his lifetime, for sixty silver qirsh, and that the plaintiff's legator, Edhan Dawaken, had acknowledged, in his lifetime, that he received from the late Abrar forty silver qirsh of the price of the ivory. Therefore [only] twenty silver qirsh were still due to him.

The widow produced two witnesses, and won the case (QR262.1).

That women saw marriage as a real partnership and tried hard to help their families (of birth and by marriage) survive and thrive is evident from the financial support they gave to their close male relations. Women often helped their husbands (and sometimes a brother or son) obtain loans by putting up their own property as security for those loans.¹³⁵ The security they pledged consisted especially of houses, land, livestock, and money. And in some cases they lost the property so pledged. The wealthy Ado bint Dera lost most of her gold when her nephew could not repay the sums advanced to him by the Zanzibari Indian trader Kanji Rajpar (QR321.1). Similarly, Mana Aisha bint Bana Omar lost a piece of land when her husband was unable to repay 25 silver qirsh of a 29-qirsh loan (QR26.1, 82.1). The qāḍī sold the land to the lender, making Mana Aisha's displeasure part of the record: I did so, he

¹³⁴ 17 *jizla* and 27 *kayla* amount to 6295.5 pounds (or 6939.60 non-metric pounds).

¹³⁵ Women pledged security for a husband in QR26.1, 71.1, 177.1, 409.1, 466.2, and 486.1; 478.2. They did so together with a sister in QR681.3, 751.1, and 866.1. They pledged security for a brother in QR45.1, and for a son in QR783.1 with 891.1, and in 842.1.

wrote, “after advising her that the sale was obligatory and after she refused to give permission for it.” That wives occasionally made loans of money in cash to their husbands is evident from the case of Fatima Mustafa, who lent her husband funds to repair his house (QRII, 77.2).

Women also raised money and took out loans of their own. The evidence we have for this consists largely of women’s acknowledgements of debts. These show us to whom women owed money, and how much and what property they pledged as security, but there is usually no mention of the purposes for which women borrowed or whether the amount of the debt to be repaid included any hidden interest.¹³⁶ However, reading between the lines of the qāḍī’s court records and drawing on other sources, we can postulate the following. It appears that women, when short of cash, rarely sold their capital assets but instead leveraged these to borrow money they hoped to repay from the income a newly acquired asset might yield. This also ensured that their initial capital (pledged as security but usually remaining in their possession) would not remain idle and allow them to produce more wealth.

Examples of added capital acquired with borrowed money might include a house or `arīsh to be rented out to a third party (as we saw above); a cow that would provide milk for sale and have calves; a slave who would reproduce¹³⁷ or autonomously generate an income from which the owner claimed a share, and so forth. The borrowed money could be also used to complete some project, such as building or repairing a house (QR795.1, QR.II.77.2). Finally, some of women’s debts appear to be loans from local male merchants for various trade goods such as grain and vinegar, as we saw above, or money borrowed from third parties to repay such merchants. It is striking that, according to the records, women helped husbands (and other male family members) *obtain* loans but did usually not *borrow from*

¹³⁶ For such acknowledgements of debt (all using the verb root q r r and the forms *aqarra* or *iqrār*), see Bishara, “A Sea of Debt,” pp. 139 ff.

¹³⁷ According to Robecchi Bricchetti, *Dal Benadir*, 179-203, 10% of all slaves in Brava in 1903 were less than ten years old.

them.¹³⁸ The data suggests that women not only borrowed from outside their families but often even from outside their own or their husband's named social groups.

The names of a few resident rich merchants, with substantial real estate property and documented business deals with Zanzibar and Brava's interior, feature in a large number of acknowledgements of debts by men and women. These are `Abd Ḥusayn bin Shams al-Dīn, called "al-Hindī al-Bohrī" (Indian of the Bohra Muslim community), and Sharif Abrar bin Sharīf Habib Mudhir. It is possible that these men more or less functioned as professional moneylenders and women certainly were among their customers, borrowing amounts ranging between six and fifty-two qirsh.¹³⁹

An example of a female entrepreneur who comes across as a real wheeler-dealer is the colorful personage of the Barawi woman Fatima Mustafa. The fact that the qāḍīs always identify her without her third (grandfather's) name – as "Fatima Mustafa" *tout court* – suggests that she was well known to them and unmistakable to anyone in Brava. Fatima's first husband had been the Indian Ya`qūb bin Ismā`il, by whom she had a daughter. In the period covered by the records, she was married to the Hatimi elder Mohamed bin Sheikh Abba, by whom she had three children. Between 23 July 1899 and 15 December 1900, Fatima figured in the qāḍī's court records as a borrower of money seven times.¹⁴⁰ The first four loans she took out, all from the above-mentioned habitual moneylenders `Abd Ḥusayn and Sharif Abrar, involved amounts ranging from six and one-eighth qirsh to thirty qirsh. For these she pledged the following items as security: first, some silver jewelry and gold beads (QR585.2); then, a stone room referred to as "the house she had built" (QR795.1); then, golden earrings (QR801.1); and eventually (QR969.2) all of the

¹³⁸ For exceptions, see the cases of Kusey bint Osman (QR141.1) and Fatima Mustafa (QR11.77.2, 79.2, and 99.2), discussed below. Gerber ("Social and Economic," 234) notes that wives made loans to husbands in 17th-century Bursa.

¹³⁹ For women borrowing from `Abd Ḥusayn, see QR585.2, 587.2, 684.2, 745.2, 795.1, 801.2, 960.3); for loans from Sharif Abrar, see QR275.2, 564.1, 671.1, 712.2, 798.1, 836.2, 892.3, 956.3, 969.2.

¹⁴⁰ In this case both the published qāḍī's court records and QR11.

aforementioned items, namely the same golden earrings, silver pectoral, and house, plus an unexpected item, a dagger! For the fifth and largest loan of 30 qirsh on 19 August 1900 (QR II, 31.2), Fatima pledged as security 16 silver and 16 golden bangles – the silver bangles, it turns out, borrowed from her daughter (QR II.99.2). In addition, although Fatima had loaned her second husband funds to repair his house, in the same six week period (3 November - 15 December 1900), she also borrowed money from him, once for the high amount of 85 qirsh – a debt whose largest part she transferred to her brother (45 qirsh) and sister (11 qirsh) and that was repaid promptly – and once for 15 qirsh.¹⁴¹ The legal records do not say whether Fatima simply enlisted the help of her siblings to repay her husband or whether the former already owed her these amounts in connection to transactions not known to us; nor do they give us a full picture of the debt-credit relationship between husband and wife. Nevertheless, although the details of Fatima Mustafa's transactions remain hazy, the picture that emerges is clearly one of an eminently enterprising woman.

6. Labor

The qāḍī's records are silent about a last important way by which women obtained economic resources: their own labor. According to Islamic law, the basic needs of a married woman – accommodation, food and clothing – were to be satisfied by the husband, whom the law saw as the family provider.¹⁴² However, the wife's right to maintenance (nafaqa) became an issue in court only if a husband failed to provide it, for example during a long absence from Brava or because of willful neglect.¹⁴³ When a husband was present in a household and had resources, he was expected to supply much of the family's food; provide small amounts of money for items such as tea,

¹⁴¹ QR II.77.2: loan to husband (3 Nov. 1900); QR II.79.2: acknowledgement of debt to husband (4 Nov. 1900), and QR II.99.2: idem (15 Dec. 1900). The debt acknowledgements probably represent money the husband loaned to her.

