

THE KADHI'S COURTS ACT 1967

No. 14 of 1967

Date of Assent: 14th June 1967

Date of Commencement: By Notice

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

ENACTED by the Parliament of Kenya, as follows:—

1. This Act may be cited as the Kadhi's Courts Act 1967, and shall come into operation on such date as the Attorney-General may by notice in the Gazette appoint.

Short title and commencement.

2. In this Act, except where the context otherwise requires—

Interpretation.

“Kadhi” means a person appointed to or to act in the office of the Chief Kadhi or the office of Kadhi referred to in section 179 of the Constitution;

“Kadhi's Court” means a Kadhi's Court established by section 4 of this Act.

3. For the purposes of section 179 (1) of the Constitution, there shall be such number of Kadhis, in addition to the Chief Kadhi, as may be prescribed by the President by order, being in any case not less than three and not more than twelve.

Number of Kadhis.

4. (1) In pursuance of section 179 (3) of the Constitution of Kenya, there are hereby established six Kadhi's Courts.

Establishment of Kadhi's Courts.

(2) The Kadhi's Courts shall have jurisdiction within the following areas—

(a) four Kadhi's Courts shall each have jurisdiction within Kwale District, Mombasa District, Kilifi District and so much of Tana River District as lies to the south-east of a line joining the north-western boundaries of the Kilifi and Lamu Districts;

(b) one Kadhi's Court shall have jurisdiction within—

(i) Nyanza Province;

(ii) Western Province; and

(iii) the following districts of Rift Valley Province—

West Pokot District
 Trans Nzoia District
 Elgeyo Marakwet District
 Baringo District
 Laikipia District
 Nandi District
 Uasin Gishu District
 Kericho District
 Nakuru District;

(c) one Kadhi's Court shall have jurisdiction within Garissa District, Wajir District and Mandera District.

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

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

Jurisdiction
of Kadhi's
Courts.

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

Evidence.

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

Provided that—

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

1967

Kadhi's Courts

No. 14

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

Records and returns.

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

Procedure and practice.

(2) Until rules of court are made under subsection (1) of this section, and so far as such rules do not extend, procedure and practice in a Kadhi's Court shall be in accordance with those prescribed for subordinate courts by and under the Civil Procedure Act.

Cap. 5 (1948).