

CHAPTER 11
THE MAGISTRATES' COURTS ACT

[PRINCIPAL LEGISLATION]

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**CHAPTER 11
THE MAGISTRATES' COURTS ACT**

An Act to provide for the jurisdiction, powers and functions of magistrates' courts and for other related matters.

[1st July, 1984]
[G.N. No. 112 of 1984]

Acts Nos.
2 of 1984
13 of 1986
10 of 1989
4 of 1991
27 of 1991
3 of 1992
2 of 1996
13 of 1996
17 of 1996

PART I
PRELIMINARY PROVISIONS (ss 1-2)

1. Short title

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

2. Interpretation

In this Act, unless the context requires otherwise—

"**appropriate judicial authority**" means the Chief Justice and any person appointed by the Chief Justice under section 15 to be, or to perform the functions of, the appropriate judicial authority for the relevant purpose;

"**civil magistrate**" means a resident magistrate and such other magistrate as the Chief Justice may appoint either generally or in respect of any proceeding or category of proceedings, to be a civil magistrate;

"**decision**" includes a judgment, finding, acquittal, conviction, sentence or ruling;

"**district court**" means a court established under section 4;

"**district magistrate**" includes a resident magistrate;

"**honorary magistrate**" means any person appointed under section 16 to be, or to perform the functions of, a magistrate;

"**local government authority**" means a city, municipal, town or district council;

"**magistrate**" means a primary court magistrate, a district magistrate or a resident magistrate and also includes a civil magistrate and an honorary magistrate;

"**Minister**" means the Minister for the time being responsible for legal affairs;

"**order**" includes a writ, warrant, summons or other process, and a decree revisional or confirmatory order and any other formal expression of the decision of a court;

"**primary court**" means a court established under section 3;

"**Primary Courts Criminal Procedure Code**" means the Code set out in the Third Schedule to this Act, as amended from time to time;

"**proceeding**" includes any application, reference, cause, matter, suit, trial, appeal or revision, whether final or interlocutory, and whether or not between parties;

"**registrar**" means the Registrar of the Court of Appeal or of the High Court and includes any deputy or district registrar;

"resident magistrate-in-charge" means any resident magistrate appointed by the Chief Justice for each region under section 15, to be, or to perform, supervisory, administrative and judicial functions of a resident magistrate-in-charge.

PART II

ESTABLISHMENT, CONSTITUTION AND SET UP OF MAGISTRATES' COURTS (ss 3-17)

3. Primary courts

(1) There are hereby established in every district primary courts which shall, subject to the provisions of any law for the time being in force, exercise jurisdiction within the respective districts in which they are established.

(2) The designation of a primary court shall be the primary court of the district in which it is established.

4. District courts

(1) There is hereby established in every district a district court which shall, subject to the provisions of any law for the time being in force, exercise jurisdiction within the district in which it is established.

(2) Subject to subsection (3), the designation of a district court shall be the district court of the district in which it is established.

(3) The Chief Justice may, by order published in the *Gazette*, vary the designation of any district court.

(4) The variation of the designation of a district court or of the area within which such court may exercise jurisdiction, shall not affect the jurisdiction of such court to continue the hearing of, or to determine, any proceeding commenced before it prior to such variation.

(5) The Chief Justice may, if in his opinion it is in the public interest so to do, by published order in the *Gazette*, confer upon a district court established for any district, jurisdiction over any other contiguous district or districts and where such order is made, such district court shall have concurrent jurisdiction in relation to the district for which it is established and also in relation to such other district or districts as may be specified in the order.

5. Courts of a resident magistrate

(1) The Chief Justice may, by order published in the *Gazette*, establish courts of a resident magistrate which shall, subject to the provisions of any law for the time being in force, exercise jurisdiction in such areas as may be specified in the order.

(2) The designation of a court of a resident magistrate shall be that specified in the order establishing it.

(3) The Chief Justice may, by order published in the *Gazette*, vary the designation of a court

of a resident magistrate or of the area within which that court may exercise jurisdiction.

(4) The variation of the designation of a court of a resident magistrate, or of the area within which that court may exercise jurisdiction, shall not affect the jurisdiction of that court to continue the hearing of, or to determine, any proceeding commenced before it prior to the variation.

6. Constitution of magistrates' courts

(1) Subject to the provisions of section 7, a magistrates' court shall be duly constituted when held by a single magistrate, being—

- (a) in the case of a primary court, a primary court magistrate;
- (b) in the case of a district court, a district magistrate resident or a magistrate;
- (c) in the case of a court of a resident magistrate, a resident magistrate.

(2) Notwithstanding the provisions of subsection (1), where jurisdiction is conferred on a district court only when held by a magistrate of a particular description, such court shall not be duly constituted for the exercise of such jurisdiction unless held by a magistrate of that description.

(3) Where two or more magistrates of the same description are assigned to a particular magistrates' court each may hold sittings of the court concurrently with the other or others.

(4) Notwithstanding the foregoing provisions of this section, the Chief Justice may direct two or more magistrates of the same or other appropriate description to sit for the hearing and determination of any proceeding or any category thereof, and in any such case the court shall not be duly constituted for such proceeding nor any proceeding of such category, unless it is composed of the number and description of magistrates so directed.

(5) In any case where any proceeding is directed to be heard and determined by two or more magistrates, the same shall be determined in accordance with the opinion of the majority and if the court is equally divided the proceedings shall be dismissed.

7. Assessors

(1) In every proceeding in the primary court, including a finding, the court shall sit with not less than two assessors.

(2) All matters in the primary court including a finding in any issue, the question of adjourning the hearing, an application for bail, a question of guilt or innocence of any accused person, the determination of sentence, the assessment of any monetary award and all questions and issues whatsoever shall, in the event of difference between a magistrate and the assessors or any of them, be decided by the votes of the majority of the magistrates and assessors present and, in the event of an equality of votes the magistrate shall have the casting vote in addition to his

deliberative vote.

(3) In any proceeding in any other magistrates' court in which any rule of customary or Islamic law is in issue or relevant the court may, and when directed by an appropriate judicial authority shall, sit with an assessor or assessors; and every such assessor shall be required, before judgment, to give his opinion as to all questions relating to customary or Islamic law in issue in, or relevant to, the proceeding; save that in determining the proceeding the court shall not be bound to conform with the opinion of the assessors.

8. Liability to serve as assessor in courts, exemptions, etc.

(1) Subject to subsection (2) all persons between the age of thirty and sixty years shall be liable to serve as assessors in courts.

(2) The following persons are hereby exempted from liability to serve as assessors, namely—

- (a) Ministers and members of the National Assembly;
- (b) magistrates and judges;
- (c) persons actively discharging the duties of priests or ministers of their respective religion;
- (d) physicians, surgeons, dentists and apothecaries in actual practice;
- (e) legal practitioners in actual practice;
- (f) officers and men in the Armed Forces of the United Republic on full pay;
- (g) persons disabled by mental infirmity;
- (h) officers of the Police and Prison Services; and
- (i) such other officers of the Government and such other persons as may be exempted by the Chief Justice from liability to serve.

9. Regulations for the purposes of assessors in courts

The Minister may make regulations for the better carrying out of the purposes of the provisions of section 7, prescribing—

- (a) the constitution and composition of panels of assessors;
- (b) forms for the purposes of summoning assessors.
- (c) the procedure for the appointment of members of panels of assessors;
- (d) the remuneration of assessors;

(e) conditions and other matters in respect of the service of assessors;

10. Places and times of sitting and distribution of business

(1) A magistrates' court may be held at any place within its local limits of jurisdiction.

(2) Notwithstanding the provisions of subsection (1) a magistrates' court shall not be held at a place that is not regularly or customarily used for such a purpose unless public notice has previously been given of the intention to use the same for such a purpose, and the Chief Justice may, by order published in the *Gazette*, authorise a district court to sit outside the district for which it is established when exercising its appellate, confirmatory or revisional jurisdiction.

(3) Subject to the other provisions of this section, a magistrates' court shall sit at such times and places as may be necessary for the convenient and speedy dispatch of the business of the court and the distribution of business as between magistrates assigned to a court shall be arranged as may be convenient.

(4) The resident magistrate-in-charge or the appropriate judicial authority may give general or specific directions relating to any of the matters referred to in subsection (3).

(5) Notwithstanding the provisions of any other written law, a magistrates' court may sit for the dispatch of any proceeding of a criminal nature on Sunday or on a public holiday.

11. Registers and returns

(1) Subject to subsection (2) each magistrates' court shall keep such register or registers of all the proceedings entered, heard and determined in the court as may be prescribed.

(2) Where sittings of the court are regularly or customarily held at more than one place, a separate register or set of registers shall be kept for each of such places, and proceedings heard and determined at any place other than a regular or customary place of sitting shall be entered in the principal register or registers of the court.

(3) Each magistrates' court shall—

- (a) with respect to all civil proceedings, submit to the Registrar of the High Court annual returns of all proceedings; and
- (b) with respect to all criminal proceedings submit to the Registrar of the High Court annual returns of all proceedings specifying—
 - (i) the number of persons prosecuted for the year of returns;
 - (ii) the nature of the charges;
 - (iii) the results of the proceedings taken therein and any other particulars relating to the state of crime in the area or areas of jurisdiction of the court.

12. Seals and stamps

Magistrates' courts shall use seals or stamps of such nature and pattern as the Chief Justice may direct.

13. Language of courts

(1) The language of primary courts shall be Kiswahili.

(2) The language of courts of a resident magistrate and of district courts shall be either English or Kiswahili or such other language as the magistrate holding such court may direct; save that in the exercise of appellate, revisional or confirmatory jurisdiction by a district court (in which case the record and judgment may be in English or Kiswahili), the record and judgment of the court shall be in English.

14. Magistrates to sit in open court

(1) Subject to the provisions of subsection (2), a magistrate shall not inquire into or try any offence, preside over any civil proceeding or hear any appeal unless he is sitting in open court.

(2) This section shall have effect subject to any law conferring power on a court or magistrate to sit in camera or otherwise to exclude persons or categories of persons for any proceeding or part of it, and to any law relating to domestic proceedings or juvenile courts.

15. Appointment of resident magistrates-in-charge and appropriate judicial authorities

(1) The Chief Justice shall appoint for each region a resident magistrate-in-charge to perform the supervisory, administrative and judicial functions of a resident magistrate-in-charge in the region.

(2) The Chief Justice may, generally or in respect of specified provisions, courts or areas only, appoint any judge, registrar or magistrate to be, or to perform the functions of an appropriate judicial authority.

16. Appointment of honorary magistrates

Subject to subsection (2), the Minister may, if in his opinion it is in the public interest so to do, and after consultation with the Chief Justice, appoint any suitable person as honorary magistrate who may from time to time be called upon to try specific cases or perform any judicial function.

(2) Unless circumstances require otherwise, an honorary magistrate shall be appointed from amongst persons who have had experience of, and have shown capacity in, the practice of any branch of the legal profession.

(3) The Minister shall, by order published in the *Gazette*, confer upon such honorary magistrate the jurisdiction to enforce any law or perform any judicial function.

(4) A person exercising judicial functions by reason of his appointment as an honorary magistrate shall be paid such remuneration, allowances or other payments for expenses and subsistence as the Minister may, by notice published in the *Gazette* determine.

17. Establishment of special traffic courts

The Minister may, if in his opinion it is in the public interest so to do, after consultation with the Chief Justice, establish a special traffic court in such places as he may deem necessary, for the hearing and determination of traffic cases.

PART III JURISDICTION AND POWERS OF, AND APPEALS, ETC., FROM PRIMARY COURTS (ss 18-39)

(a) Jurisdiction and Powers (ss 18-19)

18. Jurisdiction of primary courts

(1) A primary court shall have and exercise jurisdiction—

(a) in all proceedings of a civil nature—

(i) where the law applicable is customary law or Islamic law:

Provided that no primary court shall have jurisdiction in any proceedings affecting the title to or any interest in land registered under the Land Registration Act *(21);

(ii) for the recovery of civil debts, rent or interests due to the Republic, any district, city, municipal or town council or township authority under any judgment, written law (unless jurisdiction therein is expressly conferred on a court or courts other than a primary court), right of occupancy, lease, sublease or contract, if the value of the subject matter of the suit does not exceed five million shillings, and in any proceedings by way of counter-claim and set-off therein of the same nature and not exceeding such value;

(iii) for the recovery of any civil debt arising out of contract, if the value of the subject matter of the suit does not exceed three million shillings, and in any proceeding by way of counterclaim and set-off therein of the same nature not exceeding such value; and

(b) in all matrimonial proceedings relating civil and Christian marriages;

(c) in all proceedings in respect of which jurisdiction is conferred on a primary court by the First Schedule to this Act; and

(d) in all proceedings in respect of which jurisdiction is conferred on a primary court by any

other law.

(2) The Chief Justice may, by order published in the *Gazette*, confer upon a primary court jurisdiction in the administration of deceased's estates where the law applicable to the administration or distribution of, or the succession to, the estate is customary law or, save as provided in subsection (1) of this section, Islamic law.

(3) The Minister may, by order published in the *Gazette*, add to the First Schedule jurisdiction to administer or enforce any provision of any law which a district court has jurisdiction to administer or enforce (other than any such provision in respect of which jurisdiction is conferred on a district court only when held by a civil magistrate), and may amend or replace the same accordingly.

19. Powers, practice and procedure

(1) The practice and procedure of primary courts shall be regulated and, subject to the provisions of any law for the time being in force, their powers limited—

- (a) in the exercise of their criminal jurisdiction, by the Primary Courts Procedure Code;
- (b) in the exercise of their jurisdiction, by the provisions of the Fourth Schedule to this Act, and, where the law applicable is customary, by customary law in so far as it is not inconsistent with the provisions of the Fourth Schedule;
- (c) in the exercise of their jurisdiction in the administration of estates by the provisions of the Fifth Schedule to this Act, and, in matters of practice and procedure, by rules of court for primary courts which are not inconsistent therewith; and the said Code and Schedules shall apply thereto and for the regulation of such other matters as are provided for therein.

