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**THE MAGISTRATES' COURTS ACT**

NO. 26 OF 2015

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**NO. 26 OF 2015**

**MAGISTRATES' COURTS ACT**

[Date of assent: 15th December, 2015.]

[Date of commencement: 2nd January, 2016.]

**AN ACT of Parliament to give effect to Articles 23(2) and 169(1)(a) and (2) of the Constitution; to confer jurisdiction, functions and powers on the magistrates' courts; to provide for the procedure of the magistrates' courts, and for connected purposes**

[Act No. 26 of 2015.]

**PART I – PRELIMINARY**

**1. Short title**

This Act may be cited as the Magistrates' Courts Act, 2015.

**2. Interpretation**

In this Act, unless the context otherwise requires —

**"Chief Justice"** means the Chief Justice appointed under Article 166 of the Constitution;

**"Chief Registrar"** means the Chief Registrar of the judiciary established in Article 161 of the Constitution;

**"Commission"** means the Judicial Service Commission established under Article 171(1) of the Constitution;

**"magistrate"** means a chief magistrate, a senior principal magistrate, a principal magistrate, a senior resident magistrate, or a resident magistrate appointed in accordance with Article 172 (1) (c) of the Constitution and includes a person appointed to act in the particular office;

**"magistrate's court"** means a subordinate court established by Article 169(1)(a) of the Constitution;

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

**"station"** means the place at which one or more magistrate's courts are located.

**3. Guiding principles**

In exercise of its judicial authority, a magistrate's court shall be guided by the principles specified under Articles 10, 159 (2) and 232 of the Constitution.

**4. Objective**

(1) The objective of this Act is to enable magistrate courts to facilitate just, expeditious, proportionate and accessible judicial services in exercise of the criminal and civil jurisdiction in this Act or any other written law.

(2) The parties appearing in a magistrate's court and the duly authorised representatives of the parties, shall assist the magistrates' courts to further the principal objective of this Act.

## PART II – MAGISTRATES' COURTS

**5. Constitution of magistrate's court**

A magistrate's court shall be subordinate to the High Court and shall be duly constituted when presided over by a chief magistrate, a senior principal magistrate, a principal magistrate, a senior resident magistrate or a resident magistrate.

**6. Criminal jurisdiction of a magistrate's court**

A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a criminal nature as may be conferred on it by —

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

**7. Civil jurisdiction of a magistrate's court**

(1) A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed —

- (a) twenty million shillings, where the court is presided over by a chief magistrate;
- (b) fifteen million shillings, where the court is presided over by a senior principal magistrate;
- (c) ten million shillings, where the court is presided over by a principal magistrate;
- (d) seven million shillings, where the court is presided over by a senior resident magistrate; or
- (e) five million shillings, where the court is presided over by a resident magistrate.

(2) The Chief Justice may from time to time, by notice in the *Gazette*, revise the pecuniary limits of jurisdiction set out in subsection (1), taking into account inflation and change in prevailing economic conditions.

(3) A magistrate's court shall have jurisdiction in proceedings of a civil nature 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 person;
- (e) matters affecting status, and in particular the status of widows and children including guardianship, custody, adoption and legitimacy; and
- (f) intestate succession and administration of intestate estates, so far as they are not governed by any written law.

**8. Claims relating to violation of human rights**

(1) Subject to Article 165 (3) (b) of the Constitution and the pecuniary limitations set out in section 7(1), a magistrate's court shall have jurisdiction to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.

(2) The applications contemplated in subsection (1) shall only relate to the rights guaranteed in Article 25 (a) and (b) of the Constitution.

(3) Nothing in this Act may be construed as conferring jurisdiction on a magistrate's court to hear and determine claims for compensation for loss or damage suffered in consequence of a violation, infringement, denial of a right or fundamental freedom in the Bill of Rights.

(4) The Chief Justice shall make Rules for the better exercise of jurisdiction of the magistrate's courts under this section.

### **9. Claims in employment, labour relations claims; land and environment cases**

A magistrate's court shall —

- (a) in the exercise of the jurisdiction conferred upon it by section 26 of the Environment and Land Court Act (No. 19 of 2011) and subject to the pecuniary limits under section 7(1), hear and determine claims relating to —
  - (i) environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
  - (ii) compulsory acquisition of land;
  - (iii) land administration and management;
  - (iv) public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
  - (v) environment and land generally.
- (b) in the exercise of the jurisdiction conferred upon it under section 29 of the Industrial Court Act (No. 20 of 2011) and subject to the pecuniary limits under section 7(1), hear and determine claims relating to employment and labour relations.

### **10. Contempt of Court**

(1) Subject to the provisions of any other law, the Court shall have power to punish for contempt.

(2) A person who, in the face of the Court —

- (a) assaults, threatens, intimidates, or insults a magistrate, court administrator, judicial officer, or a witness, during a sitting or attendance in Court, or in going to or returning from the Court;
- (b) interrupts or obstructs the proceedings of the Court; or
- (c) without lawful excuse disobeys an order or direction of the Court in the course of the hearing of a proceeding,

commits an offence.

(3) In the case of civil proceedings, the willful disobedience of any judgment, decree, direction, order, or other process of a court or willful breach of an undertaking given to a court constitutes contempt of court.

(4) In the case of criminal proceedings, the publication, whether by words, spoken or written, by signs, visible representation, or otherwise, of any matters or the doing of any other act which —

- (a) scandalizes or tends to scandalize, or lowers or tends to lower the judicial authority or dignity of the court;
- (b) prejudices, or interferes or tends to interfere with, the due course of any judicial proceedings; or
- (c) interferes or tends to interfere with, or obstructs or tends to obstruct the administration of justice,

constitutes contempt of court.

