



THE REPUBLIC OF KENYA

LAWS OF KENYA

CIVIL PROCEDURE ACT

CHAPTER 21

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CHAPTER 21

CIVIL PROCEDURE ACT
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CHAPTER 21
CIVIL PROCEDURE ACT

[Date of commencement: 31st January, 1924.]

An Act of Parliament to make provision for procedure in civil courts

[Cap. 5 (1948), Act No. 43 of 1948, Act No. 39 of 1956, L.N. 299/1956, L.N. 300/1956, Act No. 46 of 1963, Act No. 19 of 1964, Act No. 17 of 1967, Act No. 8 of 1968, Act No. 21 of 1968, Act No. 38 of 1968, Act No. 10 of 1969, Act No. 11 of 1970, Act No. 4 of 1974, Act No. 14 of 1977, Act No. 13 of 1978, Act No. 13 of 1980, Act No. 1 of 1981, L.N. 22/1984, Act No. 19 of 1985, Act No. 21 of 1990, Act No. 10 of 1997, Act No. 6 of 2009, Act No. 12 of 2012.]

PART I – PRELIMINARY

1. Short title and application

(1) This Act may be cited as the Civil Procedure Act.

(2) This Act applies to proceedings in the High Court and, subject to the Magistrate's Courts Act (Cap. 10), to proceedings in subordinate courts.

[Act No. 17 of 1967, s. 37.]

1A. Objective of Act

(1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.

(2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).

(3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.

[Act No. 6 of 2009, Sch.]

1B. Duty of Court

(1) For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims—

- (a) the just determination of the proceedings;
- (b) the efficient disposal of the business of the Court;
- (c) the efficient use of the available judicial and administrative resources;
- (d) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and
- (e) the use of suitable technology.

[Act No. 6 of 2009, Sch.]

2. Interpretation

In this Act, unless the context otherwise requires—

“**Act**” includes rules;

“**court**” means the High Court or a subordinate court, acting in the exercise of its civil jurisdiction;

“**decree**” means the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final; it includes the striking out of a plaint and the determination of any question within section 34 or section 91, but does not include—

- (a) any adjudication from which an appeal lies as an appeal from an order; or
- (b) any order of dismissal for default:

Provided that, for the purposes of appeal, “decree” includes judgment, and a judgment shall be appealable notwithstanding the fact that a formal decree in pursuance of such judgment may not have been drawn up or may not be capable of being drawn up;

Explanation. — A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.

“**decree holder**” means any person in whose favour a decree has been passed or an order capable of execution has been made, and includes the assignee of such decree or order;

“**district**” means the local limits of the jurisdiction of a subordinate court;

“**foreign court**” means a court situate outside Kenya which has no authority in Kenya;

“**foreign judgment**” means the judgment of a foreign court;

“**impartial**” in relation to a dispute means being and being seen to be unbiased towards parties to a dispute, their interests and the options they present for settlement;

“**judge**” means the presiding officer of a court;

“**judgment-debtor**” means any person against whom a decree has been passed or an order capable of execution has been made;

“**legal representative**” means a person who in law represents the estate of a deceased person, and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;

“**mediation**” means an informal and non-adversarial process where an impartial mediator encourages and facilitates the resolution of a dispute between two or more parties, but does not include attempts made by a judge to settle a dispute within the course of judicial proceedings related thereto;

“**mediation rules**” means the mediation rules made under this Act;

“**mediator**” means an impartial third party selected to carry out a mediation;

“**mesne profits**”, in relation to property, means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but does not include profits due to improvements made by the person in wrongful possession;

“**movable property**” includes growing crops;

“**order**” means the formal expression of any decision of a court which is not a decree, and includes a *r. nisi*;

“**pleading**” includes a petition or summons, and the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any defence or counterclaim of a defendant;

“**prescribed**” means prescribed by rules;

“**registrar**” includes a district registrar and a deputy registrar;

“**rules**” means rules and forms made by the Rules Committee to regulate the procedure of courts;

“**share in a corporation**” includes stock, debenture stock, debentures and bonds;

“**suit**” means all civil proceedings commenced in any manner prescribed.

[Act No. 17 of 1967, s. 38, Act No. 10 of 1969, Sch., Act No. 4 of 1974, Sch.,
Act No. 12 of 2012, Sch.]

3. Saving of special jurisdiction and powers

In the absence of any specific provision to the contrary, nothing in this Act shall limit or otherwise affect any special jurisdiction or power conferred, or any special form or procedure prescribed, by or under any other law for the time being in force.

3A. Saving of inherent powers of court.

Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

4. Pecuniary jurisdiction

Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits, if any, of its ordinary jurisdiction.

PART II – SUITS IN GENERAL

*Jurisdiction of Courts***5. Courts to try all civil suits unless barred**

Any court shall, subject to the provisions herein contained, have jurisdiction to try all suits of a civil nature excepting suits of which its cognizance is either expressly or impliedly barred.

6. Stay of suit

No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.

Explanation.—The pendency of a suit in a foreign court shall not preclude a court from trying a suit in which the same matters or any of them are in issue in such suit in such foreign court.

[Act No. 10 of 1969, Sch.]

7. Res judicata

No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.

Explanation. —(1) The expression “former suit” means a suit which has been decided before the suit in question whether or not it was instituted before it.

Explanation. —(2) For the purposes of this section, the competence of a court shall be determined irrespective of any provision as to right of appeal from the decision of that court.

Explanation. —(3) The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation. —(4) Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation. —(5) Any relief claimed in a suit, which is not expressly granted by the decree shall, for the purposes of this section, be deemed to have been refused.

Explanation. —(6) Where persons litigate *bona fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

[L.N. 22/1984.]

8. Bar to further suit

Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of that cause of action.

9. When foreign judgment not conclusive

A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim, litigating under the same title, except—

- (a) where it has not been pronounced by a court of competent jurisdiction;
- (b) where it has not been given on the merits of the case;
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of Kenya in cases in which such law is applicable;
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice;
- (e) where it has been obtained by fraud;
- (f) where it sustains a claim founded on a breach of any law in force in Kenya.