(2) The Minister may make regulations prescribing the rules of evidence applicable in primary courts and subject to any regulations, a primary court may accept such evidence as is pertinent and such proof as appears to be worthy of belief, according to the rule thereof and notwithstanding any other law relating to evidence or proof.

(3) In addition to any other powers and provisions in that behalf and subject to subsection (4), a primary court shall have power, subject to rules of court—

- (a) to issue a summons for the attendance of any party to any proceeding in the court;
- (b) to issue a summons to any person to attend before it for the purposes of giving evidence or of producing any documents or thing relevant to any proceeding in the court, to issue a warrant for the arrest of any such person and his production before the court, to issue a commission for the examination of witnesses and to take evidence on commission;
- (c) where it is of the opinion that the justice of any case so requires, to require any person

present at the court whether a party or summoned as a witness or not, to give evidence; and

- (d) if it is shown to the satisfaction of the court that any property which is in dispute in any case is in danger of being destroyed, hidden, wasted, damaged, alienated or otherwise injuriously dealt with by any person, the court may, pending final determination of the case, issue an injunction to restrain any such person from destroying, hiding, wasting, damaging, alienating or otherwise injuriously dealing with any such property, and may, if it deems fit, take the property into its own custody, and, if it is of a perishable character, sell or dispose of the same and retain the proceeds in the same manner as if they were the original property.

(4) Where, in any proceeding of a criminal nature, the exercise of any of the powers specified in subsection (3) is subject, in accordance with the Primary Courts Criminal Procedure Code, to any condition, that power may be exercised only subject to that condition being fulfilled; and nothing in paragraph (c) of that subsection shall be construed as empowering a primary court to require any person accused in any criminal proceedings to give evidence therein against his will.

(5) For the avoidance of doubt it is hereby declared that nothing in sections 29, 31, 32, 36, 38, 38A or 38B of the Penal Code *(22) shall apply to, or to any punishment imposed by, a primary court.

(6) The Minister may, after consultation with the Chief Justice, by order published in the *Gazette*, amend the provisions of the Third, Fourth and the Fifth Schedules to this Act.

(b) Appellate and Revisional Jurisdiction of District Courts (ss 20-24)

20. Appeals from primary courts

(1) Save as hereinafter provided—

- (a) in proceedings of a criminal nature, any person convicted of an offence by a primary court, or where any person has been acquitted by a primary court, the complainant or the Director of Public Prosecutions; or
- (b) in any other proceedings, any party,

if aggrieved by an order or decision of the primary court, may appeal therefrom to the district court of the district for which the primary court is established.

(2) No appeal shall be allowed—

- (a) in any case of an accused person convicted on his own plea of guilty, except against sentence or an order for the payment of compensation;
- (b) in any case in which a primary court has passed a sentence of a fine not exceeding

one hundred shillings only or made an order for the payment of compensation not exceeding one hundred shillings only, save with the leave of the district court; or

- (c) in any case where a person is convicted of an offence set out in the Schedule to the Minimum Sentences Act *(23) (being an offence within the jurisdiction of primary courts), against any minimum sentence ascribed by section 4 of that Act, unless the accused is a first offender within the meaning prescribed to that expression in that Act and the value of the relevant property does not exceed one hundred shillings or unless such sentence includes an order for the imposition of corporal punishment and the appellant is a male under the age of sixteen years or over the age of forty-five years or is a female.

(3) Every appeal to a district court shall be by way of petition and shall be filed in the district court within thirty days after the date of the decision or order against which the appeal is brought.

(4) Notwithstanding the provisions of subsection (3)–

- (a) the district court may extend the time for filing an appeal either before or after such period has expired; and
- (b) if an application is made to the district court within the said period of thirty days or any extension thereof granted by the district court, the district court may permit an appellant to state the grounds for his appeal orally and shall record them and hear the appeal accordingly.

(5) The Minister may make regulation prescribing the procedure for appeals from primary courts by a complainant other than the Director of Public Prosecutions.

21. Powers of district courts

(1) In the exercise of its appellate jurisdiction, a district court shall have power–

- (a) to direct the primary court to take additional evidence and to certify the same to the district court or, for reasons to be recorded in writing, to hear additional evidence itself;
- (b) whether or not additional evidence is heard or taken, to confirm reverse, amend or vary in any manner the decision or order appealed against (including power to substitute a conviction or a conviction and sentence for an acquittal), so however that the decision or order as altered shall not be in excess of the jurisdiction of the primary court and 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 been given an opportunity of being heard;
- (c) to quash any proceeding (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 court of first instance or some other primary court, or any district court, having

jurisdiction; and

- (d) the provisions of paragraph (d) of subsection (1), and subsection (2) of section 49 shall be applicable to such rehearing as if the case had been transferred.

(2) Where an order that any proceedings be quashed and the case be reheard is made as aforesaid, no plea of *res judicata* or *autrefois acquit* or of *autrefois convict* shall be entertained in respect of any order or decision in the proceedings so quashed.

(3) Nothing in this section shall be read as prohibiting any aggrieved complainant in a criminal proceeding to appeal against the decision of a primary court to the district court.

22. Revisional jurisdiction

(1) A district court may call for and examine the record of any proceedings in the primary court established for the district for which it is itself established, and may examine the records and registers thereof, for the purposes of satisfying itself as to the correctness, legality or propriety of any decision or order of the primary court, and as to the regularity of any proceedings therein, and may revise any such proceedings.

(2) In the exercise of its revisional jurisdiction, a district court shall have all the powers conferred upon a district court in the exercise of its appellate jurisdiction including the power to substitute a conviction, or a conviction and sentence, for an acquittal; and the provisions of paragraph (b) of subsection (1) of section 21 shall apply in relation to an order quashing proceedings and ordering a rehearing which is made in the exercise of a district court's revisional jurisdiction as they apply in relation to any such order made in the exercise of its appellate jurisdiction.

(3) In addition to the provisions of subsection (2) of this section, no order shall be made in the exercise of the court's revisional jurisdiction in any proceeding of a civil nature increasing any sum awarded, or altering the rights of any party to his detriment (other than an order quashing proceedings in a lower court or an order reducing any award in excess of the jurisdiction or powers of the lower court to the extent necessary to make it conform thereto) unless such party has been given an opportunity of being heard.

(4) No proceedings shall be revised under this section after the expiration of twelve months from the termination of such proceedings in the primary court and no proceedings shall be further revised under this section in respect of any matter arising thereon which has previously been the subject of a revisional order under this section.

(5) Without prejudice to the provisions of subsection (1) of this section a district court may exercise its powers of revision in any case where an offender is committed for sentence, or a sentence is submitted for confirmation, under the Primary Courts Criminal Procedure Code.

23. Jurisdiction over offenders committed for sentence by primary courts

- (1) Where an offender is committed to a district court for sentence under the provisions of the

Primary Courts Criminal Procedure Code, the district court shall have jurisdiction to inquire into the circumstances of the case and to deal with the offender in any manner in which he could have been dealt with by the district court if he had been convicted by the district court of the offence in question.

(2) If the district court imposes a sentence on the offender—

- (a) the provisions of the Primary Courts Criminal Procedure Code and of this Part shall apply only with regard to an appeal against conviction as for any other case tried by a primary court; and
- (b) the offender may appeal against such sentence to the High Court in the same manner and in the same circumstances as if he had been convicted by the district court, and the provisions of the Criminal Procedure Act *(24) relating to appeals against sentence from a district court to the High Court shall apply accordingly.

(3) The district court may in its discretion postpone its inquiry under the provisions of subsection (1) of this section until the expiration of the time for filing an appeal against conviction and, if the appeal has been filed before the district court commences the inquiry, the district court may in its discretion postpone the inquiry until final determination of the appeal or for such lesser period as the court may deem fit.

24. General provisions on appeals to, revision by, and committal for sentence to, district courts

(1) Where an appeal has been filed by a person entitled to appeal to a district Court or a district court calls for the record of any proceedings under section 23, the district court or the primary court may, for reasons to be recorded in writing—

- (a) in the case of a person sentenced to imprisonment or committed in custody to the district court for sentence, order—
 - (i) that the person be released on bail with or without sureties pending the hearing of his appeal or the termination of the revisional proceedings; or
 - (ii) that the execution of the sentence be suspended pending the hearing of his appeal or the termination of the revisional proceedings, in which case he shall be treated as a remand prisoner pending the hearing of his appeal; but if the appeal is ultimately dismissed or the original sentence (being a sentence of imprisonment) is confirmed, or some other sentence of imprisonment substituted therefor, the time during which the sentence has been suspended, shall be excluded in computing the term of imprisonment; and
- (b) in any other case, order that the execution of the decision or order appealed against be suspended pending the hearing of his appeal or the termination of the revisional proceedings.

(2) Where a district court determines any appeal, revises any proceedings or passes sentence upon any person committed to it for sentence, it shall certify its decision or order to the primary court in which the proceedings originated, and the primary court shall thereupon make such orders as are conformable to the decision or order of the district court and, if necessary, the records shall be amended in accordance therewith.

(c) Appellate and Revisional Jurisdiction of the High Court in Relation to Matters Originating in Primary Courts (ss 25-32)

25. Appeals, etc., from district courts in their appellate and revisional jurisdiction

(1) Save as hereinafter provided—

(a) in proceedings of a criminal nature, any person convicted of an offence or, in any case where a district court confirms the acquittal of any person by a primary court or substitutes an acquittal for a conviction, the complainant or the Director of Public Prosecutions; or

(b) in any other proceedings any party,

if aggrieved by the decision or order of a district court in the exercise of of its appellate or revisional jurisdiction may, within thirty days after the date of the decision or order, appeal therefrom to the High Court; and the High Court may extend the time for filing an appeal either before or after such period of thirty days has expired.

(2) The Minister may make regulations prescribing the procedure for appeals from district courts by a complainant other than the Director of Public Prosecutions against the decision or order of a district court confirming the acquittal of any person by the primary court or where a district court substitutes an acquittal for a conviction.

(3) Every appeal to the High Court shall be by way of petition and shall be filed in the district court from the decision or order in respect of which the appeal is brought:

Provided that the Director of Public Prosecutions may file an appeal in the High Court and, where he so files an appeal, he shall give notice thereof to the district court and the district court shall forthwith dispatch the record of proceedings in the primary court and the district court to the High Court.

(4) Upon receipt of a petition under this section the district court shall forthwith dispatch the petition, together with the record of the proceedings in the primary court and the district court, to the High Court.

26. Powers of registrars

Where an appeal against any decision or order of a district court in the exercise of its appellate or revisional jurisdiction is received in the High Court, a registrar of that court may—

- (a) give directions as to the time within which any further step in the proceedings shall be taken by the appellant or any other party (and may extend any such period) and where the appellant fails to complete any such step within such time, may dismiss the appeal for want of prosecution; or
- (b) order fresh evidence to be recorded before the court of first instance or the district court, and to be certified to the High Court.

27. Composition of High Court on appeal

(1) Appeals to the High Court under this part shall be heard by one judge unless the Chief Justice directs that an appeal be heard by two or more judges.

(2) Any direction by the Chief Justice under subsection (1) may be given at any time before judgment.

(3) If two or more judges hearing an appeal are equally divided, the appeal shall be dismissed.

(4) In any appeal to the High Court under this Part in which any rule of customary law is in issue or relevant, the High Court may refer any question of customary law to a panel of experts constituted in accordance with rules made under this Act, but the High Court shall not be bound to conform with the opinion of such experts in determining the appeal.

28. Power to reject appeals summarily

(1) Subject to the provisions of subsection (2) of this Section, a judge of the High Court may, if satisfied that an appeal in any proceeding of a criminal nature has been lodged without sufficient ground of complaint, summarily reject the appeal.

(2) An appeal in a proceeding of a criminal nature shall not be summarily rejected under subsection (1) of this section unless—

- (a) if the appeal is against sentence and is brought on the grounds that the sentence is excessive, it appears that there is no material evidence in the circumstances of the case which could lead the court to consider that the sentence ought to be reduced;
- (b) if the appeal is against conviction, it appears that the evidence before the lower court leaves no reasonable doubt as to the accused's guilty and that the appeal is without substance;
- (c) If the appeal is against conviction and sentence, it appears that the evidence before the lower court leaves no reasonable doubt as to the accused's guilt and that the appeal is without substance, and that there is no material in the circumstances of the case which could lead the court to consider that the sentence ought to be reduced.

(3) A judge may, if satisfied that an appeal in any other proceeding is without substance

summarily reject the appeal.

29. Powers of High Court on appeal

In the exercise of its appellate jurisdiction under this Part, the High Court shall have power—

- (a) to take or to order some other court to take and certify additional evidence and, whether additional evidence is taken or not, to confirm, reverse, amend or vary in any manner the decision or order appealed against (including, without prejudice to the generality of the foregoing, power to substitute a conviction, or a conviction and sentence, for an order of the district court substituting an acquittal for a conviction, and power to make declaratory orders), so however that the decision or order as altered shall not be in excess of the jurisdiction of the court of first instance:

Provided that—

- (i) no conviction or conviction and sentence shall be substituted for an order of the district court substituting an acquittal for a conviction, and no sentence shall be enhanced, unless the accused or convicted person, as the case may be, has been given an opportunity of being heard; and
 - (ii) no declaratory order on an appeal by the Director of Public Prosecutions against a decision or order of a district court confirming the acquittal of a person in a primary court shall have effect as a conviction;
- (b) to quash any proceedings (including proceedings which terminated in a decision or order of a district court substituting an acquittal for a conviction, not being a decision or order confirming an acquittal by a primary court) and where it is considered desirable, order the case to be heard *de novo* either before the court of first instance or some other primary court or district court having jurisdiction:

Provided that where proceedings are quashed and an order for rehearing is made as aforesaid—

- (i) the provisions of paragraph (b) of subsection (1), of section 49 and of subsection (2) of that section shall be applicable to such rehearing as if the case had been transferred; and
 - (ii) no plea of *res judicata* or *autrefois acquit* or *autrefois convict* shall be entertained in respect of any decision or order in the proceedings so quashed;
- (c) to make any other decision or order which might have been made by the court of first instance.