¹⁴² Tucker *Women, Family and Gender*, 58-67.

¹⁴³ Examples of nafaqa feature in QR611.2 and QR II 67.1; lack of maintenance features in all cases in which women asked for dissolution of marriage.

sugar, and oil, and occasionally buy his wife and children clothes. Many women therefore supplemented the husband's contributions by way of their own labor, whether to help the family budget, to buy some luxury items such as jewelry, or perhaps to generate their first capital for further ventures.

Sources other than the qāḍī's records indicate that the women of Brava engaged in a number of income-generating activities carried out from their homes. Women supplied local coffee shops with cooked food or had these items sold in the market. Urban women who kept cows derived a small daily income from selling milk, from their homes, to regular customers. Other home-based economic activities involved producing items such as straw mats and *kofias* (men's skullcaps).¹⁴⁴ Women also wove *taranzi*, multi-colored strips sewn onto the edges of fabrics to prevent the fraying of the cloth, although otherwise weaving in Brava was work done outside of the house by men, in this period especially slaves.¹⁴⁵

Also resident in Brava were the female slaves and freedwomen of the Bravanese. The qāḍī's records are silent about what female slaves and freedwomen may have earned from the sweat of their brow.¹⁴⁶ As mentioned above, slaves feature in the qāḍī's records as property and gained legal personhood and autonomous agency under the law only when they obtained their freedom. From the field report about slavery in Brava Robecchi Bricchetti compiled in 1903 we know that some slaves were allowed to work autonomously in return for paying to their owners a substantial percentage of their daily or monthly income, while they kept only a part for themselves.¹⁴⁷ For example, a slave woman called Mana Ascia (Asha) paid four pesa a day to her owner, the Hatimi woman Alima (Halima), and the fourteen years-old male slave called Shekurria paid his owner, the Tunni Dakhtira

¹⁴⁴ Alessandra Vianello, "Brava Skullcaps (Makofia Ya Stunru)," *Halabuur*, 4, nos. 1-2 (2009): 37-39.

¹⁴⁵ Guillain, *Documents*, Partie II, Tome 1, 531; Chiesi, *La Colonizzazione*, 352. Robecchi Bricchetti, *Dal Benadir, passim*, mentions male slaves engaged in weaving cloth (*futa*).

¹⁴⁶ Robecchi Bricchetti, *Dal Benadir*, 201, refers to a slave woman making clay pots.

¹⁴⁷ Idem, 179-203.

woman Ascias Abdu (Asha Abdow), three pesa a day.¹⁴⁸ These sums, though amounting to less than one qirsh a month, could well have been enough to cover the basic expenses of the female owners.

The qāḍī's records include several cases of freedwomen who succeeded in accumulating some wealth.¹⁴⁹ The best example of an independent freedwoman who did well for herself is a woman called Rahma, whose patroness was Bay Asha bint Wali. No husband or children are recorded for Rahma. She first appeared in court claiming some money that the deceased slave Nasib owed her (QR387.2). At a later time the court confirmed her as the owner of an 'arīsh, a donkey, and some silver jewelry (QR584.2). Indirectly we find out that her 'arīsh was located very close to the house of her former owner and this suggests that the two women may have continued to have social connections (QR257.1 and QR584.2). Given their legal nature, it is not surprising that the qāḍī's records do not comment on how Rahma obtained these possessions. This is generally true for income-generating activities that mostly depended on women's labor and did not involve (or barely involved) capital investment – a feature of our source base we must keep in mind.

WOMEN'S PROPERTY

Brava's qāḍī's court records are an especially rich source for documenting Bravanese women's property, including (1) real estate (that is to say, stone houses, 'arīsh, and urban land), (2) slaves, (3) livestock, (4) money in cash, and (5) personal items such as jewelry, clothing, furniture, and household utensils.

1. Real estate

¹⁴⁸ *Idem*, 197 (No. 581 and No. 619 of his list of slaves). We changed Robecchi's spelling of Ascias to Asha.

¹⁴⁹ For examples of freedwomen, see Khadija, whose patron was the Arab Sheikh Ṣalāḥ bin Muḥsin (QR16.1) and Rahma, discussed in what follows. For an example of freedmen, see QR127.1 (Bashir) and QR1103.1 (Baraka). The latter's substantial estate, consisting of four slaves and 50 goats, worth together 250 qirsh, was at his death inherited by his Tunni Dafaradhi patron (QR1103.1).

Women's ownership of immovable assets in Brava was both widespread and of long standing. The records show that women owned or co-owned over fifty stone houses or parts of such houses, over twenty `arīsh, and about twenty pieces of urban land. In one case, a woman built her own house (QR795.1). Women also regularly pledged stone houses and rooms of such houses, as well as `arīsh, as security for loans.¹⁵⁰ As we saw above, some of the `arīsh women owned included space for business activities such as making ḥalwa or processing sesame oil. With the value of stone houses ranging in value from c. 90 to 650 qirsh and that of `arīsh dwellings normally from six to eleven qirsh, this represents a considerable amount of wealth in women's hands. Indeed, women owned (or had owned at some point in time) more than one half of all the houses mentioned in the records.¹⁵¹ The records indicate that women attached great importance to owning a home, also as a way of planning ahead for having some autonomy during their old age. This is perhaps why women obtained dwellings in return for their mahr (referred to above) and why a brother gave his widowed sister (by nadhiri) an `arīsh of her own (QR686.3, 826.1). The records contain two examples of women renting living space for themselves in houses that had once belonged to them or their family.¹⁵²

Moreover, women's ownership of real estate (and the application of the Shari'a rules governing it) must by the late nineteenth and early twentieth century have been in force in Brava for at least three generations, for the records mention individuals inheriting immovable property from their grandmothers and include references to women of previous generations who were already owners of real estate. For example in one case two men contested the ownership of some land, with

¹⁵⁰ For women pledging as security stone houses or rooms, see: QR154.1 159.1 564.1, 587.2, 606.1, 795.1 with 969.2, 871.3, 953.1, and 960.3. For women pledging as security `arīsh or rooms of such, see: QR47.1, 472.2, 673.2, 783.2, 836.2, and 949.3. [The "with" indicates that the two documents refer to the same case]

¹⁵¹ Vianello and Kassim, *Servants*, 35.

¹⁵² QR 397.1 with 396.2 and 301.3 with 297.1.

one claiming it had belonged to his two maternal aunts and the other that it had belonged to his mother, who had inherited it from her mother (QR276.1).¹⁵³

The qāḍī's court records therefore disprove oral sources recorded by Reese that women did not inherit real estate from their fathers' estates and that Sheikh Nureni, when he served as qāḍī before the Italian administration, had alienated some Bravanese merchants because he insisted on applying the Shari`a in this area.¹⁵⁴ That Asha bint Haji Awisa, the wife of the most prominent chief of all the Tunni and a Tunni Dafaradhi herself, owned a stone house valued at 500 qirsh (QR186.1), later inherited by her sons and daughters, further proves that women's house ownership in all sections of the Bravanese population was of long standing.

