

**THE CRIMINAL PROCEDURE
(AMENDMENT) ACT, 1982**

No. 13 of 1982

Date of Assent: 10th December, 1982

Date of Commencement: 10th December, 1982

An Act of Parliament to amend the Criminal Procedure Code to abolish preliminary inquiries and to widen the jurisdiction of magistrates to try certain offences

ENACTED by the Parliament of Kenya as follows:—

1. This Act may be cited as the Criminal Procedure (Amendment) Act, 1982. Short title.

2. The Criminal Procedure Code, in this Act called the principal Act, is amended in section 2 by deleting the definition of “preliminary investigation” and inserting, in the correct alphabetical order— Amendment to section 2, Cap. 75.

“committal proceedings” means proceedings held by a subordinate court for the purpose of committing an accused person for trial before the High Court;

3. The principal Act is amended by inserting after section 77 the following— Insertion of section 77A, Cap. 75.

77A. The provisions of sections 66 to 77 inclusive shall apply to committal proceedings under Part VIII. Application to committal proceedings.

4. The principal Act is amended in section 167 by deleting subsection 1 (b) and inserting— Amendment to section 167, Cap. 75.

(b) in cases which are the subject of committal proceedings—

(i) the subordinate court shall commit the accused person for trial by the High Court, if satisfied that there is sufficient evidence to do so, and shall admit him to bail or remand him in custody;

- (ii) the High Court shall try the case and at the close thereof shall either acquit the accused person or, if satisfied that the evidence would justify a conviction, shall order that the accused person be detained during the President's pleasure.

5. The principal Act is amended by repealing section 200 and inserting—

Conviction on evidence partly recorded by one magistrate and partly by another.

200. (1) Subject to subsection (3), where a magistrate, after having heard and recorded the whole or part of the evidence in a trial, ceases to exercise jurisdiction and is succeeded by another magistrate who has and exercises that jurisdiction, the succeeding magistrate may—

- (a) deliver a judgment that has been written and signed but not delivered by the predecessor; or
- (b) where judgment has not been written and signed by the predecessor, act on the evidence recorded by that predecessor, or resummon the witnesses and recommence the trial.

(2) Where a magistrate who has delivered judgment in a case but has not passed sentence, ceases to exercise jurisdiction and is succeeded by a magistrate who has and exercises that jurisdiction, the succeeding magistrate may pass sentence or make any order that he could have made if he had delivered judgment.

(3) Where a succeeding magistrate commences the hearing of proceedings and part of the evidence has been recorded by his predecessor, the accused person may demand that any witness be resummoned and reheard and the succeeding magistrate shall inform the accused person of that right.

(4) Where an accused person is convicted upon evidence that was not wholly recorded by the convicting magistrate, the High Court may, if it is of

Repeal and replacement of section 200, Cap. 75.

the opinion that the accused person was materially prejudiced thereby, set aside the conviction and may order a new trial.

6. The principal Act is amended by repealing section 220 and inserting—

Repeal and replacement of section 220, Cap. 75.

Procedure where a case proves unsuitable for summary trial.

220. Where a subordinate court has taken cognizance of a case involving an offence that appears to that court unsuitable for trial by a subordinate court, the court shall adjourn the case and require the prosecution to comply with the procedure set out in Part VIII.

7. The principal Act is amended by deleting the heading to Part VIII, repealing sections 230-245 inclusive and inserting—

Repeal and replacement of sections 230-245, Cap. 75.

PART VIII—PROVISIONS RELATING TO THE COMMITTAL OF ACCUSED PERSONS FOR TRIAL BEFORE THE HIGH COURT

COMMITTAL PROCEEDINGS BY SUBORDINATE COURTS

Power to commit for trial.

230. A subordinate court shall hold committal proceedings in accordance with this Part where a person appears before that court charged with an offence—

- (a) which is triable only by the High Court; or
- (b) to which section 220 applies.

Committal documents.