30. Supervision

- (1) The High Court shall exercise general powers of supervision over all courts in the

exercise of their jurisdiction under this Part, and may at any time—

- (a) call for and inspect the record of any proceedings under this Part in a district court or primary court and may examine the records or register thereof; or
- (b) direct any district court to call for and inspect the records of any proceedings of the primary court established in its district and to examine the records and registers thereof, in order to satisfy itself, or to ensure that such district court shall satisfy itself, as to the correctness, legality and propriety of any decision or order and as to the regularity of any proceedings therein; and may—
 - (i) itself revise any such proceedings in a district court; or
 - (ii) where it has exercised its appellate jurisdiction in relation to proceedings which originated in a primary court between or against parties not all of whom were parties to the appeal, itself revise such proceedings in the primary court; or
 - (iii) direct the district court to revise any such proceedings in a primary court,and all such courts shall comply with such directions without undue delay.

(2) A resident magistrate-in-charge may call for and inspect the record of any proceedings under this Part in a resident magistrates' court, a district court or a primary court and may examine the records or registers thereof for the purpose of satisfying himself as to the correctness, legality or propriety of any decision or order and as to the regularity of any proceedings therein; and may, in any case in which he considers that any decision or order is illegal or improper or any proceedings are irregular—

- (a) in the case of a resident magistrates' court or district court, forward the record with a report to the High Court in order that it may consider whether or not to exercise its powers of revision; and
- (b) in the case of a primary court, consider the proceedings and if he considers it appropriate so to do, revise the same:

Provided that nothing in this subsection shall confer on a resident magistrate-in-charge any power to call for, inspect, forward or report on any proceedings before a resident magistrate.

(3) Where a resident magistrate-in-charge forwards any record to the High Court under this section, and pending the decision of such court, he may, for reasons to be recorded by him in writing on the record, order that the execution of the decision or order of the district court or primary court, as the case may be, be suspended and also in criminal proceedings, if the convicted person is in confinement, that he be released on bail with or without sureties: Provided that where any sentence of imprisonment dealt with under this subsection is confirmed by the High Court or a district court or some other sentence of imprisonment substituted therefor, the time during which the convicted person has been released on bail or the sentence was suspended and the convicted person treated as a remand prisoner, shall be excluded in

computing the term for which he is sentenced.

31. Revision

(1) In the exercise of its revisional jurisdiction under this Part, the High Court shall have all the powers conferred upon it in the exercise of its appellate jurisdiction under this paragraph including the powers to substitute a conviction or a conviction and sentence for an acquittal or an acquittal for a conviction or to make a declaratory order; and the provisions of the proviso to paragraph (b) of section 29 shall apply in relation to an order quashing proceedings and ordering a rehearing which is made in the exercise of the High Court's revisional jurisdiction as they apply in relation to any such order made in the exercise of its appellate jurisdiction.

(2) In addition to the provisions of subsection (1) of this section, no order shall be made in the exercise of the High Court's revisional jurisdiction under this Part in any proceedings of a civil nature, increasing any sum awarded or altering the rights of any party to his detriment (other than an order quashing proceedings in a lower court or an order reducing any award in excess of the jurisdiction or powers of a lower court to the extent necessary to make it conform thereto) unless the party adversely affected has been given an opportunity of being heard.

32. General provisions on appeal to, and revision by, the High Court

(1) Where—

(a) an appeal to the High Court on appeal to the High Court under this Part has been filed; or

(b) the High Court calls for the recording of any proceedings or any record is forwarded to the High Court under section 30, the High Court, or the district court may, for reasons to be recorded in writing—

(i) in the case of a person sentenced to imprisonment, order—

(A) that the person be released on bail, with or without sureties pending the hearing of the appeal or termination of the revisionary proceedings;

(B) that the execution of the sentence be suspended pending the hearing of the appeal or termination of the revisionary proceedings, in which case such person shall be treated as a remand prisoner during such period:

Provided that if the appeal is dismissed or the sentence (being a sentence of imprisonment) is confirmed or some other sentence substituted therefor, the time during which such person was released on bail, or during which the sentence has been suspended, shall be excluded in computing the term of the imprisonment; and

(ii) in any other case, order that the execution of the decision or order appealed against shall be suspended pending the hearing of the appeal or the termination of

the revisional proceedings.

(2) Where the High Court determines any appeal or revises any proceedings under this Part, it shall certify its decision or order to the primary court in which the proceedings originated through the district court, and the primary court shall thereupon make such orders as are conformable to the decision or order of the High Court and, if necessary, the records shall be amended in accordance therewith.

(d) *Miscellaneous (ss 33-39)*

33. Appearance on behalf of parties in primary courts

(1) No advocate or public prosecutor as such may appear or act for any party in a primary court.

(2) Subject to the provisions of subsections (1) and (3) of this section and to any rules of court relating to the representation of parties, a primary court may permit any relative or any member of the household of any party to any proceedings of a civil nature, upon the request of such party, to appear and act for that party.

(3) In any proceedings in a primary court to which a body corporate is a party (including proceedings of a criminal nature) a person in the employment of the body corporate and duly authorised in that behalf, other than an advocate, may appear and act on behalf of that party.

34. Presence of parties at hearing of appeals and revisional proceedings

(1) Save where an appeal is summarily rejected by the High Court and subject to any rules of court relating to substituted service, a court to which an appeal lies under this Part shall cause notice of the time and place at which the appeal will be heard to be given—

- (a) to the parties or their advocates;
- (b) in all proceedings of a criminal nature in the High Court, or in any such proceedings in the district court in which he is an appellant or has served notice that he wishes to be heard, to the Director of Public Prosecutions:

Provided that no such notice need be given—

- (i) to an appellant in any proceedings of a criminal nature who is in custody, who does not state in the petition both that he wishes to be present and that he is in a position to pay the expenses of his transfer to the place of hearing;
- (ii) to any party who has served notice on the appellate court that he does not wish to be present;
- (iii) to any advocate unless the petition of appeal is signed by the advocate or the appellate court is otherwise informed that he is instructed to appear at the hearing; or

- (iv) to the Republic or to the Director of Public Prosecutions except in the circumstances specified in paragraph (b) of this subsection.

(2) An appellant or other party, whether in custody or not, shall be entitled to be present at the hearing of an appeal under this Part:

Provided that where an appellant or other party is in custody, his right to be present at the hearing of the appeal shall, unless the court directs that his presence is desirable for the due determination of the appeal (in which case the expenses of transferring him to and from the place of hearing shall be borne by the Republic) be subject to his paying all expenses incidental to his transfer to and from the place where the court sits for the determination of the appeal.

(3) No party has any right to be heard either personally or by advocate before the High Court or a district court exercising their respective jurisdictions in revision under this Part:

Provided that—

- (a) the court may, if it thinks fit, hear any party personally or by advocate; and
- (b) nothing in this subsection shall derogate from the provisions of paragraph (b) of section 21, subsection (3) of section 22, paragraph (i) of the proviso to paragraph (a) of section 29, or subsection (2) of section 31.

(4) Where notice of time, and place of the hearing cannot be served on a party who is a respondent by virtue of his having been previously acquitted and his acquittal is being appealed against, if he cannot be found through the address obtained by the trial court from him, the court shall order that notice be brought to his attention through publication in a newspaper three times, and at the end of that service the court may proceed with the appeal in the absence of the respondent.

35. Presence of parties at hearing of civil appeals

Subject to any provision of the Civil Procedure Code *(25), in all civil appeals to the High Court or the district court, as the case may be, the court shall have the power to determine the appeal notwithstanding that the appellant or the respondent or both of them have not been served with notice of hearing of the appeal if the court, upon grounds to be recorded in writing, is satisfied that the party concerned cannot be served without undue delay and unnecessary expenses or efforts have been made to effect service without success.

36. Abatement of appeals on death

Every appeal from a primary court or district court under this Part in proceedings of a criminal nature (other than an appeal against a sentence of fine or an order for the payment of compensation) shall abate on the death of the appellant.

37. Substantial justice to be done without undue regard to technicalities

(1) No proceedings in a primary court or district court under this Part and no decision or order thereof shall be set aside merely on the ground that the proceedings took place in the wrong district, unless it appears that such error has in fact occasioned a failure of justice.

(2) No decision or order of a primary court or a district court under this Part shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, or any process or charge, in the proceedings before or during the hearing, or in such decision or order or on account of the improper admission or rejection of any evidence, unless such error, omission or irregularity or improper admission or rejection of evidence has in fact occasioned a failure of justice.

(3) In the exercise of their respective jurisdictions under this Part, the High Court and district courts—

- (a) shall not refuse to recognise any rule of customary law on the grounds that it has not been established by evidence, but may accept any statement thereof which appears to them to be worthy of belief which is contained in the record of the proceedings in or before any lower court which has exercised jurisdiction in the case, or from any other source which appears to be credible, or of which the court may take judicial notice;
- (b) subject to any regulations made under subsection (2) of section 19, may accept such evidence as is pertinent and such proof as appears to be worthy of belief, according to the value thereof and notwithstanding any other law relating to the adduction and reception of evidence;
- (c) shall not be required to comply or conform with the provisions of any rule of practice or procedure otherwise generally applicable in proceedings in the appellate or revisional court, but may apply any such rule where it considers that its application would be advantageous to the exercise of its jurisdiction;
- (d) where there is any dispute or uncertainty as to any customary law, whether by reason of anything contained in the record of the proceedings in or before any lower court which has exercised jurisdiction in the case, the grounds of appeal, or otherwise, shall not be required to accept as conclusive or binding any evidence contained in the record but shall—
 - (i) in any case of dispute, determine the customary law applicable, and give judgment thereon, in accordance with what it conceives to be the best and most credible opinion or statement which is consistent with the provisions of such customary law as are undisputed; and
 - (ii) in any case of uncertainty, determine the appeal, and give judgment thereon, in such manner as accords as near as may be to the provisions of such customary law as are established and certain.

38. Service of process

(1) Any summons, warrant or other process lawfully issued from a primary court or a district court in the exercise of its jurisdiction under this Part may be served or executed—

- (a) within any part of the district within which it exercises jurisdiction; or
- (b) within any other district, if the said summons, warrant or process is sent to the district court or primary court established for the district in which it is to be served or executed and endorsed by a magistrate or justice assigned to the court of issue with a certificate that any fees for service or execution and, in the case of any process requiring the attendance of witnesses, the reasonable expenses of such witnesses have been paid or tendered.

(2) An affidavit that a summons, warrant or other process has been served or executed pursuant to the provisions of subsection (1) of this section, or an endorsement that it has not or cannot be so served or executed, shall be made by the person by whom such service or execution was effected or attempted.

39. Execution of orders and process of other courts

(1) Every primary court shall execute or cause to be executed any decision or order of any other court directed to such primary court and shall cause to be executed or served every summons, warrant or other process issued by any such other court directed to it for execution or service, and generally shall give such assistance to any such other court as may be necessary.

(2) Every district court shall—

- (a) when so requested by some other district court, execute any decision or order of such district court or of the primary court established for the district for which such other district court is established and shall cause to be executed the summonses, warrants or other process thereof; and
- (b) execute or cause to be executed any decision or order of the High Court in the exercise of its jurisdiction under this Part directed to it and execute and serve the summonses, warrants and other process of the High Court directed to it.

PART IV

ORIGINAL JURISDICTION AND POWERS OF, AND APPEALS, ETC., FROM DISTRICT COURTS AND COURTS OF A RESIDENT MAGISTRATE (ss 40-46)

(a) Original Jurisdiction and Powers (ss 40-42)

40. Original jurisdiction of district courts

(1) A district court shall have and exercise original jurisdiction—

- (a) in all proceedings of a criminal nature in respect of which jurisdiction conferred on a district court by any such law for the time being in force;

- (b) in all such other proceedings under any written law for the time being in force (except as otherwise provided in subsection (2) of this section) in respect of which jurisdiction is conferred on a district court by any such law:

Provided that—

- (i) where jurisdiction in any such proceeding as is referred to in paragraph (a) or (b) is conferred on a district court when held by a resident magistrate, a civil magistrate, or some other description of magistrate a district court shall not have jurisdiction therein unless it is held by a resident magistrate, civil magistrate or magistrate of such other description, as the case may be; and
- (ii) the jurisdiction of a district court in proceedings under any such law as is referred to in paragraph (b) of this subsection shall (subject to any express exception in any such law) be limited in the same cases and to the same extent as is provided in paragraph (b) of subsection (2).

(2) A district court when held by a civil magistrate shall, in addition to the jurisdiction set out in subsection (1), have and exercise original jurisdiction in proceedings of a civil nature, other than any such proceedings in respect of which jurisdiction is conferred by written law exclusively on some other court or courts, but (subject to any express exception in any other law) such jurisdiction shall be limited—

- (a) in proceedings for the recovery of possession of immovable property, to proceedings in which the value of the property does not exceed twelve million shillings; and
- (b) in other proceedings where the subject matter is capable of being estimated at a money value, to proceedings in which the value of the subject matter does not exceed ten million shillings.

41. Original jurisdiction of courts of resident magistrates

(1) A court of a resident magistrate shall have and exercise jurisdiction in all proceedings in respect of which jurisdiction is conferred by the Second Schedule to this Act and any law for the time being in force on a court of a resident magistrate or on a district court presided over by a resident magistrate or a civil magistrate, in the exercise of its original jurisdiction.

(2) The Minister may, by order published in the *Gazette*, amend or replace the Second Schedule to this Act if any circumstances so require.

42. Powers, practice and procedure in original jurisdiction

(1) Subject to the provisions of any law for the time being in force the powers of district courts and courts of a resident magistrate shall be limited, and their practice and procedure regulated—

- (a) in the exercise of their original criminal jurisdiction, by the Penal Code *(26) and the

Criminal Procedure Act *(27);

- (b) in the exercise of their original civil jurisdiction, in accordance with the principles and provisions of the Civil Procedure Code *(28) so far as the same shall be applicable and suitable.