The records give no examples of urban women owning agricultural land. Because free women of the higher and middle strata did not usually go out during the day, it is possible that such fields would have been hard to reach for them, especially after the Webi Goofka, which had allowed for irrigated fields close to Brava, had been purposefully filled in and obstructed during regional conflict in 1876.¹⁵⁵ That the Bravanese owned a significant number of male and female slaves who worked fields and plantations at some distance from Brava was established and documented in great detail by the Italian traveler Robecchi Bricchetti. However, there are no women among the owners of agricultural slaves the latter lists by name.¹⁵⁶

2. Slaves

In Brava, in the period 1893-1900, slaves were still considered "speaking things" or "chattel" and as such were sold, hired out, pledged as security, or donated by their

¹⁵³ See also QR73.1, 107.1, 494.1. For individuals receiving houses by nadhiri from women of their parents' generation, see QR327.1, 497.1. QR282.1 mentions land originally owned by someone's grandmother.

¹⁵⁴ Reese, "Patricians," 298.

¹⁵⁵ Vianello and Kassim, *Servants*, 45. At the time under study, the fields owned by Bravanese were at a walking distance of nine hours from the town.

¹⁵⁶ Robecchi Bricchetti, *Dal Benadir*, 179-203.

owners at will.¹⁵⁷ However, slaves were at the same time not “just property” and had limited legal capacity, as is evident from records documenting their marriage.¹⁵⁸ It is evident from the qāḍī’s court records that urban women *routinely* owned slaves, often transferred or acquired ownership of them by nadhiri or inheritance, and used them as security for loans.¹⁵⁹ Women’s estates at death sometimes consisted to a substantial extent or entirely of slaves.¹⁶⁰ For example, the estate of Mana Fatima bint Sharif Alawi also included eight slaves, inherited by her two sons (QR490.1). The estate of Hijawo bint Mohamed Mote, who died on 21 July 1896, leaving a husband, mother, and seven children (of whom two girls), consisted of six slaves, valued at 250 qirsh (QR559.1). Of this amount, the husband received one-fourth, the mother one-sixth, and the children the rest, with the daughters receiving one half of the share of the sons (and paying only half of the court fee!).¹⁶¹ One of the sons must have provided some of the money to pay the others’ shares, for he ended up with four of the six slaves, namely Mariam Jahab, her two daughters Fadhuma and Kadisha, and her son Hinda, all children, the record specifies, of the slave Awregha (QR561.3).¹⁶² This last record suggests that Bravanese owners avoided separating slave children from their mothers. Heirs to an estate sometimes officially recorded their consent to have slaves pass into the ownership of one heir only, so that slave

¹⁵⁷ For “speaking things” (*shay’an nāṭiqan*), see, e.g., QR94.1; for “chattel” (*jins al-māl*), QR889.2.

¹⁵⁸ QR 448.2, 502.2. For example, male slaves had the right to decide whether and whom they would marry, even if they needed their owner’s permission. Compare Frederick Cooper, *Plantation Slavery on the East Coast of Africa* (New Haven: Yale University Press, 1977), 213: “[N]o slave law was ever able to treat slaves solely as chattel.”

¹⁵⁹ For women pledging slaves as security for loans, see QR246.1, 265.1, 418.1, 656.2, 739.1, 798.1, 808.1, and 900.3.

¹⁶⁰ QR559.1 and 988.1.

¹⁶¹ QR562.4 and QR562.5.

¹⁶² For other cases of one heir buying out other heirs, see QR 60.1, and 386.1. In other cases, slaves who were part of estates were sold by the qāḍī (QR376.2) or by auction (QR320.1, 405.1). Some individuals, including women, also co-owned slaves, that is to say owned a share in a slave (QR 386.1).

families were not split. Even when slaves were auctioned, it appears that mothers and children were not separated (QR405.1), a practice that, according to the Italian colonial administrator and scholar Cerulli, was not observed in Somalia's northeastern region.¹⁶³

Other evidence of women's ownership of slaves is provided by what the qāḍī's court records tell us about Ado bint Dera, mentioned above in the discussion of nadhiris and waqf. Already on 7 November 1895, Ado had donated a slave (*shay'an mu'ayyinān*) to a niece (QR221.1), who apparently received a document describing the slave. When Ado died on 5 September 1899, the qāḍī recorded further donations of slaves to another niece (QR629.1) and to a woman or girl who was possibly her grandniece (QR629.2).¹⁶⁴ By will Ado also left a female slave called Zafaran to her grandnephew Abdallah, who was to take care of her funeral expenses of 30 qirsh in return (QR628.3). Ado must therefore have owned at least six slaves during her lifetime.

In using the legal option of the nadhiri to benefit particular members of her family, Ado also ensured that at her death her slaves would not be sold to outsiders (as might well have happened as she had no living children of her own) but become part of the households of relatives of her choice. Another example of a female owner's concern about the fate of her slave is Bariso bint Mohamed bin Maie. Bariso defaulted on a loan for which she had pledged her female slave Sudi bint Maftah as security. In transferring the ownership of Sudi to her creditor, Bariso added a restrictive clause: "Abu Bana Ware is not allowed to sell her or transfer her elsewhere. The aforesaid slave woman should stay with her mother Suriya, slave of

¹⁶³ See Enrico Cerulli, Enrico. *Il Diritto Consuetudinario della Somalia Italiana Settentrionale* (Napoli: Tip. Francesca Golia, 1919), p. 21. The census of slaves in Brava provided by Robecchi Bricchetti in *Dal Benadir*, pp. 179-209, appears to confirm this, as mothers and children are always listed together as slaves of the same owner.

¹⁶⁴ In both cases, the record makes reference to another document, probably one of ownership. QR629.1 refers to "one piece of chattel (*jins al-mal*) whose name is specified in the original document" and QR 629.2 to "one piece of chattel with her children, whose characteristics are specified in the original document."

Bariso, in the town of Brava” (QR458.2). When transferred by sale or nadhiri, domestic slaves often stayed within the same family and this may have mitigated the negative impact of transfers of this kind, as such slaves would probably have continued to live in the same household performing the same tasks.¹⁶⁵

An analysis of the named and unnamed slaves mentioned in Brava’s qāḍī’s court records leaves many questions unanswered. The records do not allow us to know the total number of slaves present in Brava, because they mention only slaves that feature in the transactions recorded in the seven-year period of 1893-1900. The overall list, while too small to produce statistically meaningful information, nevertheless suggests that free urban women owned fewer slaves than men. The qāḍī’s records mention a total of 106 slaves by name (38 males, 61 females, 7 of uncertain gender). Of these women owned 21. For the more than 101 unnamed slaves, we identified 16 female owners with a total of 33 slaves, including children. Moreover, from the list of slaves whose names are mentioned in the records, we see that women owned more female than male slaves.¹⁶⁶ It is worth noting that female slaves are more often mentioned by name than male slaves (61 women compared to 38 men). This might indicate that female slaves had more individuality in the eyes of their owners, perhaps because they were part of the household.