[Act No. 10 of 1969, Sch.]

10. Repealed by Act No. 46 of 1963, Second Sch.*Place of Suing***11. Court in which suit to be instituted**

Every suit shall be instituted in the court of the lowest grade competent to try it, except that where there are more subordinate courts than one with jurisdiction in the same district competent to try it, a suit may, if the party instituting the suit or his advocate certifies that he believes that a point of law is involved or that any other good and sufficient reason exists, be instituted in any one of such subordinate courts:

Provided that—

- (i) if a suit is instituted in a court other than a court of the lowest grade competent to try it, the magistrate holding such court shall return the plaint for presentation in the court of the lowest grade competent to try it if in his opinion there is no point of law involved or no other good and sufficient reason for instituting the suit in his court; and
- (ii) nothing in this section shall limit or affect the power of the High Court to direct the distribution of business where there is more than one subordinate court in the same district.

[Act No. 19 of 1964, Sch.]

12. Suit to be instituted where subject matter situate

Subject to the pecuniary or other limitations prescribed by any law, suits—

- (a) for the recovery of immovable property, with or without rent or profits;
- (b) for the partition of immovable property;
- (c) for the foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property;
- (d) for the determination of any other right to or interest in immovable property;
- (e) for compensation for wrong to immovable property;
- (f) for the recovery of movable property actually under distraint or attachment,

where the property is situate in Kenya, shall be instituted in the court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the court within the local limits of whose jurisdiction the property is situate, or in the court within the local limits of whose jurisdiction the defendant actually and voluntarily resides or carries on business, or personally works for gain.

[Act No. 10 of 1969, Sch.]

13. Suit for immovable property situate within jurisdiction of different courts

Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different courts, the suit may be instituted in any court within the local limits of whose jurisdiction any portion of the property is situate, provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such court.

14. Suit for compensation for wrong to the person or movables

Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one court and the defendant resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of another court, the suit may be instituted at the option of the plaintiff in either of those courts.

Illustration.—(a) A residing in Mombasa beats B in Nairobi. B may sue A either in Mombasa or Nairobi.

Illustration.—(b) A residing in Mombasa publishes at Nairobi statements defamatory of B. B may sue A either in Mombasa or Nairobi.

15. Other suits to be instituted where defendant resides or cause of action arises

Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction—

- (a) the defendant or each of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain; or
- (b) any of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain, provided either the leave of the court is given, or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid acquiesce in such institution; or
- (c) the cause of action, wholly or in part, arises.

Explanation.(1)—Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

Explanation.(2)—A corporation shall be deemed to carry on business at its sole or principal office in Kenya, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Explanation.(3)—In suits arising out of contract, the cause of action arises within the meaning of this section at any of the following places, namely—

- (i) the place where the contract was made;
- (ii) the place where the contract was to be performed or the performance thereof completed;
- (iii) the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable.

Illustration.—(a) A is a tradesman in Nairobi. B carries on business in Mombasa. B by his agent at Nairobi buys goods of A and requests A to deliver them to Mombasa by rail. A may sue B for the price of the goods either in Nairobi, where the cause of action has arisen, or in Mombasa, where B carries on business.

Illustration.—(b) A resides at Kisumu, B at Nairobi, and C at Mombasa. A, B, and C being together at Nakuru, B and C make a joint promissory note payable on demand and deliver it to A. A may sue B and C at Nakuru, where the cause of action arose. He may also sue them at Nairobi, where B resides, or at Mombasa, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the court.

[Act No. 10 of 1969, Sch.]

16. Objections to jurisdiction

No objection as to the place of suing shall be allowed on appeal unless such objection was taken in the court of first instance and there has been a consequent failure of justice.

17. Power to transfer suits which may be instituted in more than one court

Where a suit may be instituted in any one of two or more subordinate courts, and is instituted in one of those courts, any defendant after notice to the other parties, or the court of its own motion, may, at the earliest possible opportunity, apply to the High Court to have the suit transferred to another court; and the High Court after considering the objections, if any, shall determine in which of the several courts having jurisdiction the suit shall proceed.

18. Power of High Court to withdraw and transfer case instituted in subordinate court

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—

- (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
- (b) withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter—
 - (i) try or dispose of the same; or
 - (ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
 - (iii) retransfer the same for trial or disposal to the court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

*Institution of Suits***19. Institution of suits**

Every suit shall be instituted in such manner as may be prescribed by rules.

*Procedure in Suits and Discovery***20. Service on defendant**

Where a suit has been duly instituted the defendant shall be served in manner prescribed to enter an appearance and answer the claim.

21. Service where defendant resides in another district

(1) Any document which is required to be served in connexion with a suit may be sent for service in another district to a court having jurisdiction in that district.

(2) The court to which such document is sent shall, upon receipt thereof, proceed as if it had been issued by such court and shall then return the document to the court of issue together with the record, if any, of its proceedings with regard thereto.

22. Power to order discovery and the like

Subject to such conditions and limitations as may be prescribed, the court may, at any time, either of its own motion or on the application of any party—

- (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;
- (b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;
- (c) order any fact to be proved by affidavit.

23. Summons to witness

Sections 21 and 22 shall apply to summonses to give evidence or to produce documents or other material objects.

24. Penalty for default

The court may compel the attendance of any person to whom a summons has been issued under section 22, and for that purpose may—

- (a) issue a warrant for his arrest;
- (b) attach and sell his property;
- (c) impose a fine on him not exceeding one thousand shillings;
- (d) order him to furnish security for his appearance and in default commit him to prison.