(b) Appellate and Revisional Jurisdiction, etc., of the High Court in relation to Proceedings Originating in District Courts and Courts of Resident Magistrates (ss 43-45)

43. Appeals, revision, etc.

(1) Subject to the provisions of any law for the time being in force, the provisions of the Criminal Procedure Act *(29) shall apply to appeals in proceedings of a criminal nature from a district court or courts of a resident magistrate to the revision of proceedings of a criminal nature therein, and to such other proceedings in or in relation to, such courts as may be provided for in that Act.

(2) Subject to the provisions of any law for the time being in force, all appeals, references, revisions and similar proceedings from, or in respect of, any proceedings of a civil nature in a district court or a court of a resident magistrate which are authorised by law shall lie to and be heard by the High Court.

44. Additional powers of supervision and revision

(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court—

- (a) shall exercise general powers of supervision over all district courts and courts of a resident magistrate and may, at any time, call for and inspect or direct the inspection of the records of such courts and give such directions as it considers may be necessary in the interests of justice, and all such courts shall comply with such directions without undue delay;
- (b) may, in any proceedings of a civil nature determined in a district court or a court of a resident magistrate on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it sees fit:

Provided that no decision nor order shall be made by the High Court in the exercise of the jurisdiction conferred by paragraph (b) of this subsection, increasing any sum awarded or altering the rights of any party to his detriment, unless the party adversely affected has been given an opportunity of being heard.

(2) A resident magistrate-in-charge may call for and inspect the record of any proceedings in a district court and may examine the records or registers thereof for the purpose of satisfying himself as to the correctness, legality or propriety of any decision or order and as to the

regularity of the proceedings therein; and may, in any case in which he considers that any decision or order is illegal or improper or any proceedings are irregular, forward the record with a report to the High Court in order that it may consider whether or not to exercise its powers of revision.

(3) Where a resident magistrate-in-charge forwards any record in any proceedings of a criminal nature to the High Court under this section, he may, for reasons to be recorded by him in writing record, order that the execution of the decision or order of the court be suspended; and if the convicted person is in confinement, that he be released on bail, with or without sureties.

(4) Where any sentence of imprisonment dealt with under this section is confirmed by the High Court, or some other sentence of imprisonment substituted therefor, the time during which the convicted person was released or the sentence was suspended and the convicted person treated as a remand prisoner, shall be excluded in computing the term for which he is sentenced.

45. Minister may confer extended appellate jurisdiction on resident magistrate

(1) The Minister may, after consultation with the Chief Justice and with the Attorney-General, by order published in the *Gazette*—

- (a) invest any resident magistrate, in relation to any category of cases specified in the order, with the appellate jurisdiction ordinarily exercisable by the High Court; or
- (b) invest any resident magistrate, in relation to any particular case specified in the order, with the appellate jurisdiction ordinarily exercisable by the High Court,

and such magistrate shall, by virtue of such order notwithstanding the provision of any written law to the contrary but subject to the limitations or restrictions, if any, specified in the order or any subsequent order, have power in relation to such category of cases so specified or, as the case may be, such case so specified, to hear and determine appeals and exercise in his capacity as a court of appeal, to hear and determine appeals and exercise in its capacity as a court of appeal, in the same manner and to the same extent as the High Court, and in so far as it is necessary, expedient or desirable for the proper exercise of such jurisdiction, and for the purpose of any appeal from his decision in the exercise of such jurisdiction, such resident magistrate shall be deemed to be a judge of the High Court, and the court presided over by him while exercising such jurisdiction shall be deemed to be the High Court.

(2) The High Court may direct that an appeal instituted in the High Court be transferred to and be heard by a resident magistrate upon whom extended jurisdiction has been conferred by section 45(1).

(3) The provisions of this Act, the Criminal Procedure Act *(30) or the Civil Procedure Code *(31) which govern the exercise by the High Court of its appellate and revisional jurisdiction shall, *mutatis mutandis*, and to the extent that they are relevant, govern proceedings before a

resident magistrate under this section in the same manner as they govern like proceedings before the High Court, and the provisions of those laws which relate to appeals to the High Court, the powers of the High Court on such appeals, the revisional jurisdiction of the High Court and other matters relating to appeals, revisions, inspection and supervision to or by the High Court, shall be construed, in relation to proceedings under this section, as if references to the High Court were references to such resident magistrate exercising extended jurisdiction conferred upon him under this section.

(4) For avoidance of doubt, any proceedings conducted by a resident magistrate with extended appellate jurisdiction, prior to the coming into effect of the provisions of this subsection, such proceedings shall be deemed to have been conducted under the provisions of subsection (2) of this section.

(c) *Miscellaneous (s 46)*

46. Application

(1) Nothing in this Part shall apply to any proceeding to which Part III applies.

(2) Nothing in section 43 or 44 shall apply to or in relation to appeals from, or the stating of cases by, a district court or court of a resident magistrate exercising extended powers conferred by order under section 173 of the Criminal Procedure Act *(32) or, save as provided in section 175 of that Act, authorise the High Court or any resident magistrate-in-charge to exercise any power of supervision or revision in relation to any court.

PART V TRANSFERS (ss 47-50)

47. Transfer from primary courts

(1) Where any proceeding has been instituted in a primary court, it shall be lawful, at any time before judgment, for—

- (a) the primary court, with the consent of the district court or a court of a resident magistrate having jurisdiction, to transfer the proceeding to such district court or court of a resident magistrate or to some other primary court;
- (b) the district court or a court of a resident magistrate within any part of the local jurisdiction of which the primary court is established, to order the transfer of the proceedings to itself or to another magistrates' court; or
- (c) the High Court to order the transfer of the proceeding to itself or to a magistrates' court, in any case where—
 - (i) it appears that the circumstances or gravity of the proceeding make it desirable that the same should be transferred;

- (ii) there is reasonable cause to believe that there would be a failure of justice were the proceeding to be heard in the primary court;
- (iii) the subject matter of the proceeding arose outside the local limits of the primary court's jurisdiction or is not within its jurisdiction, or in any case in which the law applicable is a customary law which is not a customary law prevailing within such first-mentioned primary court's local jurisdiction; or
- (iv) the proceeding seeks to establish or enforce a right or remedy under customary law or Islamic law, or is an application for the appointment of an administrator of the estate of a deceased person, and the court is satisfied that the law applicable is neither customary law nor Islamic law or that the question whether or not customary law or Islamic law is applicable cannot be determined without hearing or determining the proceedings,

and the court shall record its reasons for making or ordering such transfer:

Provided that nothing in this subsection shall authorise—

- (a) the transfer by a magistrates' court of any proceeding which is required by law to be commenced in a primary court except to another primary court; or
- (b) the transfer of any proceeding to a court which, however constituted, has no jurisdiction in respect of the subject matter thereof.

(2) A primary court—

- (a) shall transfer to the district court of the district for which it is established any proceedings of a criminal nature if the accused person appears to be of unsound mind;
- (b) if the accused person so elects, shall transfer to the district court of the district for which it is established any proceeding of a criminal nature in which the accused is charged with an offence punishable in the primary court by imprisonment for more than twelve months or, in the case of an adult, by corporal punishment; and election under this section shall be exercised before the accused pleads to the charge.

(3) Where any proceedings of a civil nature referred to in subparagraph (iii) of paragraph (c) of subsection (1) has been instituted in a primary court, the primary court shall, on the application of either party to such proceedings and on being satisfied that the proceedings involve a question of law at issue between the parties, transfer the proceedings to the district court of the district for which the primary court is established:

Provided that no decision, judgment or order of the primary court in any proceedings of civil nature to which this subsection applies shall be reversed or altered on appeal or revision on the ground only of failure by such primary court to transfer the proceedings in accordance with the provisions of this subsection unless such failure has in fact occasioned a failure of justice.

(4) Where any proceedings have been instituted in a primary court established for any district, the primary court may, if it is satisfied that it is reasonable in the circumstances so to do, and shall, if directed by the district court of that district, transfer the proceedings to another primary court established for the same district.

(5) The provisions of subsection (4) shall be construed without prejudice to the provisions of subsection (1).

(6) Where any proceedings of a criminal nature have been instituted in a primary court, it shall be lawful at any time before the accused person gives evidence therein, for the Director of Public Prosecutions to order the primary court to transfer the proceeding to the district court of the district for which it is established.

(7) A primary court shall comply with all orders of the Director of Public Prosecutions, a district court, a court of a resident magistrate or the High Court under this section.

48. Transfer to primary courts

Where any proceedings in respect of which a primary court has jurisdiction have been instituted in the district court, a court of a resident magistrate or the High Court, it shall be lawful, at any time before judgment, for such court to order the transfer of the same to the primary court having jurisdiction; save that before making any such order the district court, court of a resident magistrate or High Court, as the case may be, shall satisfy itself that the transfer of the proceedings will not be contrary to the interests of justice or cause undue inconvenience to the parties, and shall record its reasons for ordering such transfer.

49. Additional provisions

(1) Where any proceeding or matter is transferred from one court to another under the provisions of section 47 or 48—

- (a) the court from which the same is transferred may, subject, in the case of a magistrates' court, to any directions in that behalf given by the superior court ordering the transfer, make such order as to the costs of the proceedings to date as it shall think fit;
- (b) upon payment of any necessary fees additional to those paid in the court from which the case is transferred, the court shall commence the hearing *de novo* and proceed with the conduct and trial thereof in the same manner as if, in criminal proceedings, a complaint of facts constituting an offence had been duly made to the court and, in civil proceedings, a plaint or other appropriate statement of claim therein had been duly filed, in such court, and the proceeding, and any appeal from the decision thereof, shall be regulated in the same manner as if the proceeding had been commenced in the court to which the same have been transferred.

(2) Where any court transfers any proceedings of a criminal nature under or in accordance with any order made under this Part, it shall take security for the appearance of the accused person before the court to which the proceeding is transferred or, if it is appropriate, remand him

in custody to be brought before such court; and any security taken for the appearance of the accused person shall be treated as if it had been taken by the court to which the proceedings are transferred.

(3) No appeal shall lie against the making of, or any refusal to make, an order under the provisions of section 47 or 48.

(4) The jurisdiction of a court under this Part may be exercised of its own motion or on the application of any party.

50. Savings of transfers under other laws

Nothing in this Part of this Act shall be construed as derogating from the provisions of any other law relating to the transfer of Proceedings.

PART VI JUSTICES OF THE PEACE, AND ADDITIONAL POWERS OF PRIMARY COURT MAGISTRATES (ss 51-62)

(a) Appointment and Powers of Justices of the Peace (ss 51-57)

51. Appointment

(1) Every specified officer of a district, town, municipal or city council shall be a justice of the peace for the district in which such council has jurisdiction.

(2) The Minister may appoint any fit and proper person to be a justice of the peace for the district in which such person is ordinarily resident.

(3) Notwithstanding the provisions of subsection (1) or (2) of this section, the Minister may, by notice published in the *Gazette*, in any case in which he considers such an appointment to be desirable, appoint a specified officer or person appointed a justice of the peace under subsection (2) to be a justice of the peace for more than one district.

(4) In this section, "specified officer" means the Secretary to the district, town, municipal or city council and includes the Secretary to a divisional committee thereof.

52. Assignment of justices to court houses

The appropriate judicial authority shall assign every justice of the peace to a primary or district court house in the district for which he is appointed.

53. Arrest by or on order of justice

A justice of the peace may arrest, or may order any person to arrest, any person who commits a cognizable offence in his presence.

54. Justices may compel appearance of persons accused

(1) Where a complaint of facts which constitutes an offence is made, either orally or in writing, to a justice of the peace, he shall examine the complaint and, if satisfied that there are sufficient grounds for so doing, issue a summons or a warrant for the purposes of compelling the appearance of the person accused:

Provided that a justice of the peace shall not, in the first instance, issue a warrant for the arrest of the person accused, unless he is satisfied that it is proper that such person should be detained in custody pending his trial or should give security for his appearance, or that the circumstances of the case render it unlikely that such person will appear in answer to a summons.

(2) The power to issue a warrant under this section includes power to issue a warrant of arrest authorising a police officer to whom it is directed to release the person accused on his executing a bond for a specified sum with or without sureties, for his appearance before the court.

(3) Every summons and warrant issued under this section shall be in the prescribed form and shall be returnable before a magistrates' court at a court house in accordance with the directions of the appropriate judicial authority.

(4) Where a justice of the peace considers a complaint under this section, he shall enter the same, together with his decision whether or not to issue process, in the records and registers of the court house to which he is assigned; and if he issues process, he shall enter the charge in the register.

55. Persons arrested to be taken before court

Where any person is arrested by or on the orders of a justice of the peace under section 53 or any person otherwise arrested without warrant is brought before justice of the peace shall, without unnecessary delay, either take him or cause him to be taken before a magistrate:

Provided that where—

- (a) the justice of the peace is assigned to a court house in the vicinity and, for the time being, there is no magistrate in attendance thereat; and
- (b) in accordance with the arrangements made for the dispatch of judicial business in the district by the appropriate judicial authority, the proceedings will be further prosecuted at such court house, the justice of the peace may, instead, enter the matter in the registers of the court house and exercise the powers conferred by paragraph (a) or (b) of section 56.

