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LAWS OF KENYA



MAGISTRATES' COURTS ACT

CHAPTER 10

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CHAPTER 10

MAGISTRATES' COURTS ACT

[Date of assent: 4th July, 1967.]

[Date of commencement: 1st August, 1967.]

An Act of Parliament to establish magistrates' courts; to declare the jurisdiction and provide for the procedure of such courts; to provide for appeals in certain cases; and for purposes connected therewith or incidental thereto

[Act No. 17 of 1967, Act No. 8 of 1968, Act No. 10 of 1969, Act No. 14 of 1972, Act No. 4 of 1974, Act No. 6 of 1979, Act No. 14 of 1981, Act No. 11 of 1983, Act No. 19 of 1984, Act No. 18 of 1986, L.N. 47/1987, Act No. 20 of 1989, Act No. 18 of 1990, Act No. 14 of 1991, Act No. 11 of 1993, Act No. 2 of 2002, Act No. 12 of 2012.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Magistrates' Courts Act.

2. Interpretation

In this Act, except where the context otherwise requires—

“**claim under customary law**” means a claim concerning any of the following matters under African customary law—

- (a) land held under customary tenure;
- (b) marriage, divorce, maintenance or dowry;
- (c) seduction or pregnancy of an unmarried woman or girl;
- (d) enticement of or adultery with a married woman;
- (e) matters affecting status, and in particular the status of women, widows and children, including guardianship, custody, adoption and legitimacy;
- (f) intestate succession and administration of intestate estates, so far as not governed by any written law;

“**district magistrate's court**” means a district magistrate court established by section 7 of this Act;

“**Judicial Service Commission**” means the Judicial Service commission established under section 68 of the Constitution;

“**magistrate**” means a chief magistrate, a senior principal magistrate, a principal magistrate, senior resident magistrate, a resident magistrate or district magistrate; and each of those terms applies to a person respectively appointed by the Judicial Service Commission under section 69 of the Constitution to, or to act in, the particular office;

“magistrate’s court” means the Resident Magistrate’s Court or a district magistrate’s court;

“magistrate’s court of the first class” means the Resident Magistrate’s Court, or a district magistrate’s court held by a District Magistrate having power to hold a magistrate’ court of the first class;

“magistrate’s court of the third class” means a district magistrate’s court held by a District Magistrate having power to hold a magistrate’s court of the third class;

“order” includes a conviction, a sentence, a decree and any other decision or determination of a court;

“Resident Magistrate’s Court” means the court established by section 3.

[Act No. 14 of 1972, Ninth Sch., Act No. 4 of 1974, Sch., Act No. 18 of 1986, Sch., Act No. 14 of 1991, Sch.]

PART II – RESIDENT MAGISTRATE’S COURTS

3. Establishment of Resident Magistrate’s Court

(1) There is hereby established the Resident Magistrate’s Court, which shall be a court subordinate to the High Court and shall be duly constituted when held by a chief magistrate, a senior principal magistrate, a senior resident magistrate or a resident magistrate.

(2) The Resident Magistrate’s Court shall have jurisdiction throughout Kenya.

[Act No. 4 of 1974, Sch., Act No. 18 of 1986, Sch., Act No. 14 of 1991, Sch.]

4. Criminal jurisdiction of Resident Magistrate’s Court

The Resident Magistrate’s Court shall have and exercise such jurisdiction and powers in proceedings of a criminal nature as are for the time being conferred on it by—

- (a) the Criminal Procedure Code (Cap. 75); or
- (b) any other written law.

5. Civil jurisdiction of Resident Magistrates Courts

The Magistrates’ Courts shall have and exercise jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter in dispute does not exceed—

- (a) seven million shillings for a Chief Magistrate;
- (b) five million shillings for a Senior Principal Magistrate;
- (c) four million shillings for a Principal Magistrate;
- (d) three million shillings for a Senior Resident Magistrate; and
- (e) two million shillings for a Resident Magistrate.

[Act No. 4 of 1974, Sch., Act No. 6 of 1979, Sch., Act No. 11 of 1983, Sch., Act No. 18 of 1986, Sch., Act No. 14 of 1991, Sch., Act No. 11 of 1993, Sch., Act No. 2 of 2002, Sch., Act No. 12 of 2012, Sch.]

PART III – DISTRICT MAGISTRATES' COURTS

6. Powers of District Magistrate

A district magistrate shall have power to hold a magistrate's court of such class as is designated by the Judicial Service Commission.

7. Establishment of district magistrate's courts

(1) There is hereby established for each district a district magistrate's court, each of which shall be a court subordinate to the High Court and shall be duly constituted when held by a District Magistrate who has been assigned to the district in question by the Judicial Service Commission.