*Judgement and decree***25. Judgment and decree**

The court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow:

Provided that it shall not be necessary for the court to hear the case before pronouncing judgment—

- (i) where the plaint is drawn claiming a liquidated demand, and either—
 - (a) the defendant has not entered such appearance as may be prescribed; or
 - (b) the defendant, having entered such appearance, has failed to file a defence within the time prescribed; or
- (ii) in such cases as may be prescribed under section 81(2)(f).

*Interest***26. Interests**

(1) Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the

decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.

(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum.

Costs

27. Costs

(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

(2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.

[Act No. 19 of 1985, Sch.]

PART III – EXECUTION

General

28. Application to orders

The provisions of this Act relating to the execution of decrees shall, so far as they are applicable, be deemed to apply to the execution of orders.

29. Definition of “court which passed a decree”

The expression “court which passed a decree”, or words to that effect, shall, in relation to the execution of decrees, except where the context otherwise requires, include—

- (a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the court of first instance; and
- (b) where the court of first instance has ceased to exist or to have jurisdiction to execute it, the court which, if the suit wherein the decree was passed were instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

*Courts by which Decrees may be Executed***30. Court by which decree may be executed**

A decree may be executed either by the court which passed it or by the court to which it is sent for execution.

31. Transfer of decree

(1) The court which passed a decree may, on the application of the decree-holder, send it for execution to another court—

- (a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of that other court; or
- (b) if such person has no property within the local limits of the jurisdiction of the court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other court; or
- (c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the court which has passed it; or
- (d) if the court which has passed the decree considers for any other reason, which it has recorded in writing, that the decree should be executed by such other court.

(2) The court which passed a decree may of its own motion send it for execution to any court of inferior but competent jurisdiction.

32. Result of execution proceedings to be certified

The court to which a decree is sent for execution shall certify to the court which passed it the fact of such execution, or where the former court fails to execute the same the circumstances attending such failure.

33. Powers of court in executing transferred decree

(1) The court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself.

(2) All persons disobeying or obstructing the execution of the decree shall be punishable by such court in the same manner as if it had passed the decree; and its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

*Questions to be Determined by Court Executing Decree***34. Questions to be determined by court executing decree**

(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.

(2) The court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit, or a suit as a proceeding, and may, if necessary, order payment of any additional court fees.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the court.

Explanation.—For the purposes of this section, a plaintiff whose suit has been dismissed, and a defendant against whom a suit has been dismissed, are parties to the suit.

35. Repealed by Act No. 21 of 1968, Sch.

Transferees and Legal Representatives

36. Transferee of decree

Every transferee of a decree shall hold the same subject to the equities, if any, which the judgment-debtor might have enforced against the original decree-holder.

37. Legal representative

(1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the court which passed it to execute the same against the legal representative of such deceased, or against any person who has intermeddled with the estate of such deceased.

(2) Where the decree is executed against such legal representative, or against any person as aforesaid, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability the court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.

Procedure in Execution

38. Powers of court to enforce execution

Subject to such conditions and limitations as may be prescribed, the court may, on the application of the decree-holder, order execution of the decree—

- (a) by delivery of any property specifically decreed;
- (b) by attachment and sale, or by sale without attachment, of any property;
- (c) by attachment of debts;
- (d) by arrest and detention in prison of any person;
- (e) by appointing a receiver; or
- (f) in such other manner as the nature of the relief granted may require:

Provided that where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the court, for reasons to be recorded in writing, is satisfied—

- (a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree—
 - (i) is likely to abscond or leave the local limits of the jurisdiction of the court; or
 - (ii) has after the institution of the suit in which the decree was passed, dishonestly transferred, concealed or removed any part of his property, or committed any other act of bad faith in relation to his property; or
- (b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree, or some substantial part thereof, and refuses or neglects, or has refused or neglected, to pay the same, but in calculating such means there shall be left out of account any property which, by or under any law, or custom having the force of law, for the time being in force, is exempt from attachment in execution of the decree; or
- (c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

[Act No. 11 of 1970, Sch.]

39. Enforcement of decree against legal representative

(1) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.

(2) Where no such property remains in the possession of the judgment-debtor, and he fails to satisfy the court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property in respect of which he has failed so to satisfy the court in the same manner as if the decree had been against him personally.

Arrest and Detention

40. Arrest and detention

(1) A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall as soon as practicable be brought before the court, and his detention may be in any prison of the district in which the court ordering the detention is situate, or, if such prison does not afford suitable accommodation, in any other place which the Minister may appoint for the detention of persons ordered by the courts of such district to be detained:

Provided that—

- (i) for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset and before sunrise;

- (ii) no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto; but when the officer authorized to make the arrest has duly gained access to any dwelling-house he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found;
- (iii) if the room is in the actual occupancy of a woman who is not the judgment-debtor, and who according to the custom of her community does not appear in public, the officer authorized to make the arrest shall give notice to her that she is at liberty to withdraw and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest;
- (iv) where the decree in execution of which a judgment-debtor is arrested is a decree for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

(2) The Minister may, by notice in the *Gazette*, declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as he may direct.

[Act No. 43 of 1948, L.N. 299/1956, L.N. 300/1956, Act No. 10 of 1969, Sch.]

41. Subsistence allowances

The Minister may, by notice in the *Gazette*, fix scales of monthly allowances payable for the subsistence of a judgment-debtor.

[L.N. 300/1956, Act No. 8 of 1968, Sch., Act No. 10 of 1969, Sch.]

42. Detention and release

(1) Every person detained in prison in execution of a decree shall be so detained

- (a) where the decree is for the payment of a sum of money exceeding one hundred shillings, for a period not exceeding six months; and
- (b) in any other case, for a period not exceeding six weeks:

Provided that he shall be released from such detention before the expiration of the said period of six months or six weeks, as the case may be—

- (i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the prison; or
- (ii) on the decree against him being otherwise fully satisfied, if the court so orders; or
- (iii) on the request of the person on whose application he has been so detained, if the court so orders; or
- (iv) on the omission of the person, on whose application he has been so detained, to pay subsistence allowance.