231. (1) Not less than fourteen days before the date fixed for committal proceedings, the prosecution shall furnish the accused person or his advocate with one set, and the court with three sets, of the committal documents referred to in subsection (2).

(2) The committal documents referred to in subsection (1) shall be—

- (a) the information stating the charge in respect of which the committal proceedings are to be held;

- (b) a list of the witnesses whom the prosecution intends to call at the trial and copies of their statements relevant to the case;
 - (c) a list of the exhibits which the prosecution intends to produce at the trial and copies of the following exhibits--
 - (i) any statement of the accused;
 - (ii) any medical, psychiatric or post-mortem report;
 - (iii) any report on fingerprints, on an identification parade or on the scene of a crime;
 - (iv) any report made by a firearms examiner, Government analyst or document examiner; and
 - (v) any photographs taken or sketch plan made;
 - (d) an alibi warning to the effect that, if the accused intends to say at his trial that he is not guilty because he was not at the place where the alleged offence was committed at the time of its alleged commission, he shall give details of that defence, and of the witnesses he will call in support thereof, either at the committal proceedings or in writing to the committing court and to the prosecution within fourteen days thereafter, and that if he fails to do so he may be prevented at the trial from making that defence.
- (3) A statement referred to in subsection (2) (b) shall—
- (a) purport to be signed by the person making it and state his age if he is under eighteen years;
 - (b) contain a declaration by the person making it that it is true to the best of his knowledge and belief and that he made it knowing that, if it were tendered in evidence, he

would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true;

- (c) contain, where the person making it cannot read, a declaration to the effect that it was read to him, signed by the person who read it;
- (d) be in a language that the person making it understands, and if that language is not English, be accompanied by a translation thereof into English, certified to be accurate by the translator; and
- (e) be accompanied, where it refers to another document as an exhibit, by a copy of that document, or by information to enable that document or a copy thereof to be inspected.

Committal
proceed-
ings.

232. (1) Except as provided by this section, oral evidence shall not be given at committal proceedings and no person shall address the court without leave.

(2) The magistrate shall read the committal documents before the commencement of committal proceedings and, at the commencement thereof if he considers that there are sufficient grounds for committing the accused person for trial before the High Court, shall frame a charge which he shall read over and explain to the accused person and inform him that he need not reply thereto.

(3) The charge framed by the magistrate under subsection (2) may be in the same terms as the information furnished by the prosecution or may be an amendment thereof.

(4) Where the magistrate considers that there are sufficient grounds for committing the accused person for trial before the High Court, the magistrate shall address him in the following words, or words to a similar effect—

“This is not your trial. You will be tried later in another court before a judge and assessors, where witnesses will give evidence and you will be allowed to question them. You will then be allowed to make a statement or give evidence on oath and call your witnesses. If you wish, you may say something now, either on oath or not on oath. If you say anything on oath now you may be questioned by the prosecution. If a promise or threat was made to you earlier, it should not make you confess to an offence now. Anything you say will be written down and may be used at your trial.”

(5) The statement or evidence of the accused person shall be recorded in full and shown or read over to him, and he may add to, alter or explain anything so recorded.

(6) The magistrate shall certify that the statement or evidence of the accused person was made in his presence and hearing and that the record thereof is accurate.

(7) The magistrate shall invite the accused person to sign the record, but if he refuses to sign a note of the refusal shall be made and the record may be used as if the accused person had signed.

Discharge
of accused
person.

233. (1) Where, having read the committal documents, the magistrate considers that there are insufficient grounds for committing the accused person for trial, the magistrate shall discharge him.

(2) The prosecution may, before the committal of the accused person for trial, withdraw the charge and the magistrate shall discharge him.

(3) A discharge under subsection (1) or (2) shall not operate as a bar to subsequent proceedings on the same facts.

Committal
for trial.