56. Powers of justices assigned to court houses

A justice of the peace may, if there is no magistrate in attendance at a court house to which

he is assigned, exercise at the court house any of the following powers of a magistrate exercising jurisdiction at such court house—

- (a) to admit any person arrested, with or without warrant, for any offence, other than murder or treason, to bail either with or without surety or release him in his own bond, and to issue a warrant of arrest for any person in breach of a bond for his appearance; or
- (b) to remand in custody any person arrested, with or without warrant, for a reasonable time, not exceeding seven days at any one time, to some prison, lock-up or other place or security:

Provided that a justice shall not remand any person in custody—

- (i) unless a case file is, or has have been, opened for the matter and a charge is, or has been, drawn up and signed by a magistrate, a justice of the peace or police officer, containing such particulars as are reasonably necessary to identify the offence or offences, including the law and the section, or other division thereof, under which the accused person is charged; and
 - (ii) for more than seven days at any time nor, save where normal means of access to the nearest magistrate are interrupted, for more than an aggregate of twenty-eight days, without taking him before a magistrate;
- (c) to cause any person brought before a primary court under arrest to be taken before the district court;
 - (d) to issue a summons compelling any person to appear to give evidence or to produce any thing in any proceedings to be heard in the court house or for the attendance of any party to such proceedings;
 - (e) to endorse warrants of arrest and summons issued by courts outside the district in which has jurisdiction;
 - (f) if it is shown to the satisfaction of the justice of the peace that any property which is in dispute in any case (whether of a civil or a criminal nature) is in danger of being destroyed, hidden, wasted, damaged, alienated, or otherwise injuriously dealt with, by any person and, pending final determination of the case, to issue an injunction to restrain person from destroying, hiding, wasting, damaging, alienating or otherwise injuriously dealing with that property, and, if it is of a perishable character, to sell or dispose of the same and retain the proceeds in the same manner as if they were the original property,

and may exercise any of the powers, functions and duties conferred by any other written law upon a justice of the peace other than such as are conferred on a justice assigned to a district court house.

57. Additional powers of justices assigned to district court houses

In addition to the powers conferred by this Act on a justice of the peace a justice of the peace assigned to a district court house—

- (a) may hear, take and record the confessions of persons in the custody of a police officer in the same manner as a magistrate may hear, take and record such confessions;
- (b) shall have and exercise the powers, functions and duties conferred on a justice of the peace assigned to a district court house by any other written law.

(b) Additional Powers of Primary Court Magistrates (s 58)

58. Primary court magistrates as justices

(1) A primary court magistrate shall be a justice of the peace for the district for which the primary court to which he is assigned is established and, in his capacity as a justice of the peace he is hereby assigned to every district court house therein.

(2) The exercise of the powers or functions of a justice of the peace by a primary court magistrate shall not be called in question solely on the grounds that, in the exercise of such powers or functions, he purported to act as a primary court magistrate.

(c) Miscellaneous (ss 59-62)

59. Confessions to justices

A confession made by a person in the custody of a police officer which is made in the immediate presence of a justice of the peace assigned to a district court house may be proved in evidence in the same manner and to the same extent as a confession in the like circumstances in the immediate presence of a magistrate may be proved.

60. Powers of persons arresting

Every justice of the peace exercising the power to arrest any person, and every person to whom any order or warrant to arrest any other person is given or directed, in accordance with the provisions of this Part, shall have and may exercise, in the exercise of such powers, all such powers and shall perform all such duties as are by law conferred or imposed upon a police officer.

61. Provisions relating to process

The provisions of paragraphs 10, 11 and 12 of the Primary Courts Criminal Procedure Code shall apply to any process issued under this Part by justices of the peace assigned to primary court houses.

62. Supervision of and instruction to justices

(1) Justices of the peace shall be subject to the supervision of the magistrate exercising jurisdiction in the court houses to which they are assigned, and to the supervision of a resident magistrate-in-charge, and they shall be obedient to the magistrates to whose supervision they are subject.

(2) The appropriate judicial authority may, from time to time, issue instructions not inconsistent with any law for the time being in force for the guidance and control of justices of the peace in the exercise of their powers, functions and duties, and every justice of the peace shall comply with and obey such instructions.

PART VII

MISCELLANEOUS PROVISIONS (ss 63-71)

63. Concurrent jurisdiction

(1) Subject to the provisions of any law for the time being in force, where jurisdiction in respect of the same proceedings is conferred on different courts, each court shall have concurrent jurisdiction therein:

Provided that no civil proceedings in respect of marriage, guardianship or inheritance under customary law, or the incidents thereof, and no civil proceedings in respect of immovable property, other than proceedings relating to land held on a Government lease or a right of occupancy granted under the Land Act *(33) or proceedings under section 22 or 23 of the Land Act shall be commenced in any court other than a primary court unless the Republic is a party thereto or unless the High Court gives leave for such proceedings to be commenced in some other court.

(2) Nothing in section 15 of the Civil Procedure Code *(34) shall require any proceedings of a civil nature to be commenced in a primary court.

64. Certain issues not justiciable in primary courts

Where—

- (a) proceedings to establish or enforce any right or remedy under customary law are instituted in a primary court, or an application is made to a primary court on which jurisdiction in the administration of deceased estates has been conferred for the appointment of an administrator for the administration and distribution of the estate in accordance with customary law, and the proceedings are, or the application is, are not rejected by the court of its own motion; or
- (b) any proceedings have been transferred to a primary court and the reason or one of the reasons therefor is that the law applicable is customary law,

the issue whether or not customary law applies to any party, or person, relevant to the proceedings or application, or whether or not customary law is the law applicable, shall not be justiciable in such court, but the proceedings or application shall be heard and determined and

decisions and orders made therein in accordance with customary law and this Act, and the primary court shall have jurisdiction accordingly:

Provided that–

- (i) nothing in this section shall apply to any issue as to the applicability of one of several customary laws; and
- (ii) nothing in this section shall preclude any person from making application to some other court or authority having jurisdiction in that behalf for a transfer under this Act or, in the case of administration proceedings, for administration under the Probate and Administration of Estates Act *(35), or any other court or authority having appellate, supervisory or revisional jurisdiction, or power to make orders of transfers or relating to administration, from hearing and determining any such issue or making such decisions or orders as the circumstances of the case require.

65. Magistrates not to act if having an interest

(1) Subject to the provisions of subsection (2) of this section, no magistrate shall act in his judicial office in any proceedings in which he has any pecuniary or personal interest.

(2) A magistrate shall not be incapable of acting in his judicial office in any proceedings by reason of his being one of several rate payers or as one of any other class of persons liable, in common with others, to any rate, tax or duty, or to contribute to or to be benefitted by any rate, tax or duty which may be increased, diminished or in any way affected by those proceedings.

66. Non-liability to suit of magistrates, justices, etc., acting in good faith

(1) A magistrate holding a magistrates' court shall not be liable to be sued in any court for any act done or ordered to be done by him in the exercise of his judicial duty, nor shall a justice of the peace be liable to be sued in any court for any act done or ordered to be done by him in the exercise of his functions or duty as a justice, whether or not such act is within the limits of his or the court's jurisdiction, if at the time of doing such act or making such order he believed in good faith that he had jurisdiction to do the act or make the order.

(2) No officer of a magistrates' court or other person required to execute the lawful orders of a magistrate or justice of the peace shall be liable to be sued in any court for the execution of any order issued or made by a magistrate or a justice of the peace if he believed in good faith that the order was within the jurisdiction of the magistrate or justice of the peace by whom it was issued.

67. Contempt

The power of the High Court to punish for contempt shall extend to upholding the authority of all magistrates' courts.

68. Appellants in prison or lock-up

Where any person who wishes to appeal under the provisions of this Act against any decision or order in proceedings of a criminal nature is in prison or a lock-up established under section 70 he may present his petition of appeal to the officer-in-charge of the prison or lock-up, who shall forward it to the court in which, but for the provisions of this section, the petition is required to be filed.

69. Local government authorities to prepare list of assessors

Every local authority shall, before the first day of March in each year, prepare and deliver to the district court a list of suitable persons ordinarily resident within the area of its jurisdiction, who shall be liable to serve as assessors when so required by a court:

Provided that—

- (a) any person exempted from liability to serve as an assessor by section 8 of this Act, shall be exempted from liability to serve as an assessor under this section; and
- (b) no person shall be disqualified from service as an assessor by reason only that his name is not included in a list prepared under this section.

70. Lock-ups

(1) The Minister for the time being responsible for Home Affairs (in this section referred to as "the Minister") may establish lock-ups for the reception of persons taken or remanded in custody and for the safe keeping of persons sentenced to a term of imprisonment by a primary court pending their transfer to a prison.

(2) The Minister shall make arrangements for the administration and control of lock-ups and may authorise a local government authority and its servants to administer and control lock-ups in its area:

Provided that every judge of the High Court, every resident magistrate-in-charge, every district and primary court magistrate assigned to the district court or primary court established for the district in which a lock-up is situated, and every justice of the peace appointed for such district shall be, and have the powers of, a visiting justice in relation to lock-ups.

(3) The Minister may make rules for the administration and control of lock-ups and the custody of persons detained therein, and the transfer of such persons to and from courts and prisons.

(4) The Minister may delegate his powers to establish lock-ups under this section to any Regional Commissioner or any local government authority.

71. Rules and directions

(1) The Chief Justice may make rules of court and give directions not in consistent therewith,

regulating and prescribing the practice and procedure of magistrates' courts, the execution of the decisions and orders thereof and the functions and duties of members and officers of such courts, and regulating and prescribing the practice and procedure in hearing and determining appeals including the power to strike out appeals in proceedings of a civil nature in the absence of the parties, the exercise of revisional jurisdiction and the manner of presenting appeals, and otherwise for the purposes of this Act and the administration of magistrates' courts.

- (2) Without prejudice to the generality of subsection (1) of this section, rules of court may—
- (a) regulate and prescribe costs, fees and allowances of witnesses;
 - (b) prescribe forms;
 - (c) authorise and make provision for the service of process issued by courts outside or within the country, and authorise and make provision for the service of process issued by magistrates' courts outside or within the country;
 - (d) authorise a primary court to exclude members of the public generally or any particular person from any open court in particular cases or particular categories of cases;
 - (e) make provision for the limitation of claims under customary law;
 - (f) confer powers, functions or duties on any judge, registrar or magistrate; or
 - (g) make different provision for any category, of whatever description, of courts.

(3) The Minister may make regulations for the constitution and composition of the panels of experts in customary law and for the appointment and remuneration of the members of those panels.

PART VIII

REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS (ss 72-77)

72.-76. Repeal of R.L. Cap. 537

[Repeals the Magistrates' Courts Act with saving and transitional provisions.]

77. Saving of appeal laws and prerogative writs

Unless the context requires otherwise, nothing in this Act shall derogate from the provisions of the Appellate Jurisdiction Act *(36), or from the power or jurisdiction of the High Court to issue any writ of *mandamus*, *certiorari* or prohibition to, or in respect of any magistrates' court.

FIRST SCHEDULE

JURISDICTION OF THE PRIMARY COURTS

(Section 18(1))

PART I

JURISDICTION UNDER THE PENAL CODE

Primary courts shall have jurisdiction to try any offence contrary to any of the following provisions of the Penal Code:—

| <i>Section</i> | | | <i>Offences</i> |
|----------------|----------------------------------|-----|---|
| 84 | ... | ... | Going armed in public. |
| 85 | ... | ... | Forcible entry. |
| 86 | ... | ... | Forcible detainer. |
| 87 | ... | ... | Affray. |
| 88 | ... | ... | Challenging to fight a duel. |
| 89 | ... | ... | Abusive language, brawling and threatening violence. |
| 101 | ... | ... | Threat of injury to persons employed in the public service. |
| 109 | ... | ... | Destroying evidence. |
| 114 (1) | other than paragraph (d) thereof | | Contempt of court. |
| 114A | ... | ... | Preventing or obstructing service or execution of process. |
| 116 | ... | ... | Escape from lawful custody. |
| 116A | ... | ... | Absence from extra-mural employment. |
| 117 | ... | ... | Aiding prisoners to escape. |
| 118 | ... | ... | Removal, etc., of property under lawful seizure. |
| 124 | ... | ... | Disobedience of lawful orders. |
| 126 | ... | ... | Disturbing religions assembly. |
| 134 | ... | ... | Abduction of girls under sixteen. |
| 135 (3) | ... | ... | Insulting the modesty of a woman. |

| | | | |
|----------------------|-----|-----|---|
| 166 | ... | ... | Desertion of children. |
| 167 | ... | ... | Neglecting to provide food, etc., for children. |
| 176 (b), (c) and (e) | | | Idle and disorderly person (certain offences only). |
| 178 (1) | ... | ... | Wearing uniform without authority. |
| 178 (2) | ... | ... | Bringing contempt on uniform. |
| 180 | ... | ... | Adulteration of food or drink intended for sale. |
| 181 | ... | ... | Sale of noxious food or drink. |
| 184 | ... | ... | Fouling water. |
| 185 | ... | ... | Fouling air |
| 194 (a) | ... | ... | Holding of commodities. |
| 217 | ... | ... | Attempting suicide. |
| 218 | ... | ... | Concealing the birth of a child. |
| 228 (a) | ... | ... | Wounding. |
| 233 (d) | ... | ... | Omitting to take precautions against probable danger from animal. |
| 234 | ... | ... | Other negligent acts causing harm not specified in section 233. |
| 240 | ... | ... | Common assault. |
| 241 | ... | ... | Assaults causing actual bodily harm. |
| 247 | ... | ... | Kidnapping. |
| 253 | ... | ... | Wrongful confinement. |
| 265 | ... | ... | Theft. |
| 266 | ... | ... | Stealing cattle. |
| 268 | ... | ... | Stealing wills. |

| | | | |
|---------|-----|-----|---|
| 269 | ... | ... | Stealing from the person. |
| 270 | ... | ... | Stealing by person in the public service. |
| 271 | ... | ... | Stealing by clerks and servants. |
| 279 | ... | ... | Killing animal with intent to steal. |
| 280 | ... | ... | Severing with intent to steal. |
| 286 | ... | ... | Robbery. |
| 288 | ... | ... | Assault with intent to steal. |
| 292 | ... | ... | Demanding property with menaces with intent to steal. |
| 294 | ... | ... | Housebreaking and burglary. |
| 295 | ... | ... | Entering dwelling house with intent to commit offence. |
| 296 | ... | ... | Breaking into building and committing offence. |
| 297 | ... | ... | Breaking into building with intent to committing offence. |
| 299 | ... | ... | Criminal trespass. |
| 302 | ... | ... | Obtaining goods by false pretences. |
| 304 | ... | ... | Cheating. |
| 311 | ... | ... | Receiving stolen property, etc. |
| 319 | ... | ... | Arson. |
| 320 | ... | ... | Attempt to commit arson. |
| 321 | ... | ... | Setting fire to crops and growing plants. |
| 325 | ... | ... | Injuring animals. |
| 326 (1) | ... | ... | Malicious injuries. |
| 369 | ... | ... | Personation. |

| | | | |
|-----|-----|-----|---|
| 381 | ... | ... | Attempt to commit any of the offences which a primary court has jurisdiction to try. |
| 390 | ... | ... | Soliciting or inciting the commission of an offence which it has jurisdiction to try. |

