
THE REPUBLIC OF KENYA

LAWS OF KENYA

# CRIMINAL PROCEDURE CODE

CHAPTER 75

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# CHAPTER 75

# CRIMINAL PROCEDURE CODE

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# CHAPTER 75

# CRIMINAL PROCEDURE CODE

[*Date of commencement: 1st August 1930*.]

**An Act of Parliament to make provision for the procedure to be followed in criminal cases**

[Cap. 27 (1948), Act No. 9 of 1951, Act No. 39 of 1951, Act No. 42 of 1952, Act No. 42 of 1954, Act No. 57 of 1955, Act No. 48 of 1956, Act No. 26 of 1957, Act No. 5 of 1958, Act No. 33 of 1958, Act No. 22 of 1959, Act No. 54 of 1960, Act No. 11 of 1961, Act No. 15 of 1961, Act No. 25 of 1961, Act No. 27 of 1961, Act No. 28 of 1961, Act No. 36 of 1962, Act No. 48 of 1962, Act No. 33 of 1963, Act No. 46 of 1963, L.N. 299/1956, L.N. 300/1956, L.N. 182/1958, L.N. 172/1960, L.N. 173/1960, L.N. 102/1962, L.N. 142/1963, L.N. 474/1963, L.N. 761/1963, L.N. 18/1964, L.N. 124/1964, L.N. 374/1964, Act No. 19 of 1964, Act No. 20 of 1965, Act No. 13 of 1967, Act No. 17 of 1967, Act No. 29 of 1967, Act No. 8 of 1968, Act No. 3 of 1969, Act No. 10 of 1969, Act No. 11 of 1970, Act No. 25 of 1971, Act No. 4 of 1974, Act No. 6 of 1976, Act No. 16 of 1977, Act No. 13 of 1978, Act No. 18 of 1979, Act No. 13 of 1980, Act No. 13 of 1982, Act No. 10 of 1983, Act No. 11 of 1983, Act No. 12 of 1984, Act No. 19 of 1984, Act No. 19 of 1985, Act No. 18 of 1986, L.N. 199/1986, L.N. 22/1984, Act No. 13 of 1988, Act No. 6 of 1989, Act No. 20 of 1989, Act No. 7 of 1990, Act No. 14 of 1991, Act No. 11 of 1993, Act No. 5 of 2003, Act No. 3 of 2006, Act No. 7 of 2007, Act No. 11 of 2008, Act No. 12 of 2012, Act No. 18 of 2014, Act No. 19 of 2014, Act No. 25 of 2015, Act No. 27 of 2015, Act No. 18 of 2018.]

## PART I – PRELIMINARY

### 1. Short title

This Act may be cited as the Criminal Procedure Code.

### 2. Interpretation

In this Code, unless the context otherwise requires—

**"cognizable offence"** means an offence for which a police officer may, in accordance with the First Schedule or under any law for the time being in force, arrest without warrant;

**"complaint"** *deleted by Act No. 7 of 2007, Sch.;*

**"drug related offence"** means any specified in Part V of the Dangerous Drugs Act (Cap. 245) and includes the possession, manufacture, distribution or receipt of any drug of any quantity whatsoever;

**"non-cognizable offence"** means an offence for which a police officer may not arrest without warrant;

**"officer in charge of a police station"** includes any officer superior in rank to an officer in charge of a police station and also includes, when the officer in charge of the police station is absent from the station-house, or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to that officer, and is above the rank of constable, or, when the Inspector-General of the National Police Service so directs, any other police officer so present;

**"plea agreement"** means an agreement entered into between the prosecution and an accused person in a criminal trial in accordance with Part IV;

**"police officer"** means a police officer or an administration police officer;

**"police station"** means a place designated by the Inspector-General as a police station under section 40 of the National Police Service Act, 2011.

**"prosecutor"** means a public prosecutor or a person permitted by the court to conduct a prosecution under section 88 of the Act;

**"public prosecutor"** means the Director of Public Prosecutions, a state counsel, a person appointed under section 85 or a person acting under the direction of the Director of Public Prosecutions;

**"Registrar of the High Court"** includes a Deputy Registrar of the High Court and a district registrar of the High Court;

**"summary trial"** means a trial held by a subordinate court under Part VI.

[Act No. 39 of 1951, s. 2, Act No. 22 of 1959, s. 2, Act No. 15 of 1961, Sch., Act No. 28 of 1961, Sch., Act No. 36 of 1962, Sch., Act No. 13 of 1967, First Sch., Act No. 17 of 1967, s. 23, Act No. 8 of 1968, Sch., Act No. 13 of 1982, s. 2, L.N. 124/1964, Act No. 14 of 1991, Sch., Act No. 5 of 2003, s. 59, Act No. 7 of 2007, Act No. 11 of 2008, s. 2, Act No. 12 of 2012, Sch., Act No. 18 of 2018, Sch.]

### 3. Trial of offences under Penal Code and under other laws

(1) All offences under the Penal Code (Cap. 63) shall be inquired into, tried and otherwise dealt with according to this Code.

(2) All offences under any other law shall be inquired into, tried and otherwise dealt with according to this Code, subject to any enactment for the time being in force regulating the manner or place of inquiring into, trying, or otherwise dealing with those offences.

(3) Notwithstanding anything in this Code, the High Court may, subject to the provisions of any law for the time being in force, in exercising its criminal jurisdiction in respect of any matter or thing to which the procedure prescribed by this Code is inapplicable, exercise that jurisdiction according to the course of procedure and practice observed by and before the High Court of Justice in England at the date of the coming into operation of this Code.

(4) Notwithstanding anything in this Code or any other written law, in relation to a person who is a member of the armed forces or police forces of another country lawfully present in Kenya as a consequence of an agreement between the government of that other country and the Government of Kenya, in which agreement provision is made in respect of offences under the Penal Code or any other written law for the detention or punishment of that person or the inquiry into, trial or other disposal of those offences, nothing done or omitted in accordance with such a provision shall be or shall be deemed to be unlawful or contrary to the provisions of this Code, or any other written law.

[Act No. 20 of 1965, s. 2.]

## PART II – POWERS OF COURTS

### 4. Offences under Penal Code

Subject to this Code, an offence under the Penal Code (Cap. 63) may be tried by the High Court, or by a subordinate court by which the offence is shown in the fifth column of the First Schedule to this Code to be triable.

**5. Offences under other laws**

(1) An offence under any law other than the Penal Code (Cap. 63) shall, when a court is mentioned in that behalf in that law, be tried by that court.

(2) When no court is so mentioned, it may, subject to this Code, be tried by the High Court, or by a subordinate court by which the offence is shown in the fifth column of the First Schedule to this Code to be triable.

**6. Sentences which High Court may pass**

The High Court may pass any sentence authorized by law.

**7. Sentences which subordinate courts may pass**

(1) A subordinate court of the first class held by—

(a) a chief magistrate, senior principal magistrate, principal magistrate or senior resident magistrate may pass any sentence authorized by law for any offence triable by that court;

(b) a resident magistrate may pass any sentence authorized by law for an offence under section 278, 308(1) or 322 of the Penal Code or under the Sexual Offences Act, 2006.

(2) Subject to subsection (1), a subordinate court of the first class may pass the following sentences in cases where they are authorized by law—

(a) imprisonment for a term not exceeding seven years;

(b) a fine not exceeding twenty thousand shillings;

(c) *repealed by Act No. 5 of 2003, s. 60*.

(3) A subordinate court of the second class may pass the following sentences in cases where they are authorized by law—

(a) imprisonment for a term not exceeding two years;

(b) a fine not exceeding ten thousand shillings;

(c) *repealed by Act No. 5 of 2003, s. 60*.

(4) *Deleted by Act No. 5 of 2003, s. 60.*

(5) In determining the extent of a court's jurisdiction under this section to pass a sentence of imprisonment, the court shall have jurisdiction to pass the full sentence of imprisonment provided for in this section in addition to any term of imprisonment which may be awarded in default of payment of a fine, costs or compensation.

[Act No. 42 of 1952, s. 2, Act No. 57 of 1955, s. 4, Act No. 33 of 1963, Sch., Act No. 17 of 1967, s. 24, Act No. 3 of 1969, s. 6, Act No. 25 of 1971, Sch., Act No. 4 of 1974, Sch., Act No. 18 of 1979, Sch., Act No. 11 of 1983, Sch., Act No. 18 of 1986, Sch., Act No. 14 of 1991, Sch., Act No. 5 of 2003, s. 60, Act No. 7 of 2007, Sch.]

**8. Powers of Judicial Service Commission to extend jurisdiction of subordinate courts**

The Judicial Service Commission may, by notice in the *Gazette*, extend the jurisdiction of any particular magistrate under section 7 either generally or in relation to particular offences triable by a court of a class which may be held by that magistrate, and a magistrate whose jurisdiction has been so extended may pass sentences thus authorized in cases where they are authorized by law.

[Act No. 33 of 1963, Sch., Act No. 11 of 1983, Sch.]

**9.** *Repealed by Act No. 17 of 1967, s. 25.*

**10.** *Repealed by Act No. 17 of 1967, s. 25.*

**11.** *Repealed by Act No. 17 of 1967, s. 25.*

**12. Combination of sentences**

Any court may pass a lawful sentence combining any of the sentences which it is authorized by law to pass.

[Act No. 17 of 1967, s. 26.]

**13.** *Repealed by Act No. 17 of 1967, s. 25.*

**14. Sentences in cases of conviction of several offences at one trial**

(1) Subject to subsection (3), when a person is convicted at one trial of two or more distinct offences, the court may sentence him, for those offences, to the several punishments prescribed therefor which the court is competent to impose; and those punishments when consisting of imprisonment shall commence the one after the expiration of the other in the order the court may direct, unless the court directs that the punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to impose on conviction of a single offence, to send the offender for trial before a higher court.

(3) Except in cases to which section 7(1) applies, nothing in this section shall authorize a subordinate court to pass, on any person at one trial, consecutive sentences—

(a) of imprisonment which amount in the aggregate to more than fourteen years, or twice the amount of imprisonment which the court, in the exercise of its ordinary jurisdiction, is competent to impose, whichever is the less; or

(b) of fines which amount in the aggregate to more than twice the amount which the court is so competent to impose.

(4) For the purposes of appeal, the aggregate of consecutive sentences imposed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

[Act No. 17 of 1967, s. 46, Act No. 25 of 1971, s. 4, Act No. 4 of 1974, Sch.]

**15. Suspended Sentences**

(1) Any court which passes a sentence of imprisonment for a term of not more than two years for any offence may order that the sentence shall not take effect unless during the period specified by the court (hereinafter called the “operational period”) the offender commits another offence, whether that offence is punishable by imprisonment, corporal punishment or by a fine.

(2) Where the offender is convicted of an offence during the operational period the sentence for the first offence in respect of which the offender was convicted under subsection (1) shall thereupon take effect.

(3) Where under subsection (2) the sentence passed for the first offence under subsection (1) takes effect the sentence passed for the subsequent offence shall run consecutively to the sentence passed for the first offence.

[Act No. 7 of 1990, s. 4.]

**16.** *Repealed by Act No. 17 of 1967, s. 25.*

**17.** *Repealed by Act No. 17 of 1967, s. 25.*

**18.** *Repealed by Act No. 17 of 1967, s. 25.*

**19.** *Repealed by Act No. 17 of 1967, s. 25.*

**20.** *Repealed by Act No. 17 of 1967, s. 25.*

## PART III – GENERAL PROVISIONS ARREST, ESCAPE AND RETAKING

*Arrest Generally*

### 21. Arrest

(1) In making an arrest the police officer or other person making it shall actually touch or confine the body of the person to be arrested, unless there be a submission to custody by word or action.

(2) If a person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, the police officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section shall justify the use of greater force than was reasonable in the particular circumstances in which it was employed or was necessary for the apprehension of the offender.

### 22. Search of place entered by person sought to be arrested

(1) If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into or is within any place, the person residing in or being in charge of that place shall, on demand of the person so acting or the police officer, allow him free ingress thereto and afford all reasonable facilities for a search therein.

(2) If ingress to a place cannot be obtained under subsection (1), it shall be lawful in any case for a person acting under a warrant, and in any case in which a warrant may issue but cannot be obtained without affording the person to be arrested an opportunity to escape, for a police officer to enter the place and search therein, and, in order to effect an entrance into the place, to break open any outer or inner door or window of a house or place, whether that of the person to be arrested or of another person, or otherwise effect entry into the house or place, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance:

Provided that if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to custom, does not appear in public, the person or police officer shall, before entering the apartment, give notice to the woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

**23. Power to break out of house, etc., for purposes of liberation**

A police officer or other person authorized to make an arrest may break out of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

**24. No unnecessary restraint**

The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

**25. Search of arrested persons**

Whenever a person is arrested—

(a) by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail; or

(b) without warrant, or by a private person under a warrant, and the person arrested cannot legally be admitted to bail or is unable to furnish bail,

the police officer making the arrest, or, when the arrest is made by a private person, the police officer to whom he makes over the person arrested, may search that person and place in safe custody all articles, other than necessary wearing apparel, found upon him.

**26. Power to detain and search aircraft, vessels, vehicles and persons**

(1) A police officer, or other person authorized in writing in that behalf by Inspector-General of the National Police Service, may stop, search and detain—

(a) any aircraft, vessel or vehicle in or upon which there is reason to suspect that anything stolen or unlawfully obtained may be found; or

(b) any aircraft, vessel or vehicle which there is reason to suspect has been used or employed in the commission or to facilitate the commission of an offence under the provisions of Chapters XXVI, XXVIII and XXIX of the Penal Code (Cap. 63); or

(c) any person who may be reasonably suspected of having in his possession or conveying in any manner anything stolen or unlawfully obtained.

(2) No person shall be entitled to damages or compensation for loss or damage suffered by him in respect of the detention under this section of an aircraft, vessel or vehicle.

(3) For the purposes of this section, **"aircraft"**, **"vessel"** and **"vehicle"**, respectively, include everything contained in, being on or attached to an aircraft, vessel or vehicle, as the case may be, which, in the opinion of the court, forms part of the equipment of the aircraft, vessel or vehicle.

[Act No. 13 of 1967, Sch., L.N. 474/1963, Act No. 18 of 2018, Sch.]

**27. Mode of searching women**

Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

**28. Power to seize offensive weapons**

The officer or other person making an arrest may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the court or officer before which or whom the officer or person making the arrest is required by law to produce the person arrested.

*Arrest without Warrant*

**29. Arrest by police officer without warrant**

A police officer may, without an order from a magistrate and without a warrant, arrest—

(a) any person whom he suspects upon reasonable grounds of having committed a cognizable offence;

(b) any person who commits a breach of the peace in his presence;

(c) any person who obstructs a police officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody;

(d) any person in whose possession anything is found which may reasonably be suspected to be stolen property or who may reasonably be suspected of having committed an offence with reference to that thing;

(e) any person whom he suspects upon reasonable grounds of being a deserter from the armed forces;

(f) any person whom he finds in a highway, yard or other place during the night and whom he suspects upon reasonable grounds of having committed or being about to commit a felony;

(g) any person whom he finds in a street or public place during the hours of darkness and whom he suspects upon reasonable grounds of being there for an illegal or disorderly purpose, or who is unable to give a satisfactory account of himself;

(h) any person whom he suspects upon reasonable grounds of having been concerned in an act committed at a place out of Kenya which, if committed in Kenya, would have been punishable as an offence, and for which he is liable to be extradited under the Extradition (Contiguous and Foreign Countries) Act (Cap. 76) or the Extradition (Commonwealth Countries) Act (Cap. 77);

(i) any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on that person, any implement of housebreaking;

(j) any released convict committing a breach of any provision prescribed by section 344 or of any rule made thereunder;

(k) any person for whom he has reasonable cause to believe a warrant of arrest has been issued.

[Act No. 5 of 1958, s. 2, Act No. 13 of 1967, First Sch., L.N. 124/1964.]

**30. Arrest of vagabonds, habitual robbers, etc.**

An officer in charge of a police station may in the same manner arrest or cause to be arrested—

(a) any person found taking precautions to conceal his presence within the limits of the station under circumstances which afford reason to

believe that he is taking those precautions with a view to committing a cognizable offence;

(b) *Repealed by Act No. 5 of 2003, s.61*;

(c) *Repealed by Act No. 5 of 2003, s.61*.

**30. Arrest of vagabonds, habitual robbers, etc.**

An officer in charge of a police station may in the same manner arrest or cause to be arrested—

(a) any person found taking precautions to conceal his presence within the limits of the station under circumstances which afford reason to believe that he is taking those precautions with a view to committing a cognizable offence;

(b) *Repealed by Act No. 5 of 2003, s.61*;

(c) *Repealed by Act No. 5 of 2003, s.61*.

[Act No. 5 of 2003, s. 61.]

**31. Procedure when police officer deputes subordinate to arrest without warrant**

When an officer in charge of a police station requires an officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant under section 30, he shall deliver to the officer required to make the arrest an order in writing specifying the person to be arrested and the offence or other cause for which the arrest is to be made.

**32. Refusal to give name and residence**

(1) When a person who in the presence of a police officer has committed or has been accused of committing a non-cognizable offence refuses on the demand of the officer to give his name and residence, or gives a name or residence which the officer has reason to believe to be false, he may be arrested by the officer in order that his name or residence may be ascertained.

(2) When the true name and residence of the person have been ascertained he shall be released on his executing a bond, with or without sureties, to appear before a magistrate if so required:

Provided that if the person is not resident in Kenya the bond shall be secured by a surety or sureties resident in Kenya.

(3) Should the true name and residence of the person not be ascertained within twenty-four hours from the time of arrest, or should he fail to execute the bond, or, if so required, to furnish sufficient sureties, he shall forthwith be taken before the nearest magistrate having jurisdiction.

**33. Disposal of persons arrested by police officer**

A police officer making an arrest without a warrant shall, without unnecessary delay and subject to the provisions of this Code as to bail, take or send the person arrested before a magistrate having jurisdiction in the case or before an officer in charge of a police station.

**34. Arrest by private person**

(1) A private person may arrest any person who in his view commits a cognizable offence, or whom he reasonably suspects of having committed a felony.

(2) Persons found committing an offence involving injury to property may be arrested without a warrant by the owner of the property or his servants or persons authorized by him.

**35. Disposal of person arrested by private person**

(1) A private person arresting another person without a warrant shall without unnecessary delay make over the person so arrested to a police officer, or in the absence of a police officer shall take that person to the nearest police station.

(2) If there is reason to believe that the person comes under section 29, a police officer shall rearrest him.

(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which the officer has reason to believe to be false, he shall be dealt with under section 32.

(4) If there is no sufficient reason to believe that he has committed an offence he shall at once be released.

**36. Detention of persons arrested without warrant**

When a person has been taken into custody without a warrant for an offence other than murder, treason, robbery with violence and attempted robbery with violence the officer in charge of the police station to which the person has been brought may in any case and shall, if it does not appear practicable to bring that person before an appropriate subordinate court within twenty-four hours after he has been so taken into custody, inquire into the case, and, unless the offence appears to the officer to be of a serious nature, release the person on his executing a bond, with or without sureties, for a reasonable amount to appear before a subordinate court at a time and place to be named in the bond, but where a person is retained in custody he shall be brought before a subordinate court as soon as practicable:

Provided that an officer in charge of a police station may release a person arrested on suspicion on a charge of committing an offence, when, after due police inquiry, insufficient evidence is, in his opinion, disclosed on which to proceed with the charge.

[Act No. 22 of 1959, s. 6, Act No. 13 of 1988, Sch.]

**36A. Remand by court**

(1) Pursuant to Article 49(1) (f) and (g) of the Constitution, a police officer shall present a person who has been arrested in court within twenty-four hours after being arrested.

(2) Notwithstanding subsection (1), if a police officer has reasonable grounds to believe that the detention of a person arrested beyond the twenty-four hour period is necessary, the police officer shall—

(a) produce the suspect before a court; and

(b) apply in writing to the court for an extension of time for holding the suspect in custody.

(3) An application under subsection (2) shall be supported by an affidavit sworn by the police officer and shall specify—

(a) the nature of the offence for which the suspect has been arrested;

(b) the general nature of the evidence on which the suspect has been arrested;

(c) the inquiries that have been made by the police in relation to the offence and any further inquiries proposed to be made by the police; and

(d) the reasons necessitating the continued holding of the suspect in custody.

(4) In determining an application under subsection (2), the court shall consider any objection that the suspect may have in relation to the application and may—

(a) release the suspect unconditionally;

(b) release the suspect subject to such conditions as the court may impose to ensure that the suspect—

(i) does not, while on release, commit an offence, interfere with witnesses or the investigations in relation to the offence for which the suspect has been arrested;

(ii) is available for the purpose of facilitating the conduct of investigations and the preparation of any report to be submitted to the court dealing with the matter in respect of which the suspect stands accused; and

(iii) appears at such a time and place as the court may specify for the purpose of conducting preliminary proceedings or the trial or for the purpose of assisting the police with their inquiries; or

(c) having regard to the circumstances specified under subsection (5), make an order for the remand of the suspect in custody.

(5) A court shall not make an order for the remand in custody of a suspect under subsection (5)(c) unless—

(a) there are compelling reasons for believing that the suspect shall not appear for trial, may interfere with witnesses or the conduct of investigations, or commit an offence while on release;

(b) it is necessary to keep the suspect in custody for his protection, or, where the suspect is a minor, for his welfare;

(c) the suspect is serving a custodial sentence; or

(d) the suspect, having been arrested in relation to the commission of an offence, has breached a condition for his release.

(6) The court may, for the purpose of ensuring the attendance of a suspect under subsection ((4)(b)(ii) or (iii), require the suspect—

(a) to execute a bond for such reasonable amount as the court considers appropriate in the circumstances; and

(b) to provide one or more suitable sureties for the bond.

(7) Where a court makes an order for the remand of a suspect under subsection (4)(c), the period of remand shall not exceed thirty days.

(8) A police officer who detains a suspect in respect of whom an order has been issued under subsection (4)(c) may, at any time before the expiry of the period of remand specified by the court, apply to the Court for an extension of that period.

(9) The court shall not make an order for the extension of the time for remand under subsection (8) unless it is satisfied that having regard to the circumstances for which an order was issued under subsection (4)(c), it is necessary to grant the order.

(10) Where the court grants an extension under subsection (9), such period shall not, together with the period for which the suspect was first remanded in custody, exceed ninety days.

[Act No. 19 of 2014, s. 15.]

**37. Police to report apprehensions**

Officers in charge of police stations shall report to the nearest magistrate the cases of all persons arrested without warrant within the limits of their respective stations, whether those persons have been admitted to bail or not.

**38. Offence committed in magistrate's presence**

When an offence is committed in the presence of a magistrate within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions of this Code as to bail, commit the offender to custody.

**39. Arrest by magistrate**

A magistrate may at any time arrest or direct the arrest in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

*Escape and Retaking*

**40. Recapture of person escaping**

If a person in lawful custody escapes or is rescued, the person from whose custody he escapes or is rescued may immediately pursue and arrest him in any place in Kenya.

**41. Provisions of sections 22 and 23 to apply to arrests under section 40**

The provisions of sections 22 and 23 shall apply to arrests under section 40 although the person making the arrest is not acting under a warrant and is not a police officer having authority to arrest.

**42. Assistance to magistrate or police officer**

Every person is bound to assist a magistrate or police officer reasonably demanding his aid—

(a) in the taking or preventing the escape of another person whom the magistrate or police officer is authorized to arrest;

(b) in the prevention or suppression of a breach of the peace, or in the prevention of injury attempted to be committed to any railway, canal, telegraph or public property.

**42A. Disclosure by prosecution**

(1) Pursuant to Article 50(2)(j) of the Constitution, the prosecution shall inform the accused person in advance of the evidence that the prosecution intends to rely on and ensure that the accused person has reasonable access to that evidence.

(2) In proceedings under the Prevention of Terrorism Act, the Narcotic Drugs and Psychotropic Substances (Control) Act, the Prevention of Organized Crimes Act, the Proceeds of Crime and Anti-Money Laundering Act and the Counter-Trafficking in Persons Act, the prosecution may, with leave of court, not disclose certain evidence on which it intends to rely until immediately before the hearing—

(a) if the evidence may facilitate the commission of other offences;

(b) if it is not in the public interest to disclose such evidence;

(c) where there are grounds to believe that disclosing such evidence might lead to an attempt being improperly made to persuade a witness to make a statement retracting his original statement, not to appear in court or otherwise to intimidate him.

(3) Evidence shall be deemed to be in the public interest, if that evidence—

(a) touches on matters of national security;

touches on the identity of an informant where there are good reasons for believing that disclosure of the informant's identity may place the family of the informant in danger;

(b) discloses the identity of a witness who might be in danger of assault or intimidation if his identity is known;

(c) contains details which, if they became known, might facilitate the commission of other offences or alert someone not in custody that the person was a suspect;

(d) discloses some unusual form of surveillance or method of detecting crime.

(4) Disclosure of evidence to the Court and the accused person under this section shall be done in camera.

[Act No. 19 of 2014, s. 16.]

PREVENTION OF OFFENCES

*Security for Keeping the Peace and for Good Behaviour*

**43. Security for keeping the peace**

(1) Whenever a magistrate empowered to hold a subordinate court of the first class is informed that a person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, the magistrate shall examine the informant on oath and may as hereinafter provided require the person in respect of whom the information is laid to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding one year, as the magistrate thinks fit.

(2) Proceedings shall not be taken under this section unless either the person informed against, or the place where the breach of the peace or disturbance is apprehended, is within the local limits of the magistrate's jurisdiction.

(3) When a magistrate not empowered to proceed under subsection (1) has reason to believe that a person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and that a breach of the peace or disturbance cannot be prevented otherwise than by detaining the person in custody, the magistrate may, after recording his reasons, issue a warrant for his arrest (if he is not already in custody or before the court), and may send him before a magistrate empowered to deal with the case, with a copy of his reasons.

(4) A magistrate before whom a person is sent under this section may detain that person in custody until the completion of the inquiry hereinafter prescribed.

[Act No. 22 of 1959, s. 7.]

**44. Security for good behaviour from persons disseminating seditious matter**

Whenever a magistrate empowered to hold a subordinate court of the first class is informed on oath that there is within the limits of his jurisdiction a person who, within or without those limits, either orally or in writing or in any other manner, disseminates, or attempts to disseminate, or has recently disseminated, or in anyway abets the dissemination of—

(a) *Repealed by Act No. 5 of 2003, s. 62*;

(b) matter which is likely to be dangerous to peace and good order within Kenya or is likely to lead to the commission of an offence; or

(c) matter concerning a judge which amounts to libel under the Penal Code,

the magistrate may, in the manner provided in this Code, require that person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the magistrate thinks fit.