Given that the price of male slaves ranged from 46 to 66 qirsh and that of women from 17 to 60, with a woman-with-baby valued at 100 qirsh (QR405.1), slaves represented a substantial amount of women’s wealth. Of course, slaves were people and, as people, they provided (were forced to provide) their owners with much more than wealth calculated in cold cash. The qāḍī’s court records give us very few glimpses of affect in the relations between owners and slaves. Some free urban men had concubines or *surias*, and we know from Robecchi Bricchetti and Brenner that some of these *surias* had a special status and supervised other slaves’

¹⁶⁵ In QR272.2, a slave whose name and sex are not identified was donated by his male owner to his wife, who donated the slave to her son, who then donated him/her to his wife.

¹⁶⁶ Women feature in the qāḍī’s records as owners of 17 female and only four male slaves.

work in the fields outside of Brava.¹⁶⁷ For free urban women, slaves represented domestic labor, including chores outside of the house such as fetching water. However, at times slaves may have also provided human company, for example to an elderly woman without a husband or surviving children such as Ado bint Dera. One gets a strong sense of the emotional bonds slave women might forge with the families of their owners from Naila Barwani's fictionalized but reality-based memoir about Zanzibar titled *Gone is yesterday (Imepita jana)*.¹⁶⁸ However, Brava's legal records do not allow insight into such an emotional dimension.

Female owners, like male owners, appear to have regularly manumitted their slaves. The records routinely identify a freedwoman by adding the name of her manumitter, whether male or female.¹⁶⁹ One such record (QR391.1) shows that a Hatimi woman, Mana Ado bint Bakar, had freed her female slave, whom she had named after herself (Mana Ado). Former owners and their freed slaves continued to be bound by close ties of mutual social and economic obligations. We learn, for example, that one freedwoman (perhaps a concubine) was apparently so trusted by her patron (and perhaps the qāḍī and community as well) that, at her patron's death, she had a large amount of gold and silver in her possession, which was then handed over to the guardian of the deceased's minority-age heirs (QR312.1). A freed person also remained legally tied to his or her patron, who at the former's death would inherit his or her estate (QR316.1). Even when a freedman died leaving a wife and children of his own, the former owner would share the estate with them (QR537.2).¹⁷⁰

¹⁶⁷ Brenner, "Renseignements," 147 ff.

¹⁶⁸ Naila Barwani, *Gone Is Yesterday (Imepita jana)*. In English and Swahili (Sandy, Bedfordshire: Bright Pen, 2010), and Strobel, *Muslim Women*, 11.

¹⁶⁹ For examples of freedwomen listed with their female patrons, see QR340.2, 367.1, 368.2, 391.1, 506.2, 584.2, and 647.3.

¹⁷⁰ A patron's right to inherit would at his death pass to his male but not his female descendants (En Nawawi, *Minhaj*, 543-544). An example is QR 573.1, which explicitly refers to legal texts (*kutub al-fiqh*). Stockreiter documents the persistence of patronage rights and the qāḍī's role in maintaining them decades after the abolition of slavery (*Islamic Law*, 164-165, 243). Brava's qāḍī's court records do not

3. Livestock

The people of Brava – especially women, the qāḍī's court records indicate – kept a number of milch cows that provided milk for local consumption. Women of all social backgrounds and named groups, including those of the Ashrāf, owned cows, and often also goats, donkeys and camels.¹⁷¹ -Apart from a source of nutrition, livestock was also productive capital and a store of wealth. However, because of the rinderpest of 1888, which predated the qāḍī's court records under study here by about five years, cattle herds were largely destroyed.¹⁷² This is visible both in the limited presence of cattle in the records before 1899-1900 and the high prices of cattle that do get mention. Although women's ownership of cattle is recorded for the whole period covered by the records, most cases date from 1899 onwards, when, about eleven years after the epidemic, the herds appear to have reconstituted themselves.

An example of women's livestock ownership is that of Bay bint Abdallah, also known as Bay Burasi, who, when she died on 12 March 1899, left to her son and daughter an estate valued at 165 qirsh. Apart from gold, money in cash, and an `arīsh, she left a bull worth 15 qirsh and a milch cow with its calf worth 40 qirsh (QR521.2). Compared to the average price of a male slave (46-66 qirsh), these are very high prices. Similarly, when on 17 June 1899 Fato bint Mohamed Manyo died, leaving her brother's son as sole heir, the cow-with-calf that constituted her estate was also valued at 40 qirsh (QR551.1). A third estate, which Mana Aba bint Haji Jinkismalleh, when she died on 30 April 1900, left to her two daughters and sister, included a cow worth 20 and a bull worth 14 riyāl (QR859.3). Women's ownership of cattle is also evident from the approximately 20 cases in which they pledged from

have any cases of freedwomen leaving an estate at death but they show clearly that freedwomen had a right to, and routinely received, their own mahr (QR345.2, 506.2, 603.1, 647.3, 949.4).

¹⁷¹ Vianello and Kassim, *Servants*, 35.

¹⁷² Vianello and Kassim, *Servants*, 45.

one to six cows as security for debts.¹⁷³ The records include cases in which women obtained cows in exchange for their mahr.¹⁷⁴ In most of these cases women “bought” a cow with calf from their husbands with a mahr of 60 qirsh , i.e. at a price higher than the usual market value of 40 qirsh.

The same type of record (that of women pledging property as security for debts) gives us an occasional glimpse of women owning goats, donkeys and burden camels. The donkeys and camels suggest that women may have been engaged in the local transport business, perhaps hiring out donkeys and camels to carry (or pull carts carrying) water, building materials, and so forth.¹⁷⁵ Livestock was clearly an important dimension of women’s wealth.

4. Money in cash

The qāḍī’s court records clearly show that Brava’s economy was highly monetized and that money in cash was part of everyone’s life, whether male or female, rich or poor, free or slave. The records specify the monetary value of every item being transacted and the qāḍīs evaluated all estates left at death in monetary terms. Money in cash was therefore part of urban women’s property. Not only was the mahr fixed and usually paid in cash, but women, like men, engaged in monetary transactions of many kinds; the records show them routinely borrowing and lending money, as well as acknowledging and claiming money debts. Here a few examples of what women might own in cash money must suffice. The estate Aisha bint Haji Awisa left to her husband, sons, daughters and mother on 20 May 1895– valued at 1100 qirsh, the second-largest estate featuring in the records and the largest left by a woman –included 270 qirsh in cash (QR186.1). The smaller but still impressive

¹⁷³ QR203.1, 275.2, 657.2, 712.2, 853.2, 856.5, 858.2, 865.2, 867.1, 879.1, 903.1, 922.1, 937.1, 947.1, 951.3, 956.1, and 956.3.

¹⁷⁴ QR377.1, 502.1, 515.1, 606.2, 896.1.

¹⁷⁵ Women pledged goats as security, always with other livestock (QR703.2, 903.1, 942.1). Sheep were rare in Brava’s hinterland. For donkeys, see QR 867.1, 942.1; for camels, QR 703.2, 973.2.

estate Bay Burasi left to her son and daughter on 12 March 1899 valued at 165 riyāl total, did not only include an `arīsh and cattle, as we saw above, but also sixty riyāl in cash (QR521.2). An example of a widow inheriting (rather than bequeathing) money in cash is Asha bint Adaw, who received one-eighth of her husband's estate, consisting of 178¾ riyāl.¹⁷⁶ This estate, valued at 2332 riyāl is the largest one mentioned in the qāḍī's court records. That freedwomen too might own substantial amounts of cash is evident from a case of debt acknowledgment in favor of Khadija, who was owed 90 qirsh (QR16.1).

