

CHAPTER 11

THE KADHIS' COURTS ACT

SUBSIDIARY LEGISLATION

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THE KADHIS' COURTS ORDER

[Legal Notice 260 of 1977, Legal Notice 1 of 1984]

1. This Order may be cited as the Kadhis' Courts Order.
2. For the purposes of Article 170(4) of the Constitution there shall be, in addition to the Chief Kadhi, eight Kadhis.

[L.N. 1/1984, r. 2.]

THE KADHIS' COURTS (PROCEDURE AND PRACTICE) RULES

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SCHEDULE —

FORMS

THE KADHIS' COURTS (PROCEDURE AND PRACTICE) RULES

[Legal Notice 203 of 2020]

PART I – PRELIMINARY

1. Citation

These Rules may be cited as the Kadhis' Courts (Procedure and Practice) Rules.

2. Interpretation

In these Rules, unless the context otherwise requires—

"Court" means the Kadhi's Court established under Article 169 (1) of the Constitution;

"Court assistant" means a Registrar of the Kadhi's court;

"*fasakh*" means dissolution of marriage in accordance with Muslim law;

"*hadanah*" means custody of children;

"*hiwalah*" means transfer of debt;

"*idda*" means waiting period of a divorced Muslim woman or a widow;

"*khul*" means divorce at the wife's requests;

"*li an*" means allegation of adultery by a husband against his wife without a witness;

"*mata*" means a consolatory gift to divorced Muslim spouse;

"*mudda i*" means a claimant;

"*mudda' a 'Alaih*" means a respondent;

"*muhal 'alaih*" means a third party;

"Muslim school of jurisprudence" means schools for the Sunni and Shia;

"*nafaqah*" means maintenance;

"Registry" means any office designated by the Court for the purpose of filing pleadings under these Rules;

"*talaq*" means divorce under Muslim law rules;

"*yamin al-inkar*" means an oath of denial or rebuttal; and

"*yamin al- marduda*" means a returned oath.

3. Jurisdiction of the Court

The jurisdiction of the Court is set out in the Constitution, the Kadhis' Courts Act (Cap. 11), any other relevant written law, Muslim law and international instruments.

4. Application of the Rules

These Rules shall have effect in all proceedings commenced in any Kadhi's Court save where otherwise provided under any other written law or order by the Court.

5. Overriding objective of the Rules

(1) The overriding objective of these Rules shall be to facilitate the just, expeditious, proportionate, affordable and amicable resolution of disputes in respect of Muslim law relating to personal status, marriage, divorce or inheritance.

(2) The Court shall, in exercise of its powers under these Rules or the interpretation of its provisions, seek to give effect to the principles of the Constitution and spirit of Muslim law and shall be guided by the following principles—

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- (a) enjoining the good and forbidding the evil;
- (b) certainty is not dispelled by doubt;
- (c) freedom from liability is a fundamental principle;
- (d) injury is removed;
- (e) custom is an arbiter; and
- (f) any person who hastens the accomplishment of a thing before its due time is punished by being deprived thereof.

(3) A party to proceedings or an advocate for a party is under a duty to assist the Court to further the overriding objectives of these Rules and to that effect to participate in the processes in the Court and to comply with the directions and orders of the Court.

6. Non-compliance

(1) Non-compliance with the provisions of these Rules shall not render any proceedings void unless the Court shall so order.

(2) The Court may, of its own motion or on the application of any party, make such order for sanction for non-compliance that the Court may consider just in the circumstances.

7. Application set aside for non-compliance

(1) An application to set aside sanctions for non-compliance of these Rules shall be made at the earliest opportunity.

(2) Subsequent applications may be granted at the Court's discretion and may result in an adverse order for costs.

8. Form of application

(1) Save as provided in these Rules, every petition shall be made by notice and supported by a declaration sworn in accordance with these Rules.

(2) If a party is unable to read or write, or unable to afford a lawyer or legal representative, the Court shall provide a scribe to record the party's evidence which shall thereafter be commissioned in accordance with the Oaths and Statutory Declarations Act (Cap. 15).

(3) Every application shall state in full the nature of the order applied for and, in sufficient detail, the facts relied upon by the applicant and, unless the Court otherwise orders, shall be served on all parties.

PART II – PARTIES

9. Third-party proceedings

(1) Where a respondent claims against any person not already a party to the proceedings or suit (in this rule called "the third party") that any question or issue relating to or connected with the said subject matter is substantially the same as any question or issue arising between the claimant and the respondent, and should properly be determined not only as between the claimant and the respondent but between the claimant and the respondent and the third party, the respondent may apply to the Court by way of a Notice of Motion supported by affidavit in Form KC 3 set out in the Schedule within fourteen days after the close of pleadings for permission to serve a "third party notice".

(2) The claimant shall file a copy of the third-party notice and state the nature and grounds of the claim and shall, unless otherwise ordered by the Court, be filed within fourteen days of service in Form KC 4 set out in the Schedule.

(3) If the third party desires to dispute the claimant's claim in the suit as against the respondent on whose behalf the notice has been given, or the third party's liability to the respondent, the third party must enter an appearance in the suit on or before the day specified in the notice, and in default of his or her so doing, shall be deemed to admit the validity of the decree obtained against the respondent, and the third party's liability to contribute or indemnify, as the case may be, to the extent claimed in the third-party notice:

Provided that a person so served and failing to enter an appearance within the period fixed in the notice may apply to the Court for leave to enter an appearance and, for good cause, such leave may be given upon such terms, if any, as the Court shall deem fit.

(4) On the hearing of the third party's application under paragraph (3), the Court may grant or refuse permission and, if permission is granted, shall give directions as to the time for service of the third-party notice and date of trial and, if the action is a summary action, judgment shall not be entered pending the trial.

(5) The notice shall state the nature and grounds of the claim, or the nature of the question or issue sought to be determined, and the nature and extent of any relief or remedy claimed.

(6) The notice shall be served on the third party personally, and shall be accompanied by a copy of the summons in the suit and of the annexed particulars.

(7) The third party shall, as from the time of the service upon him or her of the third party notice, be a party to the action with the same rights in respect of his or her response to any claim made against him or her and service of proceedings as if he had been sued in the ordinary way by the respondent.

(8) The third party shall appear before the Court on the day fixed for the trial of the action.

(9) If the third party does not appear at the trial, he or she shall be deemed to admit the claim and be bound by any judgment given in the action whether by consent or otherwise and by any decision on any question specified in the notice:

(10) If contribution or indemnity or some other relief or remedy is claimed against the third party in the notice, he or she shall be deemed to admit his or her liability in respect of such contribution or indemnity or other relief or remedy:

Provided that execution against the third party shall not be issued without the permission of the Court until the respondent has satisfied the judgment in the same action given against him or her.

(11) The Court may decide all questions of costs between a third party and the other parties to the suit, and may make such orders as to costs as may be just in the circumstances.

10. Joinder of parties

(1) One or more persons may be joined to an existing petition or motion as petitioner or respondent without the leave of the Court before the close of pleadings, but in any other case, the leave of the Court shall be obtained.

(2) The Court may, on its own motion, enjoin further parties in the interests of justice.

11. Substitution of parties

Where any change of parties occurs during the pendency of any proceedings—

- (a) the title of the proceedings shall be amended accordingly; and
- (b) any person added or substituted in an application, the respondent shall be served with the pleadings and orders issued unless he or she consents to waive the service.

12. Amendment of pleadings

Any party may file and serve amended pleadings before the close of pleadings, but at any other time, the leave of the Court shall be required.

13. Misjoinder or non-joinder of parties

At the first directions hearing, the Court shall decide who are the appropriate parties and makes orders accordingly.

[Subsidiary]

14. Abatement of action

If, for any reason including the death or incapacity of a party, an action cannot be maintained, the opposing party may apply to the Court to strike out the suit or application.

15. Persons under disability

(1) Any person under disability may sue or be sued through his or her guardian for the purposes of the litigation duly appointed by the Court.

(2) Where a petitioner is a person under disability—

- (a) a settlement or compromise shall not be valid and enforceable without the Court's approval;
- (b) all money or other property recovered for the petitioner in, or in consequence of, the suit shall be paid into the Court unless the Court otherwise orders; and
- (c) the Court shall have the power and duty to ensure that the interests of the person under disability are safeguarded at all times.

16. Removal of guardian for the purposes of the litigation

The Court may, at any time and for sufficient reason, remove any guardian for the purposes of the litigation and replace him or her with another.

17. Minor petitioner attaining majority

(1) A minor petitioner shall, on attaining the age of majority, either adopt or withdraw from the proceedings.

(2) Leave to withdraw shall be required except where such withdrawal does not affect the rights of the other parties to the suit.

(3) If the minor petitioner withdraws his or her claim, he or she shall not be personally liable for costs unless the Court otherwise orders.

(4) If, on attaining the age of majority, the minor petitioner adopts the proceedings, the former minor petitioner shall apply to the Court to release his or her guardian for the purposes of the litigation.

18. Poor persons suit

Any person who desires to commence or defend any action or suit in his or her own right, and is unable to pay the Court fees, may apply to the Court for dispensation.

19. Costs

Costs shall be in the discretion of the Court.

PART III – COMMENCEMENT OF PROCEEDINGS**20. Commencement**

(1) Every suit shall be instituted by presenting a petition in Form KC 1 set out in the Schedule to the Court and a summons to enter appearance in Form KC 2.

(2) An application shall be brought by filing by a Notice of Motion in Form KC 3 set out in the Schedule.

21. Summons to enter appearance

Every summons—

- (a) shall be in Form KC 2 set out in the Schedule; and
- (b) shall be accompanied by a petition, if it is not within an existing petition, which shall comply with the requirements of rule 8(1).

22. Authority to issue summons

Every summons against a respondent shall be—

- (a) issued by the duly authorised office in the Registry;
- (b) shall be presented for filing in triplicate; and
- (c) an additional copy shall be presented for every additional respondent.

23. Issue and service of summons

The duly authorised officer in the Registry shall examine the petition, assign a serial number to the petition and issue summons to enter appearance if—

- (a) the petition appears to be in the correct form; and
- (b) the petitioner has paid the prescribed fee.

24. Validity of summons

(1) Each summons shall be valid in the first instance for twelve months beginning with the date of its issue.

(2) An application may be made to the Court to extend the validity of the summons before the expiry date.

(3) The Court may extend the validity of the summons from time to time for such period, not exceeding one year, at any one time.

(4) A summons shall not be valid after two years from the date of its initial issue.

25. Service of summons commencing an action

Summons commencing an action shall be served not less than fifteen working days before the next appearance before court unless the Court otherwise orders.

26. Entering appearance

The respondent must enter appearance within 15 days of service of the summons to enter appearance.

27. Issue of warrant in lieu of or in addition to summons

A court may, in any case in which it is empowered to issue a summons for the appearance of any person, after recording its reasons, issue a warrant for that person's arrest—

- (a) if after the issue of the summons but before the time fixed for his or her appearance, the Court sees reason to believe that he or she has absconded or will not obey the summons; or
- (b) if at such time he or she fails to appear and the summons is proved to have been duly served in time to admit of his or her appearing in accordance therewith and no reasonable excuse is offered for such failure.

28. Witness summons

(1) Before the Court issues a witness summons, a request in Form KC 5 for the issue of the witness summons shall be filed in court containing the name and address of the party requesting for the issue of the witness summons if he or she is acting in person, or the name of the firm and the business address of the party's Advocate.

(2) Issue of a witness summons shall take effect upon it being sealed by an officer of the Court.

(3) A witness summons shall be in forms in Form KC 6, KC 7 or KC 8, as the case may require.

29. Number of persons in witness summons

(1) Every witness summons, other than a witness summons to produce documents or things, may include the names of two or more persons.

(2) A witness summons to produce documents or things shall contain the name of one person only.

[Subsidiary]

30. Witness summons to produce documents

Any person served with a witness summons to produce a document or an article only shall comply if he or she causes the document or article to be produced without attending personally provided that there is an alternative competent witness who can introduce the document or article into evidence.