(2) The Chief Justice may, by order, designate any two or more districts a joint district for the purposes of this Act, and thereupon those districts shall be deemed to be one district for those purposes.

(3) A district magistrate's court shall have jurisdiction throughout the district in respect of which it is established:

Provided that the Chief Justice may, by notice in the *Gazette*, extend the area of jurisdiction of a district magistrate's court, and the Court shall then have jurisdiction throughout the extended area.

8. Criminal jurisdiction of district magistrate's court

(1) A district magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a criminal nature as are for the time being conferred on district magistrates' court by—

- (a) the Criminal Procedure Code (Cap. 75); or
- (b) an order under subsection (2) of this section; or
- (c) any other written law.

(2) The Chief Justice may, by order, empower magistrates' courts of the third class to deal with particular offences in addition to those which such courts may deal with by virtue of paragraphs (a) and (c) of subsection (1):

Provided that an order under this subsection shall not be made unless a draft thereof has been laid before the National Assembly and approved by resolution of the Assembly.

9. Civil jurisdiction of district magistrate's court

A district magistrate's court shall have and exercise jurisdiction and powers in proceedings of a civil nature where either—

- (a) the proceedings concern a claim under customary law; or
- (b) the value of the subject matter in dispute does not exceed five thousand shillings, or ten thousand shillings where the court is constituted by a district magistrate having power to hold a magistrate's court of the first class.

[Act No. 6 of 1979, Sch., Act No. 11 of 1983, Sch.]

PART IIIA – JURISDICTION IN CERTAIN CASES RELATING TO LAND

9A. *Repealed by Act No. 18 of 1990, s. 11.*

9B. *Repealed by Act No. 18 of 1990, s. 11.*

9C. *Repealed by Act No. 18 of 1990, s. 11.*

9D. *Repealed by Act No. 18 of 1990, s. 11.*

9E. *Repealed by Act No. 18 of 1990, s. 11.*

9F. *Repealed by Act No. 18 of 1990, s. 11.*

PART IV – APPEALS FROM CERTAIN DISTRICT
MAGISTRATE'S COURTS**10. Appeal from certain district magistrates' courts in criminal matters**

(1) Any person who is convicted of an offence on a trial held by a magistrate's court of the third class, or where a person charged with an offence has been acquitted on such a trial, the Attorney-General may appeal against his conviction or sentence, or both, or against the acquittal, as the case may be, to the Resident Magistrate's Court:

Provided that no appeal shall lie in the case of a person who pleaded guilty and was convicted on that plea, except as to the legality or extent of the sentence.

(2) An appeal shall be by way of petition, specifying the grounds of the appeal, and shall be entered within a period of fourteen days after the date of the decision or order appealed against:

Provided that the higher court may for good reason extend the period either before or after it has expired.

11. Appeal from certain district magistrate's courts in civil matters

(1) Any person who is aggrieved by an order of a magistrate's court of the third class made in proceedings of a civil nature may appeal against the order to a magistrate's court of the first class.

(2) An appeal shall be by way of petition, specifying the grounds of the appeal, and shall be entered within a period of twenty-eight days after the date of the order appealed against:

Provided that the higher court may for good reason extend the period either before or after it has expired.

12. Powers of court on appeal

(1) In the exercise of its appellate jurisdiction under section 11 or 12 of this Act, the higher court shall have power—

- (a) to direct the lower court to take additional evidence and to certify the evidence to it, or, for reasons to be recorded in writing, to itself hear additional evidence;
- (b) whether or not additional evidence is heard or taken, to confirm, reverse, amend or vary in any manner the order appealed against (including power to substitute a conviction or a conviction and sentence for an acquittal):

Provided that—

- (i) the order as altered shall not be in excess of the jurisdiction of the lower court; and
 - (ii) no conviction or conviction and sentence shall be substituted for an acquittal, and no sentence shall be enhanced, unless the accused or convicted person, as the case may be, has first been given an opportunity of being heard;
- (c) to quash any proceedings (including proceedings which terminated in an acquittal) and, where it is considered desirable, to order the case to be heard *de novo* either before the lower court or before some other magistrate's court having jurisdiction or before itself:

Provided that—

- (i) where the court orders a criminal case to be heard *de novo*, it shall take security for the appearance of the accused person before the court before which the case is to be heard or, if it is appropriate, remand him in custody to be brought before such court; and any such security shall be treated as if it had been taken by the court which is to hear the case; and
 - (ii) where proceedings are quashed and the case is ordered to be reheard, no plea of *res judicata*, *autrefois acquit* or *autrefois convict* shall be entertained in respect of any order or decision in the proceedings so quashed;
- (d) to make any other order which might have been made, or to exercise any power which might have been exercised, by the lower court.