The records do not often show women in possession of substantial amounts of money in cash. Where they do, it appears that women either inherited cash money or received the monetary value of their share of an estate. Since women did not receive their mahr at the time of marriage, they often borrowed money when they needed cash.

5. Jewelry, clothing, and household items

Although this was not their objective, the qāḍī's court records at times allow us to visualize the material dimension of everyday life in Brava. This is somewhat true when it comes to women's gold and silver jewelry, articles of clothing, and household items, which feature in court records primarily as items of property donated, bequeathed, and pledged as security. Gold and silver ornaments fulfilled many functions, as they were dependable stores of value, potential investment capital, indicators of their owners' social rank, and complements to feminine beauty.¹⁷⁷

Gifts of gold also marked particular relationships and lifecycle events. It was custom that a mother, at her daughter's marriage and if circumstances allowed, would give her daughter golden jewelry, either passing some of her own on to the

¹⁷⁶ QR214.1. She received a further amount when the deceased's debtors paid up (QR235.1).

¹⁷⁷ Men too owned gold and gold jewelry. One man's estate included 154 grams of gold jewelry (QR162.2, 697.1), valued at 100 qirsh.

daughter or selling some of her own gold to exchange it for more fashionable pieces for the bride.¹⁷⁸ It is not surprising that such familial gifts are usually not officially documented in the qāḍī's court records, with their focus on property transactions and disputes. However, we do get glimpses of what jewelry (gold and silver) women owned and how they acquired it and passed it on. Occasionally financial transactions such as bequests and nadhiris bring the relationships women fostered and favored clearly into focus.

Fashions in jewelry have changed (and continue to change) very rapidly in the whole Benadir and therefore many names of particular items are now not recognizable. This is the case of the golden necklace called *makka*, which in one case is said to have weighed 31.5 grams (one-and-one-eighth waqiyyas).¹⁷⁹ Only a few gold ornaments (like the *shkoya* necklace, which in one case weighed 1½ waqiyyas (42 grams) and thus may have been worth between 27 and 40 and qirsh (QR321.1), remained a favorite of the women of Brava throughout the twentieth century. It is a golden necklace of hollow golden (and sometimes also coral) beads, together with round coin-shaped golden pieces and a porte-Koran pendant in the center.

By piercing not only the earlobe but also the auricle, Bravanese women could wear a larger pairs of golden earrings together with many smaller ones. In the qāḍī's court records the *matenge*, large bow-shaped earrings to be worn in the earlobe, are usually mentioned together with the smaller rings called *ambali*. The pair of *matenge* mentioned in QR428.1 weighed 17.5 grams and was sold for 12½ riyāl, again representing a substantial amount of wealth.

¹⁷⁸ A goldsmith is mentioned in QR 690.2, QR II 74.1, 76.2 and local silversmiths are mentioned in Sorrentino, *Ricordi*, 432.

¹⁷⁹ QR428.1 and see also QR 335.1. The records give the weight of gold jewelry in waqiyyas and fractions thereof. If one converts waqiyyas into grams on the basis of 1 waqiyya = 28 grams, one finds that in the qāḍī's court records the price of gold fluctuates from as high as 0.95 qirsh per gram (QR521.2) to as low as 0.64 qirsh per gram (QR697.1). This variation may have been due to better or more fashionable workmanship, but may also reflect different qualities of gold. In recent times Somali gold was usually 22 carats, but older pieces were at times 14-carats.

The best indication of the staggering amount of gold a high-status Bravanese woman might own is the case of the already often-mentioned Ado bint Dera. The occasion for her detailed description of her gold before the qāḍī was an unfortunate one for Ado, for she had lent it to her nephew, who died leaving many debts. As a result, Ado lost almost all the gold she described in such detail to the qāḍī on 29 November 1897 (QR321.1).¹⁸⁰ Ado was allowed to pick out two earrings weighing ½ waqiyya (14 grams) from the estate but, although she was added to the long list of hopeful creditors, she lost the remaining gold, weighing 19½ waqiyyas (546 gram) and worth between c. 350 and 519 qirsh.

Ado bint Dera's case was exceptional. Other women belonging to "notable" families, such as the daughter of the Barawi elder Abu bin Maie Maioke, owned very modest amounts of gold (only 28 grams),¹⁸¹ and the wealthiest Tunni woman, Asha bint Haji Awisa, wife of the most important Dafaradhi elder, left at death gold and clothes worth together only 100 qirsh (QR186.1). However, given that Asha's large 1100-qirsh estate also included a house worth 500 qirsh, 270 silver qirsh in cash, and 200 qirsh in commercial goods, Asha bint Haji Awisa may have followed a different investment strategy than Ado bint Dera.¹⁸²

In contrast to the Palestinian context analyzed by Moors, gold was not the most significant source of wealth for Bravanese women and they did not obtain most of their gold through inheritance or marriage (mahr).¹⁸³ The qāḍī's court records include only two cases in which the mahr was paid in gold (and silver), but even then the mahr's value was recorded in qirsh.¹⁸⁴ When an inheritance consisted of different items including gold, a woman did not usually or necessarily inherit the

¹⁸⁰ QR320.1-321.1, 4 Rajab 1315, the date at which Haji Abba [a.k.a. Jabir] bin Rufai's estate was auctioned off. This golden jewelry, which included necklaces called *idafu*, *lkunzi*, *shkoya*, and *ukanme* and earrings called *ambali*, *matenge* and *rubāb*, weighed together 20 waqiyyas (560 grams).

¹⁸¹ QR985.2.

¹⁸² QR7.1 is the only case in which a woman pays someone in gold (two waqiyyas) for several pieces of cloth.

¹⁸³ Moors, "Women's Gold," 103.

¹⁸⁴ QR176.1, 697.1-698.1.

gold. For example, when a Tunni Goigali woman died leaving an `arīsh, chest, bed, clothing, and gold, neither her daughter nor the three granddaughters received (and perhaps chose to receive) any gold. Instead they were given the monetary value of their shares, after a grandson had bought everything in the estate (QR428.1). As in Palestine, however, women often received gold as “premortem gifts,”¹⁸⁵ which in Brava, as we saw above, took the form of a nadhiri, often from a husband, mother, aunt or grandmother.

The qāḍī’s court records show that silver bangles were popular with women of all social classes, from high to low. Women often owned bangles in sets of eight or ten and may have accumulated such a number in the course of their lives; in the records we see small numbers of both bangles and anklets passing as gifts from mother to daughter.¹⁸⁶ While women wore jewelry as body ornaments, given that bangles may have weighed between 45.5 and 46 grams, they also represented a small but versatile store of wealth and capital to be put to work! This is particularly evident in the case of the dynamic Fatima Mustafa. Although in the qāḍī’s court records, bangles are often pledged as security for loans (in some cases in the ratio of one bangle per qirsh borrowed),¹⁸⁷ in Fatima Mustafa’s case, we can follow how she used bangles and other jewelry to obtain loans, which helped her to accumulate property, which she then leveraged to obtain larger loans.¹⁸⁸ In the period for which we have records, Fatima took out four loans from well-known moneylenders. We also learn that the sixteen bangles that were part of what she pledged as security for a sixty-day loan of 30 qirsh on 20 August 1900 (QR1131.2) had been borrowed from her daughter (QR1199.2).¹⁸⁹ Clearly Fatima leveraged family connections as well as turning to non-related moneylenders.