31. Amendment of witness summons

Where there is a mistake in any person's name and address in a witness summons, and if the witness summons has not been served, the party on whose request the witness summons was issued may, by filing a second request under rule 28(1), have the witness summons re-sealed in the correct form and endorsed with the words "amended and re-sealed".

32. Service of witness summons

Unless the Court otherwise orders, a witness summons shall be served personally and the service shall not be valid unless served within three months after the date of issue.

33. Duration of witness summons

A witness summons shall continue to have effect until the conclusion of the hearing at which the attendance of the witness is required.

34. Court records

(1) An officer of the Court shall not be required by witness summons to produce the record of the Courts.

(2) If the original of any record of a court or any document filed in such court becomes necessary in proceedings in a different court, a request for the production thereof may, on the application of the party requiring it, be addressed to the Registrar of that court.

(3) Marks shall be placed upon any record or document produced under this rule but certified copies may be taken and marked as necessary.

35. Filing of pleadings

(1) A suit shall be filed by presenting a petition.

(2) A response shall be filed within fifteen days of filing a memorandum of entering appearance.

(3) A reply, if any, shall be filed within fifteen days of filing the response.

36. Place of suing

A suit shall be filed where—

- (a) a cause of action arose or, in case of divorce and matrimonial proceedings, where either of the parties habitually resides;
- (b) in case of inheritance proceedings, either where most of the estate is situated or where the majority of the beneficiaries reside; or
- (c) where the parties are not in agreement, the Court may direct a convenient place of hearing.

37. Petition

(1) Every petition shall be signed by the petitioner, his or her Advocate, or his or her personal representative or guardian for the purposes of the litigation, as the case may be and shall contain—

- (a) the name, description, place of residence of the petitioner, an address for service, telephone number and email (where applicable);
- (b) the name, description and place of residence of the respondent so far as is known;

- (c) a concise statement, in numbered paragraphs of all facts and matters relied upon by the petitioner setting out the cause of action;
- (d) the relief claimed; and
- (e) an averment that there is no other suit pending, and that there have been no previous proceedings, in any court between the petitioner and the respondent over the same subject matter.

(2) Where more than one cause of action is relied on, the grounds for each and the relief claimed therein shall be stated separately.

38. Respondent

(1) A respondent who disputes liability for the whole or part of any claim in the suit may—

- (a) file and serve a response within fifteen days of service of summons or petition; or
- (b) attend on the day of the hearing and dispute the petitioner's claim.

(2) Where a respondent appears in court and disputes the petitioner's claim, the Court may order the respondent to serve a response within such time as it shall direct.

(3) A response shall be in Form KC 9.

39. Form of response

Every response shall be signed by the respondent, his or her advocate, or his or her personal representative or guardian for the purposes of the litigation, as the case may be and shall—

- (a) either admit or deny every material allegation of the fact set out in the petition; and
- (b) state concisely any fact on which the respondent relies.

40. Counterclaim

(1) Every counterclaim shall be filed and served at the same time as the response.

(2) The rules applicable to the petition shall apply to the counter claim.

41. Response to counterclaim

Where any respondent counterclaims, the petitioner disputing the counterclaim shall file and serve a response to the counterclaim within fifteen days after service.

42. Opposition to a petition or motion

A party intending to oppose a petition or motion, shall file and serve on all other parties—

- (a) a replying affidavit; and
- (b) any objection to the motion or petition.

43. Hearing

The date of hearing shall be fixed by the Court which will notify the parties in writing.

44. Amendment of pleadings

(1) The Court may, at any stage of the proceedings, allow the parties to amend their pleadings as may be just and in the interest of a fair hearing.

(2) An application for amendment may also be made orally.

45. Amendment of pleadings by court order

The Court may at any time, on its own motion or on the application of any party, and on such terms as it deems just, order amendment to any pleading.

[Subsidiary]

46. Amendment of pleadings without leave of the Court

(1) A party may, without the leave of the Court, amend any of his or her pleadings once at any time before the pleadings are closed.

(2) Where an amended petition is served on a respondent—

- (a) if he or she has already filed a response, the respondent may amend his or her response; and
- (b) the response or amended response shall be filed either as provided by these Rules for the filing of the response or fifteen days after the service of the amended petition, whichever is later.

(3) Where an amended response is served on a petitioner—

- (a) if the petitioner has already served a reply on that respondent, he or she may amend his or her reply; and
- (b) the period for service of his or her reply or amended reply shall be fifteen days after the service on him or her of the amended response.

47. First direction hearing

(1) The parties to a suit shall, within thirty days after the close of pleadings or such other period as the Court may direct, move the Court to hold a first direction hearing to ascertain—

- (a) list of issues in dispute;
- (b) the possibility and type of alternative dispute resolution or any other form of settlement;
- (c) what documentary evidence needs to be disclosed by each party; and
- (d) any other matters the Court may deem necessary to define issues for trial.

(2) Where no response or objection is filed within the prescribed period, the Court may, on the application of the petitioner or on its own motion, direct that the matter proceed to formal proof and issue the appropriate notice.

48. Notice to show cause why suit should not be dismissed

(1) In any suit in which no application has been made in accordance with rule 14 or no action has been taken by either party within one year from the date of its filing, the Court may give notice in writing to the parties to show cause why the suit should not be dismissed and if no reasonable cause is shown to its satisfaction, may dismiss the suit.

(2) If reasonable cause is shown to the satisfaction of the Court, it may make such orders as it deems just to obtain the expeditious hearing and determination of the suit.

(3) Any party to the suit may apply for dismissal as provided in paragraph (1).

49. Consolidation of cases

The Court may consolidate suits if it appears that in any number of suits—

- (a) the same parties are in the same position; or
- (b) common questions of fact or law arise.

50. Transfer of proceedings to another court

(1) Where the Presiding Kadhi of any court is satisfied that any proceedings in that court can be more conveniently or fairly tried in some other court, the Presiding Kadhi may order the proceedings to be transferred to the other court.

(2) Any transfer of any proceedings under paragraph (1) may be made by the Presiding Kadhi of the Kadhi's own motion or on the application of any party made on notice.

51. Responsibility of the Court to where proceedings are transferred

(1) The Court to which proceedings are transferred shall—

- (a) allocate it a new number;
- (b) inform the parties; and

- (c) list the matter for direction within thirty days.

52. Settlement of action

Where by agreement of the parties a suit has been settled, the Court may at anytime, by consent of the parties, record the fact of such settlement with the terms thereof, and marked the matter settled.

53. Withdrawal of claim

(1) The petitioner or applicant may, with leave of the Court, at any time before judgment, withdraw any proceedings wholly or in part by giving notice in Form KC 10 to the Court and serving a copy of the notice to the respondent.

(2) Where the petitioner withdraws any proceedings under paragraph (1), the respondent may apply for costs of the proceedings.

(3) Costs shall be in the discretion of the Court.

54. Payments of costs where claim is withdrawn

Where the petitioner has withdrawn any proceedings under rule 53 (1) and he or she is liable to pay any other party's costs of the action, then, if before payment of such costs he or she subsequently brings an action for the same, or substantially the same, cause of action, the Court may order the proceedings in that action to be stayed until such costs are paid.

55. Withdrawal of response

A respondent after giving notice to the petitioner may withdraw his or her response or any part thereof with the leave of the Court on such conditions as the Court determines.

56. Conciliation (*Sulh*)

The parties to any proceedings may, at any stage of the proceedings, hold conciliation to settle their dispute amicably.

57. Fixing of date for conciliation

Where, after receiving a summons or an application for any cause of action, the Presiding Kadhi is of the opinion that there is a reasonable possibility of a settlement between the parties to the action, the Presiding Kadhi may—

- (a) appoint two arbitrators to act for the parties respectively, where applicable;
- (b) fix a date for the parties to hold conciliation and as soon as practicable but in any event, within thirty days; and
- (c) serve the notice on the parties of the date fixed for conciliation.

58. Non-appearance of parties at conciliation

Where any party in respect of whom a notice has been duly served, fails to appear on the date fixed for conciliation and the Court is satisfied that conciliation is not possible, it will proceed to hear the matter before a different Kadhi.

59. Procedure for conciliation

Before adopting the decision of the conciliation, the Presiding Kadhi shall first be satisfied that—

- (a) the conciliation was conducted in a forum where both parties to the action were present and able to participate; and
- (b) the parties in the proceedings appeared in person and no party was represented by any other person without the leave of the Court.

[Subsidiary]

60. Where there is no resolution

Where the sitting is unable to resolve the dispute concerning the subject matter of the conciliation to the satisfaction of both parties, the chairperson shall prepare a report to that effect to the Presiding Kadhi and the matter shall proceed as contested.

PART IV – SERVICE

61. Service

(1) Every person filing an application or petition shall serve on each respondent personally save as may be directed by the Court on the written application of the applicant or petitioner.

(2) Where a petitioner, applicant or other person is represented by an Advocate, the address of the Advocate shall be the address for service.

62. Mode of service

(1) Each petition or application shall be served personally by delivering and tendering a copy thereof to the respondent unless the Court otherwise directs.

(2) For the purpose of paragraph (1), a copy bearing the seal of the Court and the signature of the Kadhi shall be deemed to be an original summons.

(3) Service of a summons or other document shall be effected by a process server, a duly authorized person or any other person as may be directed by the Court depending in the circumstances.

(4) Where a process server, a duly authorized person or any person directed by the Court serves a petition, application or summons upon the other party, he or she shall require signature of the person served and file an affidavit of service on the same.

(5) Where the respondent refuses to accept the petition, application or summons, it may be left near him or her and his or her attention shall be directed to it.

(6) A petition, application or summons delivered at last known address for service of any person shall be deemed to be served on that person provided the Court has made an order for substituted service.

63. Substituted service

(1) Where the Court is satisfied that for any sufficient reason the summons or other document cannot be served in the ordinary way, the Court may order the summons or other document to be served by substituted service.

(2) An application for substituted service may be made either orally or in writing.

(3) Substituted service may include the affixing of a copy of the summons or other document on the Court's notice board and on some conspicuous part of the building in which the party to be served is known to have last resided, or in any other manner as the Court deems just.

(4) Substituted service shall be treated as personal service.

64. Service outside Kenya

(1) The Court may where necessary order service of a petition, application or summons outside Kenya.

(2) Any order giving leave to effect service outside Kenya shall be—

- (a) sealed with the seal of the High Court for use out of Kenya, and shall be forwarded by the Registrar to the Minister responsible for matters relating to foreign affairs together with a copy thereof translated into the language of the country in which service is to be effected, and with a request for the further transmission of the same through the diplomatic channel to the government of the country in which leave to serve notice of the summons has been given, and such request shall be in Form KC 11 with such variations as circumstances may require.

- (b) in the case of service in the East African region, through the Courts or recognized Muslim organizations or as the Court may otherwise direct.

65. Service out of the jurisdiction of a Kadhi

Any petition, application or summons for service out of the jurisdiction of a Kadhi within Kenya may be sent to any court having jurisdiction in the local area in which the person to be served is said to be.

66. Special cases

(1) Service on a person under disability shall be made on his or her guardian for the purposes of the litigation.

(2) The Court may, on application, order the service on a person under disability to be made on any other person.

PART V – APPEARANCE

67. Appearance

(1) Any party may appear in person or through his or her advocate.

(2) Appearance of a person under disability shall be through his guardian for the purposes of the litigation or otherwise authorized by the Court.

(3) Parties may appear in person or through their advocates before the Kadhi within thirty days from the date of issuance of the summons.

(4) Where the respondent intends to oppose the claim and/or a counter claim, the respondent will be given fifteen days to file his or her response and/or a counter claim and serve the same on the petitioner.

(5) Where the respondent admits the claim, judgment shall be entered in favour of the petitioner to the extent of the respondent's admission.

(6) Where part of the claim is not admitted, the matter shall proceed to a hearing.