(2) A judgment-debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be rearrested under the decree in execution of which he was detained in prison.

43. Release on ground of illness

(1) At any time after a warrant for the arrest of a judgment-debtor has been issued, the court may cancel it on the ground of his serious illness.

(2) Where a judgment-debtor has been arrested, the court may release him if in its opinion he is not in a fit state of health to be detained in prison.

(3) Where a judgment-debtor has been committed to prison, he may be released therefrom—

- (a) by the superintendent of the prison in which he is confined on the grounds of the existence of any infectious or contagious disease; or
- (b) by the committing court or the High Court on the ground of his suffering from any serious illness.

(4) A judgment-debtor released under this section may be rearrested, but the period of his detention in prison shall not in the aggregate exceed that prescribed by section 42 of this Act.

Attachment

44. Property liable to attachment and sale in execution of a decree

(1) All property belonging to a judgment debtor, including property over which or over the profits of which he has a disposing power which he may exercise for his own benefit, whether that property is held in his name or in the name of another but on his behalf, shall be liable to attachment and sale in execution of a decree:

Provided that the following shall not be liable to attachment or sale—

- (i) the necessary wearing apparel, cooking vessels, beds and bedding of the judgment-debtor and of his wife and children, and those personal ornaments from which, in accordance with religious usage, a woman cannot be parted;
- (ii) the tools and implements of a person necessary for the performance by him of his trade or profession;
- (iii) where the judgment-debtor is an agriculturalist—
 - (a) the first ten thousand shillings in value of his livestock, if any; and
 - (b) the first five thousand shillings in value of all implements, tools, utensils, plant and machinery used in connection with stock or dairy farming or in the production of crops or plants; and
 - (c) the first one thousand shillings in value of agricultural produce necessary to enable him to earn his livelihood;
- (iv) books of accounts;
- (v) a right to sue in damages;

- (vi) a right of personal service;
- (vii) stipends and gratuities allowed to pensioners of the Government, or payable out of a service family pension fund notified in the *Gazette* by the Minister, and political pensions;
- (viii) two thirds of the salary of public officer or other person in employment;
- (ix) a contingent or possible right or interest, including an expectancy of succession by survivorship;
- (x) a right of future maintenance;
- (xi) any fund or allowance declared by law to be exempt from attachment and sale in execution of a decree.

(2) Nothing in this section shall affect the provisions of the Armed Forces Act (Cap. 199) or of any similar law for the time being in force.

[Act No. 10 of 1969, Sch., Act No. 1 of 1981, s. 25.]

45. Seizure of property in dwelling-house

(1) No person in executing any process under this Act directing or authorizing seizure of movable property shall enter any dwelling-house after sunset and before sunrise.

(2) No outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto; but when the person executing the process has duly gained access to any dwelling-house he may break open the door of any room in which he has reason to believe any such property to be.

(3) Where a room in a dwelling-house is in the actual occupancy of a woman who, according to the custom of the country, does not appear in public, the person executing the process shall give notice to the woman that she is at liberty to withdraw; and after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter the room for the purpose of seizing the property, using at the same time every precaution consistent with these provisions to prevent its clandestine removal.

46. Property attached in execution of decrees of several courts

(1) Where property not in the custody of a court is under attachment in execution of decrees of more courts than one, the court which shall receive and realize that property and shall determine any claim thereto and any objection to the attachment thereof shall be the court of the highest grade, or, where there is no difference in grade between the courts, the court under whose decree the property was first attached.

(2) Nothing in this section shall invalidate any proceeding taken by a court executing one of the decrees.

47. Private alienation of property after attachment to be void

Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein, and any payment to the judgment-debtor of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment.

*Sale***48. Purchaser's title**

Where immovable property is sold in execution of a decree and the sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.

49. Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff

(1) No suit shall be maintained against any person claiming title under a purchase certified by the court in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of someone through whom the plaintiff claims.

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

*Distribution of Assets***50. Distribution of assets**

(1) Where assets are held by any court and more persons than one have before the receipt of such assets by such court lodged applications in court for the execution of decrees for the payment of money issued against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be distributed amongst such decree-holders in accordance with the priorities of the lodging of their several applications:

Provided that, where any property is sold subject to a mortgage or charge, the mortgagee or encumbrancer shall not be entitled to share in any surplus arising from the sale.

(2) Every application for execution of a decree shall, at the time of lodgment, be endorsed by the court, or by a duly authorized officer of the court, with a note of the day upon which and the hour at which such lodgment has been effected.

(3) Nothing in this section shall affect any right of the Government.

*Resistance to Execution***51. Resistance to execution**

Where the court is satisfied that the holder of a decree for the possession of immovable property, or that the purchaser of immovable property sold in execution of a decree, has been resisted or obstructed in obtaining possession of the property by the judgment-debtor or some other person on his behalf, and that such resistance or obstruction was without any just cause, the court may, at the instance of the decree-holder or purchaser, order the judgment-debtor or such other person to be detained in prison for a term which may extend to thirty days, and may further direct that the decree-holder or purchaser be put in possession of the property.

PART IV – INCIDENTAL PROCEEDINGS

*Commissions***52. Power of court to issue commission**

Subject to such conditions and limitations as may be prescribed, the court may issue a commission—

- (a) to examine any person;
- (b) to make a local investigation;
- (c) to examine or adjust accounts; or
- (d) to make a partition.

53. Commission to another court

(1) A commission for the examination of any person may be issued by the High Court to any subordinate court or to any advocate, and by a subordinate court of the first or second class to any other subordinate court situate in a district other than the district in which the court of issue is situate and having jurisdiction in the place in which the person to be examined resides.

(2) Every court receiving a commission for the examination of any person under subsection (1) shall examine him or cause him to be examined pursuant thereto, and the commission, when it has been duly executed, shall be returned, together with the evidence taken under it, to the court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of the order.

[Act No. 10 of 1969, Sch.]