(2) On an appeal under section 11 or 12, the higher court or the lower court may, for reasons to be recorded in writing—

- (a) where the appellant has been sentenced to imprisonment, order—
 - (i) that the appellant be released on bail with or without sureties pending the hearing of the appeal; or
 - (ii) that the execution of the sentence be suspended pending the hearing of the appeal, in which case the appellant shall be treated as a remand prisoner pending the hearing of the appeal:

Provided that, if the appeal is ultimately dismissed, or if the original sentence of imprisonment is confirmed or some other sentence of

imprisonment is substituted for it, the time during which the appellant has been released on bail or during which the sentence has been suspended shall be excluded in computing the term of imprisonment served by him; and

- (b) in any other case, order that the execution of the order appealed against shall be suspended pending the hearing of the appeal.

(3) Where the higher court determines an appeal, it shall certify its order to the lower court, which shall thereupon make such orders as are requisite and conformable to the order, and the records of the lower court shall be amended accordingly if necessary.

PART V – GENERAL

13. Places and times of sitting and distribution of business

(1) A magistrate's court may be held at any place within the local limits of its jurisdiction, but it shall, so far as is practicable, be held at the place or places where it is regularly or customarily held:

Provided that a district magistrate's court may in any particular case, with the written consent of the Chief Justice, sit at a specified place outside the local limits of its jurisdiction, and a consent purporting to be signed by the Chief Justice shall be presumed to be signed by him until the contrary is shown.

(2) Subject to subsection (1), places and times of sittings of courts, and the distribution of business between courts, shall be in accordance with any general or special directions given by the Chief Justice.

14. Attorney-General's power to determine place of sitting

(1) Notwithstanding section 13, if at any time it appears to the Attorney-General to be necessary in the interests of public safety or for the maintenance of public order so to do, he may, after consultation with the Chief Justice, by order in writing direct that the whole or any part (however described) of any particular proceedings pending before a magistrate's court shall be held at a place specified by him in the order, and—

- (a) the order shall prevail over any order, direction or process made or issued by any court, to the extent of any inconsistency between the two; and
- (b) if the place specified is outside the local limits of jurisdiction of the court before which the proceedings are pending, the place specified shall be deemed, for the purposes of the proceedings, to be within the local limits of jurisdiction of the court.

(2) Every order made under subsection (1) shall be forthwith communicated to the court before which the particular proceedings are pending, and shall come into operation on the day on which it is made.

(3) An order purporting to be made by the Attorney-General under subsection (1), and to be signed by the Attorney-General, shall be presumed, until the contrary is proved, to have been so made and signed; and an order made under that subsection shall not be questioned in any legal proceedings whatsoever.

15. Procedure and practice

Subject to this Act and to rules of court, all magistrates' courts shall follow the principles of procedure and practice laid down by or under—

- (a) the Criminal Procedure Code (Cap. 75), as regards proceedings of a criminal nature; and
- (b) the Civil Procedure Act (Cap. 21), as regards proceedings of a civil nature,

so far as they may be applicable and appropriate.

16. Rules of court

The Chief Justice may make rules of court, not inconsistent with any other written law, for regulating the procedure and practice of magistrates' courts.

17. Evidence of customary law

A magistrate's court may call for and hear evidence of the African customary law applicable to any case before it.

18. Records and returns

Every magistrate's court shall keep such records of proceedings and submit such returns of proceedings to the High Court as the Chief Justice may from time to time direct.

19. Supervision of courts

The Chief Justice shall take such steps as may be necessary for the supervision and inspection of magistrates' courts.

20. Seals and stamps

Every magistrate's court shall use seals or stamps of such kind and pattern as the Chief Justice may direct.

PART VII – AMENDMENT AND REPEAL**21. Amendment of Cap. 2**

Section 3(1) of the Interpretation and General Provisions Act (Cap. 2) is amended by deleting the definition of "**magistrate**", and by inserting in their respective alphabetical positions new definitions as follows—

"**magistrate**" has the meaning assigned to it in the Magistrate's Courts Act;

"**subordinate court**" means a magistrate's court within the meaning of the Magistrate's Courts Act 1967, and a reference to a subordinate court of a particular class means a magistrate's court of that class within the meaning of that Act.

22. Amendment of section 2 of Cap. 75

Section 2 of the Criminal Procedure Code (Cap. 75) is amended by deleting the definition of "**subordinate court**".

