



LAWS OF KENYA

WITNESS SUMMONSES (RECIPROCAL ENFORCEMENT) ACT

CHAPTER 78

Revised Edition 2012 [1970]

Published by the National Council for Law Reporting
with the Authority of the Attorney-General

www.kenyalaw.org

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WITNESS SUMMONSES (RECIPROCAL ENFORCEMENT) ACT

ARRANGEMENT OF SECTIONS

Section

1. Short title.
 2. Interpretation.
 3. Application of the Act.
 4. Backing of summonses.
 5. Service of summons.
 6. Where witness cannot be found.
 7. Court may make order excusing attendance.
 8. The Attorney-General may excuse attendance.
 9. Disobedience of summons.
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CHAPTER 78

WITNESS SUMMONSES (RECIPROCAL ENFORCEMENT) ACT

[Date of assent: 11th December, 1968.]

[Date of commencement: 20th December, 1968.]

An Act of Parliament to provide for the enforcement of witness summonses issued by courts of certain countries and for matters incidental thereto and connected therewith

[Act No. 62 of 1968.]

1. Short title

This Act may be cited as the Witness Summonses (Reciprocal Enforcement) Act.

2. Interpretation

(1) In this Act unless the context otherwise requires—

“**court**” means a court of law constituted or established by or under the law of a country to which this Act applies;

“**magistrate**” means a Resident Magistrate;

“**the Registrar**” means the Registrar of the High Court;

“**summons**” includes any subpoena or other process for requiring the attendance of any person to give evidence before a court or to produce any document before a court.

(2) Where a power is conferred or a duty is imposed by this Act upon a magistrate endorsing a summons in accordance with section 4 of this Act, such power may be exercised and such duty may be performed by any other magistrate having jurisdiction over the area of jurisdiction of the magistrate endorsing the summons.

3. Application of the Act

Where the Attorney-General is satisfied that reciprocal provision has been or will be made by or under the law of any country for the enforcement of a summons issued by any court in Kenya, he may, by order published in the *Gazette*, declare that this Act shall apply in the case of that country subject to such conditions, exceptions and qualifications as may be specified in the order, and thereupon this Act shall apply accordingly.

4. Backing of summonses

(1) Where a summons has been issued by a court in a country to which this Act applies, requiring the attendance before such court for the purpose of giving evidence or producing any document in proceedings of a criminal nature pending before such court by a person who is or is suspected of being in or on the way to Kenya, the court issuing the summons may forward the summons together with three copies thereof to the Attorney-General.

(2) On receipt of documents referred to in subsection (1) of this section the Attorney-General shall forward same to the Registrar together with a request to cause the summons to be served on the person to whom it is addressed and stating the possible whereabouts of such person.

(3) On receipt of the summons under subsection (2) of this section, the Registrar shall forward same together with the copies thereof to the magistrate within whose area of jurisdiction the person to whom the summons is addressed is or is suspected of being present.

(4) Where a magistrate receives a summons under this section he may, if he is satisfied—

- (a) that the summons was issued by a person having lawful authority to issue it; and
- (b) that adequate provision has been made or will be made for the payment to the person to whom the summons is addressed of expenses for his travel to the court issuing the summons and for his return to his ordinary place of residence in Kenya, or to the place where the summons is served upon him under the provisions of this Act, and for his subsistence during the journeys and for the period of his stay at the place where the court issuing the summons is situate; and
- (c) that the provisions of this Act have been complied with,

endorse such summons and all the copies thereof.

(5) An endorsement of a summons by a magistrate under subsection (3) of this section shall be sufficient authority for the service of the summons in the manner prescribed in section 5 of this Act.

5. Service of summons

(1) A summons endorsed by a magistrate in accordance with the provisions of section 4 of this Act shall be served by a police officer or other public officer or other person as the magistrate endorsing the summons may direct, and shall be served personally on the person to whom it is addressed by delivering or tendering to him a copy thereof.