54. Letter of request

In lieu of issuing a commission, the High Court or a subordinate court with the sanction of the High Court may issue a letter of request to examine a witness residing at any place outside Kenya.

[Act No. 10 of 1969, Sch.]

55. Commission issued by foreign court

Commissions issued by foreign courts for the examination of persons in Kenya shall be executed and returned in such manner as may be from time to time authorized by the High Court.

[Act No. 10 of 1969, Sch.]

PART V – SUITS IN PARTICULAR CASES

*Suits by Aliens and by or against Foreign Rulers***56. When alien may sue**

(1) Alien enemies residing in Kenya with the permission of the President, and alien friends, may sue in the courts of Kenya.

(2) No alien enemy residing in Kenya without such permission, or residing in a foreign country, shall sue in any of such courts.

Explanation.—Every person residing in a foreign country the government of which is at war with Kenya, and carrying on business in that country without a licence in that behalf under the hand of the President, shall, for the purpose of subsection (2), be deemed to be an alien enemy residing in foreign country.

[Act No. 10 of 1969, Sch.]

57. When foreign state may sue

(1) A foreign state may sue in any court of Kenya, provided that state has been recognized by Kenya, and provided the object of the suit is to enforce a private right vested in the head of that state or in any officer of that state in his public capacity.

(2) Every court shall take judicial notice of the fact that a foreign state has or has not been recognized by Kenya.

[Act No. 10 of 1969, Sch.]

Interpleader

58. When interpleader suit may be instituted

Where two or more persons claim adversely to one another the same debt, sum of money or other property, movable or immovable, from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants, or where a suit dealing with the same subject-matter is pending may intervene by motion on notice in such suit, for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made, and of obtaining indemnity for himself:

Provided that where any suit is pending in which the rights of all parties can be properly decided no such suit of interpleader shall be instituted.

PART VI – SPECIAL PROCEEDINGS

Arbitration

59. Arbitration

All references to arbitration by an order in a suit, and all proceedings thereunder, shall be governed in such manner as may be prescribed by rules.

59A. Establishment of Mediation Accreditation Committee

(1) There shall be a Mediation Accreditation Committee which shall be appointed by the Chief Justice.

(2) The Mediation Accreditation Committee shall consist of—

- (a) the chairman of the Rules Committee;
- (b) one member nominated by the Attorney-General;
- (c) two members nominated by the Law Society of Kenya; and
- (d) eight other members nominated by the following bodies respectively —
 - (i) the Chartered Institute of Arbitrators (Kenya Branch);
 - (ii) the Kenya Private Sector Alliance;

- (iii) the International Commission of Jurists (Kenya Chapter);
- (iv) the Institute of Certified Public Accountants of Kenya;
- (v) the Institute of Certified Public Secretaries;
- (vi) the Kenya Bankers' Association;
- (vii) the Federation of Kenya Employers, and
- (viii) the Central Organisation of Trade Unions.

(3) The Chief Justice shall designate a suitable person to be the Mediation Registrar, who shall be responsible for the administration of the affairs of the Committee under this Act.

(4) The functions of the Mediation Accreditation Committee shall be to—

- (a) determine the criteria for the certification of mediators;
- (b) propose rules for the certification of mediators;
- (c) maintain a register of qualified mediators;
- (d) enforce such code of ethics for mediators as may be prescribed; and
- (e) set up appropriate training programmes for mediators.

[Act No. 12 of 2012, Sch.]

59B. Reference of cases to mediation

(1) The Court may—

- (a) on the request of the parties concerned; or
- (b) where it deems it appropriate to do so; or
- (c) where the law so requires,

direct that any dispute presented before it be referred to mediation.

(2) Where a dispute is referred to mediation under subsection (1), the parties thereto shall select for that purpose a mediator whose name appears in the mediation register maintained by the Mediation Accreditation Committee.

(3) A mediation under this Part shall be conducted in accordance with the mediation rules.

(4) An agreement between the parties to a dispute as a result of a process of mediation under this Part shall be recorded in writing and registered with the Court giving the direction under subsection (1), and shall be enforceable as if it were a judgment of that Court.

(5) No appeal shall lie against an agreement referred to in subsection (4).

[Act No. 12 of 2012, Sch.]

59C. Other alternative dispute resolution methods

(1) A suit may be referred to any other method of dispute resolution where the parties agree or the Court considers the case suitable for such referral.

(2) Any other method of alternative dispute resolution shall be governed by such procedure as the parties themselves agree to or as the Court may, in its discretion, order.

(3) Any settlement arising from a suit referred to any other alternative dispute resolution method by the Court or agreement of the parties shall be enforceable as a judgment of the Court.

(4) No appeal shall lie in respect of any judgment entered under this section.

[Act No. 12 of 2012, Sch.]

59D. Power to enforce private mediation agreements

All agreements entered into with the assistance of qualified mediators shall be in writing and may be registered and enforced by the Court.

[Act No. 12 of 2012, Sch.]

Special Case

60. Power to state case for opinion of court

Where any persons agree in writing to state a case for the opinion of the court, then the court shall try and determine the same in the manner prescribed.

Suits Relating to Public Matters

61. Public nuisance

(1) In the case of a public nuisance, the Attorney-General, or two or more persons having the consent in writing of the Attorney-General, may institute a suit though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case.

(2) Nothing in this section shall limit or otherwise affect any right of suit which may exist independently of its provisions.

62. Public charity

In the case of an alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the court is deemed necessary for the administration of the trust, the Attorney-General, or two or more persons having an interest in the trust and having obtained the consent in writing of the Attorney-General, may institute a suit, whether contentious or not in the High Court to obtain a decree—

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in trustees;
- (d) directing accounts and inquiries;
- (e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;
- (f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;
- (g) settling a scheme; or
- (h) granting such further or other relief as the nature of the case may require.