23. Replacement of section 7 or Cap. 75

There shall be substituted for section 7 of the Criminal Procedure Code (Cap. 75) a new section as follows—

7. Sentences which subordinate courts may pass

(1) A subordinate court of the first class held by a Senior Resident Magistrate, or by a Resident Magistrate upon whom the Judicial Service Commission has conferred the powers exercisable under this section, may pass the following sentences in cases where they are authorized by law, namely—

- (a) imprisonment for a term not exceeding ten years;
- (b) a fine not exceeding ten thousand shillings;
- (c) corporal punishment not exceeding twenty-four strokes.

(2) A subordinate court of the first class may pass the following sentences in cases where they are authorized by law, namely—

- (a) imprisonment for a term not exceeding five years;
- (b) a fine not exceeding ten thousand shillings;
- (c) corporal punishment not exceeding twenty-four strokes.

(3) A subordinate court of the second class may pass the following sentences in cases where they are authorized by law, namely—

- (a) imprisonment for a term not exceeding twelve months;
- (b) a fine not exceeding two thousand shillings;
- (c) corporal punishment not exceeding twelve strokes.

(4) A subordinate court of the third class may pass the following sentences in cases where they are authorized by law, namely—

- (a) imprisonment for a term not exceeding six months;
- (b) a fine not exceeding one thousand shillings.

(5) In determining the extent of a court's jurisdiction under this section to pass a sentence of imprisonment, the court shall have jurisdiction to pass the full sentence of imprisonment provided for in this section in addition to any term of imprisonment which may be awarded in default of payment of a fine, costs or compensation.

24. Repeal of certain sections of Cap. 75

Sections 8, 9, 10, 11, 13, 15, 16, 17 and 18 of the Criminal Procedure Code (Cap. 75) are repealed.

25. Amendment of section 12 of Cap. 75

Section 12 of the Criminal Procedure Code (Cap. 75) is amended by deleting the proviso to subsection (1) thereof, and by deleting subsection (2) thereof.

26. Amendment of section 79 of Cap. 75

Section 79 of the Criminal Procedure Code (Cap. 75) is amended by deleting the words "or any magistrate holding a Muslim subordinate court".

27. Amendment of section 198 of Cap. 75

Section 198(4) of the Criminal Procedure Code (Cap. 75) is amended by deleting the words "other than a Muslim subordinate court," and the words "or a vernacular language".

28. Replacement of section 221 of Cap. 75

There shall be substituted for section 221 of the Criminal Procedure Code (Cap. 75) a new section as follows—

221. Committal to higher court for sentence

(1) Where a person of not less than eighteen years of age is convicted by a subordinate court of the second or third class of an offence which is punishable by either that court or a subordinate court of the first class, and the court convicting him, after obtaining information as to his character and antecedents, is of the opinion that they are such that greater punishment should be inflicted than it has power to inflict, that court may, instead of dealing with him itself, commit him in custody to the Resident Magistrate's Court for sentence.

(2) Where a person who is not less than eighteen years of age is convicted by a subordinate court of the first class of an offence which is punishable by either that court or the High Court, and the court convicting him, after obtaining information as to his character and antecedents, is of the opinion that they are such that greater punishment should be inflicted than it has power to inflict, that court may, instead of dealing with him itself, commit him in custody to the High Court for sentence.

(3) Where the offender is committed under subsection (1) or subsection (2) of this section for sentence, the court to which he is committed shall inquire into the circumstances of the case, and shall have power to deal with the offender in any manner in which he could be dealt with if he had been convicted by that court; and, if that court passes a sentence which the court convicting him had not the power to pass, the offender may appeal against the sentence to the High Court (if sentenced by a subordinate court of the first class) or to the Court of Appeal (if sentenced by the High Court), but otherwise he shall have the same right of appeal in all respects as if he had been sentenced by the court which convicted him.

29. Replacement of section 347 of Cap. 75

There shall be substituted for section 347 of the Criminal Procedure Code (Cap. 75) a new section as follows—

347. Appeal to High Court

(1) Save as is hereafter in this Part provided—

- (a) a person convicted on a trial held by a subordinate court of the first or second class may appeal to the High Court; and
- (b) a person convicted on a trial held by a subordinate court of the third class, whose conviction has been upheld (in whole or in part) on appeal under section 11 of the Magistrate's Courts Act, 1967 may appeal to the High Court with the leave of the High Court.

(2) An appeal to the High Court may be on a matter of fact as well as on a matter of law.

30. Repeal of section 348 of Cap. 75

Subsection (2) of section 348 of the Criminal Procedure Code (Cap. 75) is repealed.

31. Amendment of section 349 of Cap. 75

Section 349 of the Criminal Procedure Code (Cap. 75) is amended by substituting for the words "a judge of the High Court", which appear therein, the words "the court to which the appeal is made".

