

## The system of courts

Courts in Kenya operate two levels: Superior Courts and Subordinate Courts. The courts under the Constitution operate at two levels, namely; Superior and Subordinate courts.

Superior Courts:

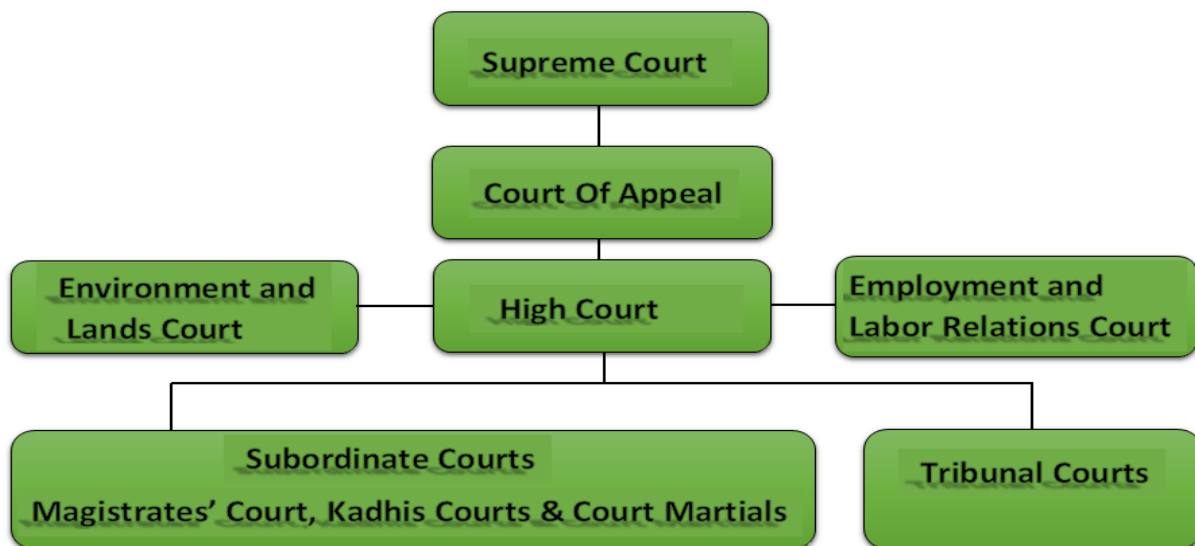
- Supreme Court,
- Court of Appeal,
- High Court,
- Employment and Labor Relations Court
- Environment and Land Court

Subordinate Courts:

- Magistrates' Courts
- Kadhis Courts
- Court Martial, and
- Any other court or local Tribunal established by an Act of Parliament

The important aspects in the Structure of Courts are:

- i. The structure – The hierarchy or levels of Courts.
- ii. Establishment – The composition or who presides in that Court.
- iii. Jurisdiction – The powers of different Courts to hear and determine disputes. Jurisdictions are either Geographical / territorial limits of their powers or Functional powers (to hear Original matter, Appellate matter or both matters or subject matter (whether it is civil or criminal justice) or Pecuniary (the range of monetary or financial value of subject matter).



## **The Supreme Court**

The Supreme Court is established under Article 163 of the Constitution as the final arbiter and interpreter of the Constitution.

### **Composition of the court**

The Court comprises of the Chief Justice, who is the President of the Court, the Deputy Chief Justice, who is the Vice-President of the Court and five other Judges

### **Jurisdiction**

Exclusive original jurisdiction to hear and determine disputes relating to the elections to the office of President arising under Article 140 of the Constitution. The Court has appellate jurisdiction to hear and determine appeals from the Court of Appeal and any other court or tribunal as prescribed by national legislation. However appeals can only be; As a matter of right where the case involves interpretation or application of the Constitution or a matter certified by the Supreme Court or the Court of Appeal as one that involves a matter of general public importance. The Supreme Court may review a certification by the Court of Appeal and either affirm, vary or overturn it. Render advisory opinion at the request of the National Government, any State organ, or any County Government with respect to any matter concerning County Government, Determine the validity of a declaration of a state of emergency; an extension of such a declaration or any legislation enacted or action taken in consequence of a declaration of a state of emergency. Appeals from a tribunal constituted under Article 168 of the Constitution on removal of Judges from office.