PART VII – SUPPLEMENTAL PROCEEDINGS

63. Supplemental proceedings

In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed—

- (a) issue a warrant to arrest the defendant and bring him before the court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to prison;
- (b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the court or order the attachment of any property;
- (c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold;
- (d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;
- (e) make such other interlocutory orders as may appear to the court to be just and convenient.

64. Compensation for arrest, attachment or injunction on insufficient grounds

(1) Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under section 63—

- (a) it appears to the court that the arrest, attachment or injunction was applied for on insufficient grounds; or
- (b) the suit of the plaintiff fails and it appears to the court that there was no reasonable or probable ground for instituting the same,

the defendant may apply to the court, and the court may, upon such application, award against the plaintiff by its order such amount, not exceeding two thousand shillings, as it deems a reasonable compensation to the defendant for the expense or injury caused to him:

Provided that, a court shall not award under this section an amount exceeding the limits of its pecuniary jurisdiction.

(2) An order determining an application under subsection (1) shall bar any suit for compensation in respect of the arrest, attachment or injunction.

PART VIII – APPEALS TO THE HIGH COURT AND COURT OF APPEAL

[Act No. 38 of 1968.]

*Appeals from Original Decrees***65. Appeal from other courts**

(1) Except where otherwise expressly provided by this Act, and subject to such provision as to the furnishing of security as may be prescribed, an appeal shall lie to the High Court—

- (a) *Deleted by Act No. 10 of 1969, Sch.;*

- (b) from any original decree or part of a decree of a subordinate court, other than a magistrate's court of the third class, on a question of law or fact;
- (c) from a decree or part of a decree of a Kadhi's Court, and on such an appeal the Chief Kadhi or two other Kadhis shall sit as assessor or assessors.

(2) Deleted by Act No. 10 of 1969, Sch.

(3) Deleted by Act No. 10 of 1969, Sch.

[Act No. 17 of 1967, s. 39, Act No. 10 of 1969, Sch., Act No. 4 of 1974, Sch.]

65A. Renumbered as section 79B.

[Act No. 10 of 1969, Sch.]

66. Appeal from decree of High Court

Except where otherwise expressly provided in this Act, and subject to such provision as to the furnishing of security as may be prescribed, an appeal shall lie from the decrees or any part of decrees and from the orders of the High Court to the Court of Appeal.

[Act No. 14 of 1977, Sch.]

67. Appeal from original decree

(1) An appeal may lie from an original decree passed *ex parte*.

(2) No appeal shall lie from a decree passed by the court with the consent of parties.

68. Appeal from final decree where no appeal from preliminary decree

Where any party aggrieved by a preliminary decree does not appeal from that decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

69. Decision where appeal heard by two or more judges

Where an appeal is heard by a court consisting of two or more judges the appeal shall be decided in accordance with the opinion of the judges or a majority of them:

Provided that where a court consisting of two judges is divided in its opinion the appeal shall be reheard by a court consisting of an uneven number of judges being not less than three.

[Act No. 13 of 1980, Sch.]

70. Renumbered as section 79A.

[Act No. 10 of 1969, Sch.]

71. Renumbered as section 79C.

[Act No. 10 of 1969, Sch.]

*Appeals from Appellate Decrees of a Subordinate Court***71A. Second appeal from subordinate court**

(1) Except where otherwise expressly provided by this Act, and subject to such provision as to the furnishing of security as may be prescribed, an appeal shall lie to the High Court from a decree passed by a subordinate court of the first class on an appeal from a subordinate court of the third class, on a question of law only.

(2) An appeal under this section shall be final.

[Act No. 10 of 1969, Sch., Act No. 13 of 1978, Sch.]

*Appeals from Appellate Decrees of the High Court***72. Second appeal from the High Court**

(1) Except where otherwise expressly provided in this Act or by any other law for the time being in force, an appeal shall lie to the Court of Appeal from every decree passed in appeal by the High Court, on any of the following grounds, namely—

- (a) the decision being contrary to law or to some usage having the force of law;
- (b) the decision having failed to determine some material issue of law or usage having the force of law;
- (c) a substantial error or defect in the procedure provided by this Act or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

(2) An appeal may lie under this section from an appellate decree passed *ex parte*.

[Act No. 10 of 1969, Sch.]

73. Deleted by Act No. 10 of 1969, Sch.

74. Deleted by Act No. 10 of 1969, Sch.

*Appeals from Orders***75. Orders from which appeal lies**

(1) An appeal shall lie as of right from the following orders, and shall also lie from any other order with the leave of the court making such order or of the court to which an appeal would lie if leave were granted—

- (a) an order superseding an arbitration where the award has not been completed within the period allowed by the court;
- (b) an order on an award stated in the form of a special case;
- (c) an order modifying or correcting an award;
- (d) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration;

- (e) an order filing or refusing to file an award in an arbitration without the intervention of the court;
- (f) an order under section 64;
- (g) an order under any of the provisions of this Act imposing a fine or directing the arrest or detention in prison of any person except where the arrest or detention is in execution of a decree;
- (h) any order made under rules from which an appeal is expressly allowed by rules.

(2) No appeal shall lie from any order passed in appeal under this section.

76. Other Orders

(1) Save as otherwise expressly provided, no appeal shall lie from any order made by a court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order affecting the decision of the case may be set forth as a ground of objection in the memorandum of appeal.

(2) Notwithstanding anything contained in subsection (1), where any party aggrieved by an order of remand from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

77. What court to hear appeal

Where an appeal from any order is allowed, it shall lie to the court to which an appeal would lie from the decree in the suit in which the order was made.

General Provisions Relating to Appeals

78. Powers of appellate court

(1) Subject to such conditions and limitations as may be prescribed, an appellate court shall have power—

- (a) to determine a case finally;
- (b) to remand a case;
- (c) to frame issues and refer them for trial;
- (d) to take additional evidence or to require the evidence to be taken;
- (e) to order a new trial.

(2) Subject as aforesaid, the appellate court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Act on courts of original jurisdiction in respect of suits instituted therein.