PART II JURISDICTION UNDER OTHER LAWS

Primary courts shall have jurisdiction to enforce the provisions of the laws set out in the first, second and third columns of the following table, and to try any offence contrary thereto, subject to any limitation set out opposite thereto in the fourth column:

Provided that where any such laws are of limited territorial application, only primary courts established within the area to which such laws apply shall have jurisdiction to enforce the same and to try offences contrary thereto.

| 1 | 2 | 3 | 4 |
|------------------|--------------------------------|--|--|
| <i>Cap No.</i> | <i>Law</i> | <i>Section, rule, by-law</i> | <i>Limitation</i> |
| Cap. 19 | The Prevention of Gambling Act | Sections 3, 4 and 5 | |
| Cap. 167 | The Highways Act | Sections 37, 38, 39, 40, 41, 42, 43, 50 and 51 | |
| Cap. 168 | Road Traffic Act | | (a) Any offence under the Road Traffic Act or any subsidiary legislation made thereunder which is connected with the riding of a bicycle, the condition of a bicycle, the carrying of a passenger on a bicycle, or the contravention of any requirement in relation to a bicycle or its use. |
| Cap. 168 S.L. | | | (b) Offences under rules 18, 32, 43 (i), 69 and 70 of the Traffic Rules |

| | | | |
|----------|-----------------------------------|---|--|
| Cap. 223 | The Arms and Ammunition Act | Sections 13 (1), 39 (1) and (2), 22 and 32 | Jurisdiction under section 22 only in so far as the offence relates to the manufacture of smooth bore muzzle loading muskets and section 32 only in relation to offences set out in column 3 |
| Cap. 265 | The Stock Theft Prevention Act | Sections 3, 4, 5, 6 and 7 | |
| Cap. 283 | Wildlife Conservation Act | The whole Act | |
| Cap. 284 | Ngorongoro Conservation Act | The whole Act | |
| Cap. 323 | The Forests Act | Sections 15(1), (2) and (4), 16 (1) and (2), 18, 22, 24, 25, 26(1), (2) and (3) | |
| | The Forests Act Rules | Rules 10(1), 11 (2), 14, 15(1) and 17 | |
| Cap. 344 | The Food (Control of Quality) Act | Parts IV, V and VI | |
| Cap. 385 | The Public Order | | |

SECOND SCHEDULE

EXISTING LAWS IN WHICH CERTAIN REFERENCES ARE TO BE READ AS REFERENCES TO DISTRICT COURTS HELD BY A CIVIL MAGISTRATE OR TO CIVIL MAGISTRATES

(Section 41)

| <i>Cap. No</i> | <i>Law</i> | <i>Provision</i> |
|----------------|-----------------------------|------------------|
| 7 | The Judgments Extension Act | The whole Act |
| 25 | The Bankruptcy Act | Section 97 |

| | | |
|-----|--|--|
| 27 | The Administrator-General (Powers and Functions) Act | Section 2 |
| 113 | The Land Act | Sections 22 and 23 |
| | The Law of Real Property and Conveyancing Act | Section 9 |
| 165 | The Merchant Shipping Act | Section 93 |
| 212 | The Companies Act | Sections 164, 165 and 166. |
| 263 | The Workers' Compensation Act | Section 3 |
| 336 | Public Health (Sewerage and Drainage) | Section 21 |
| 399 | The Mining (Mineral Oil) Act | Section 9 |
| 352 | The Probate and Administration of Estates Act | The whole Act |
| 339 | The Rent Restriction Act | Section 2 |
| 77 | The Intoxicating Liquors Act | Sections 13, 14, 66, 67, 68, 70, 72, 74, 78, 83, 91 and 92 |

**THIRD SCHEDULE
THE PRIMARY COURTS CRIMINAL PROCEDURE CODE**

(Section 2)

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3. Primary court may commit to district court for sentence.
4. Power to discharge absolutely or on conditions, and to promote reconciliation.
5. Additional powers.
6. Powers cumulative.
7. Confirmation of certain orders.

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- 9. Additional powers to issue warrant.
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- 15. Remands.
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- 18. Provisions relating to bail to apply to bail after conviction.

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- 19. Courts which may try offences.

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- 20. Limitation of time for trials in certain cases.
- 21. Charge to be drawn up.
- 22. Additions to or amendment of charges.
- 23. Withdrawal.
- 24. Adjournment.
- 25. Non-appearance of parties after adjournment.
- 26. Appearance.
- 27. Accused may be convicted and sentenced *in absentia*.
- 28. Evidence relative to proper sentence or order.
- 29. Presence of accused.
- 30. Interpretation of evidence.
- 31. Charge to be read.
- 32. Where accused admits offence.
- 33. Where accused denies offence.
- 34. Refractory witnesses.
- 35. Evidence and examination.
- 36. Dismissal of charge.
- 37. Judgment and verdict.
- 38. Alternative verdicts.
- 39. Sentence.
- 40. Warrant of committal.

**PART I
PRELIMINARY PROVISIONS**

1. Title, interpretation and general

(1) This Code may be cited as the Primary Courts Criminal Procedure Code.

(2) In this Code, unless the context requires otherwise—

"**adult**" means a person of the age of sixteen years or more;

"**bail**" includes a bond in a person's own recognisance;

"**complaint**" includes information laid by a person in relation to, and accusing of, an offence a person arrested without a warrant, and "**complainant**" includes a person who lays such information;

"**court**" means the primary court having jurisdiction;

"**the district court**" means the district court to which an appeal lies from the primary court having jurisdiction;

"**magistrate**" means a primary court magistrate.

**PART II
POWER OF PRIMARY COURTS IN PROCEEDINGS OF A CRIMINAL NATURE**

2. Court may impose imprisonment, fine or corporal punishment

(1) Subject to the provisions of any law for the time being in force, a court may, in the exercise of its criminal jurisdiction, in the cases in which such sentences are authorised by law, pass the following sentences—

(a) imprisonment for a term not exceeding twelve months;

(b) a fine not exceeding ten thousand shillings.

(c) corporal punishment not exceeding twelve strokes:

Provided that where a court convicts a person of an offence specified in any of the Schedules to the Minimum Sentences Act *(37) which it has jurisdiction to hear, it shall have the jurisdiction to pass the minimum sentence of imprisonment.

(2) A court may order that any fine which it imposes shall be paid at such time or times or by such instalments or in kind or otherwise as it shall think just, and in default of the payment of any fine or of any instalment of the same when due, the court may order that the amount of the

fine or of the instalment, as the case may be, shall be levied by the sale of any movable property belonging to the offender.

(3) Subject to subsection (4), when a court makes an order for the payment of a fine, it shall have the power to direct by its sentence that in default of the payment of the fine the offender shall suffer such period of imprisonment as will satisfy the justice of the case.

(4) Except where it is expressly provided by any law for the time being in force, in no case shall imprisonment provided under subsection (3) exceed the maximum prescribed by the following scale:

| (a) <i>Amount:</i> | <i>Maximum Period</i> |
|--|-----------------------|
| Not exceeding Shs. 100/- | 14 days |
| Exceeding Shs. 100/= but not exceeding shs. 500/- | 1 month |
| Exceeding shs. 500/- but not exceeding 1,000/- | 3 months. |
| Exceeding 1,000/- but not exceeding Shs. 5,000/- | 4 months |
| Exceeding shs. 5,000/- | 6 months |
| (b) Such imprisonment, either by itself or together with such substantive imprisonment (if any) as may be imposed, shall not in any event exceed the use of the substantive imprisonment prescribed for the offence. | maximum period |

(5) The imprisonment which is imposed in default of payment of a fine shall terminate when the fine is either paid or levied by process of law.

(6) Where a term of imprisonment is imposed by a court in default of the payment of a fine, that term shall, on the payment or levy of a part of such sum, be proportionately reduced.

3. Primary court may commit to district court for sentence

Where a primary court convicts an adult of an offence and, on obtaining information as to the

character and antecedents of such adult or as to the circumstances or prevalence of the offence, the court is of the opinion that they are such that greater punishment should be imposed for the offence than the court has power to impose the court may, instead of dealing with him in any other manner, commit the offender in custody to the district court for sentence.

4. Power to discharge absolutely or on conditions, and to promote reconciliation

(1) Where a court by which a person is convicted of an offence is of the opinion that, having regard to the circumstances, including the nature of the offence and the character of the offender, it is inexpedient to inflict punishment, the court may make an order discharging him on his executing a bond with or without sureties in such sum as the court may think fit, on condition that during a period not exceeding one year he shall appear and receive sentence when called upon and in the meantime he shall keep the peace and be of good behaviour.

(2) In the case of proceedings for common assault or for any other offence of a personal or private nature, the court may, if it is of the opinion that the public interest does not demand the infliction of a penalty, promote reconciliation and encourage and facilitate the settlement, in an amicable way, of the proceedings or terms of payment of compensation or other terms approved by the court, and may thereupon order the proceedings to be stayed.

5. Additional powers

(1) A court may, where the justice of the case so requires, and shall, in any case where any law for the time being in force so requires, make orders—

- (a) for the supervision of habitual offenders;
- (b) for the payment of compensation not exceeding one thousand shillings or costs or for compensation of more than one thousand shillings where it convicts a person of an offence specified in the Schedules to the Minimum Sentences Act *(38) which it has jurisdiction to hear;
- (c) for the forfeiture of any property in the case of unlawful possession or, where authorised by any other law for the time being in force, for the forfeiture of any property in the case of unlawful use or the forfeiture of any licence, permit or other authorisation;
- (d) when any person is convicted by it of having stolen or having dishonestly or wrongfully obtained any property, for the restoration of such property, to the person appearing to the court to be the owner or entitled to the possession thereof;
- (e) to any other effect, not hereinafter provided, prescribed by the law under which a person is convicted.

(2) The power to make orders for the payment of costs includes power to order the complainant to pay costs in any case in which the court acquits or discharges an accused person of a false, frivolous or vexatious charge:

Provided that the court shall not have power to award costs against any person holding an office in the service of the United Republic or of a local government authority, the functions of whose office include the enforcement of any law in respect of which the complaint is made.

(3) Any compensation or costs awarded by a court under this section may be ordered to be paid at such time or times or in such instalments, as the case may be, and shall be levied by the sale of any property belonging to the person ordered to pay the compensation or costs.

(4) A court may order that any fine or any part of a fine imposed shall be paid by way of compensation to any person injured or aggrieved by the act or omission which constituted the offence in respect of which such fine was imposed.

(5) No payment of compensation out of a fine shall be made until after the expiration of the time prescribed for an appeal to a district court or, if an appeal is filed, before the decision on appeal.

(6) At the time of awarding any compensation in any subsequent civil proceedings relating to the same matter as the criminal proceedings in which compensation was awarded, any court hearing the civil proceedings shall take into account any compensation paid or recovered under an order made under this section.

(7) Nothing in this Code shall be construed derogating from the provisions of the Probation of Offenders Act *(39).

6. Powers cumulative

Where a court convicts an offender at one trial of two or more offences and sentences him to imprisonment for two or more of such offences, the punishments shall commence one after the other in such order as the court may direct, unless the court directs that such sentences of imprisonment shall run concurrently:

Provided that the aggregate punishment shall not exceed twice the amount of punishment which the court is, in the exercise of its ordinary jurisdiction (including where it convicts a person of offences specified in the Schedules to the Minimum Sentences Act *(40), the amount of imprisonment authorised by the proviso to subsection (1) of section 2 of this Code), competent to impose.

7. Confirmation of certain orders

(1) Notwithstanding the foregoing provisions of this Part, no sentence or order of a primary court—

- (a) of imprisonment for a term exceeding six months;
- (b) of corporal punishment on an adult;
- (c) of supervision of a habitual offender; or

(d) of forfeiture in the exercise of its criminal jurisdiction,

shall be carried into effect unless it has been confirmed by the district court:

Provided that nothing in this subsection shall apply in any case where a person is convicted of an offence specified in any of the Schedules to the Minimum Sentences Act and sentenced to the minimum term of imprisonment provided for by that Act.

(2) For the purposes of subsection (1) of this section the aggregate of consecutive sentences of imprisonment (whether substantive or in default of payment of a fine imposed in the case of convictions for two or more offences at one trial) shall be deemed to be one sentence.

(3) Wherever a court makes an order which requires confirmation the court may, in its discretion, release the offender on bail, with or without sureties, pending confirmation of such order as the district court may make; and where an offender who has been sentenced to a term of imprisonment which requires confirmation is released on bail, the term of imprisonment shall run from the date on which he begins to serve his sentence after confirmation or other order by the district court:

Provided that where a court makes an order of corporal punishment on an adult, then whether or not it also makes an order for imprisonment at the same trial, it shall not release the person to whom the order applies pending confirmation but shall, subject in the case of a person to whom the order of imprisonment applies to his right to make the election set out in subsection (4) of this section, remand him in custody.

(4) If an offender who has been sentenced to a term of imprisonment which requires confirmation is not released on bail, he may elect either—

- (a) to serve his sentence, pending confirmation or other order, from the date upon which he is sentenced by the court in which case the term of imprisonment shall run from such date; or
- (b) to postpone serving his sentence until the order is confirmed or other order is made by the district court, in which case the offender shall be remanded in custody pending the confirmation or other order and the term of his imprisonment shall run from the date he begins to serve his sentence.

PART III WARRANTS AND SUMMONSES

8. Complaints

(1) Where a complaint of facts which constitute an offence in respect of which primary courts have jurisdiction is made to a magistrate, the magistrate shall examine the complaint and, if satisfied that there are sufficient grounds for so doing, issue a summons or warrant of arrest for compelling the appearance of the person accused:

Provided that a magistrate shall not, in the first instance, issue a warrant for the arrest of the person accused unless he is satisfied that it is proper that the person should be detained in custody pending his trial or should give security for his appearance, or that the circumstances of the case render it unlikely that he will appear in answer to a summons.