32. Amendment of section 352 of Cap. 75

Section 352(1) of the Criminal Procedure Code (Cap. 75) is amended by substituting for the proviso thereto a new proviso as follows—

Provided that no appeal shall be rejected summarily unless the appellants or his advocate has had the opportunity of being heard in support of the appeal, except—

- (i) in a case falling within subsection (2) of this section;
- (ii) in the case of an appeal against the determination of an appeal under section 11 of the Magistrate's Courts Act (Cap. 10), other than an appeal for which the leave of the High Court has been obtained.

33. Insertion of new section 352A in Cap. 75

There shall be inserted in the Criminal Procedure Code (Cap. 75), immediately after section 352 thereof a new section as follows—

352A. Summary allowance of appeal

Where an appeal against conviction has been lodged and a judge of the High Court is satisfied that the conviction cannot be supported, and the Attorney-General has informed the Court in writing that he does not support the conviction, the judge may summarily allow the appeal.

34. Replacement of section 363 of Cap. 75

There shall be substituted for section 363 of the Criminal Procedure Code (Cap. 75) a new section as follows—

363. Subordinate court may call for records of inferior court

(1) A subordinate court of the first class may call for and examine the record of any criminal proceedings of a subordinate court of a lower class than it and established within its local limits of jurisdiction, for the purpose of satisfying itself as to the legality, correctness or propriety of any finding, sentence or order recorded or passed, and as to the regularity of the proceedings.

(2) If a subordinate court acting under subsection (1) of this section considers that any finding, sentence or order of the court of lower class is illegal or improper, or that the proceedings were irregular, it shall forward the record with its remarks thereon to the High Court.

35. Amendment of First Schedule to Cap. 75

(1) The First Schedule to the Criminal Procedure Code (Cap. 75) is amended, in relation to the sections of the Penal Code (Cap. 63) set out in the first column hereunder, by substituting for the items set out in the second column hereunder the new items respectively set out in the third column hereunder—

<i>Section of Penal Code</i>	<i>Item now in First Schedule</i>	<i>Item to be substituted therefor</i>
39(2)	Any magistrate.	Subordinate court of the first or second class.
49	Any magistrate.	Subordinate court of the first or second class.
79	Subordinate court of the first or second class.	Any subordinate court.
88	Subordinate court of the first or second class.	Any subordinate court.
90	Subordinate court of the first or second class.	Any subordinate court.
91	Subordinate court of the first or second class.	Any subordinate court.
92	Any magistrate.	Any subordinate court.
93	Any magistrate.	Subordinate court of the first or second class.
95	Any magistrate.	Any subordinate court.
	Any magistrate.	Any subordinate court.
	Any magistrate.	Any subordinate court.
97	Any magistrate.	Subordinate court of the first or second class.
98	Any magistrate.	Any subordinate court.
121(1)	Any magistrate.	Any subordinate court.
(2)	Any magistrate.	Any subordinate court.
123	Subordinate court of the first or second class.	Any subordinate court.
126	Subordinate court of the first or second class.	Any subordinate court.
129	Any magistrate.	Any subordinate court.
134	Subordinate court of the first or second class.	Any subordinate court.
135	Subordinate court of the first or second class.	Any subordinate court.
136	Subordinate court of the first or second class.	Any subordinate court.
137	Any magistrate.	Any subordinate court.
144(1)	Subordinate court of the first class.	Any subordinate court.

Magistrates' Courts

<i>Section of Penal Code</i>	<i>Item now in First Schedule</i>	<i>Item to be substituted therefor</i>
144(3)	Subordinate court of the first or second class.	Any subordinate court.
175	Any magistrate.	Any subordinate court.
182	Any magistrate.	Any subordinate court.
186	Subordinate court of the first or second class.	Any subordinate court.
191	Any magistrate.	Subordinate court of the first or second class.
192	Any magistrate.	Subordinate court of the first or second class.
193	Any magistrate.	Subordinate court of the first or second class.
250	Any magistrate.	Any subordinate court.
251	Subordinate court of the first or second class.	Any subordinate court.
266	Any magistrate.	Subordinate court of the first or second class.
275	Any magistrate.	Any subordinate court.
294	Subordinate court of the first or second class.	Any subordinate court.
322(1)	Any magistrate.	Any subordinate court.
323	Subordinate court of the first or second class.	Any subordinate court.
339(1)	Any magistrate.	Any subordinate court.
342	Any magistrate.	Any subordinate court.