79. Procedure in appeals from appellate decrees and orders

The provisions of this Part relating to appeals from original decrees shall, as far as may be, apply to appeals—

- (a) from appellate decrees; and
- (b) from orders made under this Act or under any special or local law in which a different procedure is not provided.

79A. No decree to be altered for error not affecting merits or jurisdiction

No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the court.

[Act No. 10 of 1969, Sch.]

79B. Summary rejection of appeal

Before an appeal from a subordinate court to the High Court is heard, a judge of the High Court shall peruse it, and if he considers that there is no sufficient ground for interfering with the decree, part of a decree or order appealed against he may, notwithstanding section 79C, reject the appeal summarily.

[Act No. 17 of 1967, s. 40, Act No. 38 of 1968, Sch., Act No. 10 of 1969, Sch.]

79C. Mode of hearing appeal

Appeals from subordinate courts shall be heard by one judge of the High Court except when in any particular case the Chief Justice shall direct that the appeal be heard by two or more judges of the High Court; and such direction may be given before the hearing of the appeal or at any time before judgment is delivered.

[Act No. 10 of 1969, Sch.]

79D. Grounds for second appeal from High Court

No second appeal from a decree passed in appeal by the High Court shall lie except on the grounds mentioned in section 72.

[Act No. 10 of 1969, Sch.]

79E. No second appeal from High Court in certain cases

No second appeal from a decree passed in appeal by the High Court shall lie in any suit when the amount or value of the subject-matter of the original suit does not exceed ten thousand shillings unless special leave has been first obtained from the court before whom the appeal is to be heard.

[Act No. 10 of 1969, Sch., Act No. 21 of 1990, Sch.]

79F. Appeals by paupers

A person who has been allowed to take, defend or be a party to any legal proceedings in a subordinate court as a pauper may not appeal to the High Court, or from the High Court to the Court of Appeal, except with the leave of the Court before whom the proceedings appealed against were heard or (if such leave is refused) unless special leave has been first obtained from the Court before whom the appeal is to be heard.

[Act No. 10 of 1969, Sch.]

79G. Time for filing appeals from subordinate courts

Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having

been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.

[Act No. 10 of 1969, s.]

PART IX – REVIEW

80. Review

Any person who considers himself aggrieved—

- (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- (b) by a decree or order from which no appeal is allowed by this Act,

may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

PART X – RULES

81. Rules Committee

(1) There shall be a Rules Committee consisting of two judges of the High Court, two judges of the Court of Appeal, the Attorney-General and two advocates, one to be nominated by the Law Society of Kenya and the other by the Mombasa Law Society, which shall have power to make rules not inconsistent with this Act and, subject thereto, to provide for any matters relating to the procedure of civil courts.

(1A) The judges referred to in subsection (1) shall be appointed by the Chief Justice, who shall nominate one of them to be chairman of the Committee; and the Chief Justice may himself elect to be a member of the committee in which case he shall be the chairman.

(2) In particular, and without prejudice to the generality of the powers conferred by subsection (1), such rules may provide for all or any of the following matters namely—

- (a) the service of summonses, notices and other processes by post or in any other manner either generally or in any specified areas, and the proof of such service;
- (b) the maintenance and custody, while under attachment, of livestock and other movable property, the fees payable for such maintenance and custody, the sale of such livestock and property, and the proceeds of such sale;
- (c) procedure in suits by way of counterclaim and the valuation of such suits for the purposes of jurisdiction;
- (d) procedure in garnishee and charging orders either in addition to, or in substitution for, the attachment and sale of debts;
- (e) procedure where the defendant claims to be entitled to contribution or indemnity over against any person, whether a party to the suit or not;

- (f) summary procedure—
 - (i) in suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising on a contract express or implied; or on an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or on a guarantee, where the claim against the principal is in respect of a debt or a liquidated demand only or on a trust; or
 - (ii) in suits for the recovery of immovable property, with or without a claim for rent or *mesne* profits, by a landlord against a tenant whose term has expired or has been duly determined for non-payment of rent, or against persons claiming under such tenant;
- (ff) the selection of mediators and the hearing of matters referred to mediation under this Act.
- (g) procedure by way of originating summons;
- (h) consolidation of suits, appeals and other proceedings;
- (i) delegation to any registrar or other official of the court of any judicial, quasi-judicial and non-judicial duties; and
- (j) all forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of civil courts.

(3) The Chief Justice may, in consultation with the Rules Committee, issue practice notes or directions to resolve procedural difficulties arising under this Act, in order to facilitate the attainment of the overriding objective of this Act as specified in section 1A.

[Act No. 39 of 1956, s. 5, Act No. 14 of 1977, Sch., Act No. 13 of 1978, Sch., Act No. 10 of 1997, Act No. 6 of 2009, Sch.]

PART XI – MISCELLANEOUS PROVISIONS

82. Exemption of certain women

(1) Women who according to the customs and manners of their community ought not to be compelled to appear in public shall be exempt from personal appearance in court.

(2) Nothing herein contained shall be deemed to exempt those women from arrest in execution of civil process.

83. Arrest other than in execution of decree

The provisions of section 40, 41 and 43 shall apply so far as may be to all persons arrested under this Act.

84. Exemption from arrest under civil process

(1) No judge, magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in or returning from his court.

(2) Where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their advocates and recognized agents, and their witnesses acting in obedience to a summons shall be exempt from arrest under civil process other than process issued by such tribunal for contempt of court while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.

(3) Nothing in subsection (2) shall enable a judgment-debtor to claim exemption from arrest under an order for immediate execution, or where such judgment-debtor attends to show cause why he would not be committed to prison in execution of a decree.

85. Procedure relating to arrest and attachment

(1) Where an application is made to a subordinate court that any person shall be arrested or that any property shall be attached under any provision of this Act, and where the person resides or is found, or the property is situate, outside the local limits of the jurisdiction of the court to which the application is made, the court may in its discretion issue a warrant of arrest, or make an order of attachment, and send to the magistrate of the subordinate court within the local limits of whose jurisdiction that person resides or is found or the property is situate the warrant or order together with the probable amount of the costs of the arrest or attachment.

