



THE REPUBLIC OF KENYA

LAWS OF KENYA

**THE HIGH COURT (ORGANIZATION
AND ADMINISTRATION) ACT**

CHAPTER 8C

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CHAPTER 8C**HIGH COURT (ORGANIZATION AND ADMINISTRATION) ACT**

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CHAPTER 8C

HIGH COURT (ORGANIZATION AND ADMINISTRATION) ACT

[Date of assent: 15th December, 2015.]

[Date of commencement: 2nd January, 2016.]

An Act of Parliament to give effect to Article 165 (1)(a) and (b) of the Constitution; to provide for the organization and administration of the High Court of Kenya and for connected purposes

[Act No. 27 of 2015, Act No. 46 of 2016, Act No. 11 of 2017.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the High Court (Organization and Administration) Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"administrative function" in relation to the Chief Justice, Principal Judge, presiding judge or a judge means the discharge of non-judicial functions assigned under this or other law, which are necessary to facilitate the exercise of the judicial authority by the Court;

"Chief Justice" means the Chief Justice appointed under Article 166 of the Constitution;

"Chief Registrar" means the Chief Registrar of the Judiciary referred to in Article 161 of the Constitution;

"Commission" means the Judicial Service Commission established under Article 171(1) of the Constitution;

"Court" means the High Court of Kenya established by Article 165 of the Constitution;

"Division" means a division of the High Court established under section 11;

"Principal Judge" means the Principal Judge of the High Court elected pursuant to Article 165(2) of the Constitution;

"Presiding Judge" means a Judge presiding over a court station or a division appointed or designated by the Chief Justice under section 8 or 14;

"registry" means the registry where all pleadings and supporting documents and all orders and decisions of the Court are recorded and maintained in accordance with the Rules and includes a sub-registry;

"Registrar" means the Registrar of the High Court appointed pursuant to section 18;

"subordinate courts" means the courts set out in Article 169(1) of the Constitution;

"station" in relation to the Court means a station established pursuant to section 12.

3. Guiding principles

(1) In exercise of its judicial authority, the Court shall—

- (a) be guided by the national values and principles set out in Article 10 of the Constitution;
- (b) be guided by the principles of judicial authority set out in Article 159 of the Constitution;
- (c) be guided by the values and principles of public service set out in Article 232(1)(c), (e) and (f) of the Constitution;
- (d) be independent and subject only to the Constitution and the law which they must apply impartially without fear, favour or prejudice; and
- (e) uphold the Constitution and administer the law without fear, favour or prejudice.

(2) The Court shall develop jurisprudence that respects the Constitution and responds to Kenya's social, economic and political needs.

PART II – ORGANIZATION OF THE COURT**4. Constitution of the Court**

(1) The Court shall consist of—

- (a) the Principal Judge; and
- (b) not more than two hundred judges appointed in accordance with Article 166(1)(b) of the Constitution.

(2) The Court shall be deemed to be duly constituted despite any vacancy in the office of the Principal Judge or other judge.

(3) Despite subsection (1)(b), the Commission may, from time to time, conduct or cause to be conducted a judicial needs assessment and recommend a weighted case load formula to determine the number of judges required.

5. Jurisdiction of the Court

The Court shall exercise—

- (a) the jurisdiction conferred to it by Article 165(3) and (6) of the Constitution; and
- (b) any other jurisdiction, original or appellate, conferred to it by an Act of Parliament.

6. Principal Judge

(1) The Principal Judge shall be responsible to the Chief Justice for—

- (a) the overall administration and management of the Court;
- (b) ensuring the orderly and prompt conduct of the business of the Court;
- (c) the constitution of benches of two or more judges in consultation with the Chief Justice; and
- (d) undertaking of such other duties as may be assigned by the Chief Justice.

(2) The Principal Judge shall be elected in accordance with Article 165(2) of the Constitution.

(3) The Chief Justice shall make Rules for the election and removal of the Principal Judge.

(4) In the absence of the Principal Judge or in the event of a vacancy in the office of the Principal Judge, the Chief Justice shall appoint an acting Principal Judge, from amongst the presiding judges in Nairobi, to act as the Principal Judge for a period not exceeding sixty days, with effect from the date of appointment.

(5) The Chief Registrar shall designate a chief officer and such other members of staff as are necessary to facilitate the discharge of the functions of the Principal Judge.

