LAWS OF KENYA

MAGISTRATES' COURTS ACT

CHAPTER 10

Revised Edition 2007 (1989)
Published by the National Council for Law Reporting
with the Authority of the Attorney General.

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CHAPTER 10
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CHAPTER 10

THE MAGISTRATES' COURTS ACT

Commencement: 1st August, 1967

17 of 1967, 10 of 1969, 14 of 1972, 4 of 1974, 6 of 1979, 14 of 1981, 11 of 1983, 19 of 1984, 18 of 1986, 20 of 1989, 18 of 1990, 14 of 1991, 11 of 1993, 2 of 2002.

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

PART 1 - PRELIMINARY

Short title.

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

Interpretation. 14 of 1972, 9th Sch., 4 of 1974, Sch., 18 of 1986, Sch.

2. In this Act, unless the context otherwise requires -

"claim under customary law" means a claim concerning any of the following matters under African customary law -

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

"district magistrate's court" means a court established by section 7;

"Judicial Service Commission" means the commission established under section 68 of the Constitution;

A 14 of 1991, Sch.

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

"magistrate's court" means the Resident Magistrate's Court or a district magistrate's court;

"magistrate's court of the first class" means the Resident Magistrate's Court, or a district magistrate's court held by a district

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magistrate having power to hold a magistrate's court of the first class;

"magistrate's court of the third class" means a district magistrate's court held by a district magistrate having power to hold a magistrate's court of the third class;

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

"Resident Magistrate's Court" means the court established by section 3.

Part II - Resident Magistrate's Court

Establishment of Resident Magistrate's Court.
4 of 1974, Sch.,
18 of 1986, Sch.
14/1991

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

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

Criminal jurisdiction of Resident Magistrate's Court.
Cap. 75.

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

(a) the Criminal Procedure Code; or

(b) any other written law.

Civil jurisdiction of Resident Magistrate's Court.
4 of 1974, Sch.,
6 of 1979, Sch.,
11 of 1983, Sch.,
18 of 1986, Sch,
A 14 of 1991, Sch.
11 of 1993, Sch.,
2 of 2002, Sch.

5. (1) Subject to any other written law the resident magistrate's Court shall have and exercise jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter in dispute does not exceed one hundred thousand shillings, or three hundred thousand shillings where the court is held by a principal or a senior resident magistrate and five hundred thousand shillings where the court is held by a chief magistrate or a senior principal magistrate:

Provided that the Chief Justice may, by notice in the Gazette, increase the limit of jurisdiction of-

(a) a chief magistrate to a sum not exceeding three million shillings;

(b) a senior principal magistrate to a sum not exceeding two million shillings;

(c) a principal magistrate to a sum not exceeding one million shillings;

(d) a senior resident magistrate to a sum not exceeding eight

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hundred thousand shillings; or

(e) a resident magistrate to a sum not exceeding five hundred thousand shillings.

(2) The Resident Magistrate's Court shall have and exercise the same jurisdiction and powers in proceedings concerning claims under customary law as is conferred on district magistrates under section 9(a).

Part III - District Magistrates' Courts

Powers of district magistrate.

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

Establishment of district magistrates' courts.

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

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

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

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

Criminal jurisdiction of district magistrate's court. Cap. 75.

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

(a) the Criminal Procedure Code; or

(b) an order under subsection (2) of this section; or

(c) any other written law.

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

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

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Civil jurisdiction of district magistrate's court.
6 of 1979, Sch.,
11 of 1983, Sch.

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

(a) the proceedings concern a claim under customary law; or

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

Part IIIA - Jurisdiction in Certain Cases Relating to Land

9A-F. *(Repealed by Act 18 of 1990 s. 11)*

Part IV - Appeals from Certain District Magistrates' Courts

Appeal from certain district magistrates' courts in criminal matters.

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

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

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

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

Appeal from certain district magistrates' courts in civil matters.

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

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

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

Powers of court on appeal.

12.(1) In the exercise of its appellate jurisdiction under section 10 or 11, the higher court shall have power-

(a) to direct the lower court to take additional evidence and to certify the evidence to it, or, for reasons to be recorded in writing, to itself hear additional evidence;

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(b) whether or not additional evidence is heard or taken, to confirm, reverse, amend or vary in any manner the order appealed against (including power to substitute a conviction or a conviction and sentence for an acquittal):

Provided that -

(i) the order as altered shall not be in excess of the jurisdiction of the lower court; and

(ii) no conviction or conviction and sentence shall be substituted for an acquittal, and no sentence shall be enhanced, unless the accused or convicted person, as the case may be, has first been given an opportunity of being heard;

(c) to quash any proceedings (including proceedings which terminated in an acquittal) and, where it is considered desirable, to order the case to be heard *de novo* either before the lower court or before some other magistrate's court having jurisdiction or before itself :

Provided that -

(i) where the court orders a criminal case to be heard *de novo*, it shall take security for the appearance of the accused person before the court before which the case is to be heard or, if it is appropriate, remand him in custody to be brought before such court; and any such security shall be treated as if it had been taken by the court which is to hear the case; and

(ii) where proceedings are quashed and the case is ordered to be reheard, no plea of *res judicata, autrefois acquit* or *autrefois convict* shall be entertained in respect of any order or decision in the proceedings so quashed;

(d) to make any other order which might have been made, or to exercise any power which might have been exercised, by the lower court.