[Act No. 33 of 1958, s. 2, Act No. 5 of 2003, s. 62.]

**45. Security for good behaviour from suspected persons**

Whenever a magistrate empowered to hold a subordinate court of the first class is informed on oath that a person is taking precautions to conceal his presence within the local limits of the magistrate's jurisdiction, and that there is reason to believe that the person is taking those precautions with a view to committing an offence, the magistrate may, in the manner hereinafter provided, require that person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding one year, as the magistrate thinks fit.

**46. Security for good behaviour from habitual offenders**

Whenever a magistrate empowered to hold a subordinate court of the first class is informed on oath that a person within the local limits of his jurisdiction—

(a) is by habit a robber, housebreaker or thief; or

(b) is by habit a receiver of stolen property, knowing it to have been stolen; or

(c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property; or

(d) habitually commits or attempts to commit, or aids or abets in the commission of, an offence punishable under Chapter XXX, Chapter XXXIII or Chapter XXXVI of the Penal Code; or

(e) habitually commits or attempts to commit, or aids or abets in the commission of, offences involving a breach of the peace; or

(f) is so desperate and dangerous as to render his being at large without security hazardous to the community; or

(g) is a member of an unlawful society within the meaning of section 4(1) of the Societies Act (Cap. 108),

the magistrate may, in the manner hereinafter provided, require that person to show cause why he should not be ordered to execute a bond, with sureties, for his good

behaviour for such period, not exceeding three years, as the magistrate thinks fit, or why an order (hereinafter in this Part referred to as a restriction order) should not be made that he be taken to the district in which his home is situated and be restricted to that district during a period of three years:

Provided that where a magistrate is of the opinion that, having regard to all the circumstances of the case, it is desirable that the person be restricted to some other district he may specify that the person shall be so restricted.

[Act No. 57 of 1955, s. 4, Act No. 25 of 1971, 5.]

**47. Order to be made**

When a magistrate acting under section 43, section 44, section 45 or section 46 deems it necessary to require a person to show cause, he shall make an order in writing setting out—

(a) the substance of the information received;

(b) in the case of a restriction order, the district to which the person concerned is to be restricted for a period of three years;

(c) in any other case—

(i) the amount of the bond to be executed;

(ii) the term for which it is to be in force; and

(iii) the number, character and class of securities, if any, required.

[Act No. 33 of 1958, s. 3, Act No. 25 of 1971, s. 6.]

**48. Procedure in case of person present in court**

If the person in respect of whom an order under section 47 is made present in court, it shall be read over to him or, if he so desires, the substance thereof shall be explained to him.

**49. Summons or warrant in case of person not so present**

If the person in respect of whom an order is made under section 47 is not present in court, the magistrate shall issue a summons requiring him to appear, or, when the person is in custody, a warrant directing the officer in whose custody he is to bring him before the court:

Provided that, whenever it appears to the magistrate upon the report of a police officer or upon other information (the substance of which report or information shall be recorded by the magistrate) that there is reason to fear the commission of a breach of the peace, and that a breach of the peace cannot be prevented otherwise than by the immediate arrest of the person, the magistrate may at any time issue a warrant for his arrest.

**50. Copy of order under section 47 to accompany summons or warrant**

Every summons or warrant issued under section 49 shall be accompanied by a copy of the order made under section 47, and the copy shall be delivered by the officer serving or executing the summons or warrant to the person served with or arrested under it.

**51. Power to dispense with personal attendance**

The magistrate may, if he sees sufficient cause, dispense with the personal attendance of a person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by an advocate.

**52. Inquiry as to truth of information**

(1) When an order under section 47 has been read or explained under section 48 to a person present in court, or when any person appears or is brought before a magistrate in compliance with or in execution of a summons or warrant issued under section 49, the magistrate shall proceed to inquire into the truth of the information upon which the action has been taken, and to take such further evidence as may appear necessary.

(2) The inquiry shall be made, as nearly as may be practicable, in the manner prescribed by this Code for conducting trials and recording evidence in trials before subordinate courts.

(3) For the purposes of this section, the fact that a person comes within the provisions of section 46 may be proved by evidence of general repute or otherwise.

(4) Where two or more persons have been associated together in the matter under inquiry they may be dealt with in the same or separate inquiries, as the magistrate thinks just.

**53. Order to give security**

(1) If upon an inquiry it is proved that it is necessary for keeping the peace or maintaining good behaviour that the person in respect of whom the inquiry is made should be made subject to a restriction order or should execute a bond, with or without sureties, the magistrate shall make an order accordingly:

Provided that—

(i) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 47;

(ii) the amount of a bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;

(iii) when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

(2) A person in respect of whom an order is made under this section may appeal to the High Court, and the provisions of Part XI (relating to appeals) shall apply to the appeal.

[Act No. 22 of 1959, s. 9, Act No. 25 of 1971, Sch.]

**54. Discharge of person informed against**

If on an inquiry under section 52 it is not proved that it is necessary for keeping the peace or maintaining good behaviour that the person in respect of whom the inquiry is made should be subject to a restriction order or should execute a bond, the magistrate shall make an entry on the record to that effect, and, if the person is in custody only for the purposes of the inquiry, shall release him, or, if he is not in custody, shall discharge him.

[Act No. 25 of 1971, Sch.]

*Proceedings in all Cases Subsequent to Order to Furnish Security*

**55. Commencement of period for which security is required**

(1) If a person in respect of whom an order is made under section 47 or section 53 is, at the time the order is made, sentenced to or undergoing a sentence of imprisonment, the period of such order shall commence on the expiration of the sentence.

(2) In other cases the period shall commence on the date of the order unless the magistrate, for sufficient reason, fixes a later date.

[Act No. 25 of 1971, Sch.]

**56. Contents of bond**

The bond to be executed by a person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit or the aiding, abetting, counselling or procuring the commission of an offence punishable with imprisonment, wherever it may be committed, shall be a breach of the bond.

**57. Power to reject sureties**

A magistrate may refuse to accept a surety offered under any of the preceding sections of this Part on the ground that, for reasons to be recorded by the magistrate, the surety is an unfit person.

**58. Procedure on failure of person to give security**

(1) If a person ordered to give security does not give security on or before the date on which the period for which security is to be given commences, he shall, except in the case mentioned in subsection (2), be committed to prison, or, if he is already in prison, be detained in prison until that period expires or until within that period he gives the security to the court or magistrate who made the order requiring it.

(2) When a person has been ordered by a magistrate to give security for a period exceeding one year, the magistrate shall, if the person does not give security, issue a warrant directing him to be detained in prison pending the orders of the High Court, and the proceedings shall be laid as soon as conveniently may be before that court.

(3) The High Court, after examining the proceedings and requiring from the magistrate any further information or evidence which it thinks necessary, may make such order in the case as it thinks fit.

(4) The period, if any, for which any person is imprisoned for failure to give security shall not exceed three years.

(5) If the security is tendered to the officer in charge of the prison, he shall forthwith refer the matter to the court or magistrate who made the order, and shall await the orders of the court or magistrate.

[Act No. 26 of 1957, s. 2.]

**59. Power to release persons imprisoned for failure to give security**

Whenever a magistrate empowered to hold a subordinate court of the first class is of the opinion that a person imprisoned for failing to give security may be released without hazard to the community, the magistrate shall make an immediate report of the case for the orders of the High Court, and that court may order the person to be discharged.

**60. Power of High Court to cancel bond**

The High Court may at any time, for sufficient reasons to be recorded in writing, cancel any order made under section 47 or section 53.

[Act No. 25 of 1971, Sch.]

**61. Discharge of surities**

(1) A surety for the peaceable conduct or good behaviour of another person may at any time apply to a magistrate empowered to hold a subordinate court of the first class to cancel a bond executed under any of the preceding sections of this Part within the local limits of his jurisdiction.

(2) On the application being made, the magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom the surety is bound to appear or to be brought before him.

(3) When the person appears or is brought before the magistrate, the magistrate shall cancel the bond and shall order the person to give, for the unexpired portion of the term of the bond, fresh security of the same description as the original security.

(4) Every such order shall for the purposes of sections 56, 57, 58 and 59 be deemed to be an order made under section 53.

**61A. Breach of restriction order**

A person who, whilst subject to a restriction order, is found outside the district named in the order without the written permission of the chief officer of police of the district, or who fails to comply with any condition attached to that permission, shall be guilty of an offence and liable to imprisonment for a term not exceeding twelve months.

[Act No. 25 of 1971, s. 7.]

PREVENTIVE ACTION OF THE POLICE

**62. Police to prevent cognizable offences**

A police officer may interpose for the purpose of preventing, and shall to the best of his ability prevent, the commission of a cognizable offence.

**63. Information of design to commit such offences**

A police officer receiving information of a design to commit a cognizable offence shall communicate that information to the police officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of the offence.

**64. Arrest to prevent such offences**

A police officer knowing of a design to commit a cognizable offence may arrest, without orders from a magistrate and without a warrant, the person so designing, if it appears to the officer that the commission of the offence cannot otherwise be prevented.

**65. Prevention of injury to public property**

A police officer may of his own authority interpose to prevent injury attempted to be committed in his view to public property, movable or immovable, or the removal of or injury to any public landmark or buoy or other mark used for navigation.

## PART IV – PROVISIONS RELATING TO ALL CRIMINAL INVESTIGATIONS PLACE OF TRIAL

### 66. General authority of courts

Every court has authority to cause to be brought before it any person who is within the local limits of its jurisdiction and is charged with an offence committed within Kenya, or which according to law may be dealt with as if it had been committed within Kenya, and to deal with the accused person according to its jurisdiction.

### 67. Accused person to be sent to district where offence committed

Where a person accused of having committed an offence within Kenya has escaped or removed from the province or district within which the offence was committed and is found within another province or district, the court within whose jurisdiction he is found shall cause him to be brought before it, and shall, unless authorized to proceed in the case, send him in custody to the court within whose jurisdiction the offence is alleged to have been committed or require him to give security for his surrender to that court there to answer the charge and to be dealt with according to law.

### 68. Removal of accused person under warrant

(1) Where a person is to be sent in custody in pursuance of section 67, a warrant shall be issued by the court within whose jurisdiction he is found, and that warrant shall be sufficient authority to any person to whom it is directed to receive and detain the person therein named and to carry him and deliver him up to the court within whose district the offence was committed or may be tried.

(2) The person to whom the warrant is directed shall execute it according to its tenor without delay.

[Act No. 13 of 1982, First Sch.]

### 69. Powers of High Court

The High Court may inquire into and try any offence subject to its jurisdiction at any place where it has power to hold sittings.

[Act No. 13 of 1982, First Sch., Act No. 5 of 2003, s. 63.]

### 70. Place and date of sessions of the High Court

(1) For the exercise of its original criminal jurisdiction the High Court shall hold sittings at such places and on such days as the Chief Justice may direct.

(2) The Registrar of the High Court shall ordinarily give notice beforehand of all such sittings.

[Act No. 13 of 1982, First Sch.]

### 71. Ordinary place of inquiry and trial

Subject to the provisions of section 69, and to the powers of transfer conferred by sections 79 and 81, every offence shall ordinarily be tried by a court within the local limits of whose jurisdiction it was committed, or within the local limits of whose jurisdiction the accused was apprehended, or is in custody on a charge for the offence, or has appeared in answer to a summons lawfully issued charging the offence.

[Act No. 13 of 1982, First Sch.]

**72. Trial at place where Act done or where consequence of offence ensures**

When a person is accused of the commission of an offence by reason of anything which has been done or of any consequence which has ensued, the offence may be tried by a court within the local limits of whose jurisdiction the thing has been done or the consequence has ensued.

[Act No. 13 of 1982, First Sch.]

**73. Trial where offence is connected with another offence**

When an act is an offence by reason of its relation to another act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be tried by a court within the local limits of whose jurisdiction either act was done.

[Act No. 13 of 1982, First Sch.]

**74. Trial where place of offence is uncertain**

When—

(a) it is uncertain in which of several local areas an offence was committed; or

(b) an offence is committed partly in one local area and partly in another; or

(c) an offence is a continuing one, and continues to be committed in more than one local areas; or

(d) an offence consists of several acts done in different local areas,

it may be tried by a court having jurisdiction over any of those local areas.

[Act No. 13 of 1982, First Sch.]

**75. Offence committed on a journey**

An offence committed whilst the offender is in the course of performing a journey or voyage may be tried by a court through or into the local limits of whose jurisdiction the offender or the person against whom or the thing in respect of which the offence was committed passed in the course of that journey or voyage.

[Act No. 13 of 1982, First Sch.]

**76. High Court to decide in cases of doubt**

(1) Whenever a doubt arises as to the court by which an offence should be tried, the court entertaining the doubt may report the circumstances to the High Court, and the High Court shall decide by which court the offence shall be inquired into or tried.

(2) Any such decision of the High Court shall be final and conclusive, except that it shall be open to an accused person to show that no court in Kenya has jurisdiction in the case.

[Act No. 13 of 1982, First Sch.]

**77. Court to be open**

(1) Subject to subsection (2), the place in which a criminal court is held for the purpose of trying an offence shall be deemed an open court to which the public generally may have access, so far as it can conveniently contain them:

Provided that the presiding judge or magistrate may order at any stage of the trial of any particular case that the public generally or any particular person shall not have access to or remain in the room or building used by the court.

(2) Notwithstanding the provisions of subsection (1), the proceedings in the trial of any case under sections 140, 141, 145, 166 and 167 of the Penal Code (Cap. 63) shall be held in private and no person shall, in relation to such trial, publish or cause to be published by any means—

(a) any particulars calculated to lead to the identification of the victim; or

(b) any picture of the victim.

(3) A person who contravenes the provisions of subsection (2) commits an offence and is liable on conviction—

(a) in the case of an individual, to a fine not exceeding one hundred thousand shillings; and

(b) in the case of a body corporate, to a fine not exceeding five hundred thousand shillings.

[Act No. 13 of 1982, First Sch., Act No. 5 of 2003, s. 64.]

**77A.** *Repealed by Act No. 5 of 2003, s. 65.*

*Transfer of Cases*

**78. Transfer of case where offence committed outside jurisdiction**

(1) If upon the hearing of a complaint it appears that the cause of complaint arose outside the limits of the jurisdiction of the court before which the complaint has been brought, the court may, on being satisfied that it has no jurisdiction, direct the case to be transferred to the court having jurisdiction where the cause of complaint arose.

(2) If the accused person is in custody and the court directing the transfer thinks it expedient that custody should be continued, or, if he is not in custody, that he should be placed in custody, the court shall direct the offender to be taken by a police officer before the court having jurisdiction where the cause of complaint arose, and shall give a warrant for that purpose to the officer, and shall deliver to him the complaint and recognizances, if any, taken by the court, to be delivered to the court before whom the accused person is to be taken; and the complaint and recognizances, if any, shall be treated to all intents and purposes as if they had been taken by the last-mentioned court.

(3) If the accused person is not continued or placed in custody, the court shall inform him that it has directed the transfer of the case, and thereupon the provisions of subsection (2) respecting the transmission and validity of the documents in the case shall apply.

**79. Transfer of cases between magistrates**

A magistrate holding a subordinate court of the first class—

(a) may transfer a case of which he has taken cognizance to any magistrate holding a subordinate court empowered to try that case within the local limits of the first class subordinate courts' jurisdiction; and

(b) may direct or empower a magistrate holding a subordinate court of the second class who has taken cognizance of a case and whether evidence has been taken in that case or not, to transfer it for trial to himself or to any other specified magistrate within the local limits of his jurisdiction who is competent to try the accused and that magistrate shall dispose of the case accordingly.

[Act No. 17 of 1967, s. 27, Act No. 13 of 1982, First Sch., Act No. 5 of 2003, s. 66.]

**80. Transfer of part-heard cases**

If in the course of any trial before a magistrate the evidence appears to warrant a presumption that the case is one which should be tried by some other magistrate, he shall stay proceedings and submit the case with a brief report thereon to a magistrate holding a subordinate court of the first class empowered to direct the transfer of the case under section 79.

[Act No. 13 of 1982, First Sch., Act No. 5 of 2003, s. 67.]

**81. Power of High Court to change venue**

(1) Whenever it is made to appear to the High Court—

(a) that a fair and impartial trial cannot be had in any criminal court subordinate thereto; or

(b) that some question of law of unusual difficulty is likely to arise; or

(c) that a view of the place in or near which any offence has been committed may be required for the satisfactory trial of the offence; or

(d) that an order under this section will tend to the general convenience of the parties or witnesses; or

(e) that such an order is expedient for the ends of justice or is required by any provision of this Code,

it may order—

(i) that an offence be tried by a court not empowered under the preceding sections of this Part but in other respects competent to try the offence;

(ii) that a particular criminal case or class of cases be transferred from a criminal court subordinate to its authority to any other criminal court of equal or superior jurisdiction;

(iii) that an accused person be committed for trial to itself.

(2) The High Court may act on the report of the lower court, or on the application of a party interested, or on its own initiative.

(3) Every application for the exercise of the power conferred by this section shall be made by motion, which shall, except when the applicant is the Director of Public Prosecutions, be supported by affidavit.

(4) An accused person making any such application shall give to the Director of Public Prosecutions notice in writing of the application, together with a copy of the grounds on which it is made, and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of notice and the hearing of the application.

(5) When an accused person makes any such application, the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if convicted, pay the costs of the prosecutor.

[Act No. 13 of 1982, First Sch., Act No. 12 of 2012, Sch.]

CONTROL BY REPUBLIC IN CRIMINAL PROCEEDINGS

**82. Power of Director of Public Prosecutions to enter nolle prosequi**

(1) In any criminal case and at any stage thereof before verdict or judgment, as the case may be, the Director of Public Prosecutions may enter a *nolle prosequi*, either by stating in court or by informing the court in writing that the Republic intends that the proceedings shall not continue, and thereupon the accused shall be at once discharged in respect of the charge for which the *nolle prosequi* is entered, and if he has been committed to prison shall be released, or if on bail his recognizances shall be discharged; but discharge of an accused person shall not operate as a bar to subsequent proceedings against him on account of the same facts.

(2) If the accused is not before the court when a *nolle prosequi* is entered, the registrar or clerk of the court shall forthwith cause notice in writing of the entry of the *nolle prosequi* to be given to the keeper of the prison in which the accused may be detained.

[Act No. 13 of 1967, First Sch., Act No. 13 of 1982, First Sch., Act No. 5 of 2003, s. 68, Act No. 12 of 2012, Sch.]

**83. Delegation of powers by Director of Public Prosecution**

*The Director of Public Prosecutions may order in writing that all or any of the powers vested in him by sections 81 and 82, and by Part VIII, be vested for the time being in the Solicitor-General, the Deputy Public Prosecutor, the Assistant Deputy Public Prosecutor or a state counsel, and the exercise of those powers by the Solicitor-General, the Deputy Public Prosecutor, the Assistant Deputy Public Prosecutor or a state counsel shall then operate as if they had been exercised by the Director of Public Prosecutions:

Provided that the Director of Public Prosecutions may in writing revoke an order made by him under this section.

[Act No. 39 of 1951, s. 3, Act No. 12 of 1984, Sch., Act No. 12 of 2012, Sch.]

**84.** *Repealed by Act No. 5 of 2003, s. 69.*

APPOINTMENT OF PUBLIC PROSECUTORS AND CONDUCT OF PROSECUTIONS

**85. Power to appoint public prosecutors**

(1) The Director of Public Prosecutions, by notice in the *Gazette*, may appoint public prosecutors for Kenya or for any specified area thereof, and either generally or for any specified case or class of cases.

(2) The Director of Public Prosecutions, by writing under his hand, may appoint any advocate of the High Court or person employed in the public service, to be a public prosecutor for the purposes of any case.

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*Powers delegated to the Solicitor-General; Deputy Public Prosecutor; Assistant Deputy Public Prosecutor; Principal State Counsel; Provincial State Counsel, Central and Eastern Provinces; Provincial State Counsel, Coast Province; Provincial State Counsel, Nyanza Province; Provincial State Counsel, Rift Valley Province; and Provincial State Counsel, Western Province. (L.N.106/1984.)

(3) Every public prosecutor shall be subject to the express directions of the Director of Public Prosecutions.

[Act No. 22 of 1959, s. 10, Act No. 7 of 2007, Sch., Act No. 12 of 2012, Sch.]

**86. Powers of public prosecutors**

A public prosecutor may appear and plead without any written authority before any court in which any case of which he has charge is under trial or appeal; and if a private person instructs an advocate to prosecute in any such case the public prosecutor may conduct the prosecution, and the advocate so instructed shall act therein under his directions.

[Act No. 28 of 1961, Sch., Act No. 13 of 1982, First Sch., Act No. 5 of 2003.]

**87. Withdrawal from prosecution in trials before subordinate courts**

In a trial before a subordinate court a public prosecutor may, with the consent of the court or on the instructions of the Director of Public Prosecutions**, at any time before judgment is pronounced, withdraw from the prosecution of any person, and upon withdrawal—

(a) if it is made before the accused person is called upon to make his defence, he shall be discharged, but discharge of an accused person shall not operate as a bar to subsequent proceedings against him on account of the same facts;

(b) if it is made after the accused person is called upon to make his defence, he shall be acquitted.

[Act No. 12 of 2012, Sch.]

**88. Permission to conduct prosecution**

(1) A magistrate trying a case may permit the prosecution to be conducted by any person, but no person other than a public prosecutor or other officer generally or specially authorized by the Director of Public Prosecutions in this behalf shall be entitled to do so without permission.

(2) Any such person or officer shall have the same power of withdrawing from the prosecution as is provided by section 87, and the provisions of that section shall apply to withdrawal by that person or officer.

(3) Any person conducting the prosecution may do so personally or by an advocate.

[L.N. 299/1956, L.N. 172/1960, L.N. 474/1963, Act No. 13 of 1982, First Sch., Act No. 12 of 2012, Sch.]

## INSTITUTION OF PROCEEDINGS

*Making of Complaint*

**89. Complaint and charge**

(1) Proceedings may be instituted either by the making of a complaint or by the bringing before a magistrate of a person who has been arrested without warrant.

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**Powers delegated to the Solicitor-General; Deputy Public Prosecutor; Assistant Deputy Public Prosecutor; Principal State Counsel; Provincial State Counsel, Central and Eastern Provinces; Provincial State Counsel, Coast Province; Provincial State Counsel, Nyanza Province; Provincial State Counsel, Rift Valley Province; and Provincial State Counsel, Western Province. (L.N. 106/1984.)

(2) A person who believes from a reasonable and probable cause that an offence has been committed by another person may make a complaint thereof to a magistrate having jurisdiction.

(3) A complaint may be made orally or in writing, but, if made orally, shall be reduced to writing by the magistrate, and, in either case, shall be signed by the complainant and the magistrate.

(4) The magistrate, upon receiving a complaint, or where an accused person who has been arrested without a warrant is brought before him, shall, subject to the provisions of subsection (5), draw up or cause to be drawn up and shall sign a formal charge containing a statement of the offence with which the accused is charged, unless the charge is signed and presented by a police officer.

(5) Where the magistrate is of the opinion that a complaint or formal charge made or presented under this section does not disclose an offence, the magistrate shall make an order refusing to admit the complaint or formal charge and shall record his reasons for the order.

(6) *Repealed by Act No. 10 of 1983, Sch.*

[Act No. 10 of 1983, Sch.]

**90. Issue of summons or warrant**

(1) Upon receiving a complaint and having signed the charge in accordance with section 89, the magistrate may issue either a summons or a warrant to compel the attendance of the accused person before a subordinate court having jurisdiction to try the offence alleged to have been committed:

Provided that a warrant shall not be issued in the first instance unless the complaint has been made upon oath either by the complainant or by a witness or witnesses.

(2) The validity of proceedings taken in pursuance of a complaint or charge shall not be affected either by a defect in the complaint or charge or by the fact that a summons or warrant was issued without a complaint or charge.

(3) A summons or warrant may be issued on a Sunday.

[Act No. 13 of 1982, First Sch.]

PROCESSES TO COMPEL THE APPEARANCE OF ACCUSED PERSONS

*Summons*

**91. Form and contents of summons**

(1) Every summons issued by a court under this Code shall be in writing, in duplicate, signed and sealed by the presiding officer of the court or by such other officer as the High Court may from time to time by rule direct.

(2) Every summons shall be directed to the person summoned and shall require him to appear at a time and place to be therein appointed before a court having jurisdiction to deal with the charge, and shall state shortly the offence with which the person against whom it is issued is charged.

[Act No. 3 of 1982, First Sch.]

**92. Service of summons**

(1) Every summons shall be served either by a police officer, an officer of the court issuing it or by such other person as the court may direct, and shall, if practicable, be served personally on the person summoned by delivering or tendering to him one of the duplicates of the summons.

(2) Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

**93. Service when person summoned cannot be found**

Where a person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with an adult member of his family or with his servant residing with him or with his employer; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

**94. Procedure when service cannot be effected as before provided**

If service in the manner provided by sections 92 and 93 cannot by the exercise of due diligence be effected, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides and thereupon the summons shall be deemed to have been duly served.

**95. Service on servant of Government**

Where the person summoned is in the active service of the Government, the court issuing the summons shall ordinarily send it in duplicate to the head of the office in which that person is employed, and the head shall thereupon cause the summons to be served in the manner provided by section 92 and shall return it to the court under his signature with the endorsement required by that section, and the signature shall be evidence of the service.

[Act No. 22 of 1959, s. 11, Act No. 13 of 1967, First Sch., L.N. 474/1963, Act No. 13 of 1982, First Sch.]

**96. Service on company**

Service of a summons on an incorporated company or other body corporate may be effected by serving it on the secretary, local manager or other principal officer of the corporation or by registered letter addressed to the principal officer of the corporation in Kenya at the registered office of the company or body corporate; and in the latter case service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

[L.N. 199/1966.]

**97. Service outside local limits of jurisdiction**

When a court desires that a summons issued by it shall be served at a place outside the local limits of its jurisdiction, it shall send the summons in duplicate to a magistrate within the local limits of whose jurisdiction the person summoned resides or is to be there served.

**98. Proof of service when serving officer not present**

(1) Where the officer who has served a summons is not present at the hearing of the case, and where a summons issued by a court has been served outside the local limits of its jurisdiction, an affidavit purporting to be made before a magistrate that the summons has been served, and a duplicate of the summons purporting to be endorsed in the manner hereinbefore provided by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

(2) The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the court.