(2) The power to issue a warrant under this section includes power to issue a warrant for arrest authorising a police officer to whom it is directed to release the person accused on his executing a bond for a specified sum, with or without sureties, for his appearance before the court.

(3) Where a summons or warrant is issued under this paragraph, it shall be returnable before the court to which the magistrate by whom it is issued is assigned.

(4) Where a magistrate considers a complaint under this section, he shall enter the same, together with his decision whether or not to issue process, in the registers of the court.

9. Additional powers to issue warrant

Where—

- (a) a person has failed to appear in answer to a summons; or
- (b) a summons has been issued, but the court has reason to apprehend that the person to whom it has been issued will not appear in answer to the summons,

a magistrate may issue a warrant of arrest and where a person commits an act of contempt in the face of the court, the court may either order his arrest forthwith or issue a warrant of arrest.

10. Summons

(1) Every summons shall be in the prescribed form and shall be issued in duplicate and one copy of the summons shall be signed, if so required by the person serving the same, by the person on whom it is served or with whom it is left, and returned to the court.

(2) Wherever possible the summons shall be served on the person to be summoned personally but, where such person cannot be found, it may be served by leaving it with some adult member of his family, or with some adult servant residing with him, or with his employer and every such other person with whom a summons is left shall take such steps as may be reasonable and necessary to serve the person to be summoned.

11. Warrants

(1) Every warrant of arrest shall be in the prescribed form.

(2) A warrant of arrest shall constitute authority to the person to whom it is directed, to all officers of the court to which the magistrate by whom it is issued is assigned and to all police officers, to take the person in respect of whom it is issued into custody and to produce him before the court and, subject to the provisions of this Code, every such person shall have and

may exercise, in the execution thereof, all such powers and shall perform all such duties as are by law conferred or imposed upon police officers.

(3) A person executing a warrant shall notify the substance thereof to the person to be arrested and, if so required, shall show him the warrant.

(4) Every warrant of arrest shall remain in force until it is executed or until it is cancelled by the court to which the magistrate by whom it was issued is assigned.

12. Service outside local jurisdiction

(1) Process issued under the foregoing provisions of this Part may be served or executed at any place in the country but if it is to be served or executed outside the local limits of the jurisdiction of the court by which it is issued, it shall first be sent or taken to a magistrates' court within the local limits of the jurisdiction of which it is to be served or executed and there endorsed by a magistrate or a justice of the peace; and shall not be served or executed unless it is so endorsed.

(2) When a warrant of arrest has been executed outside the local limits of the court by which it is issued, the person arrested shall, unless the court which issued the warrant is nearer than a magistrate within whose local limits the arrest was made or unless security is taken under subsection (2) of section 8, be taken before a magistrate within the local limits of whose jurisdiction the arrest was made; and such magistrate shall direct his removal in custody to the court which issued the warrant unless he admits him to bail and forwards the bond to the court which issued the warrant.

13. Search warrants

(1) A magistrate may, if satisfied upon affirmation that there is reasonable ground for believing that anything upon, by or in respect of which an offence has been committed, or anything which is necessary to the conduct of an investigation into any offence, is to be found on any premises or in any vessel or vehicle within the local limits of its jurisdiction issue a search warrant in the prescribed form authorising any person or a person named therein to search the premises, vessel or vehicle and, if anything searched for is found, to seize it and take it before the court, where it may be detained until the conclusion of the case, including any appeal, reasonable care being taken for its preservation.

(2) A search warrant under this section shall be executed only between the hours of 6.30 a.m. and 6.30 p.m.

(3) Any person residing in any premises, or in charge of any premises, vessel or vehicle in respect of which a search warrant has been issued shall allow any person on executing such warrant free ingress thereto and shall afford all reasonable facilities for making a search therein, and where free ingress cannot be obtained the person executing the warrant may use such force as may be necessary to enter the premises, vessel or vehicle and in order to effect entry and search and may break open any window or door.

(4) At the conclusion of the case, including any appeal, the court shall direct the property to be returned to the person from whom it was seized, unless the court sees fit, or is authorised or required by law to dispose of it otherwise.

PART IV REMAND AND BAIL

14. Power to grant bail or remand in custody

(1) Where any person is brought before a court under arrest or has been remanded in custody or at any stage of the proceedings whilst a person is in custody, the court may either admit him to bail or remand him or further remand him in custody until the determination of the proceedings:

Provided that where a person is brought before a court under arrest and the court has no jurisdiction to try the offence for which such person is arrested, it shall cause him to be taken before the district court.

(2) Nothing in the proviso to subsection (1) shall preclude a primary court magistrate from exercising in relation to such person, at a district court house or elsewhere, any of the powers conferred upon a justice of the peace under Part VI of this Act.

15. Remands

No persons shall be remanded—

- (a) in prison custody for more than fifteen days at any one time;
- (b) in custody in a lock-up for more than seven days at one time; or
- (c) in the custody of any other person or place for longer than is necessary to hold him and convey him to a prison or lock-up and, in any event, for longer than seven days at any one time.

16. Bail

(1) A person may be released on bail with or without sureties.

(2) The amount of the bail shall be fixed according to the circumstances of the case but shall not be excessive.

(3) Before any person is released on bail he, and if a surety or sureties are required, his surety or sureties, shall enter into a bond in the prescribed form and in the amount fixed; and it shall be a condition of the bond that the person who is released shall attend at the time and place mentioned in the bond and that he shall continue to attend until the proceedings are completed:

Provided that the court may order or permit a person hereby required to execute a bond to

deposit a sum of money or property with the court instead of executing the bond.

(4) In any case in which—

- (a) the court is satisfied that a person released on bail is about to leave the country;
- (b) the sureties represent to the court that they cannot any longer be responsible for the appearance of the person released;
- (c) there is some mistake in the bond or it appears that the sureties were or have become insufficient; or
- (d) the person released fails to appear in accordance with a bond or deposit in that behalf.

17. Forfeiture

(1) Whenever it is proved to the satisfaction of a court by which a recognisance under this Act or the Penal Code *(41) has been taken or when the recognisance has been taken by a police officer for appearance before the Court to the satisfaction of the court that such recognisance has been forfeited, the court shall record the grounds of such recognisance to pay the penalty thereof or to show cause why it should not be paid.

(2) If sufficient cause is not shown and the penalty is not paid, the court may proceed to recover the same by issuing a warrant for the attachment and sale of the movable property belonging to that person on his estate if he is dead.

(3) The warrant may be executed within the local limits of the jurisdiction of the court which issued it and it shall authorise the attachment and the sale of the movable property belonging to that person without such limits when endorsed by any magistrate within the local limits of whose jurisdiction that property is found.

(4) If that penalty is not paid and cannot be recovered by that attachment and sale, the person so bound shall be liable by order of the court which issued the warrant to imprisonment for six months.

(5) The Court may, in its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(6) Where a surety to a recognisance dies before the recognisance is forfeited his estate shall be discharged from all liability in respect of the recognisance.

(7) When any person who has furnished security is convicted of an offence the commission of which constitutes a breach of the condition of his recognisance, a certified copy of the judgment of the court by which he was convicted of such offence may be used as evidence in the proceedings under this section against his surety or sureties and if such certified copy is so used, the court shall presume that such offence was committed by him unless the contrary is proved.

18. Provisions relating to bail to apply to bail after conviction

The provisions of this Part of this Code relating to bail and forfeiture shall also apply where bail is granted by a primary court after it has convicted any person of an offence.

PART V COURTS WHICH MAY TRY OFFENCES

19. Courts which may try offences

(1) Subject to the provisions of this Act, an offence shall be tried by the court within the local limits of the jurisdiction of which—

- (a) the offence was committed;
- (b) the accused was apprehended or is in custody on a charge for the offence, or has appeared in answer to a summons lawfully issued charging him with the offence;
- (c) if the offence was committed on a journey, any part of the journey; or
- (d) If it is uncertain in which of several local areas in which the offence was committed, any ingredient of the offence occurred,

by a court having jurisdiction under the foregoing provisions of this section to try some other offence with which it is appropriate or convenient that such first-mentioned offence should be tried, or by a court to which the proceedings have been transferred by an order made under Part V of this Act: Provided that nothing in this section shall be construed as conferring jurisdiction on primary courts to the exclusion of the High Court or any other category of magistrates' court.

(2) Where any doubt arises as to the primary court by which any offence shall be tried, it shall be referred to the appropriate judicial authority whose decision shall be binding on all magistrates' courts.

20. Limitation of time for trials in certain cases

Except where a longer time is allowed by law, no offence the maximum punishment for which does not exceed imprisonment for six months or a fine exceeding five thousand shillings or both, shall be triable by the court, unless the charge or complaint relating to it is laid within twelve months from the time when the matter of such charge or complaint arose.

[19A]

PART VI TRIAL OF OFFENCE

21. Charge to be drawn up

- (1) Where—

- (a) a magistrate issues process under section 8; or
- (b) any person is brought before a court under arrest,

the magistrate shall enter the fact in the registers of the court and, in the case of any offence in respect of which primary courts have jurisdiction, open a case file and, unless a written charge is signed and presented by a police officer, draw up and sign a charge with such particulars as are reasonably necessary to identify the offence or offences, including the law and the section, or other division thereof, under which the accused person is charged.

(2) Every charge shall be brought in the name of the Republic acting on the complaint of the complainant who shall also be named.

(3) A charge may contain more than one offence if the offences charged are founded on the same facts or form part of a series of offences of the same or similar character but where more than one offence is contained in the same charge it shall be separately stated.

[20]

22. Additions to or amendment of charges

At any time before the accused person gives evidence at the trial, the court may amend a charge or add new offences to it, but where the court amends, or adds to a charge, the accused person may require any witness who has previously given evidence to be recalled and may put relevant questions to such witness.

[21]

23. Withdrawal

(1) A complainant may, with the consent of the court, withdraw his complaint at any time before the accused person gives evidence at the trial, and where the court gives its consent to the withdrawal of the complaint, it shall withdraw the charge and, unless the accused person is remanded in custody on some other charge, discharge him.

(2) The discharge of an accused person under this section shall be without prejudice to the institution of new proceedings for the same offence.

(3) Nothing in this section shall be construed as derogating from the power of the Director of Public Prosecutions to enter a *nolle prosequi* in any proceedings.

[22]

24. Adjournment

The court may adjourn the hearing of any proceedings from time to time as the occasion may require.

[23]

25. Non-appearance of parties after adjournment

If at the time or place to which the hearing or further hearing is adjourned, the accused person does not appear before the court, which made the order of adjournment, it shall be lawful for such court to proceed with the hearing or further hearing as if the accused were present, and if the complaint shall not appear, the court may dismiss the charge and acquit the accused with or without costs as the court shall think fit.

(2) If the court convicts the accused person in his absence, it may set aside such conviction upon being satisfied that his absence was from causes over which he had no control, and that he had a probable defence on the merits.

(3) Any sentence passed under subsection (1) shall be deemed to commence from the date of apprehension, and the magistrate shall endorse the date thereof on the back of the warrant of commitment.

(4) The court, in its discretion, may refrain from convicting the accused in his absence, and in every such case the court shall issue a warrant for the apprehension of the accused person and cause him to be brought before the court.

[23A]

26. Appearance

Where a complainant fails to appear at the time and place appointed for the hearing of any charge, the court may dismiss the charge and acquit the accused person, unless it shall think it proper to adjourn the hearing to some other day:

Provided that the court shall not dismiss the charge or acquit the person unless he is present at the time and place appointed or is in lawful custody.

[24]

27. Accused may be convicted and sentenced *in absentia*

(1) Where in any case to which paragraph 25 does not apply an accused fails to appear on the date fixed for the continuation of the hearing after the close of the prosecution case or on the date fixed for the passing of sentence, the court may, if it is satisfied that the accused's attendance cannot be secured without undue delay or expense, proceed to dispose of the case in accordance with the provision of subsection (2) as if the accused, being present had failed to make any statement or adduced any evidence in relation to any sentence which the court may pass; save that where the accused appears on any subsequent date to which the proceedings under this subsection or the proceedings under this section on the day or days on which the accused was absent shall not be invalid by reason only of his absence.

[24A]

28. Evidence relative to proper sentence or order

The court may before passing sentence receive such evidence as it thinks fit, in order to inform itself as to the sentence to be passed.

[24B]

29. Presence of accused

Trials in primary courts shall be conducted in the presence of the accused.

[25]

30. Interpretation of evidence

(1) Where any evidence is given in a language not understood by the accused, it shall be interpreted to him in open court in a language understood by him.

(2) Before entering upon the duties of his office, an interpreter shall take oath or be affirmed, as the case may be in the prescribed form:

Provided that a regular court interpreter who has taken oath or has been affirmed generally shall not require to take oath or be affirmed in each proceeding.

[26]

31. Charge to be read

(1) At the commencement of the trial and immediately after the court has made any amendment or addition to the charge, the court shall read and, if necessary, explain the charge to the accused person.

(2) After reading the charge, the court shall either itself state the facts on which it is founded or require the complainant to state shortly such facts.

(3) After the charge has been read and, if necessary, explained to the accused person and a statement of the facts has been made, the accused shall be asked whether or not he agrees that the charge is true.

(4) Where the charge contains more than one offence, the procedure prescribed in this section shall be followed separately for each offence.

(5) After the accused has pleaded to the charge read over to him in the court under this paragraph the court shall obtain from the accused his permanent address and shall record and keep that address as part of the record of the proceedings.

[27]

32. Where accused admits offence

- (1) Where the accused person admits the truth of the charge or of any offence therein—
 - (a) the magistrate shall cause a charge to be read and explained to him and, where there are more counts than one, each shall be put separately;
 - (b) the admission shall be recorded as nearly as possible in the accused's own words and then read over to him and any amendments or corrections by the accused shall be recorded;
 - (c) the prosecutor shall state the alleged facts in sufficient details, being the essential constituents of the offence charged and the accused shall be asked if he admits the truth of the statements; but if he does not admit the magistrate shall change his plea and in that event the prosecutor may amend the charge; and
 - (d) if the plea is not changed, the magistrate and, if an interpreter is employed, the interpreter shall sign the admission of the accused person and the magistrate shall invite the accused person also to sign it.