(2) The First Schedule to the Criminal Procedure Code is further amended by substituting for the third and fourth items, appearing under the heading "OFFENCES UNDER OTHER LAWS", the following new items—

If punishable with imprisonment for less than three years or with fine only.	Shall not arrest without warrant.	Subordinate court of the first or second class.
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36. Amendment of section 1 of Cap. 5 (1948)

Section 1 of the Civil Procedure Act (Cap. 5) (1948) is amended by substituting for subsection (2) thereof a new subsection as follows—

(2) This Act applies to proceedings in the High Court and, subject to the Magistrate's Courts Act (Cap. 10), to proceedings in subordinate courts.

37. Amendment of section 2 of Cap. 5 (1948)

Section 2 of the Civil Procedure Act (Cap. 5) (1948) is amended by substituting for the definition of "court" a new definition as follows—

"court" means the High Court or a subordinate court, acting in the exercise of its civil jurisdiction.

38. Replacement of section 65 of Cap. 5 (1948)

There shall be substituted for section 65 of the Civil Procedure Act (Cap. 5) (1948) a new section as follows—

65. Appeals from decrees of subordinate courts

(1) Except where otherwise expressly provided by this Act, and subject to such provision as to the furnishing of security as may be prescribed, an appeal shall lie to the High Court—

- (a) from a decree passed by a subordinate court of the first class on an appeal from a subordinate court of the third class, on a question of law only;
- (b) from any other decree, part of a decree or order of a subordinate court, on a question of law or fact;
- (c) from a decree, part of a decree or order of a Kadhi's Court, and on such an appeal the Chief Kadhi or two other Kadhis shall sit as assessor or assessors.

(2) A person who has been allowed to take, defend or be a party to any legal proceedings as a pauper may not appeal to the High Court, except with the leave of the court before which the proceedings were heard or (if such leave is refused) of the Court of Appeal.

(3) Every appeal shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfied the court that he had good and sufficient cause for not filing the appeal in time.

39. Insertion of new section 65A in Cap. 5 (1948)

There shall be inserted in the Civil Procedure Act (Cap. 5) (1948), immediately after section 65 thereof, a new section as follows—

65A. Summary rejection of appeal

Before an appeal from a subordinate court is heard, a judge shall peruse it, and if he considers that there is no sufficient ground for interfering with the decree, part of a decree or order appealed against he may, notwithstanding section 71 of this Act, reject the appeal summarily.

40. Repeal of section 86(2) of Cap. 5 (1948)

Subsection (2) of section 86 of the Civil Procedure Act (Cap. 5) (1948) is repealed.

41. Amendment of other laws

The Acts specified in the first column of the First Schedule to this Act are amended, in relation to the provisions thereof specified in the second column of the Schedule, in the manner specified in relation thereto in the third column of that Schedule.

42. Repeal of Caps. 10 and 11 and savings

(1) The Courts Act (Cap. 10) and the African Courts Act (Cap. 11) are repealed.

(2) Notwithstanding the repeal of the Courts Act and the African Courts Act, the transitional provisions and savings set out in the Second Schedule to this Act shall have effect.

43. Revocation of Rules concerning licensed Vakils' costs

(1) The Rules of Court (Licensed Vakils Costs) (Cap. 10, Sub. Leg.) are revoked.

44. Amendment of Rules concerning expert witnesses' fees

(1) The Rules of Court (Expert Witnesses Fees) are amended by substituting for rule 1 thereof a new rule as follows—

1. Citation

(1) These Rules may be cited as the Criminal Procedure (Expert Witnesses Fees) Rules (Cap. 10, Sub. Leg.).

(2) The aforesaid Rules shall be deemed to have been made under section 394 of the Criminal Procedure Act.

45. Amendment of section 14 of Cap. 75

Section 14(3) of the Criminal Procedure Code (Cap. 75) is amended by deleting the words "or confirmation".

FIRST SCHEDULE

[Section 43.]

<i>Act</i>	<i>Provision</i>	<i>Amendment</i>
The Advocates Act (Cap. 16).	s. 9	Delete paragraph (e).
The Evidence Act (Cap. 80).	s. 2 s. 28	Delete "or an African court". Delete "empowered or appointed by or under the Courts Act to hold a subordinate court of any class".
The Administration Police Act (Cap. 85).	s. 9	Delete ", justice of the peace or African court", and substitute "or justice of the peace".
The Detention Camps Act (Cap. 91).	s. 2	In the definition of " court ", delete "a magistrate and an African court".
The Chief's Authority Act (Cap. 128).	s. 2 s. 8(2) s. 8(3)	Delete the definition of " African court ". Delete "of law (including, subject to the jurisdiction of such court, an African court)". Delete "of law (including in that expression an African court)".