### **Objective of the Court**

- These are provided for in Section 3 of the Supreme Court Act, No. 7, of 2011
- Assert the supremacy of the Constitution and the sovereignty of the people of Kenya;
- Provide authoritative and impartial interpretation of the Constitution;
- Develop rich jurisprudence that respects Kenya's history and traditions and facilitates its social, economic and political growth;

- Enable important constitutional and other legal matters, especially matters on transition to the new Constitution be determined with due regard to the circumstances, history and cultures of the people; and
- Improve access to justice.

### Seat of the Court

The Court sits in Nairobi at the Supreme Court building and is deemed to be properly constituted for purposes of its proceedings when five of the judges are sitting. Being the highest court in the land, all other courts are bound by its decisions

### **The court of Appeal**

The Court of Appeal of Kenya is established under Article 164 of the constitution of Kenya and consists of a number of judges, being not fewer than twelve. The Court of Appeal handles appeals arising over the decisions of the High Court as well as any other court or Tribunal as provided for in Law. The court comprises a maximum of 30 Judges. The Judges of the Court of Appeal elect a President from among themselves. The Court of Appeal has been decentralized and currently has a total of six registries in Nairobi, Mombasa, Nyeri, Kisumu, Nakuru and Eldoret.

While it is no longer the final arbiter in disputes of the land, the new constitution did not depart much from the provisions of the repealed Constitution that related to the jurisdiction Court of Appeal. The new instrument left intact the court's jurisdiction to hear appeals from the High Court and from any other court prescribed by law.

The court has powers to:

- 1) Determine a case finally.
- 2) Order for a trial.
- 3) Order for a re-trial.
- 4) Frame issues for the determination of the High Court.
- 5) Receive additional evidence or order that it be taken by another court.

### **The High Court**

The High Court is established under Article 165 of the Constitution. The Court is clothed with inherent jurisdiction to: determine all Criminal and Civil Matters; determine cases concerning the violation and or infringement of the bill of rights; hear appeals from subordinate courts and tribunals; interpret the constitution; and, exercise supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function. Any other jurisdiction original or appellate conferred to it by an act parliament.

#### High Court Stations and Divisions

There are currently 39 High Court Stations. There are also seven Divisions established as listed below. Family, Commercial and Tax, Civil, Criminal, Constitutional and Human Rights, Judicial Review and Anti-Corruption and Economic Crimes. Admiralty cases are filed and heard in Mombasa High Court.

The maximum legal establishment of high court judges is 200.

Judges are appointed by the President in accordance with the advice of Judicial Service Commission. They are laid down special qualifications required of a person to be eligible for appointment as a Judge.

The High Court has jurisdiction to hear an appeal from a decision of a tribunal appointed under the Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144 which makes provision for the procedure for removal of the President for reason of incapacity.

The court also has the following duties to determine:

- 1) The question whether any law is inconsistent with or in contravention of the Constitution;
- 2) The question whether anything said to be done under the authority of the Constitution or of any law is inconsistent with, or in contravention of, the Constitution;
- 3) Any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and

- 4) A question relating to conflict of laws under Article 191 – relating to between national and county legislation in respect of matters falling within the concurrent jurisdiction of both levels of government.

### **What are the High Court special powers?**

*Supervisory Jurisdiction, Admiralty Jurisdiction, Electionjurisdiction, Succession/Probate Jurisdiction and Matrimonial Cases*

### **Subordinate Courts**

The function and structure of the subordinate courts remain largely the same under the Constitution. They are the Magistrates Courts, Court Martials, Kadhis' Courts and any other court or local tribunal as may be established by an Act of Parliament, other than the courts established as required by Article 162 (2).

Article 170 provides that there shall be a Chief Kadhi and such number, being not fewer than three, of other Kadhis as may be prescribed under an Act of Parliament. The jurisdiction of the Kadhis' Court is limited to the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion and submit to the jurisdiction of the Kadhi's Courts.