(2) On the issue of a warrant or order under subsection (1) the magistrate of the subordinate court within whose jurisdiction the person to be arrested resides or is found or the property to be attached is situate, as the case may be, shall have power—

- (a) to endorse and execute the warrant or order; or
- (b) to issue, before the endorsement, a provisional warrant or order for the arrest of the defendant or the attachment of the property upon receipt of such telegraphic or other information as may satisfy him that a warrant or order has been issued:

Provided that a person arrested or property attached under the provisional warrant or order shall be discharged or released from attachment unless the original warrant or order is produced and endorsed within such time as may seem reasonable.

(3) The court ordering an arrest under subsection (2) shall upon receipt of the original warrant send the person arrested to the court by which the original warrant was issued, unless that person shows cause to the satisfaction of the former court why he should not be so sent or unless he furnishes sufficient security for his appearance before the latter court or for satisfying any decree that may be or may have been passed against him by that court, in either of which cases the court making the arrest shall release him and shall inform the court by which the original warrant was issued accordingly.

(4) Where an application is made to a judge of the High Court that any person shall be arrested or that any property shall be attached under any provision of this Act, and where owing to distance or for other sufficient cause the

warrant or order cannot be immediately executed, it shall be competent for another judge of the High Court to issue a provisional warrant or order for the arrest of the defendant or the attachment of the property upon receipt of such telegraphic or other information as may satisfy him that a warrant or order has been issued:

Provided that a person arrested or property attached under the provisional warrant or order shall be discharged or released from attachment unless the original warrant or order is produced within such time as may seem reasonable.

(5) The judge issuing a provisional warrant under subsection (4) shall send the person arrested to such places as may be specified in the original warrant, unless such person shows cause why he should not be so sent, or unless he furnishes sufficient security for his appearance at such place as aforesaid or for satisfying any decree that may be or may have been passed against him, in either of which cases the judge ordering the arrest shall release him and shall inform the judge by whom the original warrant was issued accordingly.

86. Language of courts

(1) The language of the High Court and of the Court of Appeal shall be English, and the language of subordinate courts shall be English or Swahili.

(2) *Deleted by Act No. 17 of 1967, s. 41.*

(3) Written applications to the High Court and to the Court of Appeal shall be in English and to subordinate courts in English or Swahili.

[Act No. 17 of 1967, s. 41, Act No. 14 of 1977, Sch.]

87. Assessors

(1) Any court may in any cause or matter pending before it in which questions may arise as to the laws or customs of any tribe, caste or community, summon to its assistance one or more competent assessors, and such assessors shall attend and assist accordingly.

(2) In any Admiralty or Vice-Admiralty cause of salvage, towage or collision, the court, whether it be exercising its original or its appellate jurisdiction, may summon to its assistance, in such manner as it may direct or as may be prescribed, two competent assessors; and such assessors shall attend and assist accordingly.

(3) Every such assessor shall be summoned in such manner as the court may direct, and shall receive such fees for his attendance as may be prescribed to be paid in such manner as the court may direct.

88. Administration of oath on affidavit

In the case of any affidavit under this Act—

- (a) any court, magistrate, registrar of a court, notary public or commissioner of oaths; or
- (b) any officer or other person whom the High Court may appoint in this behalf,

may administer the oath to the deponent.

89. Miscellaneous proceedings

The procedure provided in this Act in regard to suits shall be followed as far as it may be applicable in all proceedings in any court of civil jurisdiction.

90. Orders and notices to be in writing

All orders or notices served on or given to any person under this Act shall be in writing.

91. Application for restitution

(1) Where and in so far as a decree is varied or reversed, the court of first instance shall, on the application of the party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position they would have occupied but for such decree or such part thereof as has been varied or reversed; and for this purpose the court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and *mesne* profits, which are properly consequential on such variation or reversal.

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under subsection (1).

92. Enforcement of liability of surety

Where any person has become liable as surety—

- (a) for the performance of any decree or any part thereof; or
- (b) for the restitution of any property taken in execution of a decree; or
- (c) for the payment of any money, or for the fulfillment of any condition imposed on any person, under an order of the court in any suit or in any proceeding consequent thereon,

the decree or order may be executed against him, to the extent to which he has rendered himself personally liable, in the manner herein provided for the execution of decrees, and such person shall for the purposes of appeal be deemed a party within the meaning of section 34:

Provided that such notice in writing as the court in each case thinks sufficient has been given to the surety.

93. Consent or agreement by persons under disability

In all suits to which any person under disability is a party, any consent or agreement as to any proceeding shall, if given or made with the express leave of the court by the next friend or guardian for the suit, have the same force and effect as if such person were under no disability and had given such consent or made such agreement.

94. Execution of decree of High Court before costs ascertained

Where the High Court considers it necessary that a decree passed in the exercise of its original civil jurisdiction should be executed before the amount of the costs incurred in the suit can be ascertained by taxation, the court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs; and as to so much thereof as relates to the costs that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

95. Enlargement of time

Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

96. Power to make up deficiency of court fees

Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court fees has not been paid, the court may, in its discretion, at any stage, allow the person by whom such fee is payable to pay the whole or part, as the case may be, of the fee; and upon such payment the document in respect of which such fee is payable shall have the same force and effect as if such fee had been paid in the first instance.

97. *Renumbered as section 3A.*

98. Execution of instruments by order of court

Where any person neglects or refuses to comply with a decree or order directing him to execute any conveyance, contract or other document, or to endorse any negotiable instrument, the court may, on such terms and conditions, if any, as it may determine, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the court may nominate for that purpose, and a conveyance, contract, document or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it.

99. Amendment of judgments, decrees or orders

Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties.

100. General power to amend

The court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceeding.