7. Presiding judges

(1) A Presiding Judge, whether of a station or division, shall be responsible to the Principal Judge for the—

- (a) implementation of strategic and policy guidelines;
- (b) discharge of administrative functions in consultation with Principal Judge;
- (c) general management and distribution of business before the Court among the judges in a court station or a division;
- (d) facilitation of the efficient functioning of the station or division;
- (e) facilitation of linkages and effective communication between the court and the court users; and
- (f) facilitation of the use of effective information communication technology in the respective station or division.

(2) A Presiding Judge shall be the Chairperson and convener of the Court User Committee in the station.

(3) A Presiding Judge shall be responsible to the Principal Judge for—

- (a) the supervision of all the subordinate courts, tribunals and other bodies falling within the regions designated under section 12(3) to be under a station or division;
- (b) co-ordination of the public relations and promotion of goodwill of the Court; and
- (c) any other matter that the Principal Judge may direct.

8. Order of precedence of judges of the Court

(1) Precedence among judges of the Court and judges of courts established under Article 162(2) of the Constitution shall rank in the following order of seniority —

- (a) the Principal Judge;
- (b) Presiding Judges of the Court, all of whom shall rank according to the date upon which they were appointed; and
- (c) judges according to the date upon which they were appointed.

(2) Where two judges or presiding judges were appointed on the same day, their precedence shall be determined according to the order in which their names appeared in the instrument of appointment.

9. Quorum of the Court

(1) Except as otherwise provided under any written law, the Court shall be properly constituted for the purposes of any proceedings before the Court by a single judge.

(2) Without prejudice to subsection (1), any matter raising a substantial question of law that falls within the jurisdiction of the Court under Article 165(3)(b) or (d) of the Constitution shall be heard by an odd number of at least three judges, assigned by the Chief Justice.

10. Sittings and recess sessions of the Court

(1) The Court shall subject to subsections (2), (3) and (9) sit continuously for the trial of criminal cases and disposal of civil and other legal business of the Court.

(2) Without prejudice to the generality of subsection (1), the sittings of the Court shall be—

- (a) from the 14th January to the second Wednesday before Good Friday;
- (b) from the Wednesday after Easter to the 31st of July; and
- (c) from the 16th September to the 20th December.

(3) There shall be recess sessions falling during the intervals between the sitting sessions referred to in subsection (2).

(4) The Chief Justice shall, make Rules to establish measures for the disposal of urgent and priority matters during recess.

(5) The sittings of the Court shall be held in such buildings within Kenya as the Chief Justice may, by notice in the *Gazette*, designate for that purpose.

(6) Despite subsection (5), a sitting of the Court may, where circumstances demand, be held at such place as the Court may deem necessary for the expedient and proper exercise of its judicial authority.

(7) The Chief Justice may, where necessary for the expedient and proper exercise of judicial authority, authorize the sitting of the Court on any day or at any time.

(8) The proceedings of the Court held outside the Court House shall be valid, in every respect, as if the proceedings had been held in any such Court House.

(9) The Chief Justice shall prescribe Rules to ensure that matters are disposed of within twelve months from the date the Court first sets the matters down for hearing.

[Act No. 11 of 2017, Sch.]

11. Establishment of Divisions

(1) For purposes of promoting effectiveness and efficiency in the administration of justice and promoting judicial performance, the Chief Justice may, where the workload and the number of judges in a station permit, establish any of the following divisions—

- (a) the Family and Children Division;
- (b) the Commercial Division;
- (c) the Admiralty Division;
- (d) the Civil Division;
- (e) the Criminal Division;
- (f) the Constitutional and Human Rights Division;
- (g) the Judicial Review Division; and
- (h) any other division as the Chief Justice may, on the advice of the Principal Judge determine.

(2) Every division of the Court shall consist of—

- (a) a Presiding Judge designated by the Chief Justice as the head of the Division;
- (b) such number of judges as the Chief Justice may determine;
- (c) a Deputy Registrar who shall be responsible to the Presiding Judge in the discharge of the functions of the office; and
- (d) officers appointed under section 24.

12. Distribution of stations of the Court

(1) The Chief Justice shall, in consultation with the Principal Judge, facilitate reasonable and equitable access of the services of the Court and establish at least one station of the Court in every county.

(2) A station of the Court shall consist of—

- (a) a Presiding Judge, appointed by the Chief Justice from amongst the judges of the Court, who shall be head of the station;
- (b) such number of judges as the Chief Justice may, in consultation with the Principal Judge, determine;
- (c) a Deputy Registrar who shall be responsible to the Presiding Judge in the discharge of the functions of the office; and
- (d) officers appointed under section 24.

(3) The filing of appeals, bail applications, and references from the subordinate courts, tribunals and other bodies or authorities within the regions designated by the Chief Justice under the Rules, shall be made at the High Court station with the corresponding supervisory jurisdiction.