(2) The person upon whom a summons is served in accordance with subsection (1) of this section shall, if so required by the person serving the summons, sign a receipt therefor on the reverse of a copy of the summons and the person serving the summons shall return such copy to the magistrate who endorsed same, who shall forward same to the Registrar.

(3) Where the person summoned is a public officer the magistrate endorsing the summons may send the summons together with a copy thereof to the head of the department or division in which the person to whom the summons is addressed is serving, and such head of department or division shall, upon the receipt of the summons, cause the summons to be served in accordance with the foregoing provisions of this section and shall return a copy of the summons to the magistrate endorsing same after certifying on the reverse thereof the date on which and the manner in which the summons was served, and the magistrate shall forward the copy of the summons to the Registrar.

(4) Every person who serves a summons either in accordance with subsection (2) or subsection (3) of this section shall make a statutory declaration specifying the date on which and the manner in which the summons was served and such declaration shall be admissible in evidence and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

(5) Where a summons has been served in accordance with this section the Registrar shall send to the court issuing the summons the copy of the summons upon which the person served has signed a receipt or the copy certified in accordance with subsection (3) of this section together with a copy of the affidavit made under subsection (4) of this section.

6. Where witness cannot be found

Where the Magistrate who has endorsed a summons is satisfied that the witness cannot be found within the area of his jurisdiction he shall return the summons to the Registrar with a written report to the effect that the person to whom the summons is addressed cannot be found and containing such other relevant information as he may think fit, and upon receipt of the summons and the report the Registrar shall return the summons to the court issuing the same or, if the Registrar has reason to believe that the person to whom the summons is addressed may be found in some other area of Kenya, send the summons to the magistrate having jurisdiction over that area.

7. Court may make order excusing attendance

(1) The person upon whom a summons is served in accordance with the provisions of this Act may apply to the magistrate who endorsed the summons for an order excusing him from compliance with the summons.

(2) Every application under subsection (1) of this section shall be by chamber summons supported by an affidavit or affidavits specifying the grounds upon which the order is sought.

(3) Where an application is made under this section the magistrate may require the applicant to appear before him to be examined by him, and may examine any witness or witnesses whom the applicant may wish to call on his behalf.

(4) Where an application is made under this section and the magistrate is satisfied that—

- (a) no adequate provision has been made for the payment to the applicant of expenses for travelling to the court issuing the summons and for his return to his ordinary place of residence within Kenya or to the place within Kenya where he was served with the summons and for his subsistence during the journeys and for the period of his stay at the place where the court issuing the summons is situate; or
- (b) such person is too ill to travel to the court issuing the summons, or that he suffers from a physical or mental disability which would cause him great hardship to travel to such court; or
- (c) the summons was not served upon him until it was too late for him to travel to the court issuing the same so as to arrive there by the date specified in the summons; or

- (d) having regard to all the circumstances it would be unreasonable to require such person to comply with the summons,

he may by order excuse such person from complying with the summons.

(5) Every order made under subsection (4) of this section shall be in writing and contain reasons for the making thereof, and shall be signed by the magistrate who shall send two certified copies thereof to the Registrar, and the Registrar shall forward one copy of such order to the court issuing the summons.

8. The Attorney-General may excuse attendance

(1) Where the Attorney-General is satisfied that it is desirable so to do he may, at any time after a summons has been received by him in accordance with the provisions of subsection (1) of section 4 of this Act, whether or not the summons has been served on the person named therein under the provisions of this Act, direct, by an order under his hand, that the person named in the summons shall be excused from complying therewith.

(2) Where an order under subsection (1) of this section is made before the summons has been served on the person, no further steps shall be taken to serve the summons.

(3) The Attorney-General shall forward a copy of an order made under this section to the court issuing the summons.

(4) An order under subsection (1) of this section shall not be subject to review by any court.

9. Disobedience of summons

Any person who has been served with a summons under this Act and has not been excused from complying therewith by an order made under section 7 or section 8 of this Act, shall, if he fails to obey the summons, be guilty of an offence and liable on conviction to a fine not exceeding five hundred shillings.