FIRST SCHEDULE—*continued*

<i>Act</i>	<i>Provision</i>	<i>Amendment</i>
	s. 9(1) and (2)	Delete “an African court”, and substitute “a court”.
	s. 18	Delete “, on conviction before a magistrate (including, subject to the jurisdiction of such magistrate, an African court) having jurisdiction over such person,”.
	s. 19(2)	Delete “, on conviction before a magistrate,” Delete “as the magistrate”, and substitute “as the court”.
	s. 20	Delete “, on conviction before a magistrate,”.
	s. 24	Delete “, on conviction before a magistrate or, subject to the jurisdiction of such magistrate, an African court,”.
	s. 25	Delete “shall on conviction by any magistrate be” and substitute “shall be guilty of an offence and”.
The Affiliation Act (Cap. 142).	s. 2	Delete the definition of “ court ”, and substitute:— “ court ,” means any subordinate court;.
The Valuation for Rating Act (Cap. 266).	s. 29	Delete “Courts Act”, and substitute “Magistrate’s Courts Act 1967”.
The Government Lands (Irrigation) Rules (Cap. 280, Sub. Leg.).	r. 2	Delete the definition of “African court”.
	r. 7(3) and (4)	Delete “the African court” wherever it appears and substitute “a subordinate court of the third class” in each case.
The Land Adjudication Act (Cap. 283).	s. 4	Delete the definition of “ African court ”.
	s. 8(1) and (2)	Delete “no African court”, and substitute “no court whatever”.
	ss. 7(1)(c), 11(1) and (2), 13(1), 15(2)(b) and (3), 21(2), 22(1) and 24(2)(b)	Delete “native law and custom”, and substitute “African customary law”.
The Registered Land Act (Cap. 300).	s. 3	Delete the definition of “ African court ”.

FIRST SCHEDULE—*continued*

<i>Act</i>	<i>Provision</i>	<i>Amendment</i>
	ss. 120 and 121(1)	Delete “the African court” and “an African court” throughout, and substitute “the court” and “a court” respectively.
	s. 159	Renumber as subsection 159(1) and add:— (2) References to the court in section 120 of this Act are references to a subordinate court having jurisdiction in the area in which the land is situated.
The Graduated Personal Tax Act 1966 (No. 38 of 1966).	s. 2	Delete the definition of “ court ”.

SECOND SCHEDULE

[Section 44.]

TRANSITIONAL PROVISIONS

1. Continuance of pending proceedings

(1) Nothing in this Act shall effect the validity of any proceedings instituted before the commencement of this Act in an African court or in any court then subordinate to the High Court, but the same shall be carried on in a magistrate's court or a Kadhi's Court, as may be appropriate, in accordance with this Act or the Kadhi's Courts Act 1967, as the case may be, and any such proceedings may if required be amended by the court in order to bring into conformity with this Act or the Kadhi's Courts Act 1967, as the case may be.

(2) Any appeal in respect of proceedings instituted before the commencement of this Act in an African court or in any court then subordinate to the High Court, which immediately before such commencement is undermined, shall after such commencement be carried on as though it were an appeal under section 11 or section 12, as the case may be, of this Act, and any appeal from a decision of a Liwali's Court or a Mudirs' Court shall be carried on as though it were an appeal from a decision of a Kadhi's Court.

(3) Any application under section 50(1)(b) of the African Courts Act for a case to be submitted to the Court of Review which immediately before the commencement of this Act is undetermined shall upon such commencement be treated as withdrawn, and any fees paid on the application shall be repaid to the applicant, and—

- (a) in a criminal case, the applicant shall be treated as falling within paragraph (b) of section 347(1) of the Criminal Procedure Code (as

amended by this Act) and may appeal to the High Court in accordance with that paragraph within two months after such commencement;

- (b) in a civil case, the applicant shall be treated as falling within paragraph (a) of section 65(1) of the Civil Procedure Act (as amended by this Act) and may appeal to the High Court in accordance with that paragraph within two months after such commencement.

(4) For the purposes of subparagraphs (1), (2) and (3) of this paragraph, the court dealing with the proceedings may give any directions or make any order which may be necessary or desirable for the purpose of giving effect in the provisions and purposes of this Act.

2. Savings for appointments, rules of court, etc.

Save as expressly provided in this Act, all appointments, and all rules of court and other subsidiary legislation, in force immediately before the commencement of this Act (or, as the case may be, the commencement of the relative provision of this Act, or the commencement in any area of this Act or of the relative provision thereof) under or by virtue of any written law repealed by this Act shall—

- (a) continue in force until other provision is made under or by virtue of this Act or some other written law or until they are revoked under this section; and
 - (b) so far as they relate to any court in existence before such commencement, be deemed to relate, so far as is applicable, to the corresponding court established by or referred to in this Act.
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CHAPTER 10

MAGISTRATES' COURTS ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

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1. Magistrates' Courts (Criminal Jurisdiction of Magistrates' Courts of the Third Class) Order	M1 – 25

**MAGISTRATES' COURTS (CRIMINAL JURISDICTION OF MAGISTRATES'
COURTS OF THE THIRD CLASS) ORDER**

[L.N. 161/1967, Corr. No. 63/1967, L.N. 210/1967, L.N. 252/1968, L.N. 82/1969, Corr. No. 24/1969,
L.N. 296/1971, L.N. 42/1975, L.N. 82/1978, L.N. 260/1983.]