13. Transfer and deployment of judges

(1) The Chief Justice may, whenever it is necessary for purposes of promoting effective, prompt and efficient discharge of judicial service—

- (a) transfer a judge from one station to another; or
- (b) deploy a judge from one division to another.

(2) For the purpose of effective hand-over, a judge shall report at the new duty station within three months from the date on which he or she was notified of the transfer.

(3) The Chief Justice shall take into account the expertise and legal specialization in the deployment of judges under subsection (1)(b).

(4) The Chief Justice may assign special duties to any judge for the purposes of exercising judicial authority.

14. Leadership and management teams

(1) There is established in respect of every station a leadership and management team which shall, in so far as is reasonably practicable, comprise of—

- (a) the Presiding Judge who shall be the Chairperson;
- (b) a judge in the station;
- (c) the Deputy Registrar who shall be the secretary;
- (d) the most senior magistrate in the station appointed by the Presiding Judge;
- (e) an officer nominated by the staff in the station and appointed by the Presiding Judge; and

- (f) any other person who may be co-opted by the leadership and management team.

(2) The leadership and management team shall be the advisory body to the Presiding Judge in respect of implementation of policy, practice and management matters in the station for the effective administration of justice.

(3) The team shall meet at least once every quarter and may, subject to this Act and any guidelines issued by the Principal Judge, regulate its own procedure.

(4) The team shall, after every six months, prepare and submit to the Principal Judge a report containing such particulars as the Principal Judge may determine.

15. Circuit courts

(1) The Principal Judge may, in consultation with the Chief Justice, designate circuit courts and sub-registries to hold sessions in different areas for the disposal of business of the Court.

(2) For the purposes of this section, the Chief Justice may, by notice in the *Gazette*, establish any area to be a High Court circuit.

PART III – ADMINISTRATION OF THE COURT

16. Role of the Chief Justice as the head of Judiciary

The Chief Justice may issue practice directions and written guidelines to judges and judicial officers to—

- (a) ensure the application of constitutional values and principles;
- (b) foster the relationship between judges, judicial officers and judicial staff by establishing linkages and promoting teamwork;
- (c) harmonize the judicial and administrative functions of the Court;
- (d) oversee the application of norms and standards of judges and judicial officers in service delivery; and
- (e) provide for any other matter affecting the dignity, accessibility, effectiveness, expeditious disposal of matters or the functioning of the courts.

17. Role of the Chief Registrar

The Chief Registrar shall be responsible to the Chief Justice for the overall administration and management of the Court.

18. Registrar of the Court

(1) There shall be a Registrar of the High Court and such number of Deputy Registrars of the High Court as the Judicial Service Commission may determine.

(2) The Registrar shall be stationed in Nairobi and shall be assisted by two Deputy Registrars.

(3) In the absence of the Registrar, a Deputy Registrar shall undertake the functions of the Registrar.

(4) There shall be deployed a Deputy Registrar at every station and division of the Court.

(5) In the absence of the Registrar, a Deputy Registrar shall exercise the functions of the office of the Registrar.

19. Qualification for appointment of the Registrar of the Court

A person shall be qualified for appointment as the Registrar if that person—

- (a) is an advocate of the High Court of Kenya; and
- (b) has, since admission to the Roll of Advocates attained at least five years' experience as a legal practitioner.

20. Functions and powers of the Registrar

(1) The Registrar shall perform such duties as the Chief Registrar or the Principal Judge may direct, and in particular shall be responsible for—

- (a) the setting up of the registry and maintenance of the registers of the Court as required under this or other law;
- (b) the day to day administration and management of the Court;
- (c) the overseeing of support services in the Court including the planning, development and the organization of staff;
- (d) the monitoring of administration and office procedures to uphold efficiency and quality of service;
- (e) the planning, preparation and implementation of the budget of the Court;
- (f) the preparation of reports and proposals on administrative issues as may be required from time to time;
- (g) overseeing the procurement and disposal of assets;
- (h) the acceptance, transmission, service and custody of documents in accordance with the law;
- (i) the facilitation of the enforcement of the decisions of the Court;
- (j) the certification of any order, direction or decision as an order, direction or decision of the Court, the Chief justice or a Judge, as the case may be;
- (k) causing to be kept records of the proceedings and minutes of the meetings of the Court and such other records as the Court may direct;
- (l) the management of the library of the Court;
- (m) the facilitation of access to judgments and records of the Court; and
- (n) the performance of such other duties as may be assigned by the Chief Registrar from time to time.