(2) The court shall then convict the accused person of the offences which he admits and proceed to pass sentence on him:

Provided that where the court is satisfied that it is desirable that the passing of sentence be deferred it may, for the reasons to be recorded, defer the same until some other time.

[28]

33. Where accused denies offences

Where the accused does not admit the truth of the charge or of any offence therein, the court shall enter a plea of not guilty to such charge or offence and proceed to hear the evidence of the complainant and his witness and, if the accused so wishes, of the accused person and his witnesses.

[29]

34. Refractory witnesses

(1) Whenever any person, is appearing either in obedience to a summons or by virtue of a warrant, or being present in court and being verbally required by the court to give evidence—

- (a) refuses to be sworn or affirmed;
- (b) having been sworn or affirmed, refuses to answer any question put to him;
- (c) refuses or neglects to produce any document, or thing which he is required to produce;

or

- (d) refuses to sign his depositions, without in any case offering any sufficient excuse for such refusal, or neglect, the court may adjourn the case for a period not exceeding eight days, and may, in the meantime, commit such person unless he sooner consents to do what is required of him.

(2) If such person, upon being brought before the court at or before such adjournment hearing again refuses to do what is required of him the court may, if it sees fit, again adjourn the case and commit him for the like period and so again from time to time until such person consents to do what is so required of him.

[29A]

35. Evidence and examination

- (1) The evidence shall be given in such order as the court directs:

Provided that—

- (a) without prejudice to the power of the court to recall him, the complainant shall give evidence first;
- (b) subject to the provisions of paragraph (c) of this proviso, if the accused person wishes to give evidence, he shall give such evidence, before his witnesses give their evidence; and
- (c) the accused person shall be afforded an opportunity of giving evidence in rebuttal of any evidence given after he himself has given evidence, by the complainant, the complainant's witnesses or witnesses called by the court.

(2) The evidence of the complainant, the accused person and all other witnesses shall be given on affirmation save in the case of a child of tender years who, in the opinion of the court, does not understand the nature of the affirmation; and an affirmation shall be in the prescribed form.

(3) The court and the accused person may put relevant questions to the complainant and his witnesses.

(4) The court and the complainant may put relevant questions to the accused's witnesses and if he gives evidence, to the accused person.

(5) The accused person and the complainant may, with the consent of the court, put questions to witnesses called by the court.

(6) The magistrate shall record the substance of the evidence of the complainant, the accused person and the witnesses and, after each of them has given evidence shall read his evidence over to him and record any amendment or corrections and thereafter the magistrate

shall certify at the foot of such evidence, that he has complied with this requirement.

[30]

36. Dismissal of charge

(1) At any stage of the proceedings the court may, if satisfied that the accused person has no case to answer, dismiss the charge and acquit the accused.

[31]

37. Judgment and verdict

(1) Subject to section 6 of this Code, and after all the evidence has been heard, the court shall proceed to pass judgment and convict or acquit and discharge the accused accordingly.

(2) Every judgment shall contain the point or points for decision arrived at by the magistrate and the assessors, the decision thereon and the reasons for such decision, and shall be dated and signed by the magistrate.

[32]

38. Alternative verdicts

(1) A person charged with an offence may be convicted of—

- (a) an attempt to commit such offence;
- (b) another offence if the first-mentioned offence consists of a number of particulars, a combination of some of which constitute the other offence, if the relevant matters are proved and such attempt or such other offence are within the court's jurisdiction.

(2) Where a person is charged with stealing anything and the court is of the opinion that he is not guilty of that offence, but that he is guilty of an offence in respect of that thing under one of the section 302, 304 or 311 of the Penal Code, he may be convicted of that offence although he was not charged with it.

(3) Where a person is charged with an offence under section 302 or section 304 of the Penal Code and the court is of the opinion that he is not guilty of that offence but that he is guilty of stealing the thing in respect of which he is charged, he may be convicted of that offence although he was not charged with.

(4) Where a person is charged with an offence under section 302 of the Penal Code and the court is of the opinion that he is not guilty of that offence but that he is guilty of an offence under section 303 of the Penal Code, he may be convicted of that offence although he was not charged with it.

(5) When a person is charged under section 311 of the Penal Code with the offence of

receiving anything and the court is of the opinion that he is not guilty of that offence but that he is guilty of retaining the thing, and when a person is charged under the said section with the offence of retaining anything and the court is of the opinion that he can be convicted under the provisions of the said section of retaining or receiving, as the case may be, he may be convicted of the second-mentioned offence although he was not charged with it.

(6) Where a person is charged with any offence falling under section 294 to section 297 of the Penal Code and the court is of opinion that he is not guilty of that offence but that he is guilty of any other offence under another of those sections, he may be convicted of that other offence although he was not charged with it.

[33]

39. Sentence

After conviction the court shall consider the question of sentence and may hear such evidence, on oath or affirmation as it thinks necessary to assist it to determine the sentence to be passed.

[34]

40. Warrant of committal

The court shall draw up a warrant of committal in the prescribed form in the case of every person sentenced to a term of imprisonment or to corporal punishment and, in the case of a conviction for an offence specified in the Schedule to the Minimum Sentences Act *(42), the warrant shall be endorsed under the hand of the magistrate with a statement that the person convicted was convicted of a scheduled offence.

[35]

FOURTH SCHEDULE PROVISIONS RELATING TO THE CIVIL JURISDICTION OF PRIMARY COURTS

(Section 19(1)(b))

1. Courts by which proceedings to be heard.
2. Customary law.
3. Powers.
4. Execution.

1. Courts by which proceedings to be heard

Subject to the provisions of this Act, proceedings of a civil nature shall be heard and determined—

- (a) if they relate to immovable property, by a court within the local jurisdiction of which the

property is situated;

- (b) in any other case, by a court within the local jurisdiction of which the cause of action arose or the defendant is ordinarily resident, or by a court to which proceedings have been transferred under or by an order made under Part V of this Act:

Provided that nothing in this paragraph shall be construed as conferring jurisdiction on primary courts to the exclusion of the High Court, any other category of magistrates' court or any tribunal established by law.

2. Customary law

In the exercise of its customary law jurisdiction, a primary court shall apply the customary law prevailing within the area of its local jurisdiction or, if there is more than one such law, the law applicable; in the area in which the act, transaction or matter occurred or arose, unless it is satisfied that some other customary law is applicable; but it shall, subject to rules of court, apply the customary law prevailing within the area of its local jurisdiction in matters of practice and procedure to the exclusion of any other customary law.

3. Powers

- (1) A primary court, in proceedings of a civil nature, may—
 - (a) award any amount claimed;
 - (b) award compensation;
 - (c) order the recovery of possession of land;
 - (d) order the restitution of any property;
 - (e) order the specific performance of any contract;
 - (f) make orders in the nature of an injunction, both mandatory and prohibitive;
 - (g) order the payment of any costs and expenses incurred by a successful party or his witnesses;
 - (h) promote reconciliation and encourage and facilitate the settlement, in an amicable way, of the proceedings on such terms as are just; or
 - (i) make any other order which the justice of the case may require.

(2) Any amount, including compensation or costs, awarded by a primary court under this paragraph may be ordered to be paid at such time or times or by such instalments or in kind or otherwise as the court shall think just and, in default of the payment of any such amount or any instalment of the same when due, the court may order that such amount or such instalment, as the case may be, shall be levied by attachment and sale of any attachable property belonging to

and any salary accrued or to become due to the person against whom the order was made.

- (3) For the purposes of this paragraph, "attachable property" shall not be deemed to include—
- (a) the necessary wearing apparel, cooking utensils, bed and beddings of the judgment debtor and of his wife and children;
 - (b) the manual tools of artisans or of agriculturists;
 - (c) the salary or wages of any person to the extent of—
 - (i) the whole of the salary or wages, where the salary or wage does not exceed eighty shillings monthly;
 - (ii) eighty shillings where the salary or wage exceeds eighty shillings monthly but does not exceed one hundred and fifty shillings monthly;
 - (iii) two-thirds of any salary or wage which exceeds one hundred and fifty shillings monthly;
 - (d) any fund or allowance declared by law to be exempt from attachment or sale in execution of a decision or order;
 - (e) any land used for agricultural purposes by a village, an Ujamaa Village, a co-operative society or an individual whose livelihood is wholly dependent upon the use of such land; or
 - (f) any residential house or building, or part of a house or building occupied by the judgment debtor, his wife and dependent children for residential purposes.

4. Execution

A primary court may, on the application of the party entitled to the benefit of such order in any civil proceedings, request a district court to take steps for the arrest and detention of any person who has failed to comply with an order for the payment of any amount, including compensation or costs, made by such primary court and, upon receiving any such request, the district court shall have such jurisdiction and powers to order the arrest and detention of such person as if an application were made for the arrest and detention in civil prison of a judgment debtor in accordance with the provisions of the Civil Procedure Code *(43).

FIFTH SCHEDULE

(Section 19(1)(c))

PART I

POWERS OF PRIMARY COURTS IN ADMINISTRATION CASES

1. Jurisdiction.
2. Powers of courts

3. Conflicts.
4. Consequences of revocation.

PART II

POWERS AND DUTIES OF ADMINISTRATORS APPOINTED BY PRIMARY COURTS

5. General duties of administrator.
6. Proceedings.
7. Receipts.
8. Loss.
9. No obligation to advertise.
10. Distribution of assets.
11. Account.

PART I

POWERS OF PRIMARY COURTS IN ADMINISTRATION CASES

1. Jurisdiction

(1) The jurisdiction of a primary court in the administration of deceased's estates, where the law applicable to the administration or distribution of the succession to, the estate is customary law or Islamic law, may be exercised in cases where the deceased at the time of his death, had a fixed place of abode within the local limits of the court's jurisdiction:

Provided that nothing in this paragraph shall derogate from the jurisdiction of a primary court in any proceedings transferred to such court under Part V of this Act.

(2) A primary court shall not appoint an administrator of a deceased's estate—

- (a) in respect of an estate to which the provisions of the Probate and Administration Estates Act *(44), are applicable or of which a grant of administration has been made under that Act, or of which the administration is undertaken by the Administrator-General's Powers and Functions Act; or
- (b) where the gross value of the estate does not exceed shs. 1,000/- unless the court is of the opinion that such an appointment is necessary to protect the creditors or beneficiaries.

2. Powers of courts

A primary court upon which jurisdiction in the administration of deceaseds' estates has been conferred may—

- (a) either of its own motion or on an application by any person interested in the administration of the estate appoint one or more persons interested in the estate of the deceased to be the administrator or administrators thereof, and, in selecting any such administrator, shall, unless for any reason it considers inexpedient so to do, have

regard to any wishes which may have been expressed by the deceased;

- (b) either of its own motion or an application by any person interested in the administration of the estate, where it considers that it is desirable to do for the protection of the estate and the proper administration thereof, appoint an officer of the court or some reputable and impartial person able and willing to administer the estate to be administrator either together with or in lieu of an administrator appointed under subparagraph (a);
- (c) revoke any appointment of an administrator for good and sufficient cause and require the surrender of any document evidencing his appointment;
- (d) make orders as to the administration of the estate and, in particular but without prejudice to the generality of the foregoing, as to the law to be applied in the distribution of the estate and as to advertising for creditors;
- (e) require an administrator to sign an undertaking to administer the estate faithfully;
- (f) require an administrator to give security for the due administration of the estate;
- (g) make orders as to the payment of the share in the estate of any minor or other person under a disability to a relative or other suitable person for the maintenance or otherwise for the use of such minor or person under a disability or, with the consent of the Public Trustee, to the Public Trustee; or
- (h) make any order which it has power to make under this Act in cases of a civil nature.

3. Conflicts

Where the High Court has directed that the Probate and Administration of Estates Act shall apply to an estate of which an administrator has been appointed by a primary court, the primary court shall, upon receiving notice to that effect from the High Court, revoke the appointment of such administrator and require the surrender of any document evidencing his appointment.

4. Consequences of revocation

Where an appointment of an administrator is revoked by a primary court—

- (a) all payments *bona fide* made to the administrator before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same; and
- (b) the administrator who shall have acted may retain and reimburse himself out of the assets of the deceased estate in respect of any payments made by him which an administrator may lawfully make.

PART II POWERS AND DUTIES OF ADMINISTRATORS APPOINTED BY PRIMARY COURTS

5. General duties of administrator

An administrator appointed by a primary court shall, with reasonable diligence, collect the property of the deceased and the debts that were due to him, pay the debts of the deceased and the debts and costs of the administration and shall thereafter distribute the estate of the deceased to the persons or for the purposes entitled thereto and, in carrying out his duties, shall give effect to the directions of the primary court.

6. Proceedings

An administrator may bring and defend proceedings on behalf of the estate.

7. Receipts

A receipt issued by an administrator shall constitute a good discharge to any debtor paying his debts and to any person delivering the property of the deceased to the administrator.

8. Loss

An administrator who misapplies the estate of the deceased or subjects it to loss or damage shall be liable to make good such loss or damage, and an administrator who occasions loss to the estate by neglecting to get in any part of the property of the deceased shall be liable to make good the amount.

9. No obligation to advertise

If an administrator makes inquiries which, in the circumstances of the case, are reasonable as to the debts of the deceased he shall not be obliged to advertise for creditors unless so directed by the primary court.

10. Distribution of assets

An administrator who distributes the assets in discharge of such lawful claims as he knows of and, after not less than three months after the death of the deceased, distributes the remaining assets among the persons or for the purposes entitled thereto, and who gives effect or complies with the directions of the court (if any), shall not be liable for those assets to any person of whose claim he had no notice at the time of such distribution:

Provided that nothing in this paragraph shall prejudice the right of any creditor to assets in the hands of the persons receiving the same.

11. Account

After completing the administration of the estate and, if the primary court orders, at any other stage of the administration an administrator shall account to the primary court for his administration.

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