234. Where, having read the committal documents, the magistrate has decided that there is sufficient evidence to commit the accused person for trial and has complied with section 232, the magistrate shall commit the accused person for trial before the High Court and shall, until the trial, admit him to bail or remand him in custody, and the warrant of the court shall be authority to the officer of a prison appointed for the custody of prisoners committed for trial, whether or not the prison is in the jurisdiction of the court.

Alibi
warning.

235. After the committal for trial the magistrate shall—

- (a) record the names and addresses of the witnesses whom the accused wishes to have summoned at the trial;
- (b) give to the accused person an alibi warning in the following words, or words to a similar effect—

“If, at your trial, you intend to say that you are not guilty because you were not at the place where the alleged offence occurred at the time it is alleged to have occurred, you must say so. You must also supply details of where you were and the names and addresses of any witnesses who will support you. You may do this now, or you or your advocate may supply this information in writing to this court and to the prosecution within the next fourteen days. If you do not, you may be prevented at your trial from saying that you were not present when the alleged offence occurred.”;

- (c) record any details of an alibi defence given by the accused.

8. The principal Act is amended by repealing sections 250-260 inclusive and inserting—

Repeal and replacement of sections 250-260, Cap. 75.

Transmission of committal documents to the High Court.

250. Where an accused person has been committed for trial, the committing court shall without delay transmit two sets of the committal documents and two copies of an information containing the charge framed by the magistrate to the Registrar of the High Court.

Notice of trial.

251. Upon receipt of the committal documents and the information, the Registrar shall serve on the accused person or his advocate and on the prosecution, copies of that information, upon which he shall endorse a notice in the following terms—

“A.B.

Take notice that you will be tried on the information of which this is a true copy by the High Court to be held at on the day of 19.....”.

Summoning of witnesses.

252. After committal for trial, any party may apply in person or in writing to the High Court for the issue of a summons to compel the attendance of a witness at the trial.

Information to be signed by the Attorney-General.

253. An information drawn up for the purpose of committal proceedings shall be in the name of and signed by or on behalf of the Attorney-General.

9. The principal Act is amended by repealing section 301 and inserting—

Amendment to section 301, Cap. 75.

Additional evidence for the prosecution.

301. (1) The prosecution shall not, without the leave of the court, the reasons for which shall be recorded, adduce evidence at a trial where a statement in relation to the evidence was not presented at the committal proceedings, unless the accused person or his advocate has received reasonable notice in writing of the intention to adduce that evidence.

(2) A notice under subsection (1) shall be accompanied by a copy of a statement, relating to that additional evidence, complying with section 231 (3).

10. The principal Act is amended by renumbering section 307 as subsection (1) and inserting as subsection (2)—

Amendment
to section 307,
Cap. 75.

(2) Notwithstanding the provisions of subsection (1), the accused person or his advocate shall not, without the leave of the court, the reasons for which shall be recorded, adduce alibi evidence unless details thereof, and the names and addresses of any witnesses in support thereof, were provided at the committal proceedings or in writing to the committing court and the prosecution within fourteen days thereafter.

11. The principal Act is amended in section 361—

Amendments
to section
361, Cap. 75.

(a) by deleting subsection (1) and inserting—

(1) Any party to an appeal from a subordinate court may, subject to subsection (8), appeal against a decision of the High Court in its appellate jurisdiction on a matter of law, and the Court of Appeal shall not hear an appeal under this section—

(a) on a matter of fact, and severity of sentence is a matter of fact; or

(b) against sentence, except where a sentence has been enhanced by the High Court, unless the subordinate court had no power under section 7 to pass that sentence;

(b) by deleting the proviso to subsection (2).

12. The principal Act is amended in the First Schedule thereto by inserting the following in the fifth column against the items for sections 42, 43, 43A, 44, 47, 59, 60, 69, 85, 122 (1) (a), 166, 167, 170, 171, 172, 202, 210, 220, 221, 222, 224, 225, 228, 229, 230, 232, 247, 264, 265, 286, 287, 288 and 336—

Amendment to
the First
Schedule,
Cap. 75.

A subordinate court of the first class presided over by a chief magistrate or a senior resident magistrate.