68. Absence of parties

(1) If, when any action is called on for hearing—

(a) neither party appears, the Court may dismiss the action;

(b) the respondent does not appear, the Court may hear the action *ex parte*:

Provided that the respondent was notified of the date of determination of such a hearing; or

(c) the petitioner does not appear, the Court may dismiss the action and hear and determine any counterclaim.

(2) The Court shall, before making any judgment on the petitioner's claim under paragraph (1)(b) or the respondent's counterclaim under paragraph (1)(c), order the petitioner or the respondent, as the case may be, to give evidence on oath.

(3) Where there is more than one petitioner or respondent and only one of them is present, the Court may hear the action against the one present and determine the action against the parties absent in accordance with paragraph (1) or (2).

(4) The Court may in its discretion in any of the cases specified in paragraphs (1) and (3) order an adjournment.

(5) The Court may in its discretion dismiss any matter for want of prosecution where—

(a) pleadings are not completed or the matter set down for hearing within one year since filing;

(b) the matter is not prosecuted within one year from date of filing; or

(c) the parties fail to comply with any direction of the Court.

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69. Non-appearance

(1) Where the applicant fails to attend on the hearing of his or her application, the Court may dismiss the application.

(2) Where any party to a suit fails to attend the hearing of an application on a date scheduled for hearing, the Court may proceed, notwithstanding the party's absence.

(3) Before proceeding in the absence of any party, the Court shall first be satisfied that the party was duly served.

(4) Where the application has been dismissed for want of prosecution, the Court may, on application restore the action.

(5) The Court may, on the application of any party to any cause or matter, set aside an order made ex parte under this order.

PART VI – HEARINGS

70. Hearing in court

Petitions shall be heard in open court unless otherwise directed by the Court and all applications may be heard in chambers if the circumstances so require.

71. Adjournment

The hearing of an application may be adjourned from time to time as may be appropriate.

72. Counterclaim

The stay, withdrawal, striking out or dismissal of the petitioner's claim shall not prevent the hearing and determination of a counterclaim.

73. Order of speeches

(1) The petitioner shall begin by opening his case.

(2) Each party may, before calling any evidence, open his or her case.

(3) The Kadhi before whom a suit is heard may give directions as to the party to begin and the order of speeches at the trial, and subject to any such directions, the party who begins shall have the first right to sum up his or her case.

(4) The petitioner shall have the first opportunity to call all evidence for his or her case then be followed by that of the respondent.

(5) When the respondent has closed his or her case, the Kadhi shall ask the petitioner to submit in answer to the respondent's submission and to close his or her case.

(6) The submission by the parties may be oral or written or both.

(7) The petitioner shall be required to produce evidence to prove his or her claim.

(8) Where the petitioner fails to give evidence in respect of his or her claim, the respondent shall take an oath of denial or rebuttal (*Yamin al-inkar*), and if he or she does so, the claim shall be dismissed.

(9) Where the respondent declines or refuses to swear, the oath shall be returned to the petitioner who shall be required to swear the returned oath (*Yamin al-maruda*) to support of his or her claim.

(10) Where the petitioner swears the returned oath (*Yamin al-maruda*) under paragraph (9), his or her claim shall be admitted and if he or she declines, the claim shall be dismissed.

74. Trial not concluded

(1) Where a Kadhi has commenced the trial of any proceedings and is unable for any reason to conclude the trial, another Kadhi may with the consent of all parties continue the trial and give judgment.

(2) Where the consent referred to in paragraph (1) is not obtained, the matter will be re-heard.

75. Recusal of a Kadhi

A Kadhi may recuse himself on his own motion or by an application by a party made on reasonable grounds.

76. Disqualification of a Kadhi

(1) A Kadhi shall be disqualified from considering and hearing a case for any of the following reasons—

- (a) if the Kadhi is the spouse, relative, or in-law of a litigant;
- (b) if the Kadhi, or his spouse, has an existing dispute with a litigant in the case or with the spouse;
- (c) if the Kadhi is a guardian, trustee, or presumptive heir of a litigant or if the spouse of the guardian or trustee of a litigant or a relative or an in-law up to the fourth degree of the guardian or trustee of a litigant;
- (d) if the Kadhi had represented one of the litigants in the case before the Kadhi joined the Judiciary;
- (e) if the Kadhi had appeared as a witness in the case or had engaged in any investigative action therein; and
- (f) if enmity or friendship exists between the Kadhi and a litigant such that it is likely to affect the Kadhi's impartiality.

(2) An action or decision by a Kadhi in any of the foregoing circumstances contemplated in paragraph (1) shall be a ground for a reconsideration by the Kadhi's peers or an appeal.

PART VII – JUDGMENTS

77. Delivery of judgments

(1) Every trial Kadhi shall deliver a written judgment.

(2) A judgement under these Rules shall include the following particulars -

- (a) the names of the parties in the suit;
- (b) the petitioner's claim;
- (c) the respondent's response or counterclaim;
- (d) the issues for determination
- (e) a summary of evidence given by the petitioner and respondent;
- (f) the court's findings on the evidence submitted in accordance with Muslim law; and
- (g) orders to of the Court.

(3) Every judgment of the Court shall be dated and signed by the Presiding Kadhi and sealed by the Court.

(4) Every judgment shall be pronounced in open court unless otherwise necessary.

(5) When a Kadhi who has tried any proceedings is for any reason unable to pronounce judgment, the judgment written by the Kadhi may be read in open court by any other Kadhi of equal rank.

(6) All judgments pronounced under this rule shall form part of the record of the case.

(7) Upon delivery of the judgment, a decree shall be drawn up and signed by the Court.

78. Review of judgment on Kadhi's own motion

A Kadhi may review his own judgment upon notice to both parties on the Kadhi's own motion if he discovers that he has misapprehended the facts, the law or both.

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79. Reconsideration of a matter

(1) A person who is aggrieved by a judgment, ruling or an order from which an appeal is allowed but from which no appeal is preferred, may within reasonable time, apply for a reconsideration of the judgment, ruling or order—

- (a) if there is discovery of new evidence which, after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the judgment, ruling or order was made;
- (b) on account of some mistake or error apparent on the face of the record;
- (c) if the judgment, ruling or order requires clarification; or
- (d) for any other sufficient reason.

(2) An application for review of a decree or order of the Court under paragraphs (b), (c) or (d), shall be made to the Kadhi who passed the decree or made the order sought to be reviewed or to any other Kadhi if that Kadhi is not attached to the Court station.

(3) A party seeking the review of a judgment, ruling or order of the Court shall apply to the Court by way of an application and shall attach a copy of the judgment, ruling or order to be reviewed.

(4) The Court shall, upon hearing an application for review, deliver a ruling allowing or dismissing the application.

80. Consent judgment

Judgment by consent of the parties, apart from conciliation (*Sulh*), may be recorded by the Court at any time.

81. Instalments when due

Where any order is made for payment by instalment in a particular month, the instalment shall, in the absence of any direction to the contrary, be deemed to be payable on the first day of the month next following and on the first day of each succeeding month.

82. Order of instalments

(1) Any debtor against whom a judgment has been given may apply to the Court—

- (a) for leave to pay the judgment debt by instalments; or
- (b) if an order for payment by instalments has been made, for leave to pay by reduced instalment, and the Court may, after hearing the parties, make such order as it may deem just.

(2) Every judgment or order requiring any person to do any act, other than the payment of money, shall state the time within which the act is to be done and such time shall be reasonable in the circumstances.

(3) Where the person required to do the act was personally present or represented by his or her Advocate when the judgment or order was given or made, it shall not be necessary to serve him with a copy of the judgment or order but if he or she is absent he or she be served with copies thereof.

83. Enforcement of judgment

A judgment or an order for the payment of money, other than a judgment or an order for the payment of money into court, may be enforced by one or more of the following means—

- (a) seizure and sale;
- (b) transfer of debt (*hiwalah*) proceedings;
- (c) attachment;
- (d) committal to civil jail; and
- (e) where that person is a body corporate, with the leave of the Court, an order of committal against any director or other officer of the body.

84. Enforcement of judgment for possession of immovable property

(1) A judgment or an order for the giving of possession of a movable or an immovable property may be enforced by one or more of the following means—

- (a) an order of possession or eviction; and
- (b) an order of committal.

(2) An order for possession of immovable property shall not be given unless it is shown that every person in actual possession of the whole or parts of the immovable property has received such a notice of the proceedings as appear to the Court to be sufficient to enable that person to apply to the Court for any relief to which he or she may be entitled.

(3) An order for possession may include provisions for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced.

(4) A request for an order of delivery of movable property shall be made in Form KC 12.

85. Power of the Court to specify tie for compliance

A judgment or an order requiring a person to do an act shall specify the period within which that act is to be done, the Court may, on such terms as it deems just, make an order requiring the act to be done within such period as is reasonable in the circumstances.

PART VIII – APPEALS

86. Notice of appeal

(1) An appeal against the decision of the Kadhi's court shall be made to the High Court, and against the decision of the High Court to the Court of Appeal.

(2) An appeal shall be made by giving a notice of appeal.

(3) An appellant may appeal against the whole or any part of a decision.

(4) The notice of appeal shall be filed within thirty days from the day on which the decision was pronounced, and shall state whether the whole or part only, and what part, of the decision is appealed against.

87. Procedure on appeal

The procedures on appeal shall be in accordance with the Civil Procedure Rules (sub.leg) and the Court of Appeal Rules (sub.leg), as appropriate.

PART IX – EXECUTION

88. Execution

(1) An application for execution of any order shall be made to the Court and be supported by an affidavit setting out a statement of non-payment or non-compliance and exhibiting an affidavit of service of the order.

(2) The Court may make such order as the circumstances may deem just.

89. Leave to issue order of execution

(1) An order for execution to enforce a judgment or an order shall not issue without the leave of the Court—

- (a) if the judgment or order is subject to any condition or contingency;
- (b) if at any time four years or more have elapsed since the date of the judgment or order;
- (c) if any change has taken place by death, assignment or otherwise in the parties entitled or liable to execution under the judgment or order;
- (d) if the judgment creditor desires to enforce the judgment against any person other than the judgment-debtor named in the judgment;
- (e) if an order of committal is outstanding; or
- (f) if execution has been stayed by the Court.

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(2) An application for leave to execute may be made *ex parte*, but the Court may order service of the application on any party or person concerned.

(3) The Court shall, if it is satisfied that the order for execution should be issued, grant leave in accordance with the application.

90. Issue of order of execution

Subject to rule 92, a judgment creditor may present to the Court application for an order for execution in Form KC 13 and the Kadhi, if there appears no reason why execution should not issue, shall sign and seal the order in duplicate.

91. Fees and expenses to be levied

All expenses and fees of execution shall be in the discretion of the Court.

92. Satisfaction

Where the Court is satisfied that the judgment-debtor has satisfied the judgment, the Court may, on the application of the judgment-debtor, record in the file that the judgment has been satisfied.

93. Types of execution

(1) An order for execution may direct the applicant to take any one or more of the following actions—

- (a) recover any sum payable by seizing and selling the movable property of the judgment-debtor;
- (b) attach the movable property of the judgment-debtor in the possession or control of a third party (hereinafter referred to as "*muhal `alaih*") or a debt due by the *muhal `alaih* to the judgment-debtor;
- (c) seize and deliver to the judgment creditor any chattel ordered to be delivered by the judgment-debtor;
- (d) attach the income of the judgment-debtor; or
- (e) committal to civil jail, which shall be the last resort.

(2) Every order for execution—

- (a) shall state by which methods as specified under paragraph (1) execution is to take place; and
- (b) shall specifically describe the property to which the order relates.

(3) The Court may, on the application of any judgment creditor, issue a further order of execution in respect of different property or different methods of execution from those set out in the current order for execution.

94. Transfer of debt (*Hiwalah*)

(1) In this rule, "property" includes a debt due by a third party to the judgment-debtor.

(2) Where a judgement or order of the Court for recovery of payment of money has been made and remains unsatisfied or is partially satisfied, the Court may upon the application of the judgement-creditor order that debts owing to the judgement-debtor from any third party shall be attached to satisfy the judgment or order together with the costs of the transfer of debt proceedings.