**99. Power to dispense with personal attendance of accused**

(1) Subject to the following provisions of this section, whenever a magistrate issues a summons in respect of an offence other than a felony, he may if he sees reason to do so, and shall when the offence with which the accused is charged is punishable only by fine, or only by fine or imprisonment not exceeding three months, or by fine and such imprisonment, dispense with the personal attendance of the accused, if the accused pleads guilty in writing or appears by an advocate.

(2) The magistrate trying a case may, at any subsequent stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce his attendance in the manner hereinafter provided, but no such warrant shall be issued unless a complaint or charge has been made upon oath.

(3) If a magistrate imposes a fine on an accused person whose personal attendance has been dispensed with under this section, and the fine is not paid within the time prescribed for payment, the magistrate may forthwith issue a summons calling upon the accused person to show cause why he should not be committed to prison for such term as the magistrate may then specify; and if the accused person does not attend upon the return of the summons the magistrate may forthwith issue a warrant and commit the person to prison for such term as the magistrate may then fix.

(4) If, in any case in which under this section the attendance of an accused person is dispensed with, previous convictions are alleged against that person and are not admitted in writing or through that person's advocate, the magistrate may adjourn the proceedings and direct the personal attendance of the accused, and, if necessary, enforce his attendance in the manner provided hereafter in this Part.

(5) Whenever the attendance of an accused person has been so dispensed with and his attendance is subsequently required, the cost of any adjournment for that purpose shall be borne in any event by the accused.

[Act No. 13 of 1982, First Sch.]

*Warrant of Arrest*

**100. Warrant after issue of summons**

Notwithstanding the issue of a summons, a warrant may be issued at any time before or after the time appointed in the summons for the appearance of the accused.

**101. Warrant on disobedience of summons**

If the accused does not appear at the time and place appointed in and by the summons, and his personal attendance has not been dispensed with under section 99, the court may issue a warrant to apprehend him and cause him to be brought before it; but no warrant shall be issued unless a complaint has been made upon oath.

**102. Form, contents and duration of warrant**

(1) Every warrant of arrest shall be under the hand of the judge or magistrate issuing it and shall bear the seal of the court.

(2) Every warrant shall state shortly the offence with which the person against whom it is issued is charged, and shall name or otherwise describe that person, and shall order the person or persons to whom it is directed to apprehend the person against whom it is issued and bring him before the court issuing the warrant, or before some other court having jurisdiction in the case, to answer to the charge therein mentioned and to be further dealt with according to law.

(3) A warrant shall remain in force until it is executed or until it is cancelled by the court which issued it.

**103. Court may direct security to be taken**

(1) A court issuing a warrant for the arrest of a person in respect of an offence other than murder, treason or rape may direct by endorsement on the warrant that, if the person executes a bond with sufficient sureties for his attendance before the court at a specified time and thereafter until otherwise directed by the court, the officer to whom the warrant is directed shall take the security and shall release the person from custody.

(2) The endorsement shall state—

(a) the number of sureties;

(b) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound; and

(c) the time at which he is to attend before the court.

(3) Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the court.

**104. Warrants, to whom directed**

(1) A warrant of arrest may be directed to one or more police officers, or to one police officer and to all other police officers of the area within which the court has jurisdiction, or generally to all police officers of the area:

Provided that a court issuing a warrant may, if its immediate execution is necessary, and no police officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same.

(2) When a warrant is directed to more officers or persons than one, it may be executed by all or by any one or more of them.

**105. Warrants may be directed to landholders, etc.**

(1) A magistrate empowered to hold a subordinate court of the first class may direct a warrant to a landholder, farmer or manager of land within the local limits of his jurisdiction for the arrest of an escaped convict or person who has been accused of a cognizable offence and has eluded pursuit.

(2) The landholder, farmer or manager shall acknowledge in writing the receipt of the warrant and shall execute it if the person for whose arrest it was issued is in or enters on his land or farm or the land under his charge.

(3) When the person against whom the warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a magistrate having jurisdiction, unless security is taken under section 103.

**106. Execution of warrant directed to police officer**

A warrant directed to a police officer may also be executed by another police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

**107. Notification of substance of warrant**

The police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

**108. Person arrested to be brought before court without delay**

The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 103 as to security) without unnecessary delay bring the person arrested before the court before which he is required by law to produce that person.

**109. Where warrant may be executed**

A warrant of arrest may be executed at any place in Kenya.

**110. Forwarding of warrants for execution outside jurisdiction**

(1) When a warrant of arrest is to be executed outside the local limits of the jurisdiction of the court issuing it, the court may, instead of directing the warrant to a police officer, forward it by post or otherwise to a magistrate within the local limits of whose jurisdiction it is to be executed.

(2) The magistrate to whom a warrant is so forwarded shall endorse his name thereon, and, if practicable, cause it to be executed in the manner hereinbefore provided within the local limits of his jurisdiction.

**111. Warrant directed to police officer for execution outside jurisdiction**

(1) When a warrant of arrest directed to a police officer is to be executed outside the local limits of the jurisdiction of the court issuing it, he shall take it for endorsement to a magistrate within the local limits of whose jurisdiction it is to be executed.

(2) The magistrate shall endorse his name thereon, and the endorsement shall be sufficient authority to the police officer to whom the warrant is directed to execute it within those limits, and the local police officers shall, if so required, assist that officer in executing the warrant.

(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the magistrate within the local limits of whose jurisdiction the warrant is to be executed will prevent its execution, the police officer to whom it is directed may execute it without endorsement in any place outside the local limits of the jurisdiction of the court which issued it.

**112. Procedure on arrest of person outside jurisdiction**

(1) When a warrant of arrest is executed outside the local limits of the jurisdiction of the court by which it was issued, the person arrested shall, unless the court which issued the warrant is within twenty miles of the place of arrest, or is nearer than the magistrate within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 103, be taken before the magistrate within the local limits of whose jurisdiction the arrest was made.

(2) The magistrate shall, if the person arrested appears to be the person intended by the court which issued the warrant, direct his removal in custody to that court:

Provided that if the person has been arrested for an offence other than murder, treason or rape, and he is ready and willing to give bail to the satisfaction of the magistrate, or if a direction has been endorsed under section 103 on the warrant and the person is ready and willing to give the security required by the direction, the magistrate shall take the bail or security, as the case may be, and shall forward the bond to the court which issued the warrant.

(3) Nothing in this section shall prevent a police officer from taking security under section 103.

**113. Irregularities in warrant**

An irregularity or defect in the substance or form of a warrant, and any variance between it and the written complaint or information, or between either and the evidence produced on the part of the prosecution at a trial, shall not affect the validity of any proceedings at or subsequent to the hearing of the case, but, if a variance appears to the court to be such that the accused has been thereby deceived or misled, the court may, at the request of the accused, adjourn the hearing of the case to some future date, and in the meantime remand the accused or admit him to bail.

[Act No. 13 of 1982, First Sch.]

*Miscellaneous Provisions regarding Processes*

**114. Power to take bond for appearance**

Where a person for whose appearance or arrest the officer presiding in a court is empowered to issue a summons or warrant is present in court, the officer may require the person to execute a bond, with or without sureties, for his appearance in that court.

**115. Arrest for breach of bond**

When a person who is bound by a bond taken under this Code to appear before a court does not so appear, the officer presiding may issue a warrant directing that the person be arrested and produced before him.

**116. Power of court to order prisoner to be brought before it**

(1) Where a person for whose appearance or arrest a court is empowered to issue a summons or warrant is confined in prison within the local limits of the jurisdiction of that court, the court may issue an order to the officer in charge of the prison requiring him to bring the prisoner in proper custody, at a time to be named in the order, before the court.

(2) The officer so in charge, on receipt of the order, shall provide for the safe custody of the prisoner during his absence from the prison.

**117. Provisions of this Part generally applicable to summonses and warrants**

The provisions of this Part relating to a summons and warrant, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

[Act No. 10 of 1983, Sch.]

SEARCH WARRANTS

**118. Power to issue search warrant**

Where it is proved on oath to a court or a magistrate that anything upon, with or in respect of which an offence has been committed, or anything which is necessary for the conduct of an investigation into an offence, is, or is reasonably suspected to be, in any place, building, ship, aircraft, vehicle, box or receptacle, the court or a magistrate may by written warrant (called a search warrant) authorize a police officer or a person named in the search warrant to search the place, building, ship, aircraft, vehicle, box or receptacle (which shall be named or described in the warrant) for that thing and, if the thing be found, to seize it and take it before a court having jurisdiction to be dealt with according to law.

[Act No. 22 of 1959, s. 12, Act No. 10 of 1983, Sch.]

**118A. Ex-parte application for search warrant**

An application for a search warrant under section 118 shall be made ex-parte to a magistrate.

**119. Execution of search warrants**

A search warrant may be issued on any day (including Sunday), and may be executed on any day (including Sunday) between the hours of sunrise and sunset, but the court may, by the warrant authorize the police officer or other person to whom it is addressed to execute it at any hour.

[Act No. 10 of 1983, Sch.]

**120. Persons in charge of closed place to allow ingress and egress**

(1) Whenever a building or other place liable to search is closed, a person residing in or being in charge of the building or place shall, on demand of the police officer or other person executing the search warrant and on production of the warrant, allow him free ingress thereto and egress therefrom and afford all reasonable facilities for a search therein.

(2) If ingress into or egress from the building or other place cannot be so obtained, the police officer or other person executing the search warrant may proceed in the manner prescribed by section 22 or section 23.

(3) Where a person in or about the building or place is reasonably suspected of concealing about his person an article for which search should be made, that person may be searched.

(4) If that person is a woman the provisions of section 27 shall be observed.

**121. Detention of property seized**

(1) When anything is so seized and brought before a court, it may be detained until the conclusion of the case or the investigation, reasonable care being taken for its preservation.

(2) If an appeal is made, or if a person is committed for trial, the court may order it to be further detained for the purpose of the appeal or the trial.

(3) If no appeal is made, or if no person is committed for trial, the court shall direct the thing to be restored to the person from whom it was taken, unless the court sees fit or is authorized or required by law to dispose of it otherwise.

**122. Provisions applicable to search warrants**

The provisions of subsections (1) and (3) of section 102, and sections 104, 106, 109, 110 and 111, shall, so far as may be, apply to search warrants issued under section 118.

PROVISIONS AS TO BAIL

**123. Bail in certain cases**

(1) When a person, other than a person accused of murder, treason, robbery with violence, attempted robbery with violence and any related offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a court, and is prepared at any time while in the custody of that officer or at any stage of the proceedings before that court to give bail, that person may be admitted to bail:

Provided that the officer or court may, instead of taking bail from the person, release him on his executing a bond without sureties for his appearance as provided hereafter in this Part.

(2) The amount of bail shall be fixed with due regard to the circumstances of the case, and shall not be excessive.

(3) The High Court may in any case direct that an accused person be admitted to bail or that bail required by a subordinate court or police officer be reduced.

[Act No. 22 of 1959, s. 13, Act No. 6 of 1976, Sch., Act No. 13 of 1978, Sch., Act No. 19 of 1984, Sch., Act No. 19 of 1985, Sch., Act No. 7 of 1990, Sch., Act No. 14 of 1991, Sch., Act No. 5 of 2003, s. 71.]

**123A. Exception to right to bail**

(1) Subject to Article 49(1)(h) of the Constitution and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—

(a) the nature or seriousness of the offence;

(b) the character, antecedents, associations and community ties of the accused person;

(c) the defendant's record in respect of the fulfillment of obligations under previous grants of bail; and;

(d) the strength of the evidence of his having committed the offence;

(2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person—

(a) has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;

(b) should be kept in custody for his own protection.

[Act No. 18 of 2014, Sch.]

**124. Bail bond**

Before a person is released on bail or on his own recognizance, a bond for such sum as the court or police officer thinks sufficient shall be executed by that person, and, when he is released on bail, by one or more sufficient sureties, conditioned that the person shall attend at the time and place mentioned in the bond and shall continue so to attend until otherwise directed by the court or police officer.

[L.N. 142/1963.]

**125. Discharge from custody**

(1) As soon as the bond has been executed, the person for whose appearance it has been executed shall be released, and when he is in prison the court admitting him to bail shall issue an order of release to the officer in charge of the prison and the officer on receipt of the order shall release him.

(2) Nothing in this section or in section 123 shall require the release of a person liable to be detained for some matter other than that in respect of which the bond was executed.

**126. Deposit instead of recognizance**

When a person may be required by a court or officer to execute a bond, with or without sureties, the court or officer may, except in the case of a bond for good behaviour, require him to deposit a sum of money to such amount as the court or officer may fix, or to deposit property, in lieu of executing a bond.

[Act No. 13 of 1967, First Sch., Act No. 4 of 1974, Sch.]

**127. Power to order sufficient bail when that first taken is insufficient**

If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the court may issue a warrant of arrest directing that the person released on bail be brought before it, and may order him to find sufficient sureties, and on his failing so to do may commit him to prison.

**128. Discharge of sureties**

(1) All or any of the sureties for the appearance and attendance of a person released on bail may at any time apply to a magistrate to discharge the bond either wholly or so far as it relates to the applicant or applicants.

(2) On an application being made under subsection (1) the magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of the person pursuant to the warrant issued under subsection (2) or on his voluntary surrender, the magistrate shall direct the bond to be discharged either wholly or so far as it relates to the applicant or applicants, and shall call upon the person to find other sufficient sureties, and if he fails to do so may commit him to prison.

**129. Death of surety**

Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond, but the party who gave the bond may be required to find a new surety.

**130. Persons bound by recognizance absconding may be committed**

If it is made to appear to a court, by information on oath, that a person bound by recognizance is about to leave Kenya, the court may cause him to be arrested and may commit him to prison until the trial, unless the court sees fit to admit him to bail upon further recognizance.

**131. Forfeiture of recognizance**

(1) Whenever it is proved to the satisfaction of a court by which a recognizance under this Code has been taken, or, when the recognizance is for appearance before a court, to the satisfaction of that court, that the recognizance has been forfeited, the court shall record the grounds of proof, and may call upon any person bound by the recognizance to pay the penalty thereof, or to show cause why it should not be paid.

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

(3) A warrant may be executed within the local limits of the jurisdiction of the court which issued it; and it shall authorize the attachment and sale of the movable property belonging to the person without those limits, when endorsed by a magistrate within the local limits of whose jurisdiction the property is found.

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

(5) The court may remit a portion of the penalty mentioned and enforce payment in part only.

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

**132. Appeal from and revision of orders**

All orders passed under section 131 by a magistrate shall be appealable to and may be revised by the High Court.

**133. Power to direct levy of amount due on certain recognizances**

The High Court may direct a magistrate to levy the amount due on recognizance to appear and attend at the High Court.

CHARGES AND INFORMATIONS

**134. Offence to be specified in charge or information with necessary particulars**

Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.

**135. Joinder of counts in a charge or information**

(1) Any offences, whether felonies or misdemeanours, may be charged together in the same charge or information if the offences charged are founded on the same facts, or form or are part of a series of offences of the same or a similar character.

(2) Where more than one offence is charged in a charge or information, a description of each offence so charged shall be set out in a separate paragraph of the charge or information called a count.

(3) Where, before trial, or at any stage of a trial, the court is of the opinion that a person accused may be embarrassed in his defence by reason of being charged with more than one offence in the same charge or information, or that for any other reason it is desirable to direct that the person be tried separately for any one or more offences charged in a charge or information, the court may order a separate trial of any count or counts of that charge or information.

**136. Joinder of two or more accused in one charge or information**

The following persons may be joined in one charge or information and may be tried together—

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of an offence and persons accused of abetment, or of an attempt to commit the offence;

(c) persons accused of more offences than one of the same kind (that is to say, offences punishable with the same amount of punishment under the same section of the Penal Code or of any other Act or law) committed by them jointly within a period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence under Chapters XXVI to XXX, inclusive, of the Penal Code (Cap. 63), and persons accused of receiving or retaining property, possession of which is alleged to have been transferred by an offence committed by the first-named persons, or of abetment of or attempting to commit either of the last-named offences;

(f) persons accused of an offence relating to counterfeit coin under Chapter XXXVI of the Penal Code, and persons accused of another offence under that Chapter relating to the same coin, or of abetment of or attempting to commit any such offence.

**137. Rules for the framing of charges and informations**

The following provisions shall apply to all charges and informations, and, notwithstanding any rule of law or practice, a charge or information shall, subject to this Code, not be open to objection in respect of its form or contents if it is framed in accordance with this Code—

(a) (i) *Mode in which offences are to be charged*.—a count of a charge or information shall commence with a statement of the offence charged, called the statement of offence;

(ii) the statement of offence shall describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence, and if the offence charged is one created by enactment shall contain a reference to the section of the enactment creating the offence;

(iii) after the statement of the offence, particulars of the offence shall be set out in ordinary language, in which the use of technical terms shall not be necessary:

Provided that where any rule of law or any Act limits the particulars of an offence which are required to be given in a charge or information, nothing in this paragraph shall require more particulars to be given than those so required;

(iv) the forms set out in the Second Schedule or forms conforming thereto as nearly as may be shall be used in cases to which they are applicable; and in other cases forms to the same effect or conforming thereto as nearly as may be shall be used, the statement of offence and the particulars of offence being varied according to the circumstances of each case;

(v) where a charge or information contains more than one count, the counts shall be numbered consecutively;

(b) (i) *Provisions as to statutory offences*.—where an enactment constituting an offence states the offence to be the doing of or the omission to do any one of any different acts in the alternative, or the doing of or the omission to do any act in any one of any different capacities, or with any one of different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities or intentions, or other matters stated in the alternative in the enactment, may be stated in the alternative in the count charging the offence;

(ii) it shall not be necessary, in a count charging an offence constituted by an enactment, to negative any exception or exemption from, or qualifications to, the operation of the enactment creating the offence;

(c) (i) *Description of property*.—the description of property in a charge or information shall be in ordinary language, and shall indicate with reasonable clearness the property referred to, and, if the property is so described, it shall not be necessary (except when required for the purpose of describing an offence depending on any special ownership of property or special value of property) to name the person to whom the property belongs or the value of the property;

(ii) where the property is vested in more than one person, and the owners of the property are referred to in a charge or information, it shall be sufficient to describe the property as owned by one of those persons by name with the others, and, if the persons owning the property are a body of persons with a collective name, such as a joint stock company or “Inhabitants”, “Trustees”, “Commissioners” or “Club” or other similar name, it shall be sufficient to use the collective name without naming any individual;

(iii) property belonging to or provided for the use of a public establishment, service or department may be described as the property of the Government;

(iv) coin, bank notes and currency notes may be described as money; and an allegation as to money, so far as regards the description of the property, shall be sustained by proof of an amount of coin or of any bank or currency note (although the particular species of coin of which the amount was composed or the particular nature of the bank or currency note is not proved); and, in cases of stealing and defrauding by false pretences, by proof that the accused person dishonestly appropriated or obtained any coin or any bank or currency note, or any portion of the value thereof, although the coin or bank or currency note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering it or to another person and that part has been returned accordingly;

(d) *Description of persons.*—the description or designation in a charge or information of the accused person, or of another person to whom reference is made therein, shall be reasonably sufficient to identify him, without necessarily stating his correct name, or his abode, style, degree or occupation; and if, owing to the name of the person not being known, or for any other reason, it is impracticable to give such a description or designation, a description or designation shall be given as is reasonably practicable in the circumstances, or the person may be described as "a person unknown";

(e) *Description of document*.—where it is necessary to refer to a document or instrument in a charge or information, it shall be sufficient to describe it by any name or designation by which it is usually known, or by the purport thereof, without setting out a copy thereof;

(f) *General rule as to description.*—subject to any other provisions of this section, it shall be sufficient to describe a place, time, thing, matter, act or omission to which it is necessary to refer in a charge or information in ordinary language so as to indicate with reasonable clearness the place, time, thing, matter, act or omission referred to;

(g) *Statement of intent.*—it shall not be necessary, in stating an intent to defraud, deceive or injure, to state an intent to defraud, deceive or injure a particular person, where the enactment creating the offence does not make an intent to defraud, deceive or injure a particular person an essential ingredient of the offence;

(h) *Mode of charging previous convictions*.—where a previous conviction of an offence is charged in a charge or information, it shall be charged at the end of the charge or information by means of a statement that the accused person has been previously convicted of that offence at a certain time and place without stating the particulars of the offence;

(i) *Use of figures and abbreviations.*—figures and abbreviations may be used for expressing anything which is commonly expressed thereby;

(j) *Gross sum may be specified in certain cases of stealing.*—when a person is charged with an offence under section 280, 281, 282 or 283 of the Penal Code (Cap. 63), it shall be sufficient to specify the gross amount of property in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged

have been committed without specifying particular times or exact dates.

[Act No. 22 of 1959, s. 14, L.N. 124/1964, Act No. 13 of 1967, First Sch.]

PLEA AGREEMENTS

**137A. Plea agreement negotiation**

(1) Subject to section 137B, a prosecutor and an accused person or his representative may negotiate and enter into an agreement in respect of—

(a) reduction of a charge to a lesser included offence;

(b) withdrawal of the charge or a stay of other charges or the promise not to proceed with other possible charges.

(2) A plea agreement entered into under subsection (1)(a) or (b) may provide for the payment by an accused person of any restitution or compensation.

(3) A plea agreement under subsection (1) shall be entered into only after an accused person has been charged, or at anytime before judgement.

(4) Where a prosecution is undertaken privately no plea agreement shall be concluded without the written consent of the Director of Public Prosecutions.

[Act No. 11 of 2008, s. 3, Act No. 12 of 2012, Sch.]

**137B. Plea agreement on behalf of the Republic**

A plea agreement on behalf of the Republic shall be entered into by the Director of Public Prosecutions or officers authorized by the Director of Public Prosecutions in accordance with article 157(9) of the Constitution and any other person authorized by any written law to prosecute:

Provided that in any trial before a subordinate court, a public prosecutor may with the prior written approval of the Director of Public Prosecutions or officers subordinate to him, as the case may be, enter into a plea agreement in accordance with section 137A(1).

[Act No. 11 of 2008, s. 3, Act No. 12 of 2012, Sch.]

**137C. Initiation of plea agreement**

(1) An offer for a plea agreement may be initiated by—

(a) a prosecutor; or

(b) an accused person or his legal representative.

(2) The court shall be notified by the parties referred to in subsection (1) of their intention to negotiate a plea agreement.

(3) The court shall not participate in plea negotiation between a public prosecutor and an accused person under this Part.

[Act No. 11 of 2008, s. 3.]

**137D. Consultation with victim, etc.**

A prosecutor shall only enter into a plea agreement in accordance with section 137A—

(a) after consultation with the police officer investigating the case;

(b) with due regard to the nature of and the circumstances relating to the offence, the personal circumstances of the accused person and the interests of the community;

(c) unless the circumstances do not permit, after affording the victim or his legal representative the opportunity to make representations to the prosecutor regarding the contents of the agreement.

[Act No. 11 of 2008, s. 3.]

**137E. Form of plea agreement**

A plea agreement shall be in writing, and shall—

(a) be reviewed and accepted by the accused person, or explained to the accused person in a language that he understands;

(b) if the accused person has negotiated with the prosecutor through an interpreter, contain a certificate by the interpreter to the effect that the interpreter is proficient in that language and that he interpreted accurately during the negotiations and in respect of the contents of the agreement;

(c) state fully the terms of the agreement, the substantial facts of the matter and all other relevant facts of the case and any admissions made by the accused person;

(d) be signed by the prosecutor and the accused person or his legal representative;

(e) be signed by the complainant if a compensation order contemplated in section 175(2)(b) has been included in the agreement.

[Act No. 11 of 2008, s. 3.]

**137F. Recording of plea agreement by court**

(1) Before the court records a plea agreement, the accused person shall be placed under oath and the court shall address the accused person personally in court, and shall inform the accused person of, and determine that the accused person understands—

(a) the right to—

(i) plead not guilty, or having already so pleaded, to persist in that plea;

(ii) be presumed innocent until proved guilty;

(iii) remain silent and not to testify during the proceedings;

(iv) not being compelled to give self-incriminating evidence;

(v) a full trial;

(vi) be represented by a legal representative of his own choice, and where necessary, have the court appoint a legal representative;

(vii) examine in person or by his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution;

(b) that by accepting the plea agreement, he is waiving his right to a full trial;

(c) the nature of the charge he is pleading to;

(d) any maximum possible penalty, including imprisonment, fine, community service order, probation or conditional or unconditional discharge;

(e) any mandatory minimum penalty;

(f) any applicable forfeiture;

(g) the court's authority to order compensation under section 175(2)(b), restitution under section 177, or both;

(h) that by entering into a plea agreement, he is waiving the right to appeal except as to the extent or legality of sentence;

(i) the prosecution's right, in the case of prosecution for perjury or false statement, to use against the accused any statement that the accused gives in the agreement.

(2) The prosecutor shall lay before the court the factual basis of a plea agreement and the court shall determine and be satisfied that there exists a factual basis of the plea agreement.

[Act No. 11 of 2008, s. 3.]

**137G. Competence of accused to make a plea agreement**

The court shall, before recording a plea agreement, satisfy itself that at the time the agreement was entered into, the accused person was competent, of sound mind and acted voluntarily.

[Act No. 11 of 2008, s. 3.]

**137H. Record of factual basis of plea**

(1) Where the court accepts a plea agreement—

(a) it shall enter the factual basis of the plea on record;

(b) the agreement shall become binding upon the prosecutor and the accused;

(c) the agreement shall become part of the record of the court.

(2) Where a plea agreement entered into in accordance with section 137A(1)(a) is accepted by the court in accordance with this section, the court shall proceed to convict an accused person accordingly.

[Act No. 11 of 2008, s. 3.]

**137I. Address by parties**

(1) Upon conviction, the court may invite the parties to address it on the issue of sentencing in accordance with section 216.

(2) In passing a sentence, the court shall take into account—

(a) the period during which the accused person has been in custody;

(b) a victim impact statement, if any, made in accordance with section 329C;

(c) the stage in the proceedings at which the accused person indicated his intention to enter into a plea agreement and the circumstances in which this indication was given;

(d) the nature and amount of any restitution or compensation agreed to be made by the accused person.

(3) Where necessary and desirable, the court may in passing a sentence, take into account a probation officer's report.

[Act No. 11 of 2008, s. 3.]

**137J. Rejection of plea agreement**

(1) Where the court rejects a plea agreement—

(a) it shall record the reasons for such rejection and inform the parties accordingly;

(b) the plea agreement shall become null and void and no party shall be bound by its terms;

(c) the proceedings giving rise to the plea agreement shall be inadmissible in a subsequent trial or any future trial relating to the same facts; and

(d) a plea of not guilty shall be entered accordingly.