Minor amendments to Cap. 75.

13. The provisions of the principal Act set out in the first column of the First Schedule hereto are amended in the manner set out in the second column thereto.

Consequential amendments to other Acts.

14. The written laws specified in the Second Schedule hereto are amended, in relation to the provisions thereof specified in the second column, in the manner specified in the third column.

Insertion of new section 112A, Cap. 63.

15. The Penal Code is amended by inserting the following new section—

False written statements. Cap. 75.

112A. Any person who wilfully makes and signs a statement in accordance with section 231 of the Criminal Procedure Code which he knows to be false or does not believe to be true, is guilty of an offence and liable to imprisonment for three years.

Transitional provisions.

16. Where, on the day that this Act comes into operation, a person has appeared before a subordinate court charged with an offence which, but for this Act, would have been dealt with by committing that person to the High Court for trial in accordance with the former provisions of Part VIII of the principal Act, that person shall be dealt with as if this Act had not been passed if, before that day, a subordinate court had commenced to take down depositions in accordance with those provisions.

FIRST SCHEDULE

(s. 13)

<i>Section</i>	<i>Amendment</i>
PART IV—	Delete "INQUIRY OR".
Heading	
68 (1)	Delete "inquired into or" in the seventh line.
69	Delete "the same has been previously investigated into by a subordinate court and" in the proviso.
71, marginal note	Delete "inquiry and".
71, 72, 73, 74, 75 and 76.	Delete "inquired into or" wherever it appears.
77	Delete "inquiring into or" and "inquiry into or" where they appear.
79	Delete "inquiry or" where it appears and insert "committal proceedings or" and delete "inquire into or" and insert "hold committal proceedings or".

FIRST SCHEDULE—(Contd.)

<i>Section</i>	<i>Amendment</i>
80	Delete "inquiry" and insert "committal proceedings".
81 (1) (a), (c) and (i)	Delete "inquiry or", "inquiry into or", "inquired into or" and "inquire into or" where they appear.
82 (2)	Delete "to any witnesses bound over to prosecute and give evidence and to their sureties (if any), and also".
86	Delete "inquiry," and insert "committal proceedings,".
88 (1)	Delete "inquiring into or".
90 (1)	Delete "inquire into or".
91 (2)	Delete "inquire into and".
95	Delete "section 93" and insert "section 92"
99 (2)	Delete "inquiring into or".
113	Delete "inquiry or".
142 and 150	Delete "inquiry," where it appears.
162 (1), 164 (1) and 165	Delete "preliminary investigation" where it appears and insert "committal proceedings".
PART V— Heading	Delete "INQUIRIES AND".
194	Delete "inquiry or".
197 (1) and (2)	Delete "inquiries and" and "inquiry or".
209	Delete.
303	Delete.
246	Delete "depositions" in the marginal note and insert "statements" and delete ", and it is not practicable to take the deposition in accordance with the provisions of this Code of the person so ill or hurt" in the fourth, fifth and sixth lines.
304	Delete.
308	Delete "bound over" and insert "summoned"

SECOND SCHEDULE

(s. 14)

<i>Written law</i>	<i>Section</i>	<i>Amendment</i>
The Extradition (Contiguous and Foreign Countries) Act, Cap. 76.	s. 7 (1)	Delete "preliminary inquiry" and insert "trial before a subordinate court".

SECOND SCHEDULE—(Contd.)

The Extradition (Commonwealth Countries) Act, Cap. 77.	s. 9 (3)	Delete "connection with the holding of a preliminary inquiry under Part VIII of the Criminal Procedure Code." and insert "a trial."
The Fire Inquiry Act, Cap. 103.	s. 6	Delete "inquiries into cases triable by the High Court" in the ninth and tenth lines and insert "trials before a subordinate court".
	s. 7	Delete "the depositions of witnesses on inquiry into cases triable by the High Court" and insert "the evidence of witnesses in trials before a magistrate".