(2) On an appeal under section 10 or 11, the higher court or the lower court may, for reasons to be recorded in writing -

(a) where the appellant has been sentenced to imprisonment, order -

(i) that the appellant be released on bail with or without sureties pending the hearing of the appeal; or

(ii) that the execution of the sentence be suspended pending the hearing of the appeal, in which case the appellant shall be treated as a remand prisoner pending the hearing of the appeal:

Provided that, if the appeal is ultimately dismissed, or if the original sentence of imprisonment is confirmed or some other sentence of imprisonment is substituted for it, the time during which the appellant has been released on bail or during

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which the sentence has been suspended shall be excluded in computing the term of imprisonment served by him; and

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

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

Part V - General

Places and times of sitting and distribution of business.

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

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

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

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

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

(a) the order shall prevail over any order, direction or process made or issued by any court, to the extent of any inconsistency between the two; and

(b) if the place specified is outside the local limits of jurisdiction of the court before which the proceedings are pending, the place specified shall be deemed, for the purposes of the proceedings, to be within the local limits of jurisdiction of the court.

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

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

Procedure and practice.

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

(a) the Criminal Procedure Code, as regards proceedings of a criminal nature; and — Cap. 75.

(b) the Civil Procedure Act, as regards proceedings of a civil nature, — Cap. 21.

so far as they may be applicable and appropriate.

Rules of court.

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

Evidence of customary law.

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

Records and returns.

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

Supervision of courts.

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

Seals and stamps.

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

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[Subsidiary]

SUBSIDIARY LEGISLATION

L.N.161/1967,
L.N.210/1967,
L.N.252/1968,
L.N.82/1969,
L.N.296/1971,
L.N.42/1975,
L.N.82/1978,
L.N.260/1983.

Order under section 8

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

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

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

SCHEDULE

	Written law	*Provisions*
Cap. 56	Public Order Act.	Section 11.
Cap. 58	Vagrancy Act.	Section 4 (3).
Cap. 63	Penal Code.	Section 183.
Cap. 67	Witchcraft Act.	Sections 5, 6, 7 and 9 (4).
Cap. 84	Police Act.	Sections 16, 21, 22, 23, 25, 26, 27, 33, 60 and 63.
Cap. 85	Administration Police Act.	Section 18.
Cap. 90	Prisons Act.	Section 68 (9).
Cap. 104	Outlying Districts Act.	All provisions.
Cap. 105	Special Districts (Administration) Act.	All provisions.

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[Subsidiary]

	Written law	*Provisions*
Cap. 121	Liquor Licensing Act.	Sections 28, 30, 31, 32, 34 (2), 42, 43, 44, 46, 50 and 51.
Cap. 122	Traditional Liquor Act.	All provisions.
Cap. 128	Chief's Authority Act.	All provisions.
Cap. 131	Betting, Lotteries and Gaming Act.	Section 55.
Cap. 173	Aliens Restriction Act.	All provisions.
Cap. 224	Broadcast Receiving (Apparatus) Act.	All provisions.
Cap. 242	Public Health Act.	All provisions.
Cap. 244	Pharmacy and Poisons Act.	Section 26.
Cap. 245	Dangerous Drugs Act.	All provisions.
Cap. 246	Malaria Prevention Act.	All provisions.
Cap. 254	Food, Drugs and Chemical Substances Act.	All provisions.
Cap. 280	Government Lands Act.	All provisions.
Cap. 288	Trust Land Act.	All provisions.
Cap. 294	Trespass Act.	All provisions.
Cap. 300	Registered Land Act.	Sections 23 and 24.
Cap. 318	Agriculture Act.	All provisions.
Cap. 320	Agricultural Produce (Marketing) Act.	All provisions.
Cap. 321	Crop Production and Livestock Act.	All provisions.
Cap. 324	Plant Protection Act.	All provisions.
Cap. 327	Grass Fires Act.	All provisions.
Cap. 331	Coconut Industry Act.	All provisions.

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[Subsidiary]	*Written law*	*Provisions*
Cap. 332	Coconut Preservation Act.	All provisions.
Cap. 333	Coffee Act.	All provisions.
Cap. 335	Cotton Lint and Seed Marketing Act.	All provisions.
Cap. 357	Branding of Stock Act.	All provisions.
Cap. 359	Hide and Skin Trade Act.	All provisions.
Cap. 360	Prevention of Cruelty to Animals Act.	All provisions.
Cap. 364	Animal Diseases Act.	All provisions.
Cap. 365	Rabies Act.	All provisions.
Cap. 378	Fish Industry Act.	All provisions.
Cap. 385	Forests Act.	All provisions.
Cap. 397	Kenya Railway Corporation Act.	Sections 67, 68, 69, 70, 72 and 74.
Cap. 403	Traffic Act.	Sections 12, 14, 30, 36, 41, 43, 53, 67, 117 and Part IX.
	Traffic Rules.	Rules 22(9), 24(b) and 25(1)(b).
	Traffic (Minor Offences) Rules.	All provisions.
Cap. 497	Trade Licensing Act.	All provisions.
	All by-laws made by local authorities.	All provisions.

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