(2) Where a plea agreement has been rejected by the court and a plea of not guilty consequently entered, the prosecution may, upon being informed of the fact under subsection (1)(a), proceed to try the matter afresh before another court.

Provided that the accused person may waive his right to have the trial proceed before another court.

(3) Upon rejection of a plea agreement, there shall be no further plea negotiation in a trial relating to the same facts.

(4) Where the court has rejected a plea agreement under this section, no party shall appeal against, or apply for a review of, the order of the court rejecting the agreement.

[Act No. 11 of 2008, s. 3.]

**137K. Withdrawal of plea**

An accused person may withdraw a plea of guilty pursuant to a plea agreement—

(a) prior to acceptance of the plea by the court, for any reason; or

(b) after the court accepts and convicts on the plea, but before it passes a sentence, if the accused person can demonstrate, to the satisfaction of the court, a fair and just reason for requesting the withdrawal.

[Act No. 11 of 2008, s. 3.]

**137L. Finality of judgement**

(1) Subject to subsection (2), the sentence passed by a court under this Part shall be final and no appeal shall lie therefrom except as to the extent or legality of the sentence imposed.

(2) Notwithstanding subsection (1), the Director of Public Prosecutions, in the public interest and the orderly administration of justice, or the accused person, may apply to the court which passed the sentence to have the conviction and sentence procured pursuant to a plea agreement set aside on the grounds of fraud or misrepresentation.

(3) Where a conviction or sentence has been set aside, under subsection (2), the provisions of section 137J shall apply *mutatis mutandis*.

[Act No. 11 of 2008, s. 3, Act No. 12 of 2012, Sch.]

**137M. Protection of plea agreement process**

Notwithstanding anything contained in any written law for the time being in force, the statements or facts stated by an accused person in a plea agreement shall not be used for any other purpose except for the purpose of this Part.

[Act No. 11 of 2008, s. 3.]

**137N. Application**

This Part shall not apply to—

(a) offences under the Sexual Offences Act, 2006 (No. 3 of 2006);

(b) offences of genocide, war crimes and crimes against humanity.

[Act No. 11 of 2008, s. 3.]

**137O. Rules under this sub-Part**

The Attorney-General may make rules for the better carrying into effect the provisions of this Part and such rules shall apply *mutatis mutandis* to prosecutions conducted under section 88 of the Act.

[Act No. 11 of 2008, s. 3. ]

PREVIOUS CONVICTION OR ACQUITTAL

**138. Persons convicted or acquitted not to be tried again for same offence**

A person who has been once tried by a court of competent jurisdiction for an offence and convicted or acquitted of that offence shall, while the conviction or acquittal has not been reversed or set aside, not be liable to be tried again on the same facts for the same offence.

**139. Person may be tried again for separate offence**

A person convicted or acquitted of an offence may afterwards be tried for another offence with which he might have been charged on the former trial under section 135(1).

**140. Consequences supervening or not known at time of former trial**

A person convicted or acquitted of an act causing consequences which together with that act constitute a different offence from that for which he was convicted or acquitted may be afterwards tried for the last-mentioned offence, if the consequences had not happened or were not known to the court to have happened at the time when he was acquitted or convicted.

**141. Where original court was not competent to try subsequent charge**

A person convicted or acquitted of an offence constituted by any acts may, notwithstanding the conviction or acquittal, be subsequently charged with and tried for another offence constituted by the same acts which he may have committed, if the court by which he was first tried was not competent to try the offence with which he is subsequently charged.

**142. Mode of proof of previous conviction**

(1) In any trial or other proceeding under this Code, a previous conviction may be proved, in addition to any other mode provided by any law for the time being in force—

(a) by an extract certified, under the hand of the officer having the custody of the records of the court in which the conviction was had, to be a copy of the sentence or order; or

(b) by a certificate signed by the officer in charge of the prison in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered,

together with, in either case, evidence as to the identity of the accused person with the person so convicted.

(2) A certificate in the form prescribed by the Minister given under the hand of an officer appointed by the Minister in that behalf, who has compared the finger prints of an accused person with the finger prints of a person previously convicted, shall be *prima facie* evidence of all facts therein set out if it is produced by the person who took the finger prints of the accused.

(3) A previous conviction in a place outside Kenya may be proved by the production of a certificate purporting to be given under the hand of a police officer in the country where the conviction was had, containing a copy of the sentence or order, and the finger prints, or photographs of the finger prints, of the person so convicted, together with evidence that the finger prints of the person so convicted are those of the accused person.

(4) A certificate under this section shall be *prima facie* evidence of all facts stated therein without proof that the officer purporting to sign it did in fact sign it and was empowered so to do.

[L.N. 299/1956, L.N. 172/1960, Act No. 13 of 1982, First Sch.]

OFFENCES BY FOREIGNERS WITHIN TERRITORIAL WATERS

**143. Leave of Director of Public Prosecutions necessary before prosecution instituted**

(1) Proceedings for the trial of a person who is not a Kenya citizen for an offence committed within exclusive economic zone and the territorial waters shall not be instituted in any court except with the leave of the Director of Public Prosecutions and upon his certificate that it is expedient that proceedings should be instituted:

Provided that—

(i) proceedings before a subordinate court previous to the committal of an accused person for trial or to the determination of the court that the offender is to be put upon his trial shall not be deemed proceedings for the trial of the offence committed by the offender for the purposes of the consent and certificate;

(ii) it shall not be necessary to aver in a charge or information that the consent or certificate of the Director of Public Prosecutions required by this section has been given, and the fact of their having been given shall be presumed unless disputed by the accused person at the trial; and the production of a document purporting to be signed by the Director of Public Prosecutions and containing the consent and certificate shall be sufficient evidence for all the purposes of this section of that consent and certificate;

(iii) this section shall not prejudice or affect the trial of an act of piracy as defined by the Law of Nations.

(2) In this section, **"offence"** means an act, neglect or default of such a description as would, if committed in England, be punishable on indictment according to the law of England for the time being in force.

[Act No. 13 of 1967, First Sch., L.N. 299/1956, L.N. 172/1960, L.N. 474/1963, Act No. 6 of 1989, Second Sch., Act No. 12 of 2012, Sch.]

COMPELLING ATTENDANCE OF WITNESSES

**144. Summons for witness**

(1) If it is made to appear that material evidence can be given by or is in the possession of a person who will not voluntarily attend to give it or will not voluntarily produce it, a court having cognizance of a criminal cause or matter may issue a summons to that person requiring his attendance before the court or requiring him to bring and produce to the court for the purpose of evidence all documents and writings in his possession or power which may be specified or otherwise sufficiently described in the summons.

(2) Nothing in this section shall affect the provisions of sections 131 and 132 of the Evidence Act (Cap. 80).

[Act No. 46 of 1963, s. 183.]

**145. Warrant for witness who disobeys summons**

If, without sufficient excuse, a witness does not appear in obedience to the summons, the court, on proof of the proper service of the summons a reasonable time before, may issue a warrant to bring him before the court at the time and place as shall be therein specified.

**146. Warrant for witness in first instance**

If the court is satisfied by evidence on oath that the person will not attend unless compelled to do so, it may at once issue a warrant for the arrest and production of the witness before the court at a time and place to be therein specified.

**147. Mode of dealing with witness arrested under warrant**

When a witness is arrested under a warrant, the court may, on his furnishing security by recognizance to the satisfaction of the court for his appearance at the hearing of the case, order him to be released from custody, or shall, on his failing to furnish security, order him to be detained for production at the hearing.

**148. Power of court to order prisoner to be brought up for examination**

(1) A court desirous of examining, as a witness, in a case pending before it, a person confined in prison within the local limits of its jurisdiction, may issue an order to the officer in charge of the prison requiring him to bring the prisoner in proper custody, at a time to be named in the order, before the court for examination.

(2) The officer so in charge, on receipt of the order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the prison.

**149. Penalty for non-attendance of witness**

(1) A person summoned to attend as a witness who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the court, or who fails to attend after adjournment of the court after being ordered to attend, shall be liable by order of the court to a fine not exceeding five thousand shillings.

(2) The fine shall be levied by attachment and sale of movable property belonging to the witness within the local limits of the jurisdiction of the court.

(3) In default of recovery of the fine by attachment and sale the witness may, by order of the court, be imprisoned as a civil prisoner for a term of fifteen days unless the fine is paid before the end of term.

(4) For good cause shown, the High Court may remit or reduce a fine imposed under this section by a subordinate court.

[Act No. 5 of 2003, s. 72.]

EXAMINATION OF WITNESSES

**150. Power to summon witnesses, or examine person present**

A court may, at any stage of a trial or other proceeding under this Code, summon or call any person as a witness, or examine any person in attendance though not summoned as a witness, or recall and re-examine a person already examined, and the court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case:

Provided that the prosecutor or the advocate for the prosecution or the defendant or his advocate shall have the right to cross-examine any such person, and the court shall adjourn the case for such time (if any) as it thinks necessary to enable the cross-examination to be adequately prepared if, in its opinion, either party may be prejudiced by the calling of that person as a witness.

**151. Evidence to be given on oath**

Every witness in a criminal cause or matter shall be examined upon oath, and the court before which any witness shall appear shall have full power and authority to administer the usual oath.

[Act No. 42 of 1954, s. 4.]

**152. Refractory witnesses**

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

(a) refuses to be sworn; or

(b) having been sworn, refuses to answer any question put to him; or

(c) refuses or neglects to produce any document or thing which he is required to produce; or

(d) refuses to sign his deposition,

without offering sufficient excuse for his refusal or neglect, the court may adjourn the case for any period not exceeding eight days, and may in the meantime commit that person to prison, unless he sooner consents to do what is required of him.

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

(3) Nothing contained in this section shall affect the liability of any such person to any other punishment or proceeding for refusing or neglecting to do what is so required of him, or shall prevent the court from disposing of the case in the meantime according to any other sufficient evidence taken before it.

**153.** *Repealed by Act No. 46 of 1963, Second Sch.*

COMMISSIONS FOR THE EXAMINATION OF WITNESSES

**154. Issue of commission for examination of witness**

(1) Whenever, in the course of a proceeding under this Code, the High Court or a magistrate empowered to hold a subordinate court of the first class is satisfied that the examination of a witness is necessary for the ends of justice, and that the attendance of the witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, the court or magistrate may issue a commission to any magistrate within the local limits of whose jurisdiction the witness resides, to take the evidence of the witness.

(2) The magistrate to whom the commission is issued shall proceed to the place where the witness is or shall summon the witness before him, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in the case of a trial.

**155. Parties may examine witnesses**

(1) The parties to a proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the court or magistrate directing the commission may think relevant to the issue, and the magistrate to whom the commission is directed shall examine the witness upon those interrogatories.

(2) Any such party may appear before the magistrate by advocate, or, if not in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the witness.

**156. Power of magistrate to apply for issue of commission**

Whenever, in the course of a proceeding under this Code before a magistrate other than a magistrate empowered to hold a subordinate court of the first class, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, and that the attendance of the witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, the magistrate shall apply to the High Court, stating the reasons for the application; and the High Court may either issue a commission in the manner provided in section 154 or reject the application.

**157. Return of commission**

(1) After a commission issued under section 154 or section 156 has been duly executed it shall be returned, together with the deposition of the witness examined thereunder, to the High Court or to the magistrate empowered to hold a subordinate court of the first class (as the case may be), and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

(2) A deposition so taken, if it satisfies the conditions prescribed by section 34 of the Evidence Act (Cap. 80) may also be received in evidence at a subsequent stage of the case before another court.

[Act No. 46 of 1963, s. 183.]

**158. Adjournment of inquiry or trial**

In a case in which a commission is issued under section 154 or section 156, the proceedings may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

EVIDENCE FOR DEFENCE

**159.** *Repealed by Act No. 46 of 1963, Second Sch.*

**160. Procedure where person charged is only witness**

Where the only witness to the facts of the case called by the defence is the person charged, he shall be called as a witness immediately after the close of the evidence for the prosecution.

**161. Right of reply**

In cases where the right of reply depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply:

Provided that the Director of Public Prosecutions when appearing personally as advocate for the prosecution shall in all cases have the right of reply.

PROCEDURE IN CASE OF THE LUNACY OR
OTHER INCAPACITY OF AN ACCUSED PERSON

**162. Inquiry by court as to soundness of mind of accused**

(1) ***When in the course of a trial or committal proceedings the court has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, it shall inquire into the fact of unsoundness.

(2) If the court is of the opinion that the accused is of unsound mind and consequently incapable of making his defence, it shall postpone further proceedings in the case.

*** Powers delegated to the Minister and to the Permanent Secretary of the Ministry for the time being responsible for prisons, by L.N. 579/1963.

(3) If the case is one in which bail may be taken, the court may release the accused person on sufficient security being given that he will be properly taken care of and prevented from doing injury to himself or to any other person, and for his appearance before the court or such officer as the court may appoint in that behalf.

(4) If the case is one in which bail may not be taken, or if sufficient security is not given, the court shall order that the accused be detained in safe custody in such place and manner as it may think fit, and shall transmit the court record or a certified copy thereof to the Minister for consideration by the President.

(5) Upon consideration of the record the President may by order under his hand addressed to the court direct that the accused be detained in a mental hospital or other suitable place of custody, and the court shall issue a warrant in accordance with that order; and the warrant shall be sufficient authority for the detention of the accused until the President makes a further order in the matter or until the court which found him incapable of making his defence orders him to be brought before it again in the manner provided by sections 163 and 164.

[Act No. 22 of 1959, s. 15, Act No. 13 of 1967, First Sch., L.N. 124/1964, Act No. 13 of 1982, First Sch.]

**163. Procedure where person of unsound mind subsequently found capable of making defence**

(1) If a person detained in a mental hospital or other place of custody under section 162 or section 280 is found by the medical officer in charge of the mental hospital or place to be capable of making his defence, the medical officer shall forthwith forward a certificate to that effect to the Director of Public Prosecutions.

(2) The Director of Public Prosecutions shall thereupon inform the court which recorded the finding concerning that person under section 162 whether it is the intention of the Republic that proceedings against that person shall continue or otherwise.

(3) In the former case, the court shall thereupon order the removal of the person from the place where he is detained and shall cause him to be brought in custody before it, and shall deal with him in the manner provided by section 164; otherwise the court shall forthwith issue an order that the person be discharged in respect of the proceedings brought against him and released from custody and thereupon he shall be released, but the discharge and release shall not operate as a bar to any subsequent proceedings against him on account of the same facts.

[Act No. 22 of 1959, s. 16, Act No. 13 of 1967, First Sch., Act No. 20 of 1989, Sch., Act No. 12 of 2012, Sch.]

**164. Resumption of proceedings or trial**

Wherever a trial is postponed under section 162 or section 280, the court may at any time, subject to the provisions of section 163, resume trial and require the accused to appear or be brought before the court, whereupon, if the court considers the accused to be still incapable of making his defence, it shall act as if the accused were brought before if for the first time.

[Act No. 5 of 2003, s. 73.]

**165.** *Repealed by Act No. 5 of 2003, s. 74.*

**166. Defence of lunacy adduced at trial**

(1) Where an act or omission is charged against a person as an offence, and it is given in evidence on the trial of that person for that offence that he was insane so as not to be responsible for his acts or omissions at the time when the act was done or the omission made, then if it appears to the court before which the person is tried that he did the act or made the omission charged but was insane at the time he did or made it, the court shall make a special finding to the effect that the accused was guilty of the act or omission charged but was insane when he did the act or made the omission.

(2) When a special finding is so made, the court shall report the case for the order of the President, and shall meanwhile order the accused to be kept in custody in such place and in such manner as the court shall direct.

(3) The President may order the person to be detained in a mental hospital, prison or other suitable place of safe custody.

(4) The officer in charge of a mental hospital, prison or other place in which a person is detained by an order of the President under subsection (3) shall make a report in writing to the Minister for the consideration of the President in respect of the condition, history and circumstances of the person so detained, at the expiration of a period of three years from the date of the President's order and thereafter at the expiration of each period of two years from the date of the last report.

(5) On consideration of the report, the President may order that the person so detained be discharged or otherwise dealt with, subject to such conditions as to his remaining under supervision in any place or by any person, and to such other conditions for ensuring the safety and welfare of the person in respect of whom the order is made and of the public, as the President thinks fit.

(6) Notwithstanding the subsections (4) and (5), a person or persons thereunto empowered by the President may, at any time after a person has been detained by order of the President under subsection (3), make a special report to the Minister for transmission to the President, on the condition, history and circumstances of the person so detained, and the President, on consideration of the report, may order that the person be discharged or otherwise dealt with, subject to such conditions as to his remaining under supervision in any place or by any person, and to such other conditions for ensuring the safety and welfare of the person in respect of whom the order is made and of the public, as the President thinks fit.

(7) The President may at any time order that a person detained by order of the President under subsection (3) be transferred from a mental hospital to a prison or from a mental hospital, or from any place in which he is detained or remains under supervision to either a prison or a mental hospital.

[Act No. 22 of 1959, s. 16, Act No. 13 of 1967, First Sch., L.N. 124/1964.]

**167. Procedure when accused does not understand proceedings**

(1) *If the accused, though not insane, cannot be made to understand the proceedings—

(a) in cases tried by a subordinate court, the court shall proceed to hear the evidence, and, if at the close of the evidence for the prosecution, and, if the defence has been called upon, of any evidence for the defence, the court is of the opinion that the evidence which it has heard would not justify a conviction, it shall acquit and discharge the accused, but if the court is of the opinion that the evidence which it has heard would justify a conviction it shall order the accused to be detained during the President's pleasure; but every such order shall be subject to confirmation by the High Court;

(b) in cases tried by the High Court, the Court shall try the case and at the close thereof shall either acquit the accused person or, if satisfied that the evidence would justify a conviction, shall order that the accused person be detained during the President's pleasure.

(2) A person ordered to be detained during the President's pleasure shall be liable to be detained in such place and under such conditions as the President may from time to time by order direct, and whilst so detained shall be deemed to be in lawful custody.

(3) The President may at any time of his own motion, or after receiving a report from any person or persons thereunto empowered by him, order that a person detained as provided in subsection (2) be discharged or otherwise dealt with, subject to such conditions as to the person remaining under supervision in any place or by any person, and such other conditions for ensuring the welfare of the detained person and the public, as the President thinks fit.

(4) When a person has been ordered to be detained during the Presidents pleasure under paragraph (a) or paragraph (b) of subsection (1), the confirming or presiding judge shall forward to the Minister a copy of the notes of evidence taken at the trial, with a report in writing signed by him containing any recommendation or observations on the case he may think fit to make.

[Act No. 22 of 1959, s. 16, Act No. 13 of 1967, First Sch., L.N. 124/1964, Act No. 13 of 1982, s. 4, Act No. 5 of 2003, s. 75.]

JUDGMENT

**168. Mode of delivering judgment**

(1) The judgment in every trial in a criminal court in the exercise of its original jurisdiction shall be pronounced, or the substance of the judgment shall be explained, in open court either immediately after the termination of the trial or at some subsequent time, of which notice shall be given to the parties and their advocates, if any:

Provided that the whole judgment shall be read out by the presiding judge or magistrate if he is requested so to do either by the prosecution or the defence.

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*Powers delegated to the Minister and to the Permanent Secretary of the Ministry for the time being responsible for prisons, by L.N. 579/1963.

(2) The accused person shall, if in custody, be brought before the court, or, if not in custody, be required by the court to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of a fine only or he is acquitted.

(3) No judgment delivered by a court shall be invalid by reason only of the absence of a party or his advocate on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their advocates, or any of them, the notice of the day and place.

(4) Nothing in this section shall limit in any way the provisions of section 382.

**169. Contents of judgment**

(1) Every such judgment shall, except as otherwise expressly provided by this Code, be written by or under the direction of the presiding officer of the court in the language of the court, and shall contain the point or points for determination, the decision thereon and the reasons for the decision, and shall be dated and signed by the presiding officer in open court at the time of pronouncing it.

(2) In the case of a conviction, the judgment shall specify the offence of which, and the section of the Penal Code or other law under which, the accused person is convicted, and the punishment to which he is sentenced.

(3) In the case of an acquittal, the judgment shall state the offence of which the accused person is acquitted, and shall direct that he be set at liberty.

[Act No. 22 of 1959, s. 17.]

**170. Copy of judgment, etc., to be given to accused on application**

On the application of the accused person, a copy of the judgment, or, when he so desires, a translation in his own language, if practicable, shall be given to him without delay.

[Act No. 5 of 2003, s. 76.]

COSTS AND COMPENSATION

**171. Power to order costs against accused or private prosecutor**

(1) A judge of the High Court or a magistrate of a subordinate court of the first or second class may order a person convicted before him of an offence to pay to the public or private prosecutor, as the case may be, such reasonable costs as the judge or magistrate may deem fit, in addition to any other penalty imposed.

(2) A judge of the High Court or a magistrate of a subordinate court of the first or second class who acquits or discharges a person accused of an offence may, if the prosecution for the offence was originally instituted on a summons or warrant issued by a court on the application of a private prosecutor, order the private prosecutor to pay to the accused such reasonable costs as the judge or magistrate may deem fit:

Provided that—

(i) the costs shall not exceed twenty thousand shillings in the High Court or ten thousand shillings in the case of an acquittal or discharge by a subordinate court; and

(ii) no such order shall be made if the judge or magistrate considers that the private prosecutor had reasonable grounds for making his complaint.

[Act No. 13 of 1967, First Sch., Act No. 5 of 2003, s. 77.]

**172. Right of appeal from order as to costs**

An appeal shall lie from an order awarding costs under section 171, if made by a magistrate to the High Court and if by a judge to the Court of Appeal; and the appellate court may give costs of the appeal as it shall deem reasonable.

**173.** *Repealed by Act No. 13 of 1967, s. 5.*

**174. Costs and compensation to be specified in order, how recoverable**

(1) Sums allowed for costs awarded under section 171 shall in all cases be specified in the conviction or order.

(2) If the person who has been ordered to pay costs fails so to pay, he shall, in default of distress levied in accordance with section 334 of this Code, be liable to imprisonment in accordance with the scale laid down in section 28 of the Penal Code (Cap. 63), unless the costs shall be sooner paid:

Provided that in no case shall the period of imprisonment imposed under this section exceed three months.

[Act No. 13 of 1967, First Sch.]

**175. Orders for compensation and expenses**

(1) A court which—

(a) on convicting a person of an offence, imposes a fine, or a sentence of which a fine forms part; or

(b) on appeal, revision or otherwise, confirms such a sentence,

may, when passing judgment, order the whole or any part of the fine recovered to be applied in defraying expenses properly incurred in the prosecution of the offence.

(2) A court which—

(a) convicts a person of an offence or, on appeal, revision or otherwise, confirms the conviction; and

(b) finds, on the facts proven in the case, that the convicted person has, by virtue of the act constituting the offence, a civil liability to the complainant or another person (in either case referred to in this section as the “injured party”),

may order the convicted person to pay to the injured party such sum as it considers could justly be recovered as damages in civil proceedings brought by the injured party against the convicted person in respect of the civil liability concerned.

(3) No order shall be made under subsection (2)—

(a) so as to require payment of an amount that exceeds the amount that the court making the order is authorised by law to award or confirm as damages in civil proceedings; or

(b) in any case where, by reason of—

(i) the complexity of evidentiary matters affecting the quantum of damages;

(ii) the insufficiency of evidence before it in relation to such damages or their quantum;

(iii) the provisions of the Limitation of Actions Act (Cap. 22); or

(iv) any other circumstances,

the court considers that such an order would unduly prejudice the rights of the convicted person in respect of the civil liability.

(4) No order under this section shall take effect—

(a) before the expiry of the time limited for appeal against the conviction or sentence in respect of which the order was made; or

(b) while any such conviction or sentence is the subject of appeal, unless and until the conviction or sentence, and the order, are confirmed by the court determining the appeal.

(5) A court determining an appeal referred to in subsection (4) shall affirm, quash or vary an order under this section, as justice requires.

(6) An order under this section that has taken effect is enforceable in the same manner as a judgment in civil proceedings for the amount awarded by the order.

(7) An award by order under this section in respect of a civil liability is, to the extent of the amount awarded, a defence in any subsequent proceedings instituted in respect of that liability.

[Act No. 5 of 2003, s. 78.]

**176. Promotion of reconciliation**

In all cases the court may promote reconciliation and encourage and facilitate the settlement in an amicable way of proceedings for common assault, or for any other offence of a personal or private nature not amounting to felony, and not aggravated in degree, on terms of payment of compensation or other terms approved by the court, and may thereupon order the proceedings to be stayed or terminated.

RESTITUTION OF PROPERTY

**177. Property found on accused person**

Where, upon the apprehension of a person charged with an offence, any property is taken from him, the court before which he is charged may order—

(a) that the property or a part thereof be restored to the person who appears to the court to be entitled thereto, and, if he be the person charged, that it be restored either to him or to such other person as he may direct; or

(b) that the property or a part thereof be applied to the payment of any fine or any costs or compensation directed to be paid by the person charged.

**178. Property stolen**

(1) If a person guilty of an offence mentioned in Chapters XXVI to XXXI, both inclusive, of the Penal Code (Cap. 63), in stealing, taking, obtaining, extorting, converting or disposing of, or in knowingly receiving, any property, is prosecuted to conviction by or on behalf of the owner of the property, the property shall be restored to the owner or his representative.

(2) In every case referred to in this section, the court before whom the offender is convicted may award from time to time writs of restitution for the property or order the restitution thereof in a summary manner:

Provided that—

(i) where goods as defined in the Sale of Goods Act (Cap. 31) have been obtained by fraud or other wrongful means not amounting to stealing, the property in the goods shall not revest in the person who was the owner of the goods, or his personal representative, by reason only of the conviction of the offender;

(ii) nothing in this section shall apply to the case of a valuable security which has been in good faith paid or discharged by a person liable to the payment thereof, or, being a negotiable instrument, has been taken or received in good faith by transfer or delivery by a person for a just and valuable consideration without notice or without reasonable cause to suspect that it has been stolen.

(3) On the restitution of stolen property, if it appears to the court by the evidence that the offender has sold the stolen property to a person, and that that person has had no knowledge that it was stolen, and that moneys have been taken from the offender on his apprehension, the court may, on the application of the purchaser, order that out of those moneys a sum not exceeding the amount of the proceeds of the sale be delivered to the purchaser.

(4) The operation of an order under this section shall (unless the court before which the conviction takes place directs to the contrary in any case in which the title to the property is not in dispute) be suspended—

(a) in any case, until the time for appeal has elapsed; and

(b) in a case where an appeal is lodged, until the determination of the appeal,

and in cases where the operation of any such order is suspended until the determination of the appeal, the order shall not take effect as to the property in question if the conviction is quashed on appeal.