(2) The Registrar, Deputy Registrars and assistant registrars shall work under the general directions of the Chief Registrar and shall have all the powers necessary for the execution of their functions of office under this Act.

21. Functions of Deputy Registrars

(1) The Deputy Registrars shall be responsible to the Presiding judge and the Registrar for—

- (a) the administration and management of a station or division;
- (b) case management within the station or division;
- (c) efficient management of the day-to-day operations and administration of human resources in the station or division;
- (d) performing judicial functions as may be assigned by the Chief Registrar pursuant to the provisions of any law;

- (e) supporting the judges in the station or division through supervision and coordination of the operations of the registry;
- (f) accounting for any service in respect of which monies have been allocated and for which issues are made from the Fund;
- (g) planning, preparing, implementing and monitoring the budget and collecting and accounting for revenue in the station or division; and
- (h) any other function as may be assigned by a judge or Registrar.

(2) In relation to the proceedings before the Court, the Deputy Registrar may consider and dispose off procedural or administrative matters in accordance with the Rules or on the direction of the Principal Judge.

22. Review of decisions of the Registrar

(1) Any person aggrieved by a decision of the Registrar or Deputy Registrar on matters relating to judicial functions of the Court may apply for review by a Judge of the Court in accordance with the Rules.

(2) A Judge may confirm, vary or reverse the decision of the Registrar referred to in subsection (1).

23. High Court Advisory Committee

(1) There is established the High Court Advisory Committee which shall be responsible for the making of recommendations to the Commission in respect of judicial policy, practice and training and capacity building for judges and officers of the Court.

(2) The Committee shall comprise of—

- (a) the Principal Judge who shall be the Chairperson;
- (b) three Presiding Judges nominated by the Principal Judge through a rotational arrangement amongst Presiding Judges of the Court; and
- (c) the Registrar of the Court.

(3) The Committee may—

- (a) co-opt any other person as a member;
- (b) appoint from amongst its members a vice-chairperson; and
- (c) regulate its own procedures.

(4) The chief officer in the office of the Principal Judge shall provide secretariat services to the Committee.

(5) The Committee shall meet at least once in each session of the Court and shall maintain a record of its meetings.

24. Staff of the Court

(1) Every Court station or division shall have such number of staff as the Chief Registrar may, in consultation with the Principal Judge, determine.

(2) The officers appointed under subsection (1) shall perform such duties as may be assigned to them under the general direction of the Chief Registrar.

PART IV – PROCEDURES OF THE COURT

25. Practice and procedure of the Court

The Court shall exercise its jurisdiction in accordance with the rules of practice and procedure prescribed by written law.

26. Alternative dispute resolution

(1) In civil proceedings before the Court, the Court may promote reconciliation amongst the parties thereto and shall encourage and permit the amicable settlement of any dispute.

(2) The Court shall, in relation to alternative dispute resolution be guided by the Rules developed for that purpose.

(3) Nothing in this Act may be construed as precluding the Court from adopting and implementing, on its own motion, with the agreement of or at the request of the parties, any other appropriate means of alternative dispute resolution including conciliation, mediation and traditional dispute resolution mechanisms in accordance with Article 159(2)(c) of the Constitution.

(4) Where an alternative dispute resolution mechanism is a condition precedent to any proceedings before the Court, the Court shall by order, stay the proceedings until the condition is fulfilled.

PART V – GENERAL PROVISIONS**27. Case management**

(1) The Principal Judge shall implement and promote measures to maintain the integrity of the registry and the work of each court station or division including—

- (a) case management;
- (b) automation of records and business processes of the Court;
- (c) protection and sharing of information; and
- (d) the promotion of the use of information communication technology.

(2) The Chief justice may make Rules to give effect to this section including the role of Deputy Registrars and registries in the management of caseloads.

28. Records of the court

(1) The Registrar shall maintain a uniform record keeping system in the Court specifying the form, style, storage, maintenance and retrieval of records.

(2) The Chief Justice may make Rules and issue directions to give effect to this section.

29. Performance management inspections and monitoring

The Principal Judge shall, upon consultation with the Commission, oversee the implementation of a performance management system comprising of performance contracting, appraisal and evaluation of the judges of the Court in the discharge of their mandate, in accordance with the provisions of the Constitution, this Act and any other law.

30. Ethics and integrity

(1) Every judge of the Court shall sign and ascribe to the Judicial Code of Conduct.

(2) The Principal Judge shall monitor the compliance with the judicial code of conduct by judges and judicial officers.

