



THE REPUBLIC OF KENYA

LAWS OF KENYA

THE KADHIS' COURTS ACT

CHAPTER 11

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CHAPTER 11

KADHIS' COURTS ACT

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CHAPTER 11**KADHIS' COURTS ACT**

[Date of assent: 14th June, 1967.]

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

An Act of Parliament to prescribe certain matters relating to Kadhis' Courts under the Constitution, to make further provision concerning Kadhis' Courts, and for purposes connected therewith and purposes incidental thereto

[Act No. 14 of 1967, Act No. 11 of 1970, Act No. 13 of 1972, Act No. 16 of 1977, Act No. 11 of 1983, Act No. 18 of 1986, Act No. 10 of 1997.]

1. Short title

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

2. Interpretation

In this Act, "Kadhi" means a person appointed to or to act in the office of the Chief Kadhi or the office of Kadhi referred to in section 66 of the Constitution.

3. Number of Kadhis

For the purposes of Article 170 of the Constitution, there shall be such number of Kadhis, in addition to the Chief Kadhi, as may be prescribed by the President by order, being in any case not less than three.

[Act No. 16 of 1977, Sch., Act No. 10 of 1997, Sch.]

4. Establishment of Kadhis' Courts

(1) In pursuance of Article 170(4) of the Constitution there shall be established such number of kadhi's courts as the Chief Justice may, in consultation with the Chief Kadhi, determine.

(2) The Kadhis' Courts shall have jurisdiction as follows—

- (a) three courts shall each have jurisdiction within Kwale District, Mombasa District, Kilifi District and Lamu District;
- (b) one court shall have jurisdiction within—
 - (i) Nyanza Province;
 - (ii) Western Province; and
 - (iii) the following districts of Rift Valley Province—
 - West Pokot District;
 - Trans Nzoia District;
 - Elgeyo-Marakwet District;
 - Baringo District;
 - Laikipia District;
 - Nandi District;
 - Uasin Gishu District;
 - Kericho District;

Nakuru District;

- (c) one court shall have jurisdiction within Wajir District and Mandera District;
- (d) one court shall have jurisdiction within the Nairobi Area and the Central and Eastern Provinces except Marsabit District and Isiolo District;
- (e) one court shall have jurisdiction in Garissa District and Tana River District;
- (f) one court shall have jurisdiction in Marsabit District and Isiolo District.

(3) Each of the Kadhis' Courts shall be a court subordinate to the High Court and shall be duly constituted when held by the Chief Kadhi or a Kadhi.

(4) A Kadhi's Court may be held at any place within the area of jurisdiction of the court.

[Act No. 13 of 1972, Sch., Act No. 16 of 1977, Sch.,
Act No. 11 of 1983, Sch., Act No. 18 of 1986, Sch.]

5. Jurisdiction of Kadhis' Courts

A Kadhi's Court shall have and exercise the following jurisdiction, namely the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion, but nothing in this section shall limit the jurisdiction of the High Court or of any subordinate court in any proceeding which comes before it.

6. Evidence

The law and rules of evidence to be applied in a Kadhi's Court shall be those applicable under Muslim law:

Provided that—

- (i) all witnesses called shall be heard without discrimination on grounds of religion, sex or otherwise;
- (ii) each issue of fact shall be decided upon an assessment of the credibility of all the evidence before the court and not upon the number of witnesses who have given evidence;
- (iii) no finding, decree or order of the court shall be reversed or altered on appeal or revision on account of the application of the law or rules of evidence applicable in the High Court, unless such application has in fact occasioned a failure of justice.

7. Records and returns

Every Kadhi'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.

8. Procedure and practice

(1) The Chief Justice may make rules of court providing for the procedure and practice to be followed in Kadhi's Courts.

(2) Until rules of court are made under subsection (1), and so far as such rules do not extend, procedure and practice in a Kadhi's Court shall be in accordance

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with those prescribed for subordinate courts by and under the Civil Procedure Act (Cap. 21).