(5) The Chief Justice may make rules for securing the safe custody of property, pending the suspension of the operation of an order made under this section.

(6) A person aggrieved by an order made under this section may appeal to the High Court, and upon the hearing of the appeal the court may by order annul or vary an order made on a trial for the restitution of property to any person, although the conviction is not quashed; and the order, if annulled, shall not take effect, and, if varied, shall take effect as so varied.

(7) In this section and in section 177, **"property"** includes, in the case of property regarding which the offence appears to have been committed, not only property which was originally in the possession or under the control of a person but also property into which or for which it may have been converted or exchanged and anything acquired by the conversion or exchange whether immediately or otherwise.

[Act No. 27 of 1961, Sch., Act No. 11 of 1970, Sch.]

CONVICTIONS FOR OFFENCES OTHER THAN THOSE CHARGED

**179. When offence proved is included in offence charged**

(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and the combination is proved but the remaining particulars are not proved, he may be convicted of the minor offence although he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he was not charged with it.

**180. Persons charged with any offence may be convicted of attempt**

When a person is charged with an offence, he may be convicted of having attempted to commit that offence although he was not charged with the attempt.

**181. Charges of certain offences respecting infant and unborn children, and abortion, etc.**

(1) When a woman is charged with the murder of her child, being a child under the age of twelve months, and the court is of the opinion that she by a wilful act or omission caused its death but at the time of the act or omission she had not fully recovered from the effect of giving birth to that child and that by reason thereof or by reason of the effect of lactation consequent upon the birth of the child the balance of her mind was then disturbed, she may, notwithstanding that the circumstances were such that but for the provisions of section 210 of the Penal Code she might be convicted of murder, be convicted of the offence of infanticide although she was not charged with it.

(2) When a person is charged with the murder or manslaughter of a child or with infanticide, or with an offence under section 158 or section 159 of the Penal Code (relating to the procuring of abortion), and the court is of the opinion that he is not guilty of murder, manslaughter or infanticide or an offence under section 158 or section 159 of the Penal Code (Cap. 63), but that he is guilty of the offence of killing an unborn child, he may be convicted of that offence although he was not charged with it.

(3) When a person is charged with killing an unborn child and the court is of the opinion that he is not guilty of that offence but that he is guilty of an offence under one of the sections 158 and 159 of the Penal Code, he may be convicted of that offence although he was not charged with it.

(4) When a person is charged with the murder or infanticide of a child or with killing an unborn child and the court is of the opinion that he is not guilty of any of those offences, and if it appears in evidence that the child had recently been born and that the person did, by some secret disposition of the dead body of the child, endeavour to conceal the birth of that child, he may be convicted of the offence of endeavouring to conceal the birth of that child although he was not charged with it.

**182. Charge of manslaughter in connexion with driving of motor vehicle**

When a person is charged with manslaughter in connexion with the driving of a motor vehicle by him and the court is of the opinion that he is not guilty of that offence, but that he is guilty of an offence under section 46 of the Traffic Act (Cap. 403), he may be convicted of that offence although he was not charged with it.

[Act No. 29 of 1967, First Sch.]

**183. Charge of administering oaths**

Where a person is charged with an offence under paragraph (a) of section 61 of the Penal Code (Cap. 63), and the court is of the opinion that he is not guilty of that offence but is guilty of another offence under the same paragraph, he may be convicted of that other offence although he was not charged with it.

[Act No. 57 of 1955, s. 5, Act No. 19 of 1964, s. 2, L.N. 761/1963.]

**184. Charge of rape**

Where a person is charged with rape and the court is of the opinion that he is not guilty of that offence but that he is guilty of an offence under one of the sections of the Sexual Offences Act, he may be convicted of that offence although he was not charged with it.

[Act No. 3 of 2006, Second Sch.]

**185.** *Repealed by Act No. 3 of 2006, Second Sch.*;

(b) With offences under the Sexual Offences Act.

[Act No. 3 of 2006, Second Sch.]

**186. Charge of defilement of a girl under 14 years of age**

When a person is charged with the defilement of a girl under the age of fourteen years and the court is of the opinion that he is not guilty of that offence but that he is guilty of an offence under the Sexual Offences Act, he may be convicted of that offence although he was not charged with it.

[Act No. 15 of 1961, Sch., Act No. 10 of 1969, Sch., Act No. 3 of 2006, Second Sch., s. 3(4).]

**187. Charge of Burglary, etc.**

When a person is charged with an offence mentioned in Chapter XXIX of the Penal Code (Cap. 63) and the court is of the opinion that he is not guilty of that offence but that he is guilty of another offence mentioned in that Chapter, he may be convicted of that other offence although he was not charged with it.

**188. Charge of stealing**

When a person is charged with stealing anything and—

(a) the facts proved amount to an offence under section 322 or section 323 of the Penal Code (Cap. 63), he may be convicted of that offence although he was not charged with it;

(b) it is proved that he obtained the thing in a manner as would amount, under the provisions of the Penal Code or of any other law for the time being in force, to obtaining it by false pretences with intent to defraud, he may be convicted of the offence of obtaining it by false pretences although he was not charged with it.

[Act No. 22 of 1959, s. 20.]

**189. Charge of obtaining by false pretences**

When a person is charged with obtaining anything capable of being stolen by false pretences with intent to defraud and it is proved that he stole the thing, he may be convicted of the offence of stealing although he was not charged with it.

**190. Charge of stock theft under the Penal Code**

When a person is charged with the offence of stock theft under the Penal Code (Cap. 63) and the court is of the opinion that he is not guilty of that offence but that he is guilty of an offence under section 9 of the Stock and Produce Theft Act (Cap. 355), he may be convicted of that offence although he was not charged with it.

[Act No. 13 of 1967, First Sch.]

**191. Construction of sections 179 to 190**

The provisions of sections 179 to 190, both inclusive, shall be construed as in addition to, and not in derogation of, the provisions of any other Act and the other provisions of this Code, and the provisions of sections 180 to 190, both inclusive, shall be construed as being without prejudice to the generality of the provisions of section 179.

MISCELLANEOUS PROVISIONS

**192. Person charged with misdemeanour not to be acquitted if felony proved, unless court so directs**

If on a trial for a misdemeanour the facts proved in evidence amount to a felony, the accused shall not be therefore acquitted of the misdemeanour; and no person tried for the misdemeanour shall be liable afterwards to be prosecuted for a felony on the same facts, unless the court thinks fit to direct that person to be prosecuted for felony, whereupon he may be dealt with as if not previously put on trial for misdemeanour.

**193. Right of accused to be defended**

A person accused of an offence before a criminal court, or against whom proceedings are instituted under this Code in a criminal court, may of right be defended by an advocate.

**193A. Concurrent criminal and civil proceedings**

Notwithstanding the provisions of any other written law, the fact that any matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil proceedings shall not be a ground for any stay, prohibition or delay of the criminal proceedings.

[Act No. 5 of 2003, s. 79.]

PART V – MODE OF TAKING AND RECORDING EVIDENCE IN TRIALS GENERAL

**194. Evidence to be taken in presence of accused**

Except as otherwise expressly provided, all evidence taken in a trial under this Code shall be taken in the presence of the accused, or, when his personal attendance has been dispensed with, in the presence of his advocate (if any).

[Act No. 13 of 1982, First Sch.]

**195.** *Repealed by Act No. 46 of 1963, Second Sch.*

SUBORDINATE COURTS

**196.** *Repealed by Act No. 46 of 1963, Second Sch.*

**197. Manner of recording evidence before magistrate**

(1) In trials by or before a magistrate, the evidence of the witnesses shall be recorded in the following manner—

(a) the evidence of each witness shall be taken down in writing or on a typewriter in the language of the court by the magistrate, or in his presence and hearing and under his personal direction and superintendence, and shall be signed by the magistrate, and shall form part of the record;

(b) such evidence shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative:

Provided that the magistrate may take down or cause to be taken down any particular question and answer.

(2) Notwithstanding the provisions of subsection (1), a record of any proceedings at a trial by or before a magistrate may be taken in shorthand if the magistrate so directs; and a transcript of the shorthand shall be made if the magistrate so orders, and the transcript shall form part of the record.

(3) If a witness asks that his evidence be read over to him the magistrate shall cause that evidence to be read over to him in a language which he understands.

[Act No. 57 of 1955, s. 6, Act No. 22 of 1959, s. 22, Act No. 13 of 1982, First Sch.]

**198. Interpretation of evidence to accused or his advocate**

(1) Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open court in a language which he understands.

(2) If he appears by advocate and the evidence is given in a language other than English and not understood by the advocate, it shall be interpreted to the advocate in English.

(3) When documents are put in for the purpose of formal proof, it shall be in the discretion of the court to interpret as much thereof as appears necessary.

(4) The language of the High Court shall be English, and the language of a subordinate court shall be English or Swahili.

[Act No. 17 of 1967, s. 28.]

**199. Remarks respecting demeanour of witness**

When a magistrate has recorded the evidence of a witness, he shall also record such remarks (if any) as he thinks material respecting the demeanour of the witness whilst under examination.

**200. Conviction on evidence partly recorded by one magistrate and partly by another**

(1) Subject to subsection (3), where a magistrate, after having heard and recorded the whole or part of the evidence in a trial, ceases to exercise jurisdiction therein and is succeeded by another magistrate who has and exercises that jurisdiction, the succeeding magistrate may—

(a) deliver a judgment that has been written and signed but not delivered by his predecessor; or

(b) where judgment has not been written and signed by his predecessor, act on the evidence recorded by that predecessor, or resummon the witnesses and recommence the trial.

(2) Where a magistrate who has delivered judgment in a case but has not passed sentence, ceases to exercise jurisdiction therein and is succeeded by a magistrate who has and exercises that jurisdiction, the succeeding magistrate may pass sentence or make any order that he could have made if he had delivered judgment.

(3) Where a succeeding magistrate commences the hearing of proceedings and part of the evidence has been recorded by his predecessor, the accused person may demand that any witness be resummoned and reheard and the succeeding magistrate shall inform the accused person of that right.

(4) Where an accused person is convicted upon evidence that was not wholly recorded by the convicting magistrate, the High Court may, if it is of the opinion that the accused person was materially prejudiced thereby, set aside the conviction and may order a new trial.

[Act No. 13 of 1982, First Sch., Act No. 11 of 1983, Sch.]

HIGH COURT

**201. Rules as to taking down of evidence**

(1) The Chief Justice may make rules of court prescribing the manner in which evidence shall be taken down in cases coming before the High Court, and the judges shall take down the evidence or the substance thereof in accordance with those rules.

(2) The provisions of section 200 of this Act shall apply *mutatis mutandis* to trials held in the High Court.

[Act No. 27 of 1961, Sch., Act No. 7 of 2007, Sch.]

## PART VI – PROCEDURE IN TRIALS BEFORE SUBORDINATE COURTS

### PROVISIONS RELATING TO THE HEARING AND DETERMINATION OF CASES

**202. Non-appearance of complainant at hearing**

If, in a case which a subordinate court has jurisdiction to hear and determine, the accused person appears in obedience to the summons served upon him at the time and place appointed in the summons for the hearing of the case, or is brought before the court under arrest, then, if the complainant, having had notice of the time and place appointed for the hearing of the charge, does not appear, the court shall thereupon acquit the accused, unless for some reason it thinks it proper to adjourn the hearing of the case until some other date, upon such terms as it thinks fit, in which event it may, pending the adjourned hearing, either admit the accused to bail or remand him to prison, or take security for his appearance as the court thinks fit.

[Act No. 10 of 1969, Sch.]

**203. Appearance of both parties**

If at the time appointed for the hearing of the case both the complainant and the accused person appear before the court which is to hear and determine the charge, or if the complainant appears and the personal attendance of the accused person has been dispensed with under section 99, the court shall proceed to hear the case.

**204. Withdrawal of complaint**

If a complainant, at any time before a final order is passed in a case under this Part, satisfies the court that there are sufficient grounds for permitting him to withdraw his complaint, the court may permit him to withdraw it and shall thereupon acquit the accused.

**205. Adjournment**

(1) The court may, before or during the hearing of a case, adjourn the hearing to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties or their respective advocates then present, and in the meantime the court may allow the accused person to go at large, or may commit him to prison, or may release him upon his entering into a recognizance with or without sureties conditioned for his appearance at the time and place to which the hearing or further hearing is adjourned:

Provided that no such adjournment shall be for more than thirty clear days, or, if the accused person has been committed to prison, for more than fifteen clear days, the day following that on which the adjournment is made being counted as the first day.

(2) Notwithstanding subsection (1), the court may commit the accused persons to police custody—

(a) for not more than three clear days if there is no prison within five miles of the court-house; or

(b) for not more than seven clear days if there is no prison within five miles of the court-house and the court is not due to sit again at that court-house within three days; or

(c) at the request of the accused person, for not more than fifteen clear days.

(3) For the purposes of this section, in relation to any case where the maximum sentence for the offence with which the accused person is charged is punishable only by fine, or by imprisonment not exceeding twelve months with or without a fine "prison" shall be deemed to include a detention camp established in accordance with the Detention Camps Act (Cap. 91).

[Act No. 22 of 1959, s. 24, Act No. 21 of 1971, s. 8.]

**206. Non-appearance of parties after adjournment**

(1) If, at the time or place to which the hearing or further hearing is adjourned, the accused person does not appear before the court which made the order of adjournment, the court may, unless the accused person is charged with felony, proceed with the hearing or further hearing as if the accused were present, and if the complainant does not appear the court may dismiss the charge with or without costs.

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

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

(4) If the accused person who has not appeared is charged with a felony, or if

the court refrains from convicting the accused in his absence, the court shall issue a warrant for the apprehension of the accused person and cause him to be brought before the court.

[Act No. 11 of 2008, s. 4.]

**207. Accused to be called upon to plead**

(1) The substance of the charge shall be stated to the accused person by the court, and he shall be asked whether he pleads not guilty, guilty or guilty subject to a plea agreement.

(2) If the accused person admits the truth of the charge otherwise than by a plea agreement his admission shall be recorded as nearly as possible in the words used by him, and the court shall convict him and pass sentence upon or make an order against him, unless there appears to it sufficient cause to the contrary:

Provided that after conviction and before passing sentence or making any order the court may permit or require the complainant to outline to the court the facts upon which the charge is founded.

(3) If the accused person does not admit the truth of the charge, the court shall proceed to hear the case as hereinafter provided.

(4) If the accused person refuses to plead, the court shall order a plea of "not guilty" to be entered for him.

(5) If the accused pleads—

(a) that he has been previously convicted or acquitted on the same facts of the same offence; or

(b) that he has obtained the President's pardon for his offence,

the court shall first try whether the plea is true or not, and if the court holds that the evidence adduced in support of the plea does not sustain it, or if it finds that the plea is false, the accused shall be required to plead to the charge.

[Act No. 22 of 1959, s. 25, Act No. 13 of 1967, First Sch., Act No. 4 of 1974, Sch., Act No. 11 of 2008, s. 4.]

**208. Procedure on plea of not guilty**

(1) If the accused person does not admit the truth of the charge, the court shall proceed to hear the complainant and his witnesses and other evidence (if any).

(2) The accused person or his advocate may put questions to each witness produced against him.

(3) If the accused person does not employ an advocate, the court shall, at the close of the examination of each witness for the prosecution, ask the accused person whether he wishes to put any questions to that witness and shall record his answer.

**209.** *Repealed by Act No. 13 of 1982, First Sch.*

**210. Acquittal of accused person when no case to answer**

If at the close of the evidence in support of the charge, and after hearing such summing up, submission or argument as the prosecutor and the accused person or his advocate may wish to put forward, it appears to the court that a case is not made out against the accused person sufficiently to require him to make a defence, the court shall dismiss the case and shall forthwith acquit him.

[Act No. 13 of 1967, First Sch.]

**211. Defence**

(1) At the close of the evidence in support of the charge, and after hearing such summing up, submission or argument as may be put forward, if it appears to the court that a case is made out against the accused person sufficiently to require him to make a defence, the court shall again explain the substance of the charge to the accused, and shall inform him that he has a right to give evidence on oath from the witness box, and that, if he does so, he will be liable to cross-examination, or to make a statement not on oath from the dock, and shall ask him whether he has any witnesses to examine or other evidence to adduce in his defence, and the court shall then hear the accused and his witnesses and other evidence (if any).

(2) If the accused person states that he has witnesses to call but that they are not present in court, and the court is satisfied that the absence of those witnesses is not due to any fault or neglect of the accused person, and that there is a likelihood that they could, if present, give material evidence on behalf of the accused person, the court may adjourn the trial and issue process, or take other steps, to compel the attendance of the witnesses.

[Act No. 13 of 1967, First Sch.]

**212. Evidence in reply**

If the accused person adduces evidence in his defence introducing a new matter which the prosecutor could not by the exercise of reasonable diligence have foreseen, the court may allow the prosecutor to adduce evidence in reply to rebut that matter.

**213. Order of speeches**

The prosecutor or his advocate and the accused and his advocate shall be entitled to address the court in the same manner and order as in a trial under this Code before the High Court.

[Act No. 13 of 1967, s. 2.]

**214. Variance between charge and evidence, and amendment of charge**

(1) Where, at any stage of a trial before the close of the case for the prosecution, it appears to the court that the charge is defective, either in substance or in form, the court may make such order for the alteration of the charge, either by way of amendment of the charge or by the substitution or addition of a new charge, as the court thinks necessary to meet the circumstances of the case:

Provided that—

(i) where a charge is so altered, the court shall thereupon call upon the accused person to plead to the altered charge;

(ii) where a charge is altered under this subsection the accused may demand that the witnesses or any of them be recalled and give their evidence afresh or be further cross-examined by the accused or his advocate, and, in the last-mentioned event, the prosecution shall have the right to re-examine the witness on matters arising out of further cross-examination.

(2) Variance between the charge and the evidence adduced in support of it with respect to the time at which the alleged offence was committed is not material and the charge need not be amended for the variance if it is proved that the proceedings were in fact instituted within the time (if any) limited by law for the institution thereof.

(3) Where an alteration of a charge is made under subsection (1) and there is a variance between the charge and the evidence as described in subsection (2), the court shall, if it is of the opinion that the accused has been thereby misled or deceived, adjourn the trial for such period as may be reasonably necessary.

**215. Decision**

The court having heard both the complainant and the accused person and their witnesses and evidence shall either convict the accused and pass sentence upon or make an order against him according to law, or shall acquit him.

**216. Evidence relative to proper sentence or order**

The court may, before passing sentence or making an order against an accused person under section 215, receive such evidence as it thinks fit in order to inform itself as to the sentence or order properly to be passed or made.

[Act No. 22 of 1959, s. 26.]

**217. Drawing up of conviction or order**

The conviction or order may, if required, be afterwards drawn up and shall be signed by the court making the conviction or order, or by the clerk or other officer of the court.

**218. Order of acquittal bar to further procedure**

The production of a copy of the order of acquittal, certified by the clerk or other officer of the court, shall without other proof be a bar to a subsequent information or complaint for the same matter against the same accused person.

LIMITATIONS AND EXCEPTIONS RELATING
TO TRIALS BEFORE SUBORDINATE COURTS

**219. Limitation of time for summary trials in certain cases**

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

**220.** *Repealed by Act No. 5 of 2003, s. 80.*

**221. Committal to higher court for sentence**

(1) Where a person of not less than eighteen years of age is convicted by a subordinate court of the second class of an offence which is punishable by either that court or a subordinate court of the first class, and the court convicting him, after obtaining information as to his character and antecedents, is of the opinion that they are such that greater punishment should be inflicted than it has power to inflict, that court may, instead of dealing with him itself, commit him in custody to the Resident Magistrate's Court for sentence.

(2) Where a person who is not less than eighteen years of age is convicted by a subordinate court of the first class of an offence which is punishable by either that court or the High Court, and the court convicting him, after obtaining information as to his character and antecedents, is of the opinion that they are such that greater punishment should be inflicted than it has power to inflict, that court may, instead of dealing with him itself, commit him in custody to the High Court for sentence.

(3) Where the offender is committed under subsection (1) or subsection (2) for sentence, the court to which he is committed shall inquire into the circumstances of the case, and may deal with the offender in any manner in which he could be dealt with if he had been convicted by that court; and, if that court passes a sentence which the court convicting him had not the power to pass, the offender may appeal against the sentence to the High Court (if sentenced by a subordinate court of the first class), or to the Court of Appeal (if sentenced by the High Court), but otherwise he shall have the same right of appeal in all respects as if he had been sentenced by the court which convicted him.

[Act No. 17 of 1967, s. 29, Act No. 5 of 2003, s. 81.]

## PART VII – [Repealed]

**222.** *Repealed by Act No. 33 of 1963, First Sch.*

**223.** *Repealed by Act No. 33 of 1963, First Sch.*

**224.** *Repealed by Act No. 33 of 1963, First Sch.*

**225.** *Repealed by Act No. 33 of 1963, First Sch.*

**226.** *Repealed by Act No. 33 of 1963, First Sch.*

**227.** *Repealed by Act No. 33 of 1963, First Sch.*

**228.** *Repealed by Act No. 33 of 1963, First Sch.*

**229.** *Repealed by Act No. 33 of 1963, First Sch.*

## PART VIII – PROVISIONS RELATING TO THE COMMITTAL OF ACCUSED PERSONS FOR TRIAL BEFORE THE HIGH COURT COMMITTAL PROCEEDINGS BY SUBORDINATE COURTS

**230.** *Repealed by Act No. 5 of 2003, s. 82.*

**231.** *Repealed by Act No. 5 of 2003, s. 82.*

**232.** *Repealed by Act No. 5 of 2003, s. 82.*

**233.** *Repealed by Act No. 5 of 2003, s. 82.*

**234.** *Repealed by Act No. 5 of 2003, s. 82.*

**234.** *Repealed by Act No. 5 of 2003, s. 82.*

**236.** *Repealed by Act No. 13 of 1982, s. 7.*

**237.** *Repealed by Act No. 13 of 1982, s. 7.*

**238.** *Repealed by Act No. 13 of 1982, s. 7.*

**239.** *Repealed by Act No. 13 of 1982, s. 7.*

**240.** *Repealed by Act No. 13 of 1982, s. 7.*

**241.** *Repealed by Act No. 13 of 1982, s. 7.*

**242.** *Repealed by Act No. 13 of 1982, s. 7.*

**243.** *Repealed by Act No. 13 of 1982, s. 7.*

**244.** *Repealed by Act No. 13 of 1982, s. 7.*

**245.** *Repealed by Act No. 13 of 1982, s. 7.*

**246.** *Repealed by Act No. 5 of 2003, s. 82.*

**247.** *Repealed by Act No. 5 of 2003, s. 82.*

**248.** *Repealed by Act No. 5 of 2003, s. 82.*

**249.** *Repealed by Act No. 5 of 2003, s. 82.*

**250.** *Repealed by Act No. 5 of 2003, s. 82.*

**251.** *Repealed by Act No. 5 of 2003, s. 82.*

**252.** *Repealed by Act No. 5 of 2003, s. 82.*

**253.** *Repealed by Act No. 5 of 2003, s. 82.*

**254.** *Repealed by Act No. 13 of 1982, s. 8.*

**255.** *Repealed by Act No. 13 of 1982, s. 8.*

**256.** *Repealed by Act No. 13 of 1982, s. 8.*

**257.** *Repealed by Act No. 13 of 1982, s. 8.*

**258.** *Repealed by Act No. 13 of 1982, s. 8.*

**259.** *Repealed by Act No. 13 of 1982, s. 8.*

**260.** *Repealed by Act No. 13 of 1982, s. 8.*

## PART IX – PROCEDURE IN TRIALS BEFORE THE HIGH COURT

**261.** *Repealed by Act No. 5 of 2003, s. 83.*

**262.** *Repealed by Act No. 7 of 2007, Sch.*

**263.** *Repealed by Act No. 7 of 2007, Sch.*

**264.** *Repealed by Act No. 33 of 1963, First Sch.*

**265.** *Repealed by Act No. 7 of 2007, Sch.*

**266.** *Repealed by Act No. 7 of 2007, Sch.*

**267.** *Repealed by Act No. 33 of 1963, First Sch.*

**268.** *Repealed by Act No. 33 of 1963, First Sch.*

**269.** *Repealed by Act No. 7 of 2007, Sch.*

**270.** *Repealed by Act No. 7 of 2007, Sch.*

**271.** *Repealed by Act No. 7 of 2007, Sch.*

**272.** *Repealed by Act No. 33 of 1963, First Sch.*

**273.** *Repealed by Act No. 7 of 2007, Sch.*

*Arraignment*

### 274. Pleading to information

The accused person to be tried before the High Court upon an information shall be placed at the bar unfettered, unless the court sees cause otherwise to order, and the information shall be read over to him by the Registrar or other officer of the court, and explained if need be by that officer or interpreted by the interpreter of the court, and the accused person shall be required to plead instantly thereto,

unless, where the accused person is entitled to service of a copy of the information, he objects to the want of service, and the court finds that he has not been duly served therewith.

**275. Orders for amendment of information, separate trial, and postponement of trial**

(1) Every objection to an information for a formal defect on the face thereof shall be taken immediately after the information has been read over to the accused person and not later.

(2) Where, before a trial upon information or at any stage of the trial, it appears to the court that the information is defective, the court shall make an order for the amendment of the information as the court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice; and any amendments shall be made upon such terms as to the court shall seem just.

(3) Where an information is so amended, a note of the order for amendment shall be endorsed on the information, and the information shall be treated for the purposes of all proceedings in connexion therewith as having been filed in the amended form.

(4) Where, before a trial upon information or at any stage of the trial, the court is of the opinion that the accused may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same information, or that for any other reason it is desirable to direct that the accused should be tried separately for any one or more offences charged in an information, the court may order a separate trial of any count or counts of the information.

(5) Where, before a trial upon information or at any stage of the trial, the court is of the opinion that the postponement of the trial of the accused is expedient as a consequence of the exercise of any power of the court under this Code, the court shall make such order as to the postponement of the trial as appears necessary.

(6) Where an order of the court is made under this section for a separate trial or for postponement of a trial—

(a) *Repealed by Act No. 7 of 2007, Sch.*;

(b) the procedure on the separate trial of a count shall be the same in all respects as if the count had been found in a separate information, and the procedure on the postponed trial shall be the same in all respects (provided that the assessors, if any, have been discharged) as if the trial had not commenced; and

(c) the court may make such order as to admitting the accused to bail, and as to the enlargement of recognizances and otherwise, as the court thinks fit.