31. Budget and funding of the Court

(1) At least three months before the commencement of each financial year, the Registrar shall prepare estimates of all expenditure required for purposes of this

Act or other law for the next financial year, and submit them to the Chief Registrar for inclusion in the annual estimates of the Judiciary.

(2) The Chief Registrar shall allocate adequate resources to facilitate the effective discharge of the functions of the Court.

32. Welfare of Judges and judicial officers

The Chief Justice may establish or approve the establishment of such committees or associations as may be necessary for the promotion of the welfare, collegiality, working conditions, mentorship and peer review and other interactions between judges, magistrates and members of tribunals.

33. Protection of judges and Judicial officers from personal liability

(1) Subject to the Constitution, no judge or other judicial officer acting judicially shall be liable to be sued in a civil court for an act done or ordered by the judge or person in the discharge of judicial duty, provided that it is done in good faith.

(2) No officer of a court or other person bound to execute the lawful warrants, orders or other process of a judge or such person shall be liable to be sued in any court for the execution of a warrant, order or process which the officer would have been bound to execute if within the jurisdiction of the person issuing it.

34. Languages of the Court

(1) The official languages of the Court are English and Kiswahili.

(2) The Court shall, in appropriate cases, facilitate the use of other languages, by parties, including the Kenyan Sign language, Braille and other communication formats and technologies accessible to persons with disabilities.

(3) Where it is expedient and appropriate to do so, the Court may direct that proceedings be conducted and appearances be made through electronic means of communication, including tele-conferencing, video-conferencing or other modes of electronic or digital communication.

35. Judgments of the Court

(1) A judgment of the Court shall be prepared, signed, dated and delivered in the manner prescribed by written law.

(2) Where the judge presiding over a trial is unable to be present due to illness, absence, transfer or other reason, to read the judgment written by the judge, the judge shall sign and date the judgment or ruling for delivery by another judge.

(3) Where the bench of the Court is comprised of more than one judge, the judgment of the court shall be in accordance with the opinion of the majority of the judges hearing the proceedings.

(4) Where a matter is heard before a bench of the Court and judgment reserved for delivery on another day or time, it shall not be necessary for all the judges before whom the matter was heard to be present in Court on the day or time appointed for the delivery of the judgment.

(5) A minority opinion of a judge shall be signed and dated but need not be pronounced in open court unless one or more parties so demand.

36.

[Deleted by Act No. 46 of 2016, s. 39.]

37. Seal of the Court

(1) The seal of the Court shall be such a device as may be approved by the Chief Justice and shall bear the inscription "The High Court of Kenya".

(2) The seal shall be kept in the custody of the Registrar and the duplicate thereof shall be kept by each of the deputy Registrars or other officers of the Court as the Registrar may in writing determine.

(3) The seal of the Court shall be used in accordance with the provisions of any law or Rules of the Court.

38. Representation before the Court

(1) Parties may appear in person or be represented by an advocate in all proceedings before the Court.

(2) Pursuant to Article 50(7) of the Constitution, the Court may, in the interest of justice, allow an intermediary to assist a complainant or an accused person to communicate with the Court.

(3) In this section "intermediary" means a person authorized by the court, on account of his or her expertise or experience, to give evidence on behalf of a vulnerable witness and may include a parent, relative, psychologist, counsellor, guardian, children's officer or social worker.

39. Rules

(1) The Chief Justice may make Rules generally for the effective organization and administration of the High Court.

(2) Without prejudice to the generality of subsection (1), such Rules may provide for the—

- (a) conduct of the election of the Principal Judge;
- (b) procedure of removal of the President of the Court;
- (c) disposal of urgent and priority matters during Court recess;
- (d) disposal of matters within twelve months from the date the Court sets the matters down for hearing;
- (e) automation of Court records, case management, protection and sharing of Court information and the use of information communication technology;
- (f) form, style, storage, maintenance and retrieval of Court records; and
- (g) procedure relating to contempt of court.

(3) For the purposes of Article 94(6) of the Constitution—

- (a) the purpose and objective of the delegation under this section is to enable the Chief Justice to make rules to provide for the better administration and organization of the Court;
- (b) the authority of the Chief Justice to make rules under this Act is limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section;
- (c) the principles and standard applicable to the rules made under this section are those set out in the Interpretations and General Provisions Act (Cap. 2) and the Statutory Instruments Act (Cap. 2A).

40.

[Spent]

41. Code of Conduct for judges of the Court

The Chief Justice shall, within six months of the commencement of this Act, prescribe the code of conduct applicable to a judge of the Court.

SCHEDULE

[s. 40]

SPENT