(5) A police officer, with or without the assistance of any other person, may, by order of a judge of the Court, take into custody and detain a person who commits an offence under subsection (2) until the rising of the Court.

(6) The Court may sentence a person who commits an offence under subsection (1) to imprisonment for a term not exceeding five days, or a fine not exceeding one hundred thousand shillings, or both.

(7) A person may appeal against an order of the Court made by way of punishment for contempt of court as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the Court.

(8) The Chief Justice may make Rules to regulate procedures relating to contempt of court.

### PART III – ADMINISTRATION

#### **11. Court administrator**

(1) There shall be a court administrator in every station, who shall be appointed by the Commission pursuant to Article 172(1)(c) of the Constitution.

(2) A court administrator shall exercise such powers and perform such duties as may be conferred upon the court administrator by the Rules of court and directions of the Chief Registrar.

#### **12. Functions of a court administrator**

(1) The court administrator shall, in relation to the proceedings of a magistrate's court, act in accordance with the directions of the Chief Registrar and the Rules of court.

(2) Without prejudice to the generality of subsection (1), the court administrator shall be responsible for —

- (a) the establishment and maintenance of the Registry;
- (b) the acceptance, transmission, service and custody of documents in accordance with the rules of court;
- (c) the facilitation of the enforcement of decisions of the magistrate's court;
- (d) certifying that any order, direction or decision is an order, direction or decision of the magistrate's court, as the case may be;
- (e) causing to be kept records of the proceedings and the minutes of the meetings of the magistrate's court and such other records as the magistrate's court may direct;
- (f) the management and supervision of the staff of the magistrate's court;
- (g) the day to day administration of the magistrate's court;
- (h) the management of the library of the magistrate's court; and
- (i) undertaking any duties assigned by the magistrate's court.



## PART IV – GENERAL

**13. Sittings of magistrate's courts**

(1) Sittings of 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 designated in the *Gazette*.

(2) Without prejudice to the generality of subsection (1), a sitting of a magistrate's court may be held at such other place as may be necessary for the purpose of —

- (a) taking evidence in circumstances not conducive to proceedings at the place referred to in subsection (1);
- (b) taking evidence on commission in accordance with the Evidence Act (Cap. 80); or
- (c) taking evidence for any other reason that the magistrate's court may deem necessary.

**14. Provisions on delegated powers**

The Chief Justice may make Rules of court to regulate the procedure and practice of magistrates' courts.

**15. Procedure and practice**

Subject to this Act and to the Rules of court made under section 14, a magistrates' court shall follow the procedure and practice specified by written law.

**16. Evidence of customary law**

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

**17. Records and returns**

A 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.

**18. Supervision of courts**

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

**19. Seals and stamps**

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

**20. Rules**

(1) The Chief Justice may make Rules generally for the effective organization and administration of the Magistrates' Court.

(2) Without prejudice to the generality of subsection (1), such Rules may provide for the —

- (a) procedure of handling claims relating to violation of human rights;
- (b) general practice and procedure of Magistrates' Courts;
- (c) supervision and inspection of Magistrates' Courts;

- (d) automation of Court records, case management, protection and sharing of Court information and the use of information communication technology;
  - (e) form, style, storage, maintenance and retrieval of Court records; and
  - (f) procedure relating to contempt of court.
- (3) For the purposes of Article 94 (6) of the Constitution —
- (a) the purpose and objective of the delegation under this section is to enable the Chief Justice to make Rules to provide for the better administration and organization of the Court;
  - (b) the authority of the Chief Justice to make Rules under this Act is limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section; and
  - (c) the principles and standard applicable to the Rules made under this section are those set out in the Interpretations and General Provisions Act (Cap. 2) and the Statutory Instruments Act, 2013 (No. 23 of 2013).

#### **21. Code of Conduct for magistrates**

The Chief Justice shall, within six months of the commencement of this Act, prescribe the code of conduct applicable to magistrates.

#### **22. Repeal of Cap. 10**

The Magistrates' Courts Act (Cap. 10) is hereby repealed.

#### **23. Amendment of section 48 of Cap. 160**

The Law of Succession Act (Cap. 160) is amended, by repealing section 48(1) and substituting therefor the following new subsection

(1) Notwithstanding any other written law which limits jurisdiction, but subject to the provisions of section 49, a magistrate shall have jurisdiction to entertain any application and to determine any dispute under this Act and pronounce such decrees and make such orders therein as may be expedient in respect of any estate the gross value of which does not exceed the pecuniary limit prescribed under section 7(1) of the Magistrates' Courts Act, 2015.

#### **24. Amendment of section 49 of Cap. 160**

Section 49 of the Law of Succession Act is amended —

- (a) by deleting the words "Resident Magistrate" and substituting therefor the words "Magistrate's Court"; and
- (b) by deleting the words "one hundred thousand shillings" and substituting therefor the words "the pecuniary limits set out in section 7 (1) of the Magistrates' Courts Act, 2015.

#### **25. Amendment of section 26 of Act No. 19 of 2011**

Section 26 of the Environment and Land Court Act (No. 19 of 2011) is amended by inserting the following subsections immediately after subsection (2) —

(3) The Chief Justice may, by notice in the *Gazette*, appoint certain magistrates to preside over cases involving environment and land matters of any area of the country.

(4) Appeals on matters from the designated magistrate's courts shall lie with the Environment and Land Court.

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