(7) A power of the court under this section shall be in addition to and not in derogation of any other power of the court for the same or similar purposes.

[Act No. 33 of 1963, First Sch.]

**276. Quashing of information**

(1) If an information does not state, and cannot by amendment authorized by section 275 be made to state, an offence of which the accused has had notice, it shall be quashed either on a motion made before the accused pleads or on a motion made in arrest of judgment.

(2) A written statement of every such motion shall be delivered to the Registrar or other officer of the court by or on behalf of the accused and shall be entered upon the record.

**277. Procedure in case of previous convictions**

Where an information contains a count charging an accused person with having been previously convicted for an offence, the procedure shall be as follows—

(a) the part of the information stating the previous conviction shall not be read out in court, nor shall the accused be asked whether he has been previously convicted as alleged in the information, unless and until he has either pleaded guilty to or been convicted of the subsequent offence;

(b) if he pleads guilty to or is convicted of the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the information;

(c) if he answers that he has been so previously convicted, the judge may proceed to pass sentence on him accordingly; but if he denies that he has been so previously convicted, or refuses to or does not answer the question, the court and the assessors shall then hear evidence concerning the previous conviction:

Provided that, if upon the trial of a person for a subsequent offence that person gives evidence of his own good character, the advocate for the prosecution, in answer thereto, may give evidence of the conviction of that person for the previous offence or offences before a verdict of guilty is returned, and the court and assessors shall inquire concerning the previous conviction or convictions at the same time that they inquire concerning the subsequent offence.

[Act No. 33 of 1963, First Sch.]

**278. Effect of plea of "not guilty"**

An accused person, upon being arraigned upon an information, by pleading generally thereto the plea of "not guilty" shall, without further form, be deemed to have put himself upon the country for trial.

**279. Plea of autrefois acquit and autrefois convict**

(1) An accused person against whom an information is filed may plead—

(a) that he has been previously convicted or acquitted of the same offence; or

(b) that he has obtained the President's pardon for his offence.

(2) If either of those pleas are pleaded and denied to be true, the court shall try whether the plea is true or not.

(3) If the court holds that the facts alleged by the accused do not prove the plea, or if it finds that it is false, the accused shall be required to plead to the information.

[Act No. 13 of 1967, First Sch.]

**280. Refusal to plead**

(1) If an accused person being arraigned upon an information stands mute of malice, or neither will nor by reason of infirmity can, answer directly to the information, the court may order the Registrar or other officer of the court to enter a

plea of "not guilty" on behalf of the accused person, and plea so entered shall have the same force and effect as if the accused person had actually pleaded it; or else the court shall thereupon proceed to try whether the accused person be of sound or unsound mind, and, if he is found of sound mind, shall proceed with the trial, and if he is found of unsound mind, and consequently incapable of making his defence, shall order the trial to be postponed and the accused person to be kept meanwhile in safe custody in such place and manner as the court thinks fit, and shall report the case for the order of the President.

(2) The President may order the accused person to be confined in a lunatic asylum, prison or other suitable place for safe custody.

[L.N. 124/1964.]

**281. Plea generally and application of Part IVA**

(1) An accused person may plead not guilty, guilty, or guilty subject to a plea agreement.

(2) Where an accused person pleads guilty subject to a plea agreement, the provisions of Part IV relating to plea agreements shall apply accordingly.

[Act No. 11 of 2008, s. 5.]

**282. Procedure on plea of "not guilty"**

If the accused pleads "not guilty", or if a plea of "not guilty" is entered in accordance with section 280, the court shall proceed to try the case.

[Act No. 33 of 1963, First Sch., Act No. 7 of 2007, Sch.]

**283. Power to postpone or adjourn proceedings**

(1) If, from the absence of witnesses or any other reasonable cause to be recorded in the proceedings, the court considers it necessary or advisable to postpone the commencement of or to adjourn a trial, the court may from time to time postpone or adjourn it on such terms as it thinks fit for such time as it considers reasonable, and may by warrant remand the accused to some prison or other place of security.

(2) During a remand the court may at any time order the accused to be brought before it.

(3) The court may on a remand admit the accused to bail.

**284.** *Repealed by Act No. 33 of 1963, First Sch.*

**285.** *Repealed by Act No. 33 of 1963, First Sch.*

**286.** *Repealed by Act No. 33 of 1963, First Sch.*

**287.** *Repealed by Act No. 33 of 1963, First Sch.*

**288.** *Repealed by Act No. 33 of 1963, First Sch.*

**289.** *Repealed by Act No. 33 of 1963, First Sch.*

**290.** *Repealed by Act No. 33 of 1963, First Sch.*

**291.** *Repealed by Act No. 33 of 1963, First Sch.*

**292.** *Repealed by Act No. 33 of 1963, First Sch.*

**293.** *Repealed by Act No. 33 of 1963, First Sch.*

**294.** *Repealed by Act No. 33 of 1963, First Sch.*

**295.** *Repealed by Act No. 33 of 1963, First Sch.*

**296.** *Repealed by Act No. 33 of 1963, First Sch.*

**297.** *Repealed by Act No. 7 of 2007, Sch.*

**298.** *Repealed by Act No. 7 of 2007, Sch.*

**299.** *Repealed by Act No. 7 of 2007, Sch.*

CASE FOR THE PROSECUTION

**300. Opening of case for prosecution**

The advocate for the prosecution shall open the case against the accused person, and shall call witnesses and adduce evidence in support of the charge.

[Act No. 33 of 1963, First Sch., Act No. 7 of 2007, Sch.]

**301.** *Repealed by Act No. 5 of 2003, s. 84.*

**302. Cross-examination of witnesses for prosecution**

The witnesses called for the prosecution shall be subject to cross-examination by the accused person or his advocate, and to re-examination by the advocate for the prosecution.

**303.** *Repealed by Act No. 13 of 1982, First Sch.*

**304.** *Repealed by Act No. 13 of 1982, First Sch.*

**305.** *Repealed by Act No. 5 of 2003, s. 85.*

**306. Close of case for prosecution**

(1) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence shall, after hearing, if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit, record a finding of not guilty.

(2) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court, either personally or by his advocate (if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact.

(3) If the accused person says that he does not intend to give evidence or make an unsworn statement, or to adduce evidence, then the advocate for the prosecution may sum up the case against the accused person; but if the accused person says that he intends to give evidence or make an unsworn statement, or to adduce evidence, the court shall call upon him to enter upon his defence.

[Act No. 33 of 1963, First Sch., Act No. 20 of 1965, s. 33, Act No. 5 of 2003, s. 86.]

CASE FOR THE DEFENCE

**307. Defence**

(1) The accused person or his advocate may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution; the accused person may then give evidence on his own behalf and he or his advocate may examine his witnesses (if any), and after their cross-examination and re-examination (if any) may sum up his case.

(2) *Repealed by Act No. 5 of 2003, s. 87*.

[Act No. 13 of 1982, s. 10, Act No. 5 of 2003, s. 87.]

**308. Additional witnesses for the defence**

The accused person shall be allowed to examine any witness not previously summoned to give evidence at the trial, if that witness is in attendance.

[Act No. 13 of 1982, First Sch., Act No. 11 of 1983, Sch.]

**309. Evidence in reply**

If the accused person adduces evidence in his defence introducing new matter which the advocate for the prosecution could not by the exercise of reasonable diligence have foreseen, the court may allow the advocate for the prosecution to adduce evidence in reply to rebut it.

**310. Prosecutor's reply**

If the accused person, or any one of several accused persons, adduces any evidence, the advocate for the prosecution shall, subject to the provisions of section 161, be entitled to reply.

**311. Where accused adduces no evidence**

If the accused person says that he does not intend to give or adduce evidence and the court considers that there is evidence that he committed the offence, the advocate for the prosecution shall then sum up the case against the accused person, and the court shall then call on the accused person personally or by his advocate to address the court on his own behalf.

**312.** *Repealed by Act No. 33 of 1963, First Sch.*

**313.** *Repealed by Act No. 33 of 1963, First Sch.*

**314.** *Repealed by Act No. 33 of 1963, First Sch.*

**315.** *Repealed by Act No. 33 of 1963, First Sch.*

**316.** *Repealed by Act No. 33 of 1963, First Sch.*

**317.** *Repealed by Act No. 33 of 1963, First Sch.*

**318.** *Repealed by Act No. 33 of 1963, First Sch.*

**319.** *Repealed by Act No. 33 of 1963, First Sch.*

**320.** *Repealed by Act No. 33 of 1963, First Sch.*

**321.** *Repealed by Act No. 33 of 1963, First Sch.*

CLOSE OF HEARING

**322. Delivery of judgment**

(1) When the case on both sides is closed, the judge shall then give judgment.

(2) If the accused person is convicted, the judge shall pass sentence on him according to law.

[Act No. 7 of 2007, Sch.]

*PASSING SENTENCE*

**323. Calling upon the accused**

If the judge convicts the accused person, or if the accused person pleads guilty, the Registrar or other officer of the court shall ask him whether he has anything to say why sentence should not be passed upon him according to law, but the omission so to ask him shall have no effect on the validity of the proceedings.

[Act No. 33 of 1963, First Sch.]

**324. Motion in arrest of judgment**

(1) The accused person may, at any time before sentence, whether on his plea of guilty or otherwise, move in arrest of judgment on the ground that the information does not, after any amendment which the court has made and had power to make, state an offence which the court has power to try.

(2) The court may either hear and determine the matter during the same sitting, or adjourn the hearing thereof to a future time to be fixed for that purpose.

(3) If the court decides in favour of the accused, he shall be discharged from that information.

**325. Sentence**

If no motion in arrest of judgment is made, or if the court decides against the accused person upon a motion, the court may sentence the accused person at any time during the session.

**326. Power to reserve decision on question raised at trial**

The court before which a person is tried for an offence may reserve the giving of its final decision on questions raised at the trial, and its decision whenever given shall be considered as given at the time of the trial.

**327. Power to reserve questions arising in the course of the trial**

(1) When a person has, in a trial before the High Court, been convicted of an offence, the judge may reserve and refer for the decision of a court consisting of two or more judges of the High Court any question which has arisen in the course of the trial, and the determination of which would affect the event of the trial.

(2) If the judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to prison or be admitted to bail; and the High Court may review the case, or such part thereof as may be necessary, and finally determine the question, and thereupon may alter the sentence passed by the trial judge and pass such judgment or order as the High Court may think fit.

**328. Objections cured by verdict**

No judgment shall be stayed or reversed on the ground of an objection which, if stated after the information was read over to the accused person, or during the progress of the trial, might have been amended by the court, nor for any informality in swearing the witnesses or any of them.

[Act No. 33 of 1963, First Sch.]

**329. Evidence for arriving at a proper sentence**

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

PART IXA – VICTIM IMPACT STATEMENTS

**329A. Interpretation**

In this Part—

**"family victim"**, in relation to an offence as a direct result of which a primary victim has died, means a person who was, at the time the offence was committed, a member of the primary victim's immediate family, and includes such a person whether or not the person has suffered personal harm as a result of the offence;

**"member of the primary victim's immediate family"** means—

(a) the victim's spouse;

(b) the victim's de facto spouse, being a person who has cohabited with the victim for at least 2 years;

(c) a parent, guardian or step-parent of the victim;

(d) a child or step-child of the victim or some other child for whom the victim is the guardian; or

(e) a brother, sister, step-brother or step-sister of the victim;

**"personal harm"** means actual physical bodily harm, mental illness or nervous shock;

**"primary victim"**, in relation to an offence, means—

(a) a person against whom the offence was committed;

(b) a person who was a witness to the act of actual or threatened violence, the death or the infliction of the physical bodily harm concerned, being a person who has suffered personal harm as a direct result of the offence;

**"victim"** means a primary victim or a family victim;

**"victim impact statement"** means a statement containing particulars of—

(a) in the case of a primary victim, any personal harm suffered by the victim as a direct result of the offence; or

(b) in the case of a family victim, the impact of the primary victim's death on the members of the primary victim's immediate family.

[Act No. 5 of 2003, s. 88.]

**329B. Application of Part**

This Part applies in relation to an offence that is being dealt with by any court, where the offence results in the death of, or actual physical bodily harm to, any person.

[Act No. 5 of 2003, s. 88.]

**329C. When victim impact statements may be received and considered**

(1) If it considers it appropriate to do so, a court may receive and consider a victim impact statement at any time after it convicts, but before it sentences, an offender.

(2) If the primary victim has died as a direct result of the offence, the court shall receive a victim impact statement given by a family victim and acknowledge its receipt, and may make any comment on it that the court considers appropriate.

(3) Notwithstanding subsections (1) and (2), the court—

(a) shall not consider a victim impact statement unless it has been filed by or on behalf of the victim to whom it relates or by or on behalf of the prosecutor; and

(b) shall not consider a victim impact statement given by a family victim in connection with the determination of the punishment for the offence unless it considers that it is appropriate to do so.

(4) The court may make a victim impact statement available to the prosecutor, to the offender or to any other person on such conditions (which shall include conditions preventing the offender from retaining copies of the statement) as it considers appropriate.

[Act No. 5 of 2003, s. 88.]

**329D. Victim impact statements discretionary**

(1) The giving of a victim impact statement is not mandatory.

(2) A victim impact statement shall not be received or considered by a court if the victim or any of the victims to whom the statement relates objects to the statement being given to the court.

(3) The absence of a victim impact statement shall not give rise to any inference that an offence had little or no impact on a victim.

[Act No. 5 of 2003, s. 88.]

**329E. Formal requirements for victim impact statements**

(1) A victim impact statement shall be in writing and shall comply with such other requirements as are prescribed by rules of court.

(2) If a primary victim is incapable of providing information for or objecting to a victim impact statement about the personal harm suffered by the victim, a member of the primary victim's immediate family or other representative of the victim may, subject to rules of court, act on behalf of the victim for that purpose.

(3) A court may receive and consider a victim impact statement only if it is given in accordance with and complies with the requirements prescribed by or under this Part.

[Act No. 5 of 2003, s. 88.]

**329F. Rules of court**

The Chief Justice may make any rules of court necessary or expedient to be made for carrying this Part into effect.

[Act No. 5 of 2003, s. 88.]

## PART X – SENTENCES AND THEIR EXECUTION SENTENCE OF DEATH

**330. Accused to be informed of right to appeal**

When an accused person is sentenced to death, the court shall inform him of the time within which, if he wishes to appeal, his appeal should be preferred.

**331. Authority for detention**

A certificate under the hand of the Registrar or other officer of the court that sentence of death has been passed, and naming the person condemned, shall be sufficient authority for the detention of that person.

**332. Record and report to be sent to President**

(1) As soon as conveniently may be after sentence of death has been pronounced, if no appeal from the sentence is confirmed, then as soon as conveniently may be after confirmation, the presiding judge shall forward to the President a copy of the notes of evidence taken on the trial, with a report in writing signed by him containing any recommendation or observations on the case he may think fit to make.

(2) The President, after considering the report, shall communicate to the judge, or his successor in office, the terms of any decision to which he may come thereon, and the judge shall cause the tenor and substance thereof to be entered in the records of the court.

(3) The President shall issue a death warrant, or an order for the sentence of death to be commuted, or a pardon, under his hand and the Public Seal of Kenya to give effect to the decision, and—

(a) if the sentence of death is to be carried out, the warrant shall state the place where and the time when execution is to be had, and shall give directions as to the place of burial or cremation of the body of the person executed;

(b) if the sentence is commuted for any other punishment, the order shall specify that punishment;

(c) if the person sentenced is pardoned, the pardon shall state whether it is free, or to what conditions (if any) it is subject:

Provided that the President's warrant may direct that the execution shall take place at such time and at such place and that the body of the person executed shall be buried or cremated at such place as shall be appointed by some officer specified in the warrant.

(4) The warrant, or order, or pardon, of the President shall be sufficient authority in law to all persons to whom it is directed to execute the sentence of death or other punishment awarded, and to carry out the directions therein given in accordance with the terms thereof.

[Act No. 36 of 1962, Sch., L.N. 182/1958, L.N. 124/1964.]

***Other Sentences***

**333. Warrant in case of sentence of imprisonment**

(1) A warrant under the hand of the judge or magistrate by whom a person is sentenced to imprisonment, ordering that the sentence shall be carried out in any prison within Kenya, shall be issued by the sentencing judge or magistrate, and shall be full authority to the officer in charge of the prison and to all other persons for carrying into effect the sentence described in the warrant, not being a sentence of death.

(2) Subject to the provisions of section 38 of the Penal Code (Cap. 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.

[Act No. 7 of 2007, Sch.]

**334. Warrant for levy of fine, etc.**

(1) When a court orders money to be paid by an accused person or by a prosecutor or complainant for fine, penalty, compensation, costs, expenses or otherwise, the money may be levied on the movable and immovable property of the person ordered to pay it by distress and sale under warrant; but if he shows sufficient movable property to satisfy the order his immovable property shall not be sold.

(2) The person may pay or tender to the officer having the execution of the warrant the sum therein mentioned together with the amount of the expenses of the distress up to the time of payment or tender, and thereupon the officer shall cease to execute it.

(3) A warrant under this section may be executed within the local limits of the jurisdiction of the court issuing it, and it shall authorize the distress and sale of property belonging to the person without those limits when endorsed by a magistrate holding a subordinate court of the first or second class within the local limits of whose jurisdiction the property was found.

**335. Objections to attachment**

(1) Any person claiming to be entitled to or to have a legal or equitable interest in the whole or part of property attached in execution of a warrant issued under section 334 may, at any time prior to the receipt by the court of the proceeds of sale of that property, give notice in writing to the court of his objection to the attachment of the property; and the notice shall set out shortly the nature of the claim which the person (hereafter in this section referred to as the objector) makes to the whole or part of the property attached, and shall certify the value of the property claimed by him, and the value shall be deposed to upon affidavit, which shall be filed with the notice.

(2) Upon receipt of a valid notice given under subsection (1), the court shall, by an order in writing addressed to the officer having the execution of the warrant, direct the stay of the execution proceedings.

(3) Upon the issue of an order under subsection (2), the court shall, by notice in writing, direct the objector to appear before it and establish his claim upon a date to be specified in the notice.

(4) A notice shall be served upon the person whose property was, by the warrant, issued under section 334, directed to be attached, and, unless the property is to be applied to the payment of a fine, upon the person entitled to the proceeds of the sale of the property; and the notice shall specify the time and place fixed for the appearance of the objector and shall direct the person upon whom the notice is served to appear before the court at the same time and place if he wishes to be heard upon the hearing of the objection.

(5) Upon the date fixed for the hearing of the objection, the court shall investigate the claim, and for that purpose may hear any evidence which the objector may give or adduce and any evidence given or adduced by a person served with a notice in accordance with the provisions of subsection (4).

(6) If, upon investigation of the claim, the court is satisfied that the property was not, when attached, in the possession of the person ordered to pay the money or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the person ordered to pay the money at that time, it was so in his possession not on his own account or as his own property but on account of or in trust for some other person or partly on his own account and partly on account of some other person, the court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment.

(7) If, upon the date fixed for his appearance, the objector fails to appear, or if, upon investigation of the claim in accordance with the provisions of subsection (5), the court is of the opinion that the objector has failed to establish his claim, the court shall order the attachment and execution to proceed, and shall make such order as to costs as it deems fit.

(8) Nothing in this section shall be deemed to deprive a person who has failed to comply with the requirements of subsection (1) of the right to take any other proceedings which, apart from the provisions of this section, may lawfully be taken by a person claiming an interest in property attached under a warrant.

**336. Suspension of execution of sentence of imprisonment in default of fine**

(1) When a convicted person has been sentenced to a fine only and to imprisonment in default of payment of a fine, and whether or not a warrant of distress has been issued under section 334, the court may suspend the execution of the sentence of imprisonment and may release the convicted person upon his executing a bond, with or without sureties, as the court thinks fit, conditioned for his appearance before the court on a day not being more than thirty days from the time of executing the bond; and in the event of the fine not having been realized on or before that day the court may, subject to the other provisions of this section, direct the sentence of imprisonment to be carried into execution forthwith.

(2) In any case in which an order for the payment of money has been made, on non-recovery of which imprisonment may be awarded, and the money is not paid forthwith, the court may require the person ordered to make payment to enter into a bond as prescribed in subsection (1), and in default of his so doing may at once pass sentence of imprisonment as if the money had not been recovered.

(3) The court may direct that money to which this section applies may be paid by installments at such times and in such amounts as the court may deem fit; but so

that in default of payment of any installment the whole of the amount outstanding shall become and be immediately due and payable, and all the provisions of this Code and of the Penal Code (Cap. 63) applicable to a sentence of a fine and to imprisonment in default of payment thereof shall apply to it accordingly.

(4) A warrant of commitment to prison in respect of the non-payment of a sum of money by a person to whom time has been allowed for payment under subsection (1), or who has been allowed to pay by installments under subsection (3), shall not be issued unless the court first makes inquiry as to his means in his presence.

(5) After making inquiry in accordance with the provisions of subsection (4) the court may, instead of issuing a warrant of commitment to prison, make an order extending the time allowed for payment or varying the amount of the installments or the times at which the installments were, by the previous order of the court, directed to be paid.

(6) For the purpose of enabling inquiry to be made under subsection (4), the court may issue a summons to the person ordered to pay the money to appear before it and, if he does not appear in obedience to the summons, may issue a warrant for his arrest, or, without issuing a summons, issue in the first instance a warrant for his arrest.

**337. Commitment for want of distress**

If the officer having the execution of a warrant of distress reports that he could find no property or not sufficient property whereon to levy the money mentioned in the warrant with expenses, the court may by the same or a subsequent warrant commit the person ordered to pay to prison for a time specified in the warrant, unless the money and all expenses of the distress, commitment and conveyance to prison, to be specified in the warrant, are sooner paid.

**338. Commitment in lieu of distress**

When it appears to the court that distress and sale of property would be ruinous to the person ordered to pay the money or his family, or (by his confession or otherwise) that he has no property whereon the distress may be levied, or other sufficient reason appears to the court, the court may, instead of or after issuing a warrant of distress, commit him to prison for a time specified in the warrant, unless the money and all expenses of the commitment and conveyance to prison, to be specified in the warrant, are sooner paid.

**339. Payment in full after commitment**

A person committed for non-payment may pay the sum mentioned in the warrant, with the amount of expenses therein authorized (if any), to the person in whose custody he is, and that person shall thereupon discharge him if he is in custody for no other matter.

**340. Part payment after commitment**

(1) If a person who is confined in prison for non-payment of a sum adjudged by a court in its criminal jurisdiction to be paid under this Code or under any other Act pays a sum in part satisfaction of the sum adjudged to be paid, the term of his imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which that person is committed as the sum so paid bears to the sum for which he is liable.

(2) The officer in charge of a prison in which a person is confined who is desirous of taking advantage of the provisions of subsection (1) shall, on application being made to him by the prisoner, at once take him before a court, and the court shall certify the amount by which the term of imprisonment originally awarded is reduced by the payment in part satisfaction, and shall make such order as is required in the circumstances.

**341. Who may issue warrant**

A warrant for the execution of a sentence may be issued either by the judge or magistrate who passed the sentence or by his successor in office.

**342. Limitation of imprisonment for non-payment of fine, etc.**

No commitment for non-payment shall be for a longer period than six months, unless the law under which the conviction has taken place enjoins or allows a longer period.

POLICE SUPERVISION

**343. Person twice convicted may be subject to police supervision**

(1) When a person, having been convicted of an offence punishable with imprisonment for a term of three years or more is again convicted of an offence punishable with imprisonment for a similar term or of an offence under section 345, the court may, at the time of passing sentence of imprisonment on that person, also order that he shall be subject to police supervision as provided by section 344 for a period not exceeding five years from the date of his release from prison.

(2) If the conviction is set aside on appeal or otherwise, the order shall become void.

(3) An order under this section may be made by the High Court when exercising its powers of revision.

[Act No. 19 of 2014, s. 18.]

**344. Requirements from persons subject to police supervision**

(1) A court may at any time direct that a person shall, whilst subject to police supervision under section 343 and at large in Kenya, comply with all or any of the following requirements, and may vary any such directions at any time-

(a) to reside within the limits of a specified area;

(b) not to transfer his or her residence to another area without the written consent of an authorised police officer in charge of that area;

(c) not to leave the area in which the person resides without the written consent of the police officer in charge of that area;

(d) at all times to keep the authorised police officer in charge of the area in which the person resides notified of the house or place in which he or she resides and provide his or her telephone and other contacts;

(e) to present him or herself, whenever called upon by the authorised police officer in charge of the area in which the person resides, at any place in that area specified by that officer.

(2) The freedom of movement and residence under Article 39 of the Constitution shall be limited as specified under this section for the purposes of limiting the movement of persons under a lawful police supervision order.

(3) The Cabinet Secretary may make regulations for carrying out the provisions of this section, and in particular prescribing the manner in which persons may be brought before a court for the purposes of this section.

[Act No. 19 of 2014, s. 18.]

**344A. Automatic police supervision**

(1) A person who is convicted of an offence under section 296(1), 297(1), 308 or 322 of the Penal Code the Prevention of Terrorism Act or the Sexual Offences Act shall be subject to police supervision for a period of five years from the date of his release from prison.

(2) A person who is subject to police supervision under this section shall, whilst he or she is so subject—

(a) reside within the limits of such area as the Commissioner of Prisons shall, in each case, specify in writing to the Inspector General of Police upon the person's release;

(b) not transfer his or her residence to another area without the written consent of the police officer in charge of the specified area;

(c) not leave the area in which he or she resides without the written consent of the police officer in charge of that area;

(d) at all times keep the police officer in charge of the area in which he or she resides notified of the house or place in which he or she resides;

(e) present himself or herself, whenever called upon by the police officer in charge of the area in which he resides, at any place in that area specified by that officer.

(3) The freedom of movement and residence under Article 39 of the Constitution shall be limited as specified under this section for the purposes of limiting the movement of persons under a lawful police supervision order.

[Act No. 19 of 2014, s. 18.]

**345. Failure to comply with requirements under section 344**

(1) A person subject to police supervision who fails to comply with a requirement placed upon him or her by or by virtue of section 344 or 344A commits an offence and is liable, upon conviction, to imprisonment for a term not exceeding six months and on a second or subsequent conviction for that offence to imprisonment for a term not exceeding twelve months.

(2) Reasonable efforts made by a person to comply with a supervision order shall be a defence to the offences under subsection (1).

(3) A police officer may arrest without warrant a person whom he suspects upon reasonable grounds of having committed an offence under this section.

[Act No. 19 of 2014, s. 18.]