(3) On the application of the judgement-debtor for an order, the Court may require the judgment-debtor to make a declaration that the judgement or order remains unsatisfied and the amount that the third party is indebted to the judgement-debtor.

(4) When the Court is satisfied that the third party is indebted to the judgement-debtor, the Court may order the debts so owing to the judgement-debtor to be attached to satisfy the judgment or order together with costs of the transfer of debt proceedings and may order by the same or subsequent order that the third party shall appear before the Court on a day and at a time stated in the order to show cause why he or she should not pay to the

judgment-creditor the debt due from him or her to the judgment-debtor or so much thereof as may be sufficient to satisfy the judgment or order together with costs of the transfer of debt proceedings.

(5) A third party shall be served with a transfer of debt summons in Form KC 14 together with the order at least fifteen days before the hearing stating that a debt due or accruing to the judgment-debtor shall be attached and shall bind such debt in the hands of the third party to the extent or value therein mentioned, and any alienation or disposal of the property contrary to the terms of the notice, except with the leave of the Court, shall be null and void and such action shall also be a contempt of court:

Provided that no such summons shall be issued to a public servant in respect of money or property in his or her possession in his or her capacity as such, except with the leave of the Court.

(6) Where a third party fails to appear as summoned, summons, the Court may upon proof of service order execution to issue to levy the amount due from the third party or so much thereof as may be sufficient to satisfy the judgment or order together with costs of the transfer of debt proceedings.

(7) A third party may before the day and the time prescribed by any order made under subsection (4) pay into without disputing his or her liability or with admission of his or her liability an amount equal to that of judgment-debtor with costs of the transfer of debt proceedings.

(8) Where a third party appears and disputes his or her liability, the Court shall proceed to hear and determine the issue in such a manner, as it deems fair and just.

(9) After an attachment of immovable property of a third party shall have been made in accordance with these Rules, any alienation without leave of the Court of the property attached, whether by sale, gift or otherwise, and any payment of any debt to the judgment-debtor during the continuance of the attachment shall be null and void.

(10) The Court may, in its discretion, refuse to make or issue an order where the amount to be recovered or the debt to be attached is so small that the remedy sought would be worthless or vexatious.

95. Money and property in Court

The Court may order that any money, invested funds or other property in or under the control of the Court due to the judgment-debtor shall be applied with the leave of the Court towards satisfaction of the judgment debt.

96. Attachment and sale

Attachment shall be effected through the office of a licensed and certified bailiff.

97. Direction as to performance of applicant's duty

(1) The Court may, of its own motion or on the application of any interested party, give to the applicant such directions as to the performance of his duties as may be considered just.

(2) The Court may summon and examine any person who can give information regarding any execution.

98. Application for oral examination of judgment-debtor

(1) Where a judgment of the Court is for payment of money, the judgment creditor who is entitled to enforce the judgment may apply to the Court for an order requiring the judgment-debtor to appear in court to be examined.

(2) An application requesting a judgment-debtor to appear shall be made by filing a request in Form KC 15, signed by the applicant or his or her Advocate.

(3) Where a judgment has been given against two or more persons, the judgment creditor may require the judgment-debtor summons to be issued against either of the persons liable under the judgment.

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99. Issue of judgment-debtor summons

A judgment-debtor summons shall be made in in Form KC 16 and served on the judgment-debtor at least seven days before the day fixed for the hearing of the summons.

100. Examination of judgment-debtor

(1) On the day fixed for the hearing of judgment-debtor summons, the Court may examine the judgment-debtor or any necessary witnesses.

(2) If the judgment-debtor is not present on the day fixed for the hearing of the summons, the Court may—

- (a) order that he or she may be arrested and brought to the Court to be examined; or
- (b) make an order under paragraph (3) against the judgment-debtor.

(3) The Court may order the judgment-debtor to pay the judgment debt either—

- (a) immediately in a lump sum or within such time as may be fixed by the Court; or
- (b) by instalments to be paid at the time fixed by the Court.

101. Order of committal

An order for committal under this order shall be in Form KC 17.

102. Payment by judgment-debtor

(1) Where an order for committal is made under rule 108, the judgment-debtor may, at any time pay the amount due into court.

(2) Upon confirmation of such payment the Court will order his or her release.

103. Payment into court

(1) A respondent may pay money into court in satisfaction of the claim or any part thereof and may also pay into court a sum of money in respect of costs.

(2) The respondent shall give notice to the petitioner of the payment into court and, where the payment is less than the amount claimed, the notice shall state in respect of what the payment is made.

104. Payment out of court

Where the payment into court is of the amount claimed or the petitioner elects to accept it in full and final satisfaction of the whole of his or her claim, the amount shall be paid out to him or her, and may apply for judgment for costs incurred prior to his or her receiving notice of the payment into court.

105. Part satisfaction

Where part payment is made in respect of a part of the claim, the petitioner may continue the action in respect of the other part.

106. Order for payment out of court

Money paid into court shall not be paid out without an order of the Court.

107. Notice to persons entitled

Where money is paid into court in respect of a claim, the person paying in shall give notice of the payment to all other parties.

108. Furnishing security

(1) Security shall be given by deposit of money or by bond, the amount of which shall be fixed by the Court.

(2) Expenses of security, if any, shall be borne by the person giving the security.

(3) Where security is given by deposit of money, the money shall not be paid out without the order of the Court.

(4) Where security is given by bond, one surety shall be required unless the Court otherwise orders.

PART X – INTERLOCUTORY PROCEEDINGS, INJUNCTIONS AND INTERIM ORDERS

109. Interlocutory proceedings

(1) Where an application in the course of any proceedings, whether before or after judgment, is expressly or by implication authorized to be made by the Court, such application shall be made in Form KC 18 and may, unless the Court otherwise directs, be heard in chambers before a Kadhi.

(2) Every application shall state the nature of the order applied for in general terms and the grounds of the application.

(3) An application under this rule may be made *ex parte* unless the Court otherwise directs or as otherwise provided in this rule.

110. Filing of notice of application

(1) An application shall be deemed to have been made when it has been sealed by an officer of the Registry and filed, and served on all the other parties.

(2) An application shall not be amended after filing without the leave of the Court.

111. Service of summons

Any application asking for the extension or abridgment of Service of any period of time may be served on the day before the day specified for the hearing thereof but, except as provided in these Rules and unless the Court otherwise orders, an application shall be served on each of the other parties not less than two clear days before the day so specified.

112. Power of court to grant interim order

(1) The Court may grant an interim order on such terms as it deems fair and just and may give directions as to further proceedings.

(2) An application for an interim order shall be made in Form KC 19 and supported by an affidavit.

(3) The Court may, on the application of any party, make interim orders for the purpose of—

- (a) preserving any property in issue;
- (b) safeguarding the rights of any party pending trial;
- (c) facilitating the trial or hearing of the proceedings; or
- (d) the amendment of any proceedings or correction of any error, on such terms as may be just.

(4) An application for interim orders may be made orally, but any party affected thereby shall be given the opportunity to be heard thereon.

(5) Where on the hearing of the application, made before the trial of a cause or matter, for an interim order it appears to the Court that the matter in dispute can be better dealt with earlier than when considering the whole suit, the Court may upon being satisfied of the merits thereof make an order accordingly and may also make such order as respects the period before trial as the justice of the case requires.

(6) There shall be no appeal against any interim order made under this rule.

113. Application for interim order for custody (*Hadanah*)

(1) If the Court is satisfied, on the application of any party for custody of a child (*hadanah*) in any cause or matter, that the circumstances require an interim order to be made for the custody of that child, maintenance or related relief of that child, the Court may make such

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order which shall have effect for a period of fourteen days in the first instance and shall continue to be in force until the Court has made a decision *inter partes* on the cause.

(2) An application under this rule shall not be made before the action has begun except in a case of urgency which, in the interest of justice or for the protection of the applicant or the child, it appears that the immediate intervention of the Court is necessary.

(3) Where the applicant is the petitioner and the circumstances justify, an application under this rule may be made *ex parte* and shall be supported by an affidavit.

114. Interim order as to maintenance (*Nafaqah*)

(1) Where the Court is satisfied, on the application of any party entitled to maintenance in any cause or matter, that the circumstances require an interim order for maintenance to be made against the person liable to pay maintenance, the Court may make such an order which shall have immediate effect and shall continue in force until the Court has made a final decision on the cause or matter or has varied its interim decision.

(2) Where the application referred to in paragraph (1) is in respect of an interim order for the maintenance of a child, the Court shall not make such an order unless it is satisfied that the parents or the person liable for the maintenance of the child has the ability to pay for the maintenance applied for.

115. Detention, preservation, etc., of subject-matter of cause or matter

(1) On the application of any party to a cause or matter, the Court may make an order for the detention, preservation or custody of any property which is the subject of the cause or matter, or as to which any question may arise therein, or for the inspection of any such property in the possession of a party to the cause or matter.

(2) For the purpose of enabling any order under paragraph (1) to be carried out, the Court may, by the order, authorize any person to enter upon any immovable property in the possession of any party to the cause or matter.

(3) Where the right of any party to a specific fund is in dispute in a cause or matter, the Court may, on the application of a party to the cause or matter, order the fund to be paid into Court or otherwise secured.

116. Injunctions

(1) Any party may, in any cause or matter, before or after the hearing of the cause or matter, apply to the Court to grant an injunction whether or not the claim for the injunction has been included in the petition, counterclaim or third-party notice, as the case may be.

(2) An application under this rule shall not be made before an action has begun except where it is one of urgency.

(3) Where the applicant is the petitioner and the case is one of urgency, the application may be made *ex parte* supported by an affidavit which shall contain a clear and concise statement—

- (a) of the facts giving rise to the claim against the respondent in the proceedings;
- (b) of the facts giving rise to the claim for the injunction;
- (c) of the facts relied on as justifying the application being made *ex parte* including details of any notice given to the respondent or, if none has been given, the reason for giving none;
- (d) of any answer asserted by the respondent, either to state the claim in the action or the claim for the injunction;
- (e) of any facts known to the applicant which might lead the Court not to grant *ex parte* injunction;
- (f) of whether any previous similar *ex parte* application has been made to any other Kadhi and, if so, the order made in that previous application; and
- (g) of the precise relief sought.

(4) An applicant under this rule has a duty of full and frank disclosure.

(5) Notwithstanding paragraphs (1) and (3), in any proceedings against the Government, the Court shall not grant an injunction but may, in substitution, make an order declaring the right of the parties in the cause or matter.

(6) The Court shall not grant an injunction or any order against any officer of the Government if the effect of the injunction or the making of the order is to give relief that may not be obtained by it in proceedings against the Government.

PART XI – COSTS

117. Award of costs

Subject to this Part, the Court may award costs of proceedings filed in the Court.

118. Assessment of costs

Costs may be agreed on by the parties or may be assessed by the Court.

119. Fees, deposit and disbursement

Where any fee or deposit is payable in respect of any act, or any disbursement is necessarily involved in the doing of an act, the officer charged with doing of the act shall not be obliged to do it until the fee or deposit or the amount of the disbursement has been paid.

120. Contempt of court

(1) The Court shall have the power to institute proceedings against any person for contempt of court and may, in such proceedings, make an order of committal or may impose a fine in accordance with written laws.

(2) The Court shall be deemed a court of record for the purposes of contempt of court proceedings.

(3) Where contempt is committed in the face of the Court, it shall not be necessary for the Court to serve the notice to show cause:

Provided that the Court shall ensure that the person alleged to be in contempt understands the nature of the offence alleged against him or her and has the opportunity to be heard in his or her own response, and shall make a proper record of the proceedings.

(4) In the case of contempt committed outside court, notice to show cause shall be served personally on the person alleged to have committed such contempt.