ORDER UNDER SECTION 8

1. This Order may be cited as the Magistrates' Courts (Criminal Jurisdiction of Magistrates' Courts of the Third Class) Order.

2. In addition to the offences which magistrates' courts of the third class may deal with by virtue of paragraphs (a) and (c) of section 9(1) of the Act, magistrates' courts of the third class are empowered to deal with offences under the provisions specified in the second column of the Schedule of the written laws specified in the first column of that Schedule.

SCHEDULE

	<i>Written law</i>	<i>Provisions</i>
Cap. 56	Public Order Act.	Section 11.
Cap. 63	Vagrancy Act.	Section 4(3).
Cap. 58	Penal Code.	Section 183.
Cap. 67	Witchcraft Act.	Sections 5, 6, 7 and 9(4).
Cap. 84	Police Act.	Sections 16, 21, 22, 23, 25, 26, 27, 33, 60 and 63.
Cap. 85	Administration Police Act.	Section 18.
Cap. 90	Prisons Act.	Section 68(9).
Cap. 104	Outlying Districts Act.	All provisions.
Cap. 105	Special Districts (Administration) Act.	All provisions.
Cap. 121	Liquor Licensing Act.	Sections 28, 30, 31, 32, 34 (2), 42, 43, 44, 46, 50 and 51.
Cap. 122	Traditional Liquor Act.	All provisions.
Cap. 128	Chief's Authority Act.	All provisions.
Cap. 131	Betting, Lotteries and Gaming Act.	Section 55.
Cap. 173	Aliens Restriction Act.	All provisions.
Cap. 224	Broadcast Receiving (Apparatus) Act.	All provisions.
Cap. 242	Public Health Act.	All provisions.
Cap. 244	Pharmacy and Poisons Act.	Section 26.
Cap. 245	Dangerous Drugs Act.	All provisions.
Cap. 246	Malaria Prevention Act.	All provisions.
Cap. 254	Food, Drugs and Chemical Substances Act.	All provisions.
Cap. 280	Government Lands Act and the subsidiary legislation thereunder.	All provisions.
Cap. 288	Trust Land Act.	All provisions.
Cap. 294	Trespass Act and the subsidiary legislation thereunder.	All provisions.
Cap. 300	Registered Land Act.	Sections 23 and 24.
Cap. 318	Agriculture Act and the subsidiary legislation thereunder.	All provisions.

Magistrates' Courts

[Subsidiary]

SCHEDULE—continued

	<i>Written law</i>	<i>Provisions</i>
Cap. 320	Marketing of Agricultural Produce Act and the subsidiary legislation thereunder.	All provisions.
Cap. 321	Crop Production and Livestock Act and the subsidiary legislation thereunder.	All provisions.
Cap. 324	Plant Protection Act and the subsidiary legislation thereunder.	All provisions.
Cap. 327	Grass Fires Act.	All provisions.
Cap. 331	Coconut Industry Act.	All provisions.
Cap. 332	Coconut Preservation Act.	All provisions.
Cap. 333	Coffee Act and the subsidiary legislation thereunder.	All provisions.
Cap. 335	Cotton Lint and Seed Marketing Act and the subsidiary legislation thereunder.	All provisions.
Cap. 357	Branding of Stock Act.	All provisions.
Cap. 359	Hide and Skin Trade Act.	All provisions.
Cap. 360	Prevention of Cruelty to Animals Act and the subsidiary legislation thereunder.	All provisions.
Cap. 364	Animal Diseases Act.	All provisions.
Cap. 365	Rabies Act and the subsidiary legislation thereunder.	All provisions.
Cap. 378	Fish Industry Act and the subsidiary legislation thereunder.	All provisions.
Cap. 385	Forests Act.	All provisions.
Cap. 397	Kenya Railway Corporation Act.	Sections 67, 68, 69, 70, 72 and 74.
Cap. 403	Traffic Act.	Sections 117 and the Traffic (Minor Offences) Rules.
	Traffic Rules.	Rules 22 (9), 24(b) and 25(1)(b).
	Traffic (Minor Offences) Rules.	All provisions.
Cap. 497	Trade Licensing Act.	All provisions.