**346. Errors and omissions in orders and warrants**

The court may at any time amend a defect in substance or in form in an order or warrant, and no omission or error as to the time and place, and no defect in form in an order or warrant given under this Code, shall be held to render void or unlawful an act done or intended to be done by virtue of that order or warrant, provided that it is therein mentioned, or may be inferred therefrom, that it is founded on a conviction or judgment, and there is a valid conviction or judgment to sustain it.

## PART XI – APPEALS FROM SUBORDINATE COURTS

### Appeals

**347. Appeal to High Court**

(1) Save as is in this Part provided—

(a) a person convicted on a trial held by a subordinate court of the first or second class may appeal to the High Court; and

(b) *Repealed by Act No. 5 of 2003, s. 93*.

(2) An appeal to the High Court may be on a matter of fact as well as on a matter of law.

[Act No. 17 of 1967, s. 30, Act No. 5 of 2003, s. 93.]

**348. No appeal on plea of guilty, nor in petty cases**

No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.

[Act No. 17 of 1967, s. 31.]

**348A. Right of appeal against acquittal, order of refusal or order of dismissal**

(1) When an accused person has been acquitted on a trial held by a subordinate court or High Court, or where an order refusing to admit a complaint or formal charge, or an order dismissing a charge, has been made by a subordinate court or High Court, the Director of Public Prosecutions may appeal to the High Court or the Court of Appeal as the case may be, from the acquittal or order on a matter of fact and law.

(2) If the appeal under subsection (1) is successful, the High Court or Court of Appeal as the case may be, may substitute the acquittal with a conviction and may sentence the accused person appropriately.

[Act No. 13 of 1967, s. 3, Act No. 12 of 2012, Sch, Act No. 19 of 2014, s. 19.]

**349. Limitation of time of appeal**

An appeal shall be entered within fourteen days of the date of the order or sentence appealed against:

Provided that the court to which the appeal is made may for good cause admit an appeal after the period of fourteen days has elapsed, and shall so admit an appeal if it is satisfied that the failure to enter the appeal within that period has been caused by the inability of the appellant or his advocate to obtain a copy of the judgment or order appealed against, and a copy of the record, within a reasonable time of applying to the court therefor.

[Act No. 57 of 1955, s. 9, Act No. 22 of 1959, s. 34, Act No. 17 of 1967, s. 32, L.N. 22/1984.]

**350. Petition of appeal**

(1) An appeal shall be made in the form of a petition in writing presented by the appellant or his advocate, and every petition shall (unless the High Court otherwise directs) be accompanied by a copy of the judgment or order appealed against.

(2) A petition of appeal shall be signed, if the appellant is not represented by an advocate, by the appellant, and, if the appellant is represented by an advocate, by the advocate, and shall contain particulars of the matters of law or fact in regard to which the subordinate court appealed from is alleged to have erred, and shall

specify an address at which notices or documents connected with the appeal may be served on the appellant or, as the case may be, on his advocate; and the appellant shall not be permitted, at the hearing of the appeal, to rely on a ground of appeal other than those set out in the petition of appeal:

Provided that—

(i) subject to the provisions of paragraph (ii), where, within five days of the date of the judgment or order appealed against, the appellant or his advocate has applied to the subordinate court which passed the judgment or made the order for a copy of the record of the proceedings before that court, and where the appeal is entered within the period of limitation prescribed by section 349 but before receipt by the appellant or his advocate of the copy of the record, the petition of appeal may be amended on notice in writing to the Registrar of the High Court and to the Director of Public Prosecutions and without leave of the High Court, within seven days of the receipt by the appellant or his advocate of the copy of the record applied for;

(ii) the provisions of paragraph (i) shall not apply where the petition of appeal is signed by an advocate who represented the appellant in the proceedings before the subordinate court appealed from;

(iii) where a copy of the record of the proceedings before the subordinate court appealed from is applied for by the appellant or his advocate, the date of the receipt thereof by the appellant or his advocate shall be certified to the High Court by the subordinate court, and shall for the purposes of this subsection be deemed to be—

(a) if the copy of the record is delivered otherwise than by post, the date of delivery; and

(b) if the copy of the record is delivered by post, the date on which it is shown, on an advice of the delivery of a registered postal article issued under regulation 37(3) of the East African Postal Regulations, or any provision of law amending or replacing that regulation, to have been delivered,

and no such copy of a record shall be delivered by post otherwise than by registered post;

(iv) save as provided in paragraph (i), a petition of appeal may only be amended with the leave of the High Court and on such terms and conditions, whether as to costs or otherwise, as the High Court may see fit to impose;

(v) notice in writing of an application for leave to amend a petition of appeal shall be given to the Registrar of the High Court and to the Attorney-General not less than three clear days, or such shorter period as the High Court may in any particular case allow, before the application is made; and an application for leave to amend a petition of appeal shall be made either at the hearing of the appeal or, if made previously, by way of motion in open court.

[Act No. 57 of 1955, s. 10, L.N. 124/1964, L.N. 280/1967, Act No. 12 of 2012, Sch.]

**351. Appellant in prison**

If the appellant is in prison, he may present his petition of appeal and the copies accompanying it to the officer in charge of the prison, who shall thereupon forward the petition and copies to the Registrar of the High Court.

**352. Summary rejection of appeal**

(1) When the High Court has received the petition and copy under section 350, a judge shall peruse them, and, if he considers that there is no sufficient ground for interfering, may, notwithstanding the provisions of section 359, reject the appeal summarily:

Provided that no appeal shall be rejected summarily unless the appellant or his advocate has had the opportunity of being heard in support of the appeal, except—

(i) in a case falling within subsection (2) of this section;

(ii) *repealed by Act No. 5 of 2003, s. 94.*

(2) Where an appeal is brought on the ground that the conviction is against the weight of the evidence, or that the sentence is excessive, and it appears to a judge that the evidence is sufficient to support the conviction and that there is no material in the circumstances of the case which could raise a reasonable doubt whether the conviction was right or lead him to the opinion that the sentence ought to be reduced, the appeal may, without being set down for hearing, be summarily rejected by an order of the judge certifying that he has perused the record and is satisfied that the appeal has been lodged without any sufficient ground for complaint.

(3) Whenever an appeal is summarily rejected notice of rejection shall forthwith be given to the Director of Public Prosecutions and to the appellant or his advocate.

[Act No. 17 of 1967, s. 33, Act No. 5 of 2003, s. 94, Act No. 12 of 2012, Sch.]

**352A. Summary allowance of appeal**

Where an appeal against conviction has been lodged and a judge of the High Court is satisfied that the conviction cannot be supported, and the Director of Public Prosecutions has informed the court in writing that he does not support the conviction, the judge may summarily allow the appeal.

[Act No. 17 of 1967, s. 34, Act No. 12 of 2012, Sch.]

**353. Notice of time and place of hearing**

If the High Court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his advocate, and to the respondent or his advocate, of the time and place at which the appeal will be heard, and shall furnish the respondent or his advocate with a copy of the proceedings and of the grounds of appeal.

[Act No. 13 of 1967, First Sch.]

**354. Powers of High Court**

(1) At the hearing of the appeal the appellant or his advocate may address the court in support of the particulars set out in the petition of appeal and the respondent or his advocate may then address the court.

(2) The court may invite the appellant or his advocate to reply upon any matters of law or fact raised by the respondent or his advocate in his address.

(3) The court may then, if it considers that there is no sufficient ground for interfering, dismiss the appeal or may—

(a) in an appeal from a conviction—

(i) reverse the finding and sentence, and acquit or discharge the accused, or order him to be tried by a court of competent jurisdiction; or

(ii) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce or increase the sentence; or

(iii) with or without a reduction or increase and with or without altering the finding, alter the nature of the sentence;

(b) in an appeal against sentence, increase or reduce the sentence or alter the nature of the sentence;

(bb) in an appeal from an acquittal, an appeal from an order refusing to admit a complaint or formal charge or an appeal from an order dismissing a charge, hear and determine the matter of law and thereupon reverse, affirm or vary the determination of the subordinate court, or remit the matter with the opinion of the High court thereon to the subordinate court for determination, whether by way of rehearing or otherwise, with such directions as the High Court may think necessary, and make such other order in relation to the matter, including an order as to costs, as High Court may think fit;

(c) in an appeal from an acquittal, an appeal from an order refusing to admit a complaint or formal charge or an appeal from an order dismissing a charge, hear and determine the matter of law and thereupon reverse, affirm or vary the determination of the subordinate court, or remit the matter with the opinion of the High Court thereon to the subordinate court for determination, whether by way of re-hearing or otherwise, with such directions as the High Court may think necessary, and make such other order in relation to the matter, including an order as to costs, as the High Court may think fit;

(d) in an appeal from any other order, alter or reverse the order,

and in any case may make any amendment or any consequential or incidental order that may appear just and proper.

(4) Subject to subsection (5), an appellant, notwithstanding that he is in custody, shall be entitled to be present, if he desires it, at the hearing of the appeal:

Provided that where the appeal is on some ground involving a question of law alone, he shall not be entitled to be present except with the leave of the High Court.

(5) The right of an appellant who is in custody to be present at the hearing of the appeal shall be subject to his paying all expenses incidental to his transfer to and from the place where the court sits for the determination of the appeal:

Provided that the court may direct that the appellant be brought before the court in a case where in the opinion of the court his presence is advisable for the due determination of the appeal, in which case the expenses shall be defrayed out of moneys provided by Parliament.

(6) Nothing in subsection (1) shall empower the High Court to impose a greater sentence than might have been imposed by the court which tried the case.

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

[Act No. 22 of 1959, s. 35, Act No. 13 of 1967, First Sch., Act No. 10 of 1969, First Sch., Act No. 5 of 2003, s. 95.]

**355. Order of the High Court to be certified to lower court**

(1) When a case is decided on appeal by the High Court, it shall certify its judgment or order to the court by which the conviction, sentence or order appealed against was recorded or passed.

(2) The court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court, and, if necessary, the records shall be amended in accordance therewith.

**356. Bail and stay of execution pending the entering of an appeal**

(1) The High Court, or the subordinate court which has convicted or sentenced a person, may grant bail or may stay execution on a sentence or order pending the entering of an appeal, on such terms as to security for the payment of money or the performance or non-performance of any act or the suffering of any punishment ordered by or in the sentence or order as may seem reasonable to the High Court or the subordinate court.

(2) If the person in whose favour bail or a stay of execution is granted under this section is ultimately liable to a sentence of imprisonment, the time during which the person has been released on bail, or during which the execution was stayed, shall be excluded in computing the term of his sentence, unless the High Court, or failing that court the subordinate court which convicted and sentenced the person, otherwise orders.

[Act No. 22 of 1959, s. 36.]

**357. Admission to bail or suspension of sentence pending appeal**

(1) After the entering of an appeal by a person entitled to appeal, the High Court, or the subordinate court which convicted or sentenced that person, may order that he be released on bail with or without sureties, or, if that person is not released on bail, shall at his request order that the execution of the sentence or order appealed against shall be suspended pending the hearing of his appeal:

Provided that, where an application for bail is made to the subordinate court and is refused by that court, no further application for bail shall lie to the High Court, but a person so refused bail by a subordinate court may appeal against refusal to the High Court and, notwithstanding anything to the contrary in sections 352 and 359, the appeal shall not be summarily rejected and shall be heard, in accordance with such procedure as may be prescribed, before one judge of the High Court sitting in chambers.

(2) If the appeal is ultimately dismissed and the original sentence confirmed, or some other sentence of imprisonment substituted therefor, the time during which the appellant has been released on bail or during which the sentence has been suspended shall be excluded in computing the term of imprisonment to which he is finally sentenced.

(3) The Chief Justice may make rules of court to regulate the procedure in cases under this section.

[Act No. 22 of 1959, s. 37, Act No. 27 of 1961, Sch.]

**358. Power to take further evidence**

(1) In dealing with an appeal from a subordinate court, the High Court, if it thinks additional evidence is necessary, shall record its reasons, and may either take such evidence itself or direct it to be taken by a subordinate court.

(2) When the additional evidence is taken by a subordinate court, that court shall certify the evidence to the High Court, which shall thereupon proceed to dispose of the appeal.

(3) Unless the High Court otherwise directs, the accused or his advocate shall be present when the additional evidence is taken.

(4) Evidence taken in pursuance of this section shall be taken as if it were evidence taken at a trial before a subordinate court.

**359. Number of judges on an appeal**

(1) Appeals from subordinate courts shall be heard by one judge of the High Court, except when in any particular case the Chief Justice, or a judge to whom the Chief Justice has given authority in writing, directs that the appeal be heard by one judge of the High Court.

(2) If on the hearing of an appeal the court is equally divided in opinion the appeal shall be reheard before three judges.

[Act No. 16 of 1977, Sch., Act No 27 of 2015, Sch.]

**360. Abatement of appeals**

Every appeal from a subordinate court (except an appeal from a sentence of a fine) shall finally abate on the death of the appellant.

**361. Second appeals**

(1) A party to an appeal from a subordinate court may, subject to subsection (8), appeal against a decision of the High Court in its appellate jurisdiction on a matter of law, and the Court of Appeal shall not hear an appeal under this section—

(a) on a matter of fact, and severity of sentence is a matter of fact; or

(b) against sentence, except where a sentence has been enhanced by the High Court, unless the subordinate court had no power under section 7 to pass that sentence.

(2) On any such appeal, the Court of Appeal may, if it thinks that the judgment of the subordinate court or of the first appellate court should be set aside or varied on the ground of a wrong decision on a question of law, make any order which the subordinate court or the first appellate court could have made, or may remit the case, together with its judgment or order thereon, to the first appellate court or to the subordinate court for determination, whether or not by way of rehearing, with such directions as the Court of Appeal may think necessary.

(3) If it appears to the Court of Appeal that a party to an appeal, though not properly convicted on some count, has been properly convicted on some other count, the court may, in respect of the count on which it considers that the appellant has been properly convicted, either affirm the sentence passed by the subordinate court or by the first appellate court or pass such other sentence (whether more or less severe) in substitution therefor as it thinks proper.

(4) Where a party to an appeal has been convicted of an offence and the subordinate court or the first appellate court could lawfully have found him guilty of some other offence, and on the finding of the subordinate court or of the first appellate court it appears to the Court of Appeal that the court must have been satisfied of facts which proved him guilty of that other offence, the Court of Appeal

may, instead of allowing or dismissing the appeal, substitute for the conviction entered by the subordinate court or by the first appellate court a conviction of guilty of that other offence, and pass such sentence in substitution for the sentence passed by the subordinate court or by the first appellate court as may be warranted in law for that other offence.

(5) On any appeal brought under this section, the Court of Appeal may, notwithstanding that it may be of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has in fact occurred.

(6) Where an appeal under this section is pending, a judge of the High Court may grant bail to a convicted person who is a party to the appeal.

(7) For the purposes of this section, an order made by the High Court in the exercise of its revisionary jurisdiction or a decision of the High Court on a case stated shall be deemed to be a decision of the High Court in its appellate jurisdiction.

(8) This section shall not apply to—

(a) a decision of the High Court in its appellate Jurisdiction exercised under section 347(1)(b); or

(b) a refusal by the High Court to admit an appeal out of time under section 349,

and any such decision or refusal shall be final.

[Act No. 22 of 1959, s. 38, Act No. 13 of 1978, Sch., Act No. 13 of 1982, s. 11.]

*Revision*

**362. Power of High Court to call for records**

The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

**363. Subordinate court may call for records of inferior court**

(1) A subordinate court of the first class may call for and examine the record of any criminal proceedings of a subordinate court of a lower class than it and established within its local limits of jurisdiction, for the purpose of satisfying itself as to the legality, correctness or propriety of any finding, sentence or order recorded or passed, and as to the regularity of the proceedings.

(2) If a subordinate court acting under subsection (1) considers that a finding, sentence or order of the court of lower class is illegal or improper, or that the proceedings were irregular, it shall forward the record with its remarks thereon to the High Court.

[Act No. 17 of 1967, s. 35.]

**364. Powers of High Court on revision**

(1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—

(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;

(b) in the case of any other order other than an order of acquittal, alter or reverse the order.

(c) in proceedings under section 203 or 296(2) of the Panel Code, the Prevention of Terrorism Act, the Narcotic Drugs and Psychotropic Substances (Control) Act, the Prevention of Organized Crimes Act, the Proceeds of Crime and Anti-Money Laundering Act, the Sexual Offences Act and the Counter-Trafficking in Persons Act, where the subordinate court has granted bail to an accused person, and the Director of Public Prosecution has indicated his intention to apply for review of the order of the court, the order of the subordinate court may be stayed for a period not exceeding fourteen days pending the filing of the application for review.

(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.

(3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.

(4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.

(5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.

[Act No. 10 of 1970, Sch., Act No. 19 of 2014, s. 20, Act No. 25 of 2015, Sch.]

**365. Discretion of court as to hearing parties**

No party has a right to be heard either personally or by an advocate before the High Court when exercising its powers of revision:

Provided that the court may, when exercising those powers, hear any party either personally or by an advocate, and nothing in this section shall affect section 364(2).

**366. Number of judges in revision**

All proceedings before the High Court in the exercise of its revisional jurisdiction may be heard and any judgment or order thereon may be made or passed by one judge:

Provided that when the court is composed of more than one judge and the court is equally divided in opinion, the sentence or order of the subordinate court shall be upheld.

**367. High Court order to be certified to lower court**

When a case is revised by the High Court it shall certify its decision or order to the court by which the sentence or order so revised was recorded or passed, and the court to which the decision or order is so certified shall thereupon make such

orders as are conformable to the decision so certified, and, if necessary, the record shall be amended in accordance therewith.

**368.** *Repealed by Act No. 13 of 1967, s. 5.*

**369.** *Repealed by Act No. 13 of 1967, s. 5.*

**370.** *Repealed by Act No. 13 of 1967, s. 5.*

**371.** *Repealed by Act No. 13 of 1967, s. 5.*

**372.** *Repealed by Act No. 13 of 1967, s. 5.*

**373.** *Repealed by Act No. 13 of 1967, s. 5.*

**374.** *Repealed by Act No. 13 of 1967, s. 5.*

**375.** *Repealed by Act No. 13 of 1967, s. 5.*

**376.** *Repealed by Act No. 13 of 1967, s. 5.*

**377.** *Repealed by Act No. 13 of 1967, s. 5.*

**378.** *Repealed by Act No. 13 of 1967, s. 5.*

APPEALS FROM THE HIGH COURT

**379. Appeals from High Court to Court of Appeal**

(1) A person convicted on a trial held by the High Court and sentenced to death, or to imprisonment for a term exceeding twelve months, or to a fine exceeding two thousand shillings, may appeal to the Court of Appeal—

(a) against the conviction, on grounds of law or of fact, or of mixed law and fact;

(b) with the leave of the Court of Appeal, against the sentence, unless the sentence is one fixed by law.

(2) A person convicted on a trial held by the High Court and sentenced to—

(a) a term of imprisonment of twelve months or less; or

(b) a fine exceeding two hundred shillings but not exceeding two thousand shillings; or

(c) a fine of two hundred shillings or less, where the Court of Appeal or the trial judge is of the opinion that the case involves a question of law of great general or public importance,

may, with the leave of the Court of Appeal, or upon a certificate of the trial judge that it is a fit case for appeal, appeal against his conviction on any ground which appears to the Court of Appeal, or to the judge, to be a sufficient ground of appeal.

(3) No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by the High Court, except as to the extent or legality of his sentence.

(4) Save in a case where the appellant has been sentenced to death, a judge of the High Court, or of the Court of Appeal, may, where an appeal to the Court of Appeal has been lodged under this section, grant bail pending the hearing and determination of the appeal.

(5) Where a person has been acquitted in a trial before the High Court in the exercise of its original jurisdiction and the Director of Public Prosecutions has, within one month from the date of acquittal or within such further period as the

Court of Appeal may permit, signed and filed with the Registrar of that court a certificate that the determination of the trial involved a point of law of exceptional public importance and that it is desirable in the public interest that the point should be determined by the Court of Appeal, the Court of Appeal shall review the case or such part of it as may be necessary, and shall deliver a declaratory judgment thereon.

(5A) Where the Director of Public Prosecutions certifies that a sentence passed by the High Court in the exercise of its original jurisdiction should be reviewed by the Court of Appeal, the Court of Appeal may, after giving the accused person or his advocate an opportunity of being heard, make such order by way of enhancement of sentence or maintaining the sentence passed as is consistent with the ends of justice.

(6) A declaratory judgment under subsection (5) shall not operate to reverse an acquittal, but shall thereafter be binding upon all courts subordinate to the Court of Appeal in the same manner as an ordinary judgment of that court.

[Act No. 22 of 1959, s. 39, Act No. 7 of 1990, Sch., L.N. 274/1990, Act No. 12 of 2012, Sch.]

**379A. Appeal to the Court of Appeal on High Court's original jurisdiction**

In proceedings under section 203 or 296 (2) of the Penal Code, the Prevention of Terrorism Act, the Narcotic Drugs and Psychotropic Substances (Control) Act, the Prevention of Organized Crimes Act, the Proceeds of Crime and Anti-Money Laundering Act and the Counter-Trafficking in Persons Act, where the High Court, in exercise of its original jurisdiction, has granted bail or bond to an accused person, the Director of Public Prosecution, may, as of right, appeal against that decision to the court of appeal and the order may be stayed for a period not exceeding fourteen days pending the filing of an appeal.

[Act No. 19 of 2014, s. 21.]

## PART XII – SUPPLEMENTARY PROVISIONS IRREGULAR PROCEEDINGS

**380. Proceedings in wrong place**

No finding, sentence or order of a criminal court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed took place in a wrong area, unless it appears that the error has occasioned a failure of justice.

[L.N. 124/1964.]

**381.** *Repealed by Act No. 33 of 1963, First Sch.*

**382. Finding or sentence when reversible by reason of error or omission in charge or other proceedings**

Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of an error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Code, unless the error, omission or irregularity has occasioned a failure of justice:

Provided that in determining whether an error, omission or irregularity has occasioned a failure of justice the court shall have regard to the question whether

the objection could and should have been raised at an earlier stage in the proceedings.

[Act No. 33 of 1963, First Sch.]

**383. Distress not illegal for defect in proceedings**

No distress made under this Code shall be deemed unlawful, nor shall any person making it be deemed a trespasser, on account of a defect or want of form in the summons, conviction, warrant of distress or other proceedings relating thereto.

**384. Statements irregularly taken under section 246**

(1) If a court before whom a statement of a person recorded or purporting to be recorded under section 246 of this Code is tendered or has been received in evidence finds that any provision of that section has not been complied with by the magistrate recording the statement—

(a) it may take evidence that the person duly made the statement recorded; and

(b) notwithstanding anything contained in section 97 of the Evidence Act (Cap. 80), the statement shall be admitted, if the error has not injured the accused as to his defence on the merits.

[Act No. 5 of 2003, s. 96,]

INQUIRIES AS TO SUDDEN DEATHS

INQUIRIES AS TO SUDDEN DEATHS AND MISSING PERSONS BELIEVED TO BE DEAD

[Act No. 11 of 1993.]

**385. Magistrates empowered to hold inquests**

A magistrate empowered to hold a subordinate court of the first, or second class, and a magistrate specially empowered in that behalf by the Chief Justice, shall be empowered to hold inquests.

[L.N. 299/1956, L.N. 172/1960, L.N. 474/1963, Act No. 5 of 2003, s. 97.]

**386. Police to inquire and report on suicide, etc.**

(1) The officer in charge of a police station, or any other officer specially empowered by the Minister in that behalf, on receiving information that a person—

(a) has committed suicide;

(b) has been killed by another or by an accident;

(c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence; or

(d) is missing and believed to be dead;

shall immediately give information thereof to the nearest magistrate empowered to hold inquests, and, unless otherwise directed by any rule made by the Minister, shall proceed to the place where the body of the deceased person is, and shall there make an investigation and draw up a report on the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), the marks appear to have been inflicted; and the report shall in the case of paragraph (a), (b) or (c); be forwarded forthwith to the nearest magistrate empowered to hold inquests; and in the case of paragraph (d) shall immediately send to the Director of Public Prosecutions through the Inspector-General of the

National Police Service as full a report as possible together with details of all supporting evidence relating to the circumstances surrounding the disappearance and the grounds upon which the death of that person is presumed to have taken place.

(2) When, except in the case of a missing person believed to be dead there is any doubt regarding the cause of death, or when for any other reason the police officer considers it expedient to do so, he shall, subject to any rule made by the Minister, forward the body, with a view to its being examined, to the nearest medical officer or other person appointed by the Minister in that behalf, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render the examination useless.

(3) When the body of a person is found or a person has committed suicide or has been killed by another or by an accident or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, a person finding the body or becoming aware of the death shall immediately give information thereof to the nearest administrative officer or police officer.

[L.N. 299/1956, L.N.172/1960, Act No. 11 of 1993, Sch., Act No. 12 of 2012, Sch., Act No. 18 of 2018, Sch.]

**387. Inquiry by magistrate into cause of death**

(1) When a person dies while in the custody of the police, or of a prison officer, or in a prison, the nearest magistrate empowered to hold inquests shall, and in any other case mentioned in section 386(1) a magistrate so empowered may, but shall in the case of a missing person believed to be dead, hold an inquiry into the cause of death, either instead of or in addition to the investigation held by the police or prison officer, and if he does so he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.

(2) Whenever the magistrate considers it expedient to make an examination of the dead body of a person who has been already interred, in order to discover the cause of his death, the magistrate may cause the body to be disinterred and examined.

(3) If before or at the termination of the inquiry the magistrate is of the opinion that the commission by some known person or persons of an offence has been disclosed, he shall issue a summons or warrant for his or their arrest, or take such other steps as may be necessary to secure his or their attendance to answer the charge; and on the attendance of the person or persons the magistrate shall commence the inquiry *de novo* and shall proceed as if he had taken cognizance of an offence.

(4) If at the termination of the inquiry the magistrate is of the opinion that an offence has been committed by some person or persons unknown, he shall record his opinion and shall forthwith send a copy thereof to the Director of Public Prosecutions.

(5) If at the termination of the inquiry the magistrate is of the opinion that no offence has been committed, he shall record his opinion accordingly.

(6) In the case of an inquiry relating to a missing person believed to be dead the magistrate shall at the termination of the inquiry report the case together with his findings to the Director of Public Prosecutions and shall make recommendations as to whether or not the period regarding the presumption of death provided for by section 118A of the Evidence Act (Cap. 80) should be reduced and if so what lesser

period should, in the circumstances of the death, be substituted for the period of seven years.

[L.N. 474/1963, Act No. 11 of 1993, Sch., Act No. 12 of 2012, Sch.]

**388. Powers of Director of Public Prosecutions as to inquiries into cause of death**

(1) The Director of Public Prosecutions may at any time direct a magistrate to hold an inquiry, in accordance with section 387, into the cause of a particular death to which the provisions of that section apply and shall in the case of missing person believed to be dead give such directions as he deems fit.

(2) When an inquiry has been terminated under section 387, and it appears to the Director of Public Prosecutions that further investigation is necessary, the Director of Public Prosecutions may direct the magistrate to reopen the inquiry and to make further investigation, and thereupon the magistrate shall have full power to reopen the inquiry and make further investigation and thereafter to proceed in the same manner as if the proceedings at the inquiry had not been terminated:

Provided that the provisions of this subsection shall not apply to an inquiry at which a magistrate has recorded his opinion that the offence of murder or manslaughter has been committed by a person.

(3) When giving any direction under this section, the Director of Public Prosecutions may also direct whether the body is to be disinterred and examined.

(4) Upon receiving a report under section 387(6) the Director of Public Prosecutions shall after considering the recommendations of the magistrate direct him to make an order as to the period which should be recorded before the death is presumed and upon the expiration of such period the Registrar-General shall be empowered on the production to him by the proper officer entitled to apply for and receive a grant of representation under the Law of Succession Act (Cap. 160), of a court certified copy of the magistrate's order, to issue to that person an appropriate certificate of death in accordance with the Births and Deaths Registration Act (Cap. 149).

[Act No. 22 of 1959, s. 40, Act No. 11 of 1993, Sch., Act No. 12 of 2012, Sch.]

DIRECTIONS IN THE NATURE OF *HABEAS CORPUS*

**389. Power to issue directions of the nature of habeas corpus**

(1) The High Court may whenever it thinks fit direct—

(a) that any person within the limits of Kenya be brought up before the court to be dealt with according to law;

(b) that any person illegally or improperly detained in public or private custody within those limits be set at liberty;

(c) that any prisoner detained in a prison situated within those limits be brought before the court to be there examined as a witness in any matter pending or to be inquired into in that court;

(d) that any prisoner so detained be brought before a court martial or commissioners acting under the authority of a commission from the President for trial to be examined touching any matter pending before the court martial or commissioners respectively;

(e) that any prisoner within those limits be removed from one custody to another for the purpose of trial; and

(f) that the body of a defendant within those limits be brought in on a return of *cepi corpus* to a writ of attachment.

(2) The Chief Justice may make rules of court to regulate the procedure in cases under this section.

[Act No. 27 of 1961, Sch., L.N. 124/1964.]

**389A. Procedure on forfeiture of goods**

(1) Where, by or under any written law (other than section 29 of the Penal Code), any goods or things may be (but are not obliged to be) forfeited by a court, and that law does not provide the procedure by which forfeiture is to be effected, then, if it appears to the court that the goods or things should be forfeited, it shall cause to be served on the person believed to be their owner notice that it will, at a specified time and place, order the goods or things to be forfeited unless good cause to the contrary is shown; and, at that time and place or on any adjournment, the court may order the goods or things to be forfeited unless cause is shown by the owner or some person interested in the goods or things:

Provided that, where the owner of the goods or things is not known or cannot be found, the notice shall be advertised in a suitable newspaper and in such other manner (if any) as the court thinks fit.

(2) If the court finds that the goods or things belong to some person who was innocent of the offence in connexion with which they may or are to be forfeited and who neither knew nor had reason to believe that the goods or things were being or were to be used in connexion with that offence and exercised all reasonable diligence to prevent their being so used, it shall not order their forfeiture; and where it finds that such a person was partly interested in the goods and things it may order that they be forfeited and sold and that such person shall be paid a fair proportion of the proceeds of sale.

[Act No. 13 of 1967, s. 4.]

MISCELLANEOUS

**390. Persons before whom affidavits may be sworn**

Affidavits and affirmations to be used before the High Court may be sworn and affirmed before a judge of the High Court, a magistrate, the Registrar or Deputy Registrar of the High Court or a commissioner for oaths.

[Act No. 10 of 1983, Sch.]

**391. Shorthand notes of proceedings**

Shorthand notes may be taken of the proceedings at the trial of a person before the High Court or a subordinate court, and a transcript of those notes shall be made if the court so directs, and the transcript shall for all purposes be deemed to be the official record of the proceedings at the trial.

[Act No. 22 of 1959, s. 41.]

**392. Right to copies of proceedings**

If a person affected by a judgment or order passed in proceedings under this Code desires to have a copy of the judgment or order or any deposition or other part of the record, he shall on applying for the copy be furnished therewith provided he pays for it, unless the court for some special reason thinks fit to furnish it free of cost.

**393. Forms**

Forms which the High Court may from time to time approve, with such variations as the circumstances of each case may require, may be used for the respective purposes therein mentioned, and if used shall be sufficient.

**394. Expenses of assessors, witnesses, etc.**

Subject to any rules which may be made by the Minister, any court may order payment on the part of the Government of the reasonable expenses of a complainant or witness attending before the court for the purposes of an inquiry, trial or other proceeding under this Code.

[Act No. 33 of 1963, First Sch., L.N. 300/1956, L.N. 173/1960, Act No. 7 of 2007, Sch.]

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## FIRST SCHEDULE

[As amended by Act No. 57 of 1948, s. 3, Act No. 87 of 1948, Second Sch., Act No. 9 of 1951, s. 3; Act No. 39 of 1951, s. 5, Act No. 57 of 1955, s. 11; Act No. 33 of 1958, s. 4, Act No. 22 of 1959, s. 42, Act No. 54 of 1960, s. 33(2), Act No. 11 of 1961, s.12(3), Act No. 25 of 1961, s. 47, Act No. 28 of 1961, Sch., Act No. 48 of 1962, s. 13(2), Act No. 19 of 1964, Sch., Act No. 13 of 1967, Second Sch., Act No. 17 of 1967, s. 36, Act No. 3 of 1969, Second Sch., Act No. 10 of 1969, Sch., Act No. 25 of 1971, Sch., Act No. 6 of 1976, Sch., Act No. 13 of 1980, Sch., Act No. 13 of 1982, s.12; Act No. 11 of 1983, Sch., Act No. 12 of 1984, Sch., Act No. 18 of 1986, Sch., Act No. 14 of 1991, Sch., Act No. 5 of 2003, s. 98.]

### OFFENCES UNDER THE PENAL CODE

EXPLANATORY NOTE. — The entries in the second and fourth columns of this Schedule, headed respectively “Offence” and “Punishment under the Penal Code”, are not intended as definitions of the offences and punishments described in the several corresponding sections of the Penal Code or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column.

| 1 | 2 | 3 | 4 | 5 |
|---|---|---|---|---|
| Section | Offence | Whether the police may arrest without warrant or not | Punishment under the Penal Code (N.B. —Under section 26(2) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 36 of the Penal Code.) | Court (in addition to the High Court) by which offence is triable |
| CHAPTER V – PARTIES TO OFFENCES | | | | |
| 20 | Aiding, abetting, counselling or procuring the commission of an offence | May arrest without warrant if arrest for the offence aided, abetted, counselled or procured may be made without warrant but not otherwise | Same punishment as for the offence aided, abetted, counselled or procured | Any court by which the offence aided, abetted, counselled or procured would be triable |

## CHAPTER VI - PUNISHMENTS

CHAPTER VI – PUNISHMENTS

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| 39(2) | Failing to produce a certificate of competency for endorsement | Shall not arrest without warrant | Fine of six hundred shillings or imprisonment for six months | Any subordinate court. |
| 39(5)(a) | Applying for or obtaining a certificate of competency without disclosing particulars of endorsement | Shall not arrest without warrant | Fine of two thousand shillings or imprisonment for six months or both | Any subordinate court |
| DIVISION I<br>OFFENCES AGAINST PUBLIC ORDER<br>CHAPTER VII – TREASON AND OTHER OFFENCES AGAINST THE AUTHORITY OF THE REPUBLIC | | | | |
| 40 | Treason | May arrest without warrant | Death | |
| 42 | Misprision of treason | May arrest without warrant | Imprisonment for life | Subordinate court of the first class presided over by a chief magistrate, senior principal magistrate, or a senior resident magistrate |
| 43 | Treasonable felony | May arrest without warrant | Imprisonment for life | Subordinate court of the first class presided over by a chief magistrate, senior principal magistrate, a principal magistrate, or a senior resident magistrate |
| 43A | Treachery | May arrest without warrant | Imprisonment for life | Subordinate court of the first class presided over by a chief magistrate, senior principal magistrate, a principal magistrate, or a senior resident magistrate |
| 44 | Promoting warlike undertakings | May arrest without warrant | Imprisonment for life | Subordinate court of the first class presided over by a chief magistrate, a senior principal magistrate, a principal magistrate or a senior resident magistrate |
| 46 | Dissuasion from enlistment | May arrest without warrant | Fine of five thousand shillings and/or imprisonment for six months | Any subordinate court |
| 47 | Inciting to mutiny | May arrest without warrant | Imprisonment for life | Subordinate court of the first class presided over by a chief magistrate, senior principal magistrate, a principal magistrate, or a senior resident magistrate |
| 48 | Aiding, etc., to mutiny, etc. | Shall not arrest without warrant | Imprisonment for two years | Any subordinate court |
| 49 | Inducing desertion | Shall not arrest without warrant | Imprisonment for six months | Any subordinate court |

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| 50(a) | Aiding prisoner of war to escape | May arrest without warrant | Imprisonment for life | Subordinate court of the first class presided over by a chief magistrate, a senior resident magistrate, a principal magistrate, or a senior resident magistrate |
| (b) | Permitting prisoner of war to escape | Shall not arrest without warrant | Imprisonment for two years | Any subordinate court |
| 53 | Printing, etc., prohibited publications | May arrest without warrant | Imprisonment for three years | Any subordinate court |
| 57(1) | Sedition | May arrest without warrant | Imprisonment for ten years | Any subordinate court |
| (2) | Possessing seditious publication | May arrest without warrant | Imprisonment for seven years | Any subordinate court |
| (10) | Using or attempting to use printing machine which has been confiscated | May arrest without warrant | Imprisonment for seven years | Any subordinate court |
| (11) | Printing or publishing newspaper in contravention of order | May arrest without warrant | Imprisonment for seven years | Any subordinate court |
| 59 | Presence at and consent to administration of, or taking, oath to commit capital offence | May arrest without warrant | Imprisonment for life | Subordinate court of the first class presided over by a chief magistrate, a senior principal magistrate, a principal magistrate, or a senior resident magistrate |
| 60 | Administration of unlawful oaths to commit capital offence | May arrest without warrant | Death | Subordinate court of the first class presided over by a chief magistrate, a senior principal magistrate, a principal magistrate, or a senior resident magistrate |
| 61 | Administering or taking unlawful oaths to commit other offences | May arrest without warrant | Imprisonment for ten years | Subordinate court of the first class |
| 62(1) | Compelling another person to take an oath | May arrest without warrant | Imprisonment for ten years | Subordinate court of the first class |
| (2) | Being present at and consenting to the administering of an oath | May arrest without warrant | Imprisonment for ten years | Any subordinate court |
| 65(1) | Unlawful drilling | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |
| (2) | Being unlawfully drilled | May arrest without warrant | Imprisonment for two years | Any subordinate court |
| 66 | Publishing false reports | Shall not arrest without warrant | Imprisonment for two years | Any subordinate court |
| CHAPTER VIII – OFFENCES AFFECTING RELATIONS WITH FOREIGN STATES AND EXTERNAL TRANQUILITY | | | | |
| 67 | Defamation of foreign princes | Shall not arrest without warrant | Imprisonment for two years | Any subordinate court |

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| 68 | Foreign enlistment | Shall not arrest without warrant | Imprisonment for two years | Any subordinate court |
| 69 | Piracy | May without warrant | Imprisonment for life | Subordinate court of the first class presided over by a chief magistrate, a senior principal magistrate, a principal magistrate, or a senior resident magistrate |
| CHAPTER IX – UNLAWFUL ASSEMBLIES, RIOTS AND OTHER OFFENCES AGAINST PUBLIC TRANQUILITY | | | | |
| 71 | Managing unlawful society | May arrest without warrant | Imprisonment for fourteen years | Subordinate court of the first class |
| 72 | Being member of unlawful society | May arrest without warrant | Imprisonment for seven years | Any subordinate court |
| 77 | Subversive activities | May arrest without warrant | Imprisonment for three years | Subordinate court of the first class |
| 79 | Unlawful assembly | May arrest without warrant | Imprisonment for one year | Any subordinate court |
| 80 | Riot | May arrest without warrant | Imprisonment for two years | Any subordinate court |
| 83 | Rioting after proclamation | May arrest without warrant | Imprisonment for life | Subordinate court of the first class |
| 84 | Obstructing proclamation | May arrest without warrant | Imprisonment for life | Subordinate court of the first class |
| 85 | Rioters destroying buildings | May arrest without warrant | Imprisonment for life | Subordinate court of the first class presided over by a chief magistrate, a senior principal magistrate, a principal magistrate, or a senior resident magistrate |
| 86 | Rioters injuring buildings | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |
| 87 | Riotously interfering with railway, vehicle or vessel | May arrest without warrant | Imprisonment for two years | Any subordinate court |
| 88 | Going armed in public | May arrest without warrant | Imprisonment for two years | Any subordinate court |
| 89 | Possession of firearms, etc., to prejudice of public order | May arrest without warrant | Imprisonment for five years | Subordinate court of the first class |
| 90 | Forcible entry | May arrest without warrant | Imprisonment for two years | Any subordinate court |
| 91 | Forcible detainer | May arrest without warrant | Imprisonment for two years | Any subordinate court |
| 92 | Committing affray | May arrest without warrant | Imprisonment for one year | Any subordinate court |
| 93 | Challenging to duel | Shall not arrest without warrant | Imprisonment for two years | Any subordinate court |

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| 94 | Offensive conduct conducive to breaches of the peace | May arrest without warrant | Fine of five thousand shillings and/or imprisonment for six months | Any subordinate court |
| 95 | Threatening breach of the peace | May arrest without warrant | Imprisonment for six months | Any subordinate court |
| | Threatening violence | May arrest without warrant | Imprisonment for three years | Any subordinate court |
| | If the offence committed in the night | May arrest without warrant | Imprisonment for four years | Any subordinate court |
| 96 | Incitement to violence and disobedience of the law | May arrest without warrant | Imprisonment for three years | Subordinate court of the first class |
| 97 | Assembling for smuggling | May arrest without warrant | Fine of six thousand shillings or imprisonment for six months | Any subordinate court |
| 98 | Wrongfully inducing a boycott | May arrest without warrant | Imprisonment for six months | Any subordinate court |
| DIVISION II<br>OFFENCES AGAINST THE ADMINISTRATION OF LAWFUL AUTHORITY<br>CHAPTER X – ABUSE OF OFFICE | | | | |
| 99 | Officer discharging duties in respect of property in which he has a special interest | Shall not arrest without warrant | Imprisonment for one year | Any subordinate court |
| 100 | False claims by person in public service | Shall not arrest without warrant | Imprisonment for two years | Any subordinate court |
| 101 | Abuse of office | Shall not arrest without warrant | Imprisonment for two years | Any subordinate court |
| | Abuse of office (if for purposes of gain) | Shall not arrest without warrant | Imprisonment for three years | Any subordinate court |
| 102 | False certificate by public officers | Shall not arrest without warrant | Imprisonment for two years | Any subordinate court |
| 103 | Unauthorized administration of oaths | Shall not arrest without warrant | Imprisonment for one year | Any subordinate court |
| 104 | False assumption of authority | Shall not arrest without warrant | Imprisonment for two years | Any subordinate court |
| 105 | Personating person in public service | May arrest without warrant | Imprisonment for three years | Any subordinate court |
| 106 | Threat of injury to person in public service | Shall not arrest without warrant | Imprisonment for two years | Any subordinate court |
| 107 | Tampering with public officers | May arrest without warrant | Imprisonment for three years | Any subordinate court |
| CHAPTER XI – OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE | | | | |
| 108 | Perjury or subordination of perjury | Shall not arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |
| 109 | False statements by interpreters | May arrest without warrant | The same punishment as for perjury | Subordinate court of the first class |
| 112 | Contradictory statements | Shall not arrest without warrant | Imprisonment for two years | Any subordinate court |
| 113 | Fabricating evidence | Shall not arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |

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| 114 | False swearing | Shall not arrest without warrant | Imprisonment for two years | Any subordinate court |
| 115 | Deceiving witnesses | Shall not arrest without warrant | Imprisonment for two years | Any subordinate court |
| 116 | Destroying evidence | Shall not arrest without warrant | Imprisonment for two years | Any subordinate court |
| 117 | Conspiracy to defeat justice and interference with witnesses | Shall not arrest without warrant | Imprisonment for five years | Any subordinate court |
| 118 | Compounding felonies | Shall not arrest without warrant | Imprisonment for two years | Any subordinate court |
| 119 | Compounding penal actions | Shall not arrest without warrant | Imprisonment for two years | Any subordinate court |
| 120 | Advertising for stolen property | Shall not arrest without warrant | Imprisonment for two years | Any subordinate court |
| 121(1) | Offences relating to judicial proceedings | May arrest without warrant | Imprisonment for three years | Any subordinate court |
| (2) | If offence committed in view of court | — | Fine of one thousand four hundred shillings | Any subordinate court |
| CHAPTER XII - RESCUES, ESCAPES, AND OBSTRUCTING OFFICERS OF COURT | | | | |
| 122(1) Rescue– | | | | |
| (a) | if person rescued is under sentence of death or imprisonment for life or charged with offences punishable with death or imprisonment for life | May arrest without warrant | Imprisonment for life | Subordinate court of the first class presided over by a chief magistrate, senior principal magistrate, a principal magistrate, or a senior resident magistrate |
| (b) | if person rescued is imprisoned on a charge or under sentence for any other offence | May arrest without warrant | Imprisonment for seven years | Any subordinate court |
| (c) | in any other case | May arrest without warrant | Imprisonment for two years | Any subordinate court |
| 123 | Escape | May arrest without warrant | Imprisonment for two years | Any subordinate court |
| 124 | Aiding escape | May arrest without warrant | Imprisonment for seven years | Any subordinate court |
| 125 | Removal, etc., of property under lawful seizure | May arrest without warrant | Imprisonment for three years | Any subordinate court |
| 126 | Obstructing court officers | May arrest without warrant | Imprisonment for one year | Any subordinate court |
| CHAPTER XIII – MISCELLANEOUS OFFENCES AGAINST PUBLIC AUTHORITY | | | | |
| 127 | Fraud or breach of trust by person in public service | Shall not arrest without warrant | Imprisonment for two years | Subordinate court of the first class |

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| 128 | Neglect of official duty | Shall not arrest without warrant | Imprisonment for two years | Subordinate court of the first class |
| 129 | False information to person in public service | May arrest without warrant | Imprisonment for three years | Any subordinate court |
| 130 | Disobedience of statutory duty | Shall not arrest without warrant | Imprisonment for two years | Any subordinate court |
| 131 | Disobedience of lawful order | Shall not arrest without warrant | Imprisonment for two years | Any subordinate court |
| 132 | Undermining authority of public office | May arrest without warrant | Imprisonment for three years | Subordinate court of the first class |
| 133 | Destruction, etc., of statutory documents | May arrest without warrant | Fine of five thousand shillings or imprisonment for six months | Any subordinate court |
| | DIVISION III<br>OFFENCES INJURIOUS TO THE PUBLIC IN GENERAL<br>CHAPTER XIV – OFFENCES RELATING TO RELIGION | | | |
| 134 | Insult to religion | May arrest without warrant | Imprisonment for two years | Any subordinate court |
| 135 | Disturbing religious assembly | May arrest without warrant | Imprisonment for two years | Any subordinate court |
| 136 | Trespassing on burial place | May arrest without warrant | Imprisonment for two years | Any subordinate court |
| 137 | Hindering burial of dead body, etc. | May arrest without warrant | Imprisonment for two years | Any subordinate court |
| 138 | Uttering words with intent to wound religious feelings | Shall not arrest without warrant | Imprisonment for one year | Any subordinate court |
| | CHAPTER XV – OFFENCES AGAINST MORALITY | | | |
| 140 | Rape | May arrest without warrant | Imprisonment with hard labour for life with or without corporal punishment | Subordinate court of the first class |
| 141 | Attempted rape | May arrest without warrant | Imprisonment with hard labour for life with or without corporal punishment | Subordinate court of the first class |
| 142 | Abduction | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |
| 143 | Abduction of girl under sixteen | May arrest without warrant | Imprisonment for two years | Subordinate court of the first class |
| 144(1) | Indecent assault on female | May arrest without warrant | Imprisonment with hard labour for five years with or without corporal punishment | Any subordinate court |
| (3) | Insulting modesty of female | May arrest without warrant | Imprisonment for one year | Any subordinate court |
| 145(1) | Defilement of girl under fourteen | May arrest without warrant | Imprisonment with hard labour for fourteen years with or without corporal punishment | Subordinate court of the first class |
| (2) | Attempted defilement of girl under fourteen | May arrest without warrant | Imprisonment with hard labour for five years with or without corporal punishment | Subordinate court of the first class |

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| 146 | Defilement of idiot or imbecile | May arrest without warrant | Imprisonment with hard labour for fourteen years with or without corporal punishment | Subordinate court of the first class |
| 147 | Procuration | May arrest without warrant | Imprisonment for two years with or without corporal punishment | Subordinate court of the first class |
| 148 | Procuring defilements by threats or fraud or administering drugs | May arrest without warrant | Imprisonment for two years | Subordinate court of the first class |
| 149 | Householder permitting defilement of girl under thirteen on his premises | May arrest without warrant | Imprisonment for five years | Subordinate court of the first class |
| 150 | Householder permitting defilement of girl under sixteen on his premises | May arrest without warrant | Imprisonment for two years | Subordinate court of the first class |
| 151 | Detention of female for immoral purposes | May arrest without warrant | Imprisonment for two years | Subordinate court of the first class |
| 153 | Male person living on earnings of prostitution or soliciting | May arrest without warrant | Imprisonment for two years and for each subsequent offence the like imprisonment, with or without corporal punishment | Subordinate court of the first class |
| 154 | Woman living on earnings of prostitution or aiding, etc., prostitution | May arrest without warrant | Imprisonment for two years | Subordinate court of the first class |
| 156 | Keeping brothels, etc. | May arrest without warrant | Imprisonment for two years | Subordinate court of the first class |

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| 157 | Conspiracy to defile | May arrest without warrant | Imprisonment for three years with or without corporal punishment | Subordinate court of the first class |
| 158 | Attempt to procure abortion | May arrest without warrant | Imprisonment for fourteen years | Subordinate court of the first class |
| 159 | Woman attempting to procure her own abortion | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |
| 160 | Supplying drugs or instruments to procure abortion | May arrest without warrant | Imprisonment for three years | Subordinate court of the first class |
| 162 | Unnatural offences | May arrest without warrant | Imprisonment for fourteen years with or without corporal punishment | Subordinate court of the first class |
| 163 | Attempt to commit unnatural offence | May arrest without warrant | Imprisonment for seven years with or without corporal punishment | Subordinate court of the first class |
| 164 | Indecent assault on boy under fourteen | May arrest without warrant | Imprisonment for seven years with or without corporal punishment | Subordinate court of the first class |
| 165 | Indecent practices between males | May arrest without warrant | Imprisonment for five years with or without corporal punishment | Subordinate court of the first class |
| 166(1) | Incest by male | May arrest without warrant | Imprisonment for five years | Subordinate court of the first class presided over by a chief magistrate, a senior principal magistrate, a principal magistrate or a senior resident magistrate |

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| (2) | If female person is under the age of thirteen years | May arrest without warrant | Imprisonment for life | Subordinate court of the first class presided over by a chief magistrate, a senior principal magistrate, a principal magistrate or a senior resident magistrate |
| (3) | Attempt to commit incest | May arrest without warrant | Imprisonment for two years | Subordinate court of the first class presided over by a chief magistrate, a senior principal magistrate, a principal magistrate or a senior resident magistrate |
| 167 | Incest by female | May arrest without warrant | Imprisonment for five years | Subordinate court of the first class presided over by a chief magistrate, a senior principal magistrate, a principal magistrate or a senior resident magistrate |
| CHAPTER XVI – OFFENCES RELATING TO MARRIAGE AND DOMESTIC OBLIGATIONS | | | | |
| 170 | Fraudulent pretence of marriage | May arrest without warrant | Imprisonment for ten years | Subordinate court of the first class presided over by a chief magistrate, a senior principal magistrate, a principal magistrate or a senior resident magistrate |
| 171 | Bigamy | May arrest without warrant | Imprisonment for five years | Subordinate court of the first class presided over by a chief magistrate, a senior principal magistrate, a principal magistrate or a senior resident magistrate |
| 172 | Dishonestly or fraudulently going through ceremony of marriage | May arrest without warrant | Imprisonment for five years | Subordinate court of the first class presided over by a chief magistrate, a senior principal magistrate, a principal magistrate or a senior resident magistrate |
| 173 | Master not providing for servant or apprentice | Shall not arrest without warrant | Imprisonment for two years | Any Subordinate Court |
| 174 | Child stealing | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |
| CHAPTER XVII – NUISANCES AND OFFENCES AGAINST HEALTH AND CONVENIENCE | | | | |
| 175 | Committing common nuisance | Shall not arrest without warrant | Imprisonment for one year | Any subordinate court |
| 176(3) | Keeping common gaming house | Shall not arrest without warrant | Imprisonment for two years | Any Subordinate Court |
| (4) | Being found in common gaming house | Shall not arrest without warrant | Fine of three hundred shillings for first offence, and for each subsequent offence a fine of one thousand two hundred shillings or imprisonment for three months or both | Any subordinate court |

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| 177 | Keeping or permitting the keeping of common betting house | Shall not arrest without warrant | Imprisonment for one year | Any subordinate court |
| 178(1) | Carrying on lottery | Shall not arrest without warrant | Imprisonment for six months | Any subordinate court |
| (2) | Printing or publishing advertisement relating to lottery | Shall not arrest without warrant | Fine of one thousand shillings | Any subordinate court |
| 179 | Sending chain letters, etc. | May arrest without warrant. | Fine of five thousand shillings or imprisonment for six months or both | Any subordinate court |
| 181 | Trafficking in obscene publications | May arrest without warrant | Imprisonment for two years or a fine of seven thousand shillings | Any subordinate court |
| 182 | Being an idle or disorderly person | May arrest without warrant | Imprisonment for one month or a fine of one hundred shillings or both, and for each