121. Contempt by body corporate

Where contempt of court is committed by a body corporate, any person who at the time of the commission of such contempt is a director, manager or secretary of the body corporate or otherwise responsible for the management of the body corporate shall also be guilty of contempt unless that person proves that—

- (a) the contempt was committed by the body corporate without his or her consent or connivance; or
- (b) he or she exercised due diligence to prevent the commission of the contempt as he or she ought to have exercised, having regard to the nature of his or her office and function in that capacity and to all the circumstances.

122. Proceedings without authority

Any person doing any act or commencing any proceedings in the name or on behalf of another person knowing himself or herself not to be lawfully authorized by that other person shall be guilty of contempt of court.

PART XII – EVIDENTIARY PROCEDURES

123. Burden of proof

(1) The burden of proof of any fact rests with the claimant (*al Mudda'i*) and the person who denies or disputes a fact (*al Mudd 'a 'alaih*) takes the oath.

[Subsidiary]

(2) Whoever desires any court to give judgment as to any legal right or liability which is dependent on the existence of facts which he or she asserts must prove those facts.

124. Observance of Muslim law on evidentiary procedures

(1) The Court shall observe provisions of Muslim law relating to evidentiary procedures in the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance required to prove any fact.

(2) The Court may call any evidence which it considers necessary provided that no party shall be obliged to give evidence against his will.

(3) Evidence may ordinarily be given on oath in a form binding upon litigants, but the Court may on special grounds dispense with an oath and take evidence on affirmation.

125. Evidence to be taken orally or by affidavit

Any fact required to be proved at the trial of any proceedings by the evidence of parties or witnesses shall be proved by the examination of the parties or witnesses orally in an open court and by the production of material physical evidence.

126. Evidence by oath (*Al-Yamin*)

(1) Evidence shall be given by the petitioner.

(2) If the petitioner has no evidence to support his or her case, he or she may request the Court to administer oath to the respondent.

(3) If the respondent denies the claim made against him or her, he or she shall be required to take an oath according to Muslim law.

(4) If the respondent takes the oath, the claim made by the petitioner may be dismissed.

(5) If the respondent refuses to take such oath, the Court may ask the petitioner to take the oath upon which the Court shall make such decision as may be just and the circumstances require.

(6) If the petitioner takes oath, judgement may be entered for the petitioner, otherwise the claim shall be dismissed.

(7) Where the respondent admits the claim in full or in part, the Court shall enter judgement in favour of the petitioner to the extent of the respondent's admission.

(8) Any evidence either oral or documentary may be relied on to prove a claim.

127. Testimony

(1) The testimony of each witness shall be heard individually in the presence of the litigants but not in the presence of the other witnesses whose testimony had not been heard.

(2) The Kadhi may, on the Kadhi's own motion, ask the witness whatever questions the Kadhi determines are necessary to the finding of truth.

(3) A litigant who requests, during proceedings, proof by the testimony of witnesses shall set forth in writing or orally during the hearing the events he or she wishes to prove.

(4) If a witness has a valid reason or incapacity that prevents his or her attendance in court to testify, the Kadhi may, at the Kadhi's discretion, decide whether to visit the witness or the Court shall assign one of its other Kadhis to do so.

128. Testimony of parties

The petitioner and the respondent are not competent witnesses in their own cases.

129. Witnesses who are dumb or using foreign or local dialect

A witness who is unable to speak or who uses a foreign or local dialect may give his or her testimony in any manner in which he or she can make it intelligible such as by writing, signs or by an interpreter.

130. Witness statements

(1) Where a party has been unable to file the statements of any witness that he or she wishes to call, the parties shall apply to the Court for leave to file such witness statements.

(2) The Court may grant leave where the interest of justice requires it to do so.

131. Authenticity of documents

(1) Any document submitted to the Court as evidence shall require the proof of authenticity thereof.

(2) The Court may at any stage of hearing, require the attendance of a deponent or an author of a document for the purposes of examination of the facts deponed or written.

132. Discovery of documents and facts

(1) The Court may, where necessary and upon such terms as it thinks just, order any party—

- (a) to state on oath, orally or by affidavit, what document he or she has or has had in his or her possession or power relating to the matters in question, or whether he or she has or has had in his or her possession or power any specified document or documents or class of documents and, in either case, the present whereabouts of any documents formerly, but not now, in his or her possession or power; or

- (b) to produce any document in his or her possession, power or control.

(2) If the party is an incorporated or unincorporated body, an officer of that body may be ordered to comply with the order or direction of the Court in respect of discovery of any documents.

(3) The Court may stay the proceedings pending compliance of the order or direction of the Court under this rule.

133. Inspection of documents

Any party shall be entitled to inspect and copy any document in the possession or power of another party and referred to in any pleading, affidavit or other documents filed by him or her in the proceedings or on oral examination under rule 134.

134. Copies of documents

The original of any document which is to be used in evidence in proceedings relating to the application shall, if it is available, be brought in, and copies of any such document or of any part thereof shall be supplied for the use of the Court or be given to the other parties to the proceedings.

135. Privileged communications and documents

Production and inspection of documents under this Part shall be subject to the provisions of law relating to privileged communications and documents.

136. Notes of evidence

The Court shall record the evidence given and the submissions of law made, including any objections to evidence, and may, so far as relevant to its decision, record such remarks regarding the demeanour of witnesses and other material matters.

137. Documents or exhibits

(1) Documents or other exhibits tendered in evidence and accepted shall be marked and, unless the Court otherwise orders, such documents or exhibits or copies of the documents or exhibits shall be retained in Court during the pendency of the proceedings and until the time for appeal has expired.

(2) For the purpose of identification, documents or other exhibits tendered in evidence but rejected, shall also be marked.

[Subsidiary]

(3) Birth certificates tendered in evidence and accepted may be replaced with certified copies on the application of any party.

138. Power of court

In the interest of justice, the Court may, at any stage of the proceedings, call any party to adduce evidence and may inspect any document, premises or property.

139. Recording of evidence before hearing

(1) Where the Court is satisfied that the evidence of any party or witness should be taken before the date of the hearing, the Court or any Kadhi directed by the Court may take the evidence from any such party or witness at such place as it thinks fit and the evidence so taken may be used at the hearing.

(2) Notice that evidence will be taken under paragraph (1) shall be served on the other party not less than seven days before the date the evidence is to be so taken and the other party may take part in such proceedings.

(3) The Court may, if it appears likely that any intended witness in any proceedings will not be able to give evidence at the trial or hearing, record the evidence of such witness in writing and such evidence may be used as evidence at the trial or hearing:

Provided that all parties to the proceeding shall have been given due opportunity to attend and cross-examine.

140. Request to another court to take evidence

(1) The Court before which the proceedings are still pending may, of its own motion or on the application of any party to the proceedings, request another court to take evidence from any party or witness in such proceedings, if the Court is satisfied that the party or witness cannot attend the Court on a reasonable ground or if the appearance of the party or witness will cause the party calling the witness to incur unreasonable expenses.

(2) The powers of the Court or a Kadhi under paragraph (1) shall be exercised if there is a written request from the Court before which the proceedings are pending.

(3) Subject to paragraph (2), the Court or a Kadhi may, in the case of any pending proceedings before another court, take evidence from any party or witness or other person and accept any documents submitted in the pending proceedings.

141. Affidavits

(1) Every application shall be supported by an affidavit or a statutory declaration.

(2) Affidavits shall be limited to such facts that are in the deponents' own knowledge and where they are not, the sources or grounds for belief must be clearly stated.

(3) Every affidavit shall state the description, true place of residence and postal address of the deponent, and if the deponent is a minor shall state his age.

(4) Every affidavit shall be drawn in the first person and divided into paragraphs numbered consecutively.

142. Form of affidavit

(1) An affidavit shall be in Form KC 20.

(2) Notwithstanding paragraph (1), the Court may, in its discretion, accept an affidavit notwithstanding any non-compliance in the form thereof.

143. Copy of document shall be annexed to affidavit

(1) A copy of any document to be used in conjunction with an affidavit shall be annexed to the affidavit as an exhibit.

(2) An exhibit to an affidavit shall be identified and marked as an exhibit referred to in the affidavit.

144. Rejection of affidavit

The Court may reject any affidavit or part thereof if the content cannot be easily read or understood, or in which there is any interlineation, alteration or erasure or other defect of form or for any other reason where the content demonstrates it is not the words of the deponent.

145. Amendment of affidavit

(1) An affidavit which has been filed cannot be amended except for the purpose of correcting any defect of form or a clerical mistake.

(2) Any amendment made under paragraph (1) shall be made by way of corrective affidavit and shall be filed before the trial.

(3) An additional affidavit may be filed before the trial.

146. Filing of affidavits

(1) No affidavit may be filed after the final hearing of the suit has begun except with leave of the Court.

(2) There shall be no appeal against the refusal of the Court to grant leave under paragraph (1) except in an appeal against the decision of the case as a whole.

147. Manner of giving evidence

(1) Any party desiring to contest the fact deponed to in an affidavit may serve on the party who filed the affidavit notice of intention to cross-examine the deponent, and thereupon, if the deponent is not produced for cross-examination, the Court may reject and/or disregard the contents of the affidavit.

(2) The Court may of its own motion require the attendance of any deponent for examination on his affidavit and, in the absence of such attendance, may reject or disregard the affidavit.

(3) Examination-in-chief takes place first where a witness is questioned by the party who called him or her, in a.

(4) Cross-examination, where a party is interrogated by one's opponent, takes place after examination in chief.

(5) Re-examination take places after all other parties who wish to do so have cross-examined the witness.

148. Courts to be open

Every hearing in court shall be held in open court provided that a court may order that the whole or any part of any proceedings before it may take place in a closed court if it is satisfied that it is expedient in the interests of justice and of the parties or children's welfare so to do.

149. Witness expenses to be borne by party responsible

(1) Witness expenses shall be borne by the party calling the witness.

(2) Where on the hearing of any proceedings a person attends court as a witness of fact, or as a witness to produce a document, he or she may be allowed such appropriate sum as may be prescribed.

PART XIII – DISSOLUTION OF MUSLIM MARRIAGES**150. Dissolution of Muslim marriages**

(1) The dissolution of a Muslim marriage shall be governed by Muslim law.

(2) A party to a Muslim marriage may petition the Court for dissolution of the said marriage in the manner provided under these Rules.

151. Commencement of proceedings

(1) Dissolution of Muslim marriages shall be commenced by filing a claim in Form KC 1.

[Subsidiary]

- (2) The claim shall state—
- (a) particulars of the parties and their addresses where the parties have stayed in Kenya or as the case may be;
 - (b) the place and date of the marriage;
 - (c) whether there are any children of the marriage and, if so, the names and dates of birth or ages of such children;
 - (d) whether there have been in the Court or any other court any previous proceedings related to the marriage by or on behalf of either parties to the marriage;
 - (e) the reliefs sought; and
 - (f) the grounds upon which reliefs are sought.
- (3) The claim shall be accompanied by the following—
- (a) an affidavit;
 - (b) a list of witnesses; and
 - (c) copies of documents to be relied upon during trial.

152. Divorce by *Talaq*

(1) A husband may divorce his wife in accordance with Muslim law.

(2) Within reasonable and practicable time after any divorce, a party to a divorce shall apply by way of an application to the Court in the area in which the divorce took place with all necessary particulars and shall pay to the Court the prescribed fees and the Court shall verify on whether the unilateral *Talaq* issued by the husband is valid in accordance with the Muslim school of jurisprudence of the parties and upon satisfaction forthwith register the divorce and issue a certificate of divorce:

Provided that in the case of a revocable divorce no certificate of divorce shall be issued until after the expiration of the period of *Idda*.

(3) The Court shall retain the role of verifying whether the unilateral *Talaq* meet the standards of Muslim law.

153. Divorce by *Khul'*

(1) Where the parties are agreed to divorce by *Khul'*, upon payment or satisfactory arrangement to make payment, the Court may dissolve the marriage.

(2) In the absence of agreement, a married woman may apply to the Court for the dissolution of the marriage.

(3) If the parties are unable to agree to the amount to be paid, the Court shall assess the amount of the payment to be made by the wife in accordance with the status and means of the parties and shall upon payment, or satisfactory arrangements to pay, dissolve the marriage.