¹⁸⁵ Moors, “Women’s Gold,” 103.

¹⁸⁶ QR967.1, 859.3. QR330.1 mentions anklets as part of a woman’s estate.

¹⁸⁷ In QR796.1 a woman borrowed 10 qirsh against 10 bangles and in QR779.1, 8 qirsh against 8 bangles.

¹⁸⁸ Fatima Mustafa appears to have pledged her silver *namsha* pectoral as security three times (QR585.2, 795.1, and 969.2).

¹⁸⁹ See also QR585.2, 795.1, QR.II, 31.2, 79.1, and 99.2.

For lower-status women, silver jewelry was both a significant store of value and, because the designs replicated the more expensive gold jewelry, a source of prestigious adornment. This is suggested by the case of the freedwoman Rahma, who came to court to register with the qāḍī her ownership of, among other things, twelve silver bangles and an *idafu* necklace that was a silver version of the golden ones owned by women such Ado bint Dera mentioned above.¹⁹⁰

Of women's dress, the qāḍī's court records give just a few glimpses. One garment mentioned is the *ishogga* (or *shogga*, Somali *shukka*), a black outergarment urban women wore outside of the house. The *ishogga* features twice in the records, once in the estate left at her death by the Tunni Goigali woman Aisha Abdi, who left an *ishogga* of one riyāl and two riyāl worth of expensive, imported *subahiya* striped silk (QR428.1) and once in the estate of a man called Abu Nuri al-Baysari, who may have traded in cloth and jewelry. The estate was complex and Abu Nuri's wife and six children (three boys and three girls) received their shares partly in kind. The share put in trust for Abu Nuri's young daughter Mana Nana took the form of "a chest containing a *shadar* [a white fabric with colored edges], two bangles, and coral beads, for a total of six-and-three-quarters riyāl." Most of the cloth and jewelry of the estate, however, came to make up the shares of two of Abu Nuri's sons. The cloth included a locally made *ishogga* as well as, imported from India, *msuwanis* (in Somali called *shaash*), headkerchiefs of red-and-black patterned silk worn exclusively by married women, and several pieces of *banaghari*, light fabric used for scarves (QR431.1). That clothing could be a substantial part of women's property is evident from the estate of Fāṭima bint Yisir bin `Abūd of the `Umar Bā `Umar, who, among other things, left nine-and-one-quarter qirsh worth of clothing (not itemized). This represented over 24% of her estate of 37 1/3 qirsh (QR371.1).

In general, houses in Brava were not lavishly furnished. Rooms in stone houses were multi-purpose, and even the *barza*, a space in which guests could be entertained and meetings held, was used for such purposes only occasionally.¹⁹¹

¹⁹⁰ See QR584.2 for Rahma's silver *idafu* and QR321.1 for Ado's golden one.

¹⁹¹ See Guillain, *Documents*, Partie II, Tome I, 130-131, for Zanzibar.

However, we learn from the qāḍī's court records that women owned certain items of furniture. Among these was the *shabriye*, the cloth bed canopy (QR330.1, 336.2, and 428.1). Four-post canopied beds, imported from Zanzibar, where they are now collector's items, were common in the houses of Brava's better off families. Of massive hard wood, with head- and footboards that were intricately carved and decorated with panes of painted glass, they could be more than two meters high. By placing the bed's four feet on wooden blocks, the space underneath was turned into storage space where bundles of clothes, containers for dry food, and so forth were hidden from sight by the overhanging bedclothes. Canopies of two such beds were left as part of the estates of two women. That left by the Hatimi woman Bay Asha bint Sadali fetched, when auctioned, one riyāl and 62 dokra (QR330.1), while that left by the Tunni Goigali woman Aisha Abdi fetched, when sold, one riyāl (QR428.1).

Bravanese house furniture also included wooden chests of different sizes. The largest chests were often huge and served as storage for items needed only occasionally (such as food trays and serving bowls used for large ceremonies) or sacks of silver coin. The qāḍī's court records mention the *mandusi*, a middle-sized chest that could be used to store clothes, and the *boweta*, a portable box, with inside compartments, in which women kept jewelry, incense, perfumes, and documents. Many of the chests mentioned in the records belonged to women. Mana Fatima bint Abanur sent her agent to court to claim a large chest from the estate of Qullatten bin Haji Abba (QR737.2). Of the *mandusi* chests mentioned, a poor quality one featured as part of a woman's estate (QR336.2), but the one Nur bin Ali Nur borrowed from his wife and her sister was valuable enough to be part of the security he pledged for a loan from the professional money lender `Abd Ḥusayn (QR478.2). Small *boweta* chests also receive mention in the qāḍī's court records as part of women's estates.¹⁹²

In general the qāḍī's court records do not attach much importance to household goods among women's possessions. The qāḍīs never itemized them, except when they were sold individually at auction. Often the records lump them

¹⁹² In QR 428.1 and QR330.1 the boxes were valued respectively at two riyāl and one riyāl plus seven dokra.

together with other things, describing them as “broken silver and house implements valued together at 30 qirsh” (QR186.1). We can therefore say with some confidence that in Brava, at the time of study, valuable household goods and furniture were not part of a woman’s “trousseau,” as was often the case in Ottoman lands. Ottoman ladies appear to have had a much larger range of possessions, including vessels of precious metal, carpets, china, and furs, which they could sell at high prices when they needed money in cash.¹⁹³ In Brava chairs and a carpet (*zulia*) only feature in the estate of Kanji Rajpar’s local agent Jabir bin Rufai (QR320.1), and the household goods of even a wealthy man such as Moallim Omar Aboke consisted only of mats, dishes, metal trays, cups, some chests and containers, together with a few garments and a skullcap (QR389.1).

In some cases the material value of items donated or bequeathed is so small that we may consider them keepsakes. Thus in the nadhiri the Barawi woman Asha bint Maie made in favor of her three children, the latter received, apart from real estate, personal items such as a special dress, a one-hundred-bead rosary made of fishbone, and some gold (QR223.1).

CONCLUSIONS

The source base that allows us a view of late nineteenth-century Brava through its women also qualifies and limits that view. The qāḍī’s court records show us free, Muslim, married urban women, widely varying in social status, wealth, and named group affiliation, as they appeared in court to claim, defend, or create a formal record of their rights in the area of property. They provide insight into what women owned (from houses, slaves and livestock to money, jewelry and cloth) and how they obtained economic resources and wealth, venues that, apart from dower at marriage, were the same as men’s. However, what the 1,924 records of mostly

¹⁹³ Tucker (*In the House*, 55-56) mentions that the value of this *jihaz*, which was provided by the bride's parents (esp. mother), could very high, even, on occasion, double the value of the mahr. See also Tucker, *Women, Family and Gender*, 152, and Agmon, *Family and Court*, 179, note 19.

small-scale legal transactions between private individuals allow us to see goes beyond this rather prosaic cataloging of property rights and items. They extend our understanding of many aspects of the town of Brava in this time-period, including its local economy, social stratification, and justice system; and they show us that Bravanese women, who often remain invisible in other sources, were an intimate and dynamic part of the social fabric.

The qāḍī's court of this period not only mediates what we learn about Brava in this essay but also was itself a major player in shaping the social relations of late-nineteenth-century Brava. Although 1893-1900 falls within the period of Italian colonial rule, we argue that Italian influence on the qāḍī's court was still limited in this period, in contrast to, for example, Zanzibar, where the British interfered with the justice system and the qāḍī's courts from even before the formal declaration of the protectorate in 1890 and dramatically transformed it in the years that followed. Similarly, although the abolition of slavery was 'in the air' in Brava in this period, in contrast to Zanzibar and the Sultan's coastal dominions, where the British started the process of the abolition of slavery in 1897,¹⁹⁴ the Italian administration did not introduce such legislation until 1903, just beyond the period under study here, and began to implement it even later. This means that, in the context of the East African coast, the urban Islamic justice that comes into view in the qāḍī's court records of Brava gives us a glimpse of early-colonial social realities.¹⁹⁵

The records indicate that the qāḍīs of Brava of this period took their role as servants of the Shari`a very seriously and were well versed in Islamic law and familiar with the core Shāfi`ī legal texts. At the same time, they were an intrinsic

¹⁹⁴ McMahon, *Slavery and Emancipation*, 4, 51. In Zanzibar and its coastal dominions, the stages in which the British formally abolished slave status differed from area to area. By 1909 it was abolished for all individuals except surias, for whom a separate law was issued in 1910.

¹⁹⁵ East African women's dynamic agency in the Islamic courts has been documented by Hirsch (*Pronouncing and Persevering*, 243) for Mombasa and Malindi in the 1980s and 1990s, and for Zanzibar from c. 1900 onwards by Stockreiter (*Islamic Law*, 110-111). Brava's qāḍī's court records extend the baseline for such agency somewhat further back.

part of the community and intimately familiar with the people who came to their court. In this context, Peirce's insight into pre-modern Ottoman justice, that the individual was not "a notional entity," a pea like other peas in the pod of society, is fully relevant to Brava.¹⁹⁶ This meant that the qāḍī often knew the individual in his court room personally and as a member of a particular family and network, that is to say, as Peirce put it, as "a particular combination of social and civil attributes to be scrutinized and entered into the calculus of judgment."¹⁹⁷ This context-specific "intimate" character was precisely what the Ottoman state's efforts at modernization of the justice system from the sixteenth century onwards, as described by Peirce and Tucker, and British colonial transformations of the qāḍī's courts on Zanzibar and the East African coast from the mid-nineteenth-century onwards, as analyzed by Stockreiter and McMahon, were meant to change.¹⁹⁸ In both cases, establishing state authority over Islamic law meant making it less responsive to its local context and making it more predictable and verifiable by centralizing, systematizing, and bureaucratizing both the law and the training and functioning of the qāḍīs who administered it. Brava's qāḍī's court gives us a view of Islamic law in a small town just as such transformation was getting underway and before it had a great impact.

In Brava, apart from an individual's personal character and reputation, often well known to the qāḍī, and the fact that he or she was a Muslim, which in Brava was a given, a number of other aspects of identity carried great social meaning. To have legal agency at all, an individual could not be a slave. As mentioned above, in accordance with Islamic law and social practice of the time, slaves feature in the qāḍī's records only as objects of transactions, while by the same token men and

¹⁹⁶ Peirce, *Morality Tales*, 143.

¹⁹⁷ *Idem*.

¹⁹⁸ Stockreiter notes that "the fact that the kadhi's knowledge of people in his community and their affairs could be the basis for legal action was an alien concept for the [British] judge" (*Islamic Law*, 95). For state modernization of justice see Stockreiter, *idem*, 31, 51, 70 ff., and McMahon, *Slavery and Emancipation*, 73, 80, 94ff. (for East Africa); Peirce, *Morality Tales*, 98-9, 234, and Tucker, *Women, Family, and Gender*, 19, 223, and *passim* (for Ottoman lands and beyond).

women who obtained their freedom could and did exercise legal agency in the court. Being free was therefore a foundational social attribute of individuals coming to Brava's qāḍī's court. The social status of a person's family and named social group, ranging from the high-ranking Ashrāf to the low-ranking former slaves, was another important aspect of identity, and this status intersected with the individual's (or family's) economic wealth. Moreover, while male outsiders freely used the court, whether one was a resident of Brava or not was undoubtedly significant as well.

Gender was a fundamental aspect of the bundle of "social and civil attributes" that made up people's identities and one that affected many aspects of women's social existence and legal personhood. As mentioned above, there were clear constraints on women's physical presence outside of their homes. However, as is evident from this essay, under Islamic law, the women of Brava had explicit rights, especially well established in the area of property, and were entitled to assert these rights in court. In both Ottoman and East African contexts, scholars of qāḍī's court records have noted women's impressive legal and economic agency in societies that were in many other aspects definitely patriarchal. Thus Stockreiter writes about early twentieth-century Zanzibar:

[The] *kadhi's* court records demonstrate that the supposedly dominant patriarchal ideology did not thoroughly inhibit women's engagement in economic transactions and pursuance of their legal rights as wives and kin in the *kadhi's* courts.¹⁹⁹ ... [G]iven the ease with which women from all social backgrounds addressed the *kadhi's* courts, it is difficult to see that women actually imperiled their respectability in seeking legal redress.²⁰⁰

The intersection between local context and Islamic law shaped women's legal agency in Brava as it did in other Muslim societies. In Brava three aspects of this

¹⁹⁹ Stockreiter, *Islamic Law*, 15. See also Gerber, "Social and Economic," 240, on Ottoman Bursa.

²⁰⁰ Stockreiter, *Islamic Law*, 72.

intersection, of Islamic law dispensed in a local context, help account for women's dynamic presence and agency in court.

First, the qāḍī's court of 1893-1900 was socially embedded in a small community where most people knew each other and many were related. This familiarity may have facilitated women's access to the court, as it did in Zanzibar, where, in Stockreiter's words, the "social embeddedness of the Islamic court system implied the easy accessibility of kadhis and their flexibility."²⁰¹ McMahon's suggestion that qāḍīs on British-ruled Pemba often asked women to hire a licensed agent to represent them in court because "speaking to unrelated women was not appropriate for them" makes no sense for Brava.²⁰²

Second, the sources for Brava confirm what other studies of Islamic law courts have also found, namely, that qāḍīs were not biased against women beyond the social and legal norms of their day. In this respect Brava was similar to nearby early twentieth-century Zanzibar, where Stockreiter found that qāḍīs "enforced women's rights as articulated in the legal doctrines,"²⁰³ as well as to Islamic courts in Ottoman lands across time. There, Tucker concludes from her survey of the historiography, men and women flocked to the Islamic courts in the belief "that the courts were likely to hear them out and provide redress." She adds:

And, at least for the periods for which we have some systematic information, their trust was not misplaced: if they could demonstrate that their rights had indeed been violated, the judge was likely to find in their favor. The apparent ideological commitment of the court and its personnel to upholding rights thought to be inscribed in the shari`a, regardless of the

²⁰¹ *Idem*, 86.

²⁰² McMahon, *Slavery and Emancipation*, 107.

²⁰³ Stockreiter, *Islamic Law*, 66 notes that "it was the substance and structure of Islamic law that enabled women and the socially marginalised to bring claims to the *kadhi's* courts."

social power of the plaintiff, made sure that those rights remained part of the collective memory of the community.²⁰⁴

In other words, although women did not have full equality with men under the law, in Brava, as in the Zanzibari and Ottoman courts referred to above, qāḍīs appear to have upheld women's rights in accordance with the provisions of the law.

Moreover, in the area of property rights, Brava's qāḍīs' rulings in cases involving women as plaintiffs or defendants did not appreciably differ from when the parties were male. Peirce drew the same conclusion from the courts records of sixteenth-century Ottoman Aintab: "Procedurally, the court of Aintab treated women and men equally in property cases, once their cases came to court." While she notes that the court records cannot help us establish what happened to such cases before and after they came to court, or when they did not reach the court at all, her statement about the procedure at court is unambiguous: at court, she writes, "property provided its own script: women and men at court talked about property in the same language."²⁰⁵ In fact, occasionally, the qāḍīs of Brava may have even favored women, for the court records include a favorable ruling in a small number of cases in which the evidence presented would suggest a different outcome (QR827.2). This may reflect their embeddedness in the community and knowledge of the individuals and their circumstances.

Third, Bravanese women were gendered female in a man's world as part of often tightly knit and interconnected families. While someone's gender influenced how he or she functioned in society and was treated under the law, the interests of individual men and women were closely intertwined with those of their families and other social networks. Peirce powerfully articulated this qualification of the impact of gender on women in her study of sixteenth-century Ottoman Aintab:

²⁰⁴ Tucker, *Women, Family, and Gender*, 33.

²⁰⁵ Peirce, *Morality Tales*, 210

Finally, because the lives of all women and men were embedded in family relationships, the separate interests of the sexes were offset by the web of concerns and ideals that family generated. In other words, women's interests were protected in part by a view of society as an intricately woven fabric in which individual rights could not be unraveled from mutual responsibilities, especially those of the family.²⁰⁶

In Brava too, women's embeddedness in the family blunted the sharp edges of gender differentiation and may have facilitated the ease with which they appear to have accessed the qāḍī's court.²⁰⁷

A comparison between Brava and the East African and Ottoman contexts referred to above yields differences as well as similarities. As we saw above, Brava's qāḍī's court also had a number of unique features, ranging from fundamental difference to minor variation, some of which can be summarized as follows. In Brava only married women appeared in court as independent agents capable of managing and disposing of their property. This in spite of the fact that most legal texts link a woman's legal capacity to her legal majority as signaled by sexual (and, in the views of some jurists, mental) maturity.²⁰⁸ Moreover, in Brava women never appeared as witnesses, even though the Shari`a, especially the Shāfi`ī school, admitted their testimony in all matters of property as long as it went together with that of a man at a ratio of two to one.²⁰⁹ In other words, in Brava, women routinely appeared in court as plaintiffs and defendants addressing their own rights and obligations, but did not

²⁰⁶ Peirce, *Morality Tales*, 7.

²⁰⁷ In her study of contemporary coastal Kenya, Hirsch concluded: "Most women who bring claims to court are awarded with favorable decisions in cases and mediations. In 108 cases brought by women against men in the Kadhi's Court of a large coastal town in 1985-86, only two were decided against the woman" ("Kadhi's Courts," 218).

²⁰⁸ Tucker, *In the House*, 119-120.

²⁰⁹ En Nawawi, *Minhaj*, 218.

give testimony in other people's cases.²¹⁰ In Brava, however, women were given the opportunity to take the oath in precisely the same circumstances as men, and always took oaths by appearing before the qāḍī in person, even when they had filed their suit through an agent. This was different from, for example, the court of sixteenth-century Ottoman Aintab, where women were rarely invited to take oaths.²¹¹

Another difference from the situation noted for some of the Ottoman courts is that in Brava even women of the highest status groups appeared in court to uphold their rights or record their transactions, including women of the Ashrāf group (QR67.1, 275.2), wives of prominent ulama (QR228.2) and qāḍī's relatives (QR302.3).²¹² Furthermore, although the gender norms of Bravanese society were in many aspects socially conservative, for example with regard to women's seclusion, the qāḍī's court records clearly show that women had legal and commercial dealings with men who were not part of their families or even of their own named groups. Women traded and formed business partnerships with such unrelated men – always freeborn and usually of the same social class – and also conferred powers of attorney to them, so that these male agents could represent them in court or otherwise pursue their legal rights on their behalf. This is, for example, quite different from the situation noted by Peirce in Ottoman Aintab, where women used their slaves, servants and clients to conduct their public business.²¹³

As for women and real estate, it is evident that in Brava women were not subject to any restriction in their ownership and disposal of immovable property. Women's real estate transactions followed the same legal venues men used: they bought and sold it, used it as security, and received and transferred it by way of pious donation, family trust, and inheritance. Moreover, in contrast to men, who did

²¹⁰ See Mohamed Fadl, "Two Women, One Man: Knowledge, Power, and Gender in Medieval Sunni Legal Thought," *International Journal of Middle East Studies*, 29 (1997): 185-204 for reflections why this might be so.

²¹¹ Peirce, *Morality Tales*, 176.

²¹² *Idem*, 6, 148.

²¹³ Peirce, *Morality Tales*, 156.

not use this legal tool even once in the seven years covered by the qāḍī's court records, women also bequeathed real estate by will. In Brava, as in Ottoman Aintab, women feature in the qāḍī's court records more often as sellers than as buyers of real estate. In Brava, however, this was not because women preferred cash money and material goods to houses or land, as Peirce suggests for Aintab, but because they most commonly acquired real property by way of inheritance or pious donation – the latter a uniquely common and multi-faceted financial instrument in Brava.²¹⁴

Finally, Bravanese women were not only legally acknowledged as heirs but also received the shares of real property to which they were entitled under Islamic law.²¹⁵ This is different from other Islamic contexts, in which fathers sometimes donated houses to their oldest sons or women acquiesced when brothers usurped their inheritance rights to real estate.²¹⁶

This study of Brava confirms a crucial finding of the historiography about women and Islamic courts in East Africa and the Ottoman Middle East, namely, that women's legal personhood and financial and economic agency, while qualified by gender, were well established and fully acknowledged under the law. However, the question whether or to what extent our findings about the women of Brava may apply to Somali women more broadly, including those belonging to inland communities that derived their livelihood from farming and (nomadic) livestock husbandry, can, given the limited source base for the latter, not currently be answered.

²¹⁴ *Idem*, 222.

²¹⁵ This is evident, for example, from transactions in which women disposed of property they had earlier on inherited (QR299.1, and 248.1-370.1).

²¹⁶ Peirce, *Morality Tales*, 215; Moors, "Women's Gold," 106-107. In 17th-century Bursa, Gerber argues, women's inheritance rights (including shares in real estate) did not just exist in theory ("Social and Economic," 232).

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