(4) If the husband consents to the divorce, the Court shall, on payment, dissolve the marriage.

(5) The arrangements to make payment shall be to the satisfaction of the Court in accordance with the means of the Parties and the justice of the case.

154. Divorce by *Li' an* (Oath to prove allegations of adultery)

(1) Where the parties to a marriage have taken oath by way of *li'an*, the Court shall record and register the divorce by *li'an* accordingly and issue a certificate of divorce to the parties to the marriage.

(2) All evidentiary procedure relating to the proof of adultery shall be exhausted.

(3) The Court shall cause the parties to swear an affidavit.

(4) The Court shall issue a declaration.

(5) An affidavit of *li'an* shall be in in Forms KC 21 and KC 22.

155. Divorce under stipulation

(1) A married woman may, under the terms of an agreement made upon marriage, apply to the Court for dissolution of that marriage in accordance with those terms.

(2) The Court shall inquire as necessary into the validity of the divorce and shall, if satisfied, dissolve the marriage.

156. Dissolution of marriage

(1) A party to a marriage may apply by suit in the Court for a decree of dissolution of marriage (*fasakh*), in accordance with Muslim law.

(2) No decree shall be pronounced save in accordance with of Muslim law.

157. Division of matrimonial property

Either party may file an application for the division of matrimonial property at any time by Notice of Motion.

158. Court may attempt to reconcile parties

(1) In cases of dissolution of marriages, the Court may attempt to reconcile the parties and, if the couple have children, the Court shall offer reconciliation to the parties at least twice and separate between them for a period not less than thirty days and not more than sixty days.

(2) Where the Court is convinced that reconciliation has been adequately done but without success before matter was filed and differences are still irreconcilable, the Court may proceed to hear the matter.

159. Gift to divorced wife (*Matt'a*)

(1) A woman who has been divorced by her husband may apply to the Court for a consolatory gift (*Matta 'a*).

(2) The Court may, after hearing the parties, order payment of such sum or property as may be just and in accordance with Muslim law.

160. Payment to maintenance to a woman

(1) A married woman may apply to the Court obtain for an order against her husband for the payment, from time to time, of any such sums in respect of her maintenance as she may be entitled to in accordance with Muslim law.

(2) A woman who has been divorced may apply to the Court for an order against her former husband for the payment, in respect of the period of *idda*, of any such sum in respect of her maintenance as she may be entitled to in accordance with Muslim law.

161. Payment of maintenance to minor children

(1) A minor may apply to the Court through a representative for an order against his or her father or any other person liable in accordance with Muslim law to support him or her for the payment, from time to time, of any such sums in respect of his or hr maintenance to which he or she may be entitled to in accordance with Muslim law.

(2) It shall be a sufficient response to any such application that the applicant has sufficient means to support himself or herself.

(3) An application under paragraph (1) shall be by way of Notice of Motion.

162. Variation and rescission of orders

(1) The Court may at any time on an application and for sufficient reasons from time to time, revoke, review, suspend or vary any order where the order is in respect the status of children and/or any financial provisions for the spouse or children.

(2) Any order made under this part of these Rules may be rescinded or varied upon the application of any person interested thereunder and upon proof of change of material circumstances.

[Subsidiary]

PART XIV – ISLAMIC SUCCESSION

163. Succession petitions

Every succession petition shall include the following details—

- (a) the petitioner's name, address, residence, faith and relationship with the deceased;
- (b) the respondent's name, address, residence, faith and relationship with the deceased;
- (c) the deceased person's name, date and place of death;
- (d) the particulars of the estate of the deceased person and whether the estate is intestate or testate;
- (e) proof of death including death certificate, death notification and burial permit;
- (f) the debts and liabilities of the estate; and
- (g) the beneficiaries or heirs of the deceased person.

164. Grant and confirmation of probate and letters of administration

(1) The provisions of Part VII of the Law of Succession Act relating to the administration of a deceased person's estate where they are not inconsistent with those of Muslim law shall apply in the case of a deceased Muslim.

(2) The Court may grant and confirm probate and letters of administration in respect of an intestate or testate deceased Muslim.

(3) The Court may appoint an administrator or administrators of the estate of the deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing the estate.

(4) The administrator appointed under paragraph (3) shall be subject to the direct control of the Court and shall act under the Court's direction.

(5) When a minor is a beneficiary of the estate of the deceased person, letters of administration may be granted to the legal guardian of the minor, or to such other person as the Court shall think fit until the minor has attained full age.

(6) The Court may direct for the provision for the minor to pay for his or her maintenance and other necessities.

(7) After the expiration of a period of six months, or such shorter period as the Court may direct under paragraph (8), from the date of any grant of representation, the holder thereof shall apply to the Court for confirmation of the grant for the distribution of the estate of the deceased person.

(8) The Court may, on the application of the holder of a grant of representation, direct that such grant be confirmed before the expiration of six months from the date of the grant if the Court is satisfied—

- (a) that there is no dependant of the deceased or that the only dependants are of full age and consent to the application; and
- (b) that it would be expedient in all circumstances of the case so to direct.

PART XV – MISCELLANEOUS MATTERS

165. Presumption of death

(1) Where it is proved that a person has not been heard of for four years by those who might be expected to have heard of him or her if he or she were alive, there shall be a rebuttable presumption that the person is dead:

Provided that in exceptional circumstances where the facts justify, the Court shall have the discretion to apply a shorter period provided that it is not less than one year.

(2) The Court shall make a declaration on the presumed date of death.

(3) In case the person presumed dead is a man, the wife shall start observing Edda period from the date which the missing spouse was presumed dead by the Court.

166. Language of the Court

(1) The languages of the Court shall be English and Kiswahili.

(2) Any document required for use in pursuance of these Rules shall be in the official language, and a document in any other language shall be accompanied by a translation thereof in the official language.

167. Forms

The Forms set out in the Schedule, with such variations as the circumstances may require, shall be used for the respective purposes therein mentioned.

168. Certified copies

Upon application and payment of the prescribed fee by any person, the Court assistant may supply a certified copy of any document including, with the consent of the Court, any notes of evidence to that person.

169. Prohibition on officers of the Court

No officer of the Court shall—

- (a) except with leave of court become a surety, or sign any receipt or document or receive any money for or on behalf of any party to any proceedings in the Court; or
- (b) bid or otherwise become purchaser directly or indirectly at any sale by the Court.

170. Enlargement or abridgment of time

(1) The Court may by application, upon such terms as it thinks just, extend or abridge the period within which a person is required or authorized by these Rules or by any judgment, order or direction to do any act in any proceedings.

(2) The Court may extend any such period as is referred to in rule (1) although the application for extension is not made until after the expiration of such period.

171. Inherent power of the Court

(1) Nothing in these Rules shall be deemed to limit or affect the inherent power of the Court to make any order as may be necessary to apply the relevant principles of Muslim law to and to prevent injustice or abuse of the process of the Court.

(2) In matters of practice and procedure not expressly provided for in these Rules made thereunder, the Court may adopt such procedure as may seem proper for the avoidance of injustice and the disposal of the matters in issue between the parties.

172. Rules to be consistent with the Constitution

Any provisions or interpretation of the provisions under these Rules which is inconsistent with the Constitution shall, to the extent of the inconsistency, be void.

173. Rules to apply in case of *lacuna*, etc

In the event of a *lacuna* or where any matter is not expressly provided for in these Rules, the provisions of the Civil Procedure Rules (sub. leg) shall apply so far as relevant to proceedings under these Rules and so far as they are not inconsistent with Muslim law.

SCHEDULE

FORMS

Form KC 1

(r. 20(1) & 151(1))

[Subsidiary]

REPUBLIC OF KENYA
IN THE KADHI'S COURT AT
SUIT NO. OF 20
PETITION

.....
CLAIMANT
VERSUS

.....
RESPONDENT

Notes:

(1) Nature of proceedings (e.g. originating summon, chamber summons, plaint or petition etc.)

(2) Name; if under disability or in representative capacity, give particulars of representation.

Example:

- (a) A.B. administrator of C.D. deceased;
- (b) A.B. an infant, by C.D. his guardian.

1. CLAIMANT'S PARTICULARS

- a. Full name
- b. Address (physical, postal and telephone)
- c. Gender (male/female)
- d. Age
- e. Occupation/profession
- f. Whether sound
- g. Religion

2. RESPONDENT'S PARTICULARS

- a. Full name
- b. Address (physical, postal and telephone)
- c. Gender (male/female)
- d. Age
- e. Occupation/profession
- f. Whether sound
- g. Religion

3. Number of children, their names and particulars

4. Date of marriage between the parties

5. Full details of the Claim

6. State briefly the evidence in support of the Claim (e.g. state number of witnesses you intend to call and attach clear copies of the documentary evidence you intend to produce)

7. The facts showing that the Court has jurisdiction

8. Averment to the effect that there is no other suit pending and there have no previous proceedings in any court between the petitioner and the Respondent over the same subject matter.

9. Relief sought.

Dated at this day of 20

CLAIMANT

DRAWN AND FILED BY:

TO BE SERVED UPON:

Form KC 1

(r. 20(1))

REPUBLIC OF KENYA

IN THE KADHI'S COURT AT

SUIT NO OF 20

PETITION

.....
CLAIMANT

VERSUS

.....
RESPONDENT

DECLARATION

I of P.O. Box in the Republic of Kenya do hereby make oath and state as follows:-

- 1. THAT I am an adult male/female of sound mind and disposition competent to swear this Affidavit.
- 2. THAT I am the Petitioner herein hence competent to swear this Affidavit.
- 3. THAT I aver that the contents of the claim herein are true and correct.
- 4. THAT I swear this Affidavit in verification of the contents of the claim herein.
- 5. THAT what is deponed herein is true to the best of my knowledge, information and belief.

Declared by the said Deponent }
At this Day of }
20

BEFORE ME }
}

DEPONENT }
}

COMMISSIONER FOR OATHS/ }
MAGISTRATE }

DRAWN & FILED BY:

Form KC 2

(r. 20(1), 21)

REPUBLIC OF KENYA

IN THE KADHI'S COURT AT

SUIT NO OF 20

.....
CLAIMANT

VERSUS

.....
RESPONDENT

SUMMONS TO APPEAR AND REPLY

To:

Kadhis' Courts

[Subsidiary]

WHEREAS the above-named Petitioner instituted the above suit against you upon the Claim, the particulars of which are set out in the copy of the Claim with annexure attached hereto.

YOU ARE HEREBY REQUIRED within 15 days from the date of service hereof to file Memorandum of Appearance and either (a) Notice of Admission (should you admit the Claim) or (b) a reply (should you wish to oppose the Claim).

Should you fail to appear on the date and time mentioned above, the case shall be fixed for hearing and you will be served with a hearing notice.

Given under my hand and the seal of the Court this day of..... , 20

.....

Chief Kadhi / Kadhi / Magistrate

Note: You may appear in this by entering an appearance either personally or by duly appointed advocate. A filing fee must accompany such memoranda. A copy of Memo of appearance should also be sent to the petitioner or his advocate, if any.

Form KC 3 _____ (r. 9 (1), 20(2))

REPUBLIC OF KENYA
IN THE KADHI'S COURT AT
SUIT NO OF 20

CLAIMANT
VERSUS

RESPONDENT
NOTICE OF MOTION

TAKE NOTICE that this Honourable court will be moved on the day of 20 at 9.00 O'clock in the forenoon or soon thereafter as the counsel of the Applicant may be heard for orders;

1. This Honourable court be pleased to order
2. State other orders sought.
3. Any orders that the Court may deem fit to grant in the circumstances.
4. The costs of this application be provided for.

WHICH APPLICATION is supported by the grounds set out and the annexed affidavit of (name of the Applicant) and such further grounds to be adduced at the hearing hereof.

- a. State grounds to be relied upon by the Applicant.
- b. State the relief sought

Dated at this day of 20

PETITIONER

DRAWN AND FILED BY:

TO BE SERVED UPON:

Form KC 3 _____ (r. 9 (1), 20(2))

REPUBLIC OF KENYA
IN THE KADHI'S COURT AT

SUIT NO OF 20

CLAIMANT
VERSUS

RESPONDENT
SUPPORTING AFFIDAVIT

I, of P.O. Boxin the Republic of Kenya do hereby make oath and state as follows:-

1. THAT I am an adult male/female of sound mind and disposition competent to swear this Affidavit.
2. THAT I am the claimant herein hence competent to swear this Affidavit.
3. THAT I aver that the contents of the Notice of Motion herein are true and correct.
4. THAT I swear this Affidavit in verification of the contents of the Notice of Motion herein.
5. THAT what is deponed herein is true to the best of my knowledge, information and belief

Sworn by the said Deponent }
 At this Day of }
 20

BEFORE ME

DEPONENT

COMMISSIONER FOR OATHS/
MAGISTRATE

DRAWN & FILED BY:-

Form KC 4 (r. 9(2))

REPUBLIC OF KENYA

IN THE KADHI'S COURT AT

SUIT NO OF 20

CLAIMANT
VERSUS

RESPONDENT
THIRD PARTY NOTICE

In the Kadhi's Court
 CASE No. OF 20
 Between
 Claimant
 and
 Respondent
 and
 Third Party

Kadhis' Courts

[Subsidiary]

THIRD PARTY NOTICE (Issued pursuant to the order of the Court dated , 20)

To: of (address)

Take notice that this action has been brought by the claimant against the respondent. In it the claimant claims against the respondent in accordance with the attached claim. The respondent claims against you (here state nature of claim against third party, for instance "for indemnity", "contribution" or " the following relief or remedy namely") on the grounds that (state the grounds of the claim).

And take notice that if you wish to dispute the claimant's claim against the respondent, or the respondent's claim against you, you must appear within days after the service of this notice on you, inclusive of the day of service, otherwise you will be taken to admit the claimant's claim against the respondent and the respondent's claim against you and you will be bound by any judgment given in the suit.

Dated the day of 20

Claimant (Advocate for the Claimant)

Form KC 5 (r. 28 (1))

REPUBLIC OF KENYA
IN THE KADHI'S COURT AT
SUIT NO. OF 20

CLAIMANT
VERSUS

RESPONDENT
REQUEST FOR ISSUE OF WITNESS SUMMONS

To the Kadhi,
Kadhi's Court at

Please issue a witness summons to the witness whose name and particulars are as follows:

Witness's name in full:
Identity Card No.:
Occupation:
Address:

for the purpose *of giving evidence/producing document/giving evidence and producing document.

2. The witness is required to produce the following documents:

Dated this day of 20

Claimant (or Respondent)
(or Advocate for the Claimant or Respondent)

* Delete where not applicable.

Form KC 6

(r. 28 (3))

REPUBLIC OF KENYA
IN THE KADHI'S COURT AT.....
SUIT NO. OF 20

CLAIMANT
VERSUS

RESPONDENT
WITNESS SUMMONS TO GIVE EVIDENCE

To
of

You are hereby summoned to attend before the Kadhi's Court at
on the day of 20 at a.m/p.m. and
so from day to day until the end of the above proceedings, to give evidence on behalf of
the in the said proceedings.

Dated this day of 20
Entered No. of 19

Executive office
(Seal the Kadhi's Court)

Kadhi

Form KC 7

(r. 28 (3))

REPUBLIC OF KENYA
IN THE KADHI'S COURT AT
SUIT NO. OF 20

CLAIMANT
VERSUS

RESPONDENT
WITNESS SUMMONS TO PRODUCE DOCUMENT

To
of

You are hereby summoned to attend either in person or by an agent before the Kadhi's
Court at the day of 20 at a.m./p.m. and so
from day to day until the end of the above proceedings, to produce the following documents:

.....
.....
.....

on behalf of the in the said proceedings.

Dated this day of 20
Entered No. of 19

Executive office
(Seal the Kadhi's Court)

Kadhi

[Subsidiary]

Form KC 8

(r. 28 (3))

REPUBLIC OF KENYA
IN THE KADHI'S COURT AT
SUIT NO. OF 20

CLAIMANT
VERSUS

RESPONDENT

WITNESS SUMMONS TO GIVE EVIDENCE AND PRODUCE DOCUMENT
To
of

You are hereby summoned to attend in person before the Kadhi's Court at on
the day of 20 at a.m./p.m. and sor from day to day until
the end of the above proceedings, to give evidence and produce the following documents:

.....
.....

on behalf of the in the said proceedings.

Dated this day of 20.....
Entered No. of 19
Executive office
(Seal the Kadhi's Court)

.....
Kadhi

Form KC 9

(r. 38(3))

REPUBLIC OF KENYA
IN THE KADHI'S COURT AT.....
SUIT NO. OF 20

CLAIMANT
VERSUS

RESPONDENT

RESPONSE

(Set out in numbered paragraphs the admissions or denials of the material
allegations in Petition, each allegation being, so far as convenient, contained in a
separate paragraph, e.g.)

1. The respondent admits that as alleged in paragraph of Petition
but denies that
2. As to paragraph of Petition the respondent says that
3. Further or in the alternative the respondent says that
4. If (which is denied) the petitioner the respondent says
that
5. Except hereinbefore expressly admitted the respondent denies each and every
allegation of fact contained in paragraph (paragraphs
to of) Petitionas if the same were set forth herein andP specifically traversed.

COUNTER CLAIM

1. The respondent repeats paragraph and claims Kshs being the balance of the amount due as aforesaid after deducting the petitioner's claims.

REASONS WHEREFORE the Respondent prays that the Petitioner's suit be dismissed with costs.

Dated at this day of 20

CLAIMANT

DRAWN AND FILED BY:

TO BE SERVED UPON:

Form KC 10

(r. 53(1))

REPUBLIC OF KENYA

IN THE KADHI'S COURT AT.....

SUIT NO. OF 20

CLAIMANT

VERSUS

RESPONDENT

NOTICE OF WITHDRAWAL OF CLAIM

To:

(1) The Registrar.

(2) The respondent (or Advocate for the respondent)

Take notice that the petitioner wholly (or specify the part) discontinues this action against the respondent

Dated this..... day of..... 20.....

Petitioner (Advocate for the Claimant)

Dated at this day of 20

Form KC 11

(r. 64 (2)(a))

REPUBLIC OF KENYA

IN THE KADHI'S COURT AT

SUIT NO..... OF 20

CLAIMANT

VERSUS

RESPONDENT

NOTICE FORWARDING REQUEST FOR SERVICE ABROAD

To:

The Registrar

High Court of Kenya

The Kadhi presents his compliments to the Registrar, High Court of Kenya and begs to enclose a notice of a Notice of Summons issued in an action versus

pursuant to order, for transmission to the Ministry of Foreign Affairs in (name of country) with the request that the same may be served personally upon (name of respondent to be served) against whom proceedings have been taken in the High Court of Kenya, and with the further request that such evidence of the

Kadhis' Courts

[Subsidiary]

service of the same upon the respondent may be officially certified to the High Court, or declared upon oath, or otherwise, in such manner as is consistent with the usage or practice of the Courts of (name of country) in proving service of legal process.

The Kadhi begs further to request that in the event of efforts to effect personal service of the said notice of writ proving ineffectual the government or court of the said country be requested to certify the same to the Kadhi court at

Dated this day of 20
(Seal of the Kadhi's Court)

.....
Kadhi

Form KC 12 (r. 84 (2))
REPUBLIC OF KENYA
IN THE KADHI'S COURT AT
SUIT NO..... OF 20....

.....
CLAIMANT
VERSUS

.....
RESPONDENT
REQUEST FOR ORDER OF DELIVERY OF MOVABLE PROPERTY
To the Kadhi,

.....
Please issue,order of delivery against (Name of respondent) of for the delivery of(Describe the movable peoperty) under the judgment dated the day 20 which has not been delivered to the petitioner by the respondent in accordance with the said judgment.

The sealed copy of the judgment is attached.
Dated this day of 20

.....
Petitioner (or Advocate for the Claimant)
This application is filed by the petitioner (or *Advocate* for the petitioner) whose address for service is

Form KC 13 (r. 90)
ORDER FOR EXECUTION
REPUBLIC OF KENYA
IN THE KADHI'S COURT AT.....
SUIT NO. OF 20

.....
CLAIMANT
VERSUS

.....
RESPONDENT
APPLICATION FOR EXECUTION
To (the above-named respondent)
of

Take notice that the above-named applicant will apply to the Kadhi's Court at on the day of 20 at a.m./p.m. for an order that (1) on the grounds set out hereunder.

.....
Applicant (or Advocate for the Applicant)

Note:

The nature of the order applied for shall be stated with precision. Different matters arising in the same proceedings may be dealt with in the same application.

Form KC 14

.....
(r. 94 (5))

REPUBLIC OF KENYA

IN THE KADHI'S COURT AT

SUIT NO. OF 20

.....
CLAIMANT

VERSUS

.....
RESPONDENT

TRANSFER OF DEBT NOTICE

Upon the execution order dated the day of 20

It is ordered that all debts due or accruing due from the above-named third party to the above-named judgment-debtor (in the sum of Ksh) be attached to answer a judgment recovered against the said judgment-debtor by the above-named judgment creditor in the Kadhi's Court on the day of 20 for the sum (or to answer an order made in the Kadhi's Court on the..... day of 20ordering payment by the said judgment-debtor to the above-named judgment creditor of the sum) of Ksh..... (debt and Kshcosts) (together with the costs of the *hiwalah* proceedings) on which judgment (or order) the sum of Ksh remains due and unpaid.

Take notice also that all transactions to dispose or discharge made after the service of this notice are invalid and you are liable to damages and cost to the judgment creditor.

If you dispute your liability under this notice, you shall within seven days from the date of service of this notice file a notice of objection of liability herein to the Court.

Dated this day of 20

(Seal of the Kadhi's Court)

.....
Kadhi

To the above-named third party and judgment-debtor.

Notice of Objection

Take notice that I, the above-named third party hereby object to the liability imposed upon me by this notice on the following grounds:

third party (*or Advocate for the third party*)

This notice is filed by the third party (*or Advocate for the third party*) whose address for service is

Form KC 14

.....
(r. 94 (5))

REPUBLIC OF KENYA

IN THE KADHI'S COURT AT

Kadhis' Courts

[Subsidiary]

SUIT NO. OF 20

CLAIMANT
VERSUS

RESPONDENT
TRANSFER OF DEBT NOTICE (PROPERTY IN COURT)

Order for execution dated the day of 20

To:.....

The Kadhi,

the Kadhi's Court at

Whereas it is stated by the judgment creditor that a sum of Ksh stands in the Kadhi's Court atto the credit of the judgment-debtor, in proceedings I forward herewith a copy of the order for execution above referred to and request that you will remit to the Court any money, which otherwise would be or become payable to the said judgment-debtor out of the said Court by virtue of the said proceedings, up to, but not exceeding, such amount as is referred to in the said order of execution as being due to the judgment creditor.

Dated this day of 20

Kadhi

Form KC 14

(r. 94 (5))

REPUBLIC OF KENYA

IN THE KADHI'S COURT AT

SUIT NO. OF 20

CLAIMANT
VERSUS

RESPONDENT
TRANSFER OF DEBT SUMMONS

Order for execution dated the day of 20

Transfer of debt notice dated the day of 20

To of the third party.

You are hereby summoned to appear before the above-named Court on the day of 20 at a.m./p.m. to be examined as to any property of the judgment-debtor (name) which may be, or may, since the service of the transfer of debt notice on you, have been in your possession, custody or control and as to any debts due or accruing due from you to the said judgment-debtor, and to bring with you all books and other documents relating thereto in your possession, custody or control.

Take notice that, in default of such appearance, an order may be made against you in your absence.

Dated this day of 20

(Seal of the Kadhi's Court)

Kadhi

Form KC 14

(r. 94 (5))

REPUBLIC OF KENYA
IN THE KADHI'S COURT AT.....
SUIT NO..... OF 20....

CLAIMANT
VERSUS

RESPONDENT
NOTICE OF SALE BY AUCTION

Notice is hereby given that the property seized at on the day of
20 under order of seizure and sale No of 20 will be sold by public auction on
the day of 20 at a.m./p.m. unless the amount to be levied
and the fees and expenses of execution be sooner paid.

Dated this day of 20

.....
Advocate

Form KC 15 _____ (r. 98(2))
REPUBLIC OF KENYA
IN THE KADHI'S COURT AT
SUIT NO. OF 20

CLAIMANT
VERSUS

RESPONDENT
REQUEST FOR JUDGMENT-DEBTOR SUMMONS

To the Kadhi,

Please issue a Judgment-debtor Summons against (name and description of judgment-
debtor) of (address of judgment-debtor) in respect of the judgment (or order) herein dated
the day of..... 20which remains unsatisfied to the extent of Ksh.....

A sealed copy of the judgment is attached hereto.

Dated this day of 20

.....
Judgment Creditor (or Advocate for the Judgment Creditor)

My address of service is

Form KC 16 _____ (r. 99)
REPUBLIC OF KENYA
IN THE KADHI'S COURT AT
SUIT NO. OF 20

CLAIMANT
VERSUS

RESPONDENT
JUDGMENT-DEBTOR SUMMONS

To
of the above-named judgment-debtor.

Kadhis' Courts

[Subsidiary]

You are hereby summoned to appear before the Kadhi's Court at on the day of 20 at a.m./p.m. then and there to be examined respecting your ability to satisfy the judgment recovered against you in the above action on the day of 20 for Ksh and Ksh cost upon which judgment the sum of Ksh is still due. Take notice that if you do not so appear an order for your arrest may be issued or an order for payment made against you in your absence.

Dated this day of 20

Entered No. of 20

Executive Officer

(Seal of the Kadhi's Court)

Kadhi

Form KC 16 (r. 99)

REPUBLIC OF KENYA
IN THE KADHI'S COURT AT
SUIT NO. OF 20

CLAIMANT
VERSUS

RESPONDENT
APPLICATION FOR JUDGMENT NOTICE

I of the above-named petitioner (or respondent) and judgment creditor apply for a judgment notice to be issued against the judgment-debtor to show cause why he should not be committed to prison for default in payment.

(Particulars of judgment and judgment-debtor)

- (a) Full name and address of judgment-debtor.
(b) Date and particulars of the order for payment in respect of which default has been made.
(c) The total amount which has been paid since the date of such order.
(d) The sum or installment in respect of which default has been made.
(e) The date on which the sum or installment ought to have been paid according to the order.
(f) The debtor's occupation, circumstances and means of payment as far as they are known to the applicant.

Dated this day of 20

.....

Petitioner (or Respondent)

REPUBLIC OF KENYA
IN THE KADHI'S COURT AT
SUIT NO. OF 20

CLAIMANT
VERSUS

RESPONDENT

AFFIDAVIT IN SUPPORT

I, say:

That the particulars stated above are to the best of my knowledge and belief in all respects true.

AFFIDAVIT

I, of P.O. Box in the Republic of Kenya the above-named judgment creditor do hereby make oath and state as follows:-

1. THAT I am an adult male/female of sound mind and disposition competent to swear this Affidavit.

(State the facts deposed in numbered paragraphs in the Affidavit, each particular being, so far as convenient, contained in a separate paragraph)

2. THAT I swear this Affidavit in support of of the Claim herein.

3. THAT what is deponed herein is true to the best of my knowledge, information and belief.

Sworn by the said Deponent }

At this Day }

of 20

BEFORE ME }

COMMISSIONER FOR OATHS/ }

MAGISTRATE

DRAWN & FILED BY:

Form KC 16

Order 103 (2)

REPUBLIC OF KENYA

IN THE KADHI'S COURT AT

SUIT NO. OF 20

CLAIMANT

VERSUS

RESPONDENT

JUDGMENT NOTICE

To the judgment-debtor,

Take notice that you are required to attend the Kadhi's Court at on the day of 20 at a.m/p.m. to show cause why you should not be committed to prison for having disobeyed the order of the Court dated the day of 20, that is to say, in having made default in payment of the installment due thereunder (or state the order disobeyed or not complied with).

Dated this day of 20

Entered No. of 20

Executive Officer

(Seal of the Kadhi's Court)

Kadhi

Form KC 17

(r. 101)

REPUBLIC OF KENYA

IN THE KADHI'S COURT AT

Kadhis' Courts

[Subsidiary]

SUIT NO. OF 20

CLAIMANT
VERSUS

RESPONDENT
ORDER OF COMMITTAL

To the Officer Commanding Police Division (OCPD)
(State police station)

Whereas an order was made by the Court on the day of 20
whereby it was ordered that the above-named judgment-debtor pay the judgment
debt and costs by instalments of Ksh :

And whereas he or she has made default in the payment of installment amounting to
Ksh

You are hereby commanded to arrest the said and to deliver him or her to
the officer in charge of the.....

Prison there to be kept for the term of days from the arrest under this Order
or until earlier payment of the installment due amounting to Ksh

Dated this day of 20

Entered No. of 20

Executive Officer
(Seal of the Kadhi's Court)

Kadhi

Form KC 17

(r. 101)

REPUBLIC OF KENYA
IN THE KADHI'S COURT AT
SUIT NO. OF 20

CLAIMANT
VERSUS

RESPONDENT
CERTIFICATE OF SATISFACTION

I of being the judgment creditor, hereby certify that
the judgment debt in respect of which the judgment-debtor is imprisoned has
been satisfied and I request that the said be discharged from detention.

Dated this day of 20

Judgment Creditor (or Advocate for Judgment Creditor)
To the officer in charge of the Prison

This certificate is sufficient authority for the discharge of the judgment-debtor from
detention under the Order of Commitment No. of 20 issued in
respect of non- payment of the judgment debt.

Dated this day of 20

(Seal of the Kadhi's Court)

Kadhi

Form KC 17 (r. 101)

REPUBLIC OF KENYA
IN THE KADHI'S COURT AT.....
SUIT NO. OF 20

CLAIMANT
VERSUS

RESPONDENT
ORDER OF DISCHARGE

To the officer in charge of the..... Prison

Whereas it has been shown to be satisfaction of the Court that the judgment-debtor has satisfied the judgment debt in respect of which he or she is imprisoned under an Order of Commitment No..... of 20..... dated the..... day of..... 20..... in the above action.

You are hereby directed to discharge from your custody the said judgment-debtor for which this Order shall be your sufficient authority.

Dated this day of 20
(Seal of the Kadhi's Court)

Kadhi

Form KC 18 (r. 109 (1))

INTERLOCUTORY PROCEEDINGS
REPUBLIC OF KENYA
IN THE KADHI'S COURT AT
SUIT NO. OF 20

CLAIMANT
VERSUS

RESPONDENT
INTERLOCUTORY APPLICATION

Take notice that the above-named petitioner (or respondent) intends to apply to the Kadhi's Court at..... on the day of 20 at a.m./p.m. for an order that (state nature of application).

The grounds of the application are:

- 1..... (State the grounds)
- 2..... (State the grounds)
- 3..... (State the grounds)

Dated this day of 20

Entered No. of 20

Executive Officer
(Seal of the Kadhi's Court)

Kadhi

This notice is taken out by the petitioner (or respondent) of (state address).

[Subsidiary]

Form KC 19

(r. 112 (2))

REPUBLIC OF KENYA
IN THE KADHI'S COURT AT.....
SUIT NO..... OF 20....

CLAIMANT
VERSUS

RESPONDENT
APPLICATION FOR INTERIM ORDER

To the respondent (or petitioner).

This application is taken out by the petitioner (or respondent) of (state address).

Take notice that the above-named petitioner (or respondent) intends to apply to the Kadhi's Court at on the day of 20 at a.m./p.m.

for an interim order that (state nature of application).

2. The grounds of the application are:

- 1..... (State the grounds)
- 2..... (State the grounds)
- 3..... (State the grounds)

3. This application is supported by an affidavit annexed.

Dated this day of 20

Entered No. of 20

Executive Officer
(Seal of the Kadhi's Court)

.....
Kadhi)

Form KC 20

(r. 142 (1))

REPUBLIC OF KENYA
IN THE KADHI'S COURT AT
SUIT NO. OF 20

CLAIMANT
VERSUS

RESPONDENT
AFFIDAVIT

I of P.O. Box in the Republic of Kenya do hereby make oath and state as follows:-

1. THAT I am an adult male/female of sound mind and disposition and the Petitioner herein hence competent to swear this Affidavit.

(State the facts deposed in numbered paragraphs in the Affidavit, each particular being, so far as convenient, contained in a separate paragraph)

2. THAT I swear this Affidavit in support of of the Claim herein.

3. THAT what is deponed herein is true to the best of my knowledge, information and belief.

Sworn by the said Deponent }
 At this Day of }
 20 }
 BEFORE ME }
 }
 }
 } DEPONENT
 COMMISSIONER FOR OATHS/ }
 MAGISTRATE }

DRAWN & FILED BY:

Form KC 21 (r. 154 (5))
 AFFIDAVIT BY A HUSBAND ACCUSING HIS WIFE OF ADULTERY WITHOUT
 WITNESSES (*LI'ÁM*)
 REPUBLIC OF KENYA
 IN THE KADHI'S COURT AT
 SUIT NO..... OF 20....

CLAIMANT
VERSUS

RESPONDENT
AFFIDAVIT

I of P.O. Box in the Republic of Kenya do hereby make oath and state as follows:-

1. THAT I am an adult male of sound mind and disposition and the Petitioner/Respondent herein hence competent to swear this Affidavit.
2. THAT I swear by Allah that I am solemnly telling the truth in that I cast at her the charge of adultery.
3. THAT I swear by Allah that I am solemnly telling the truth in that I cast at her the charge of adultery.
4. THAT I swear by Allah that I am solemnly telling the truth in that I cast at her the charge of adultery.
5. THAT I swear by Allah that I am solemnly telling the truth in that I cast at her the charge of adultery.
6. THAT I solemnly invoke the curse of Allah on myself if I tell a lie

7. THAT what is deponed herein is true to the best of my knowledge, information and belief

Sworn by the said Deponent }
 At this Day of }
 20 }
 BEFORE ME }
 }
 }
 } DEPONENT
 COMMISSIONER FOR OATHS/ }
 MAGISTRATE }

DRAWN & FILED BY:-

[Subsidiary]

Form KC 22

(r. 154(5))

AFFIDAVIT BY A WIFE REFUTING HER HUSBAND'S ACCUSATION OF ADULTERY AGAINST HER WITHOUT WITNESSES (*LI'ÂM*)
REPUBLIC OF KENYA
IN THE KADHI'S COURT AT
SUIT NO. OF 20

CLAIMANT
VERSUS

RESPONDENT
AFFIDAVIT

I of P.O. Box in the Republic of Kenya do hereby make oath and state as follows:

- 1. THAT I am an adult female of sound mind and disposition and the Petitioner/Respondent herein hence competent to swear this Affidavit.
- 2. THAT I swear by Allah that that he is a liar in the charge of adultery that he has cast upon me.
- 3. THAT I swear by Allah that that he is a liar in the charge of adultery that he has cast upon me.
- 4. THAT I swear by Allah that that he is a liar in the charge of adultery that he has cast upon me.
- 5. THAT I swear by Allah that that he is a liar in the charge of adultery that he has cast upon me.
- 6. THAT I solemnly invoke the curse of Allah on myself if he be a true speaker in the charge of adultery.
- 7. THAT what is deponed herein is true to the best of my knowledge, information and belief.

Sworn by the said Deponent }
 At this Day of }
 20 }
 BEFORE ME }
 }
 } }
 } DEPONENT

COMMISSIONER FOR OATHS/
 MAGISTRATE }
DRAWN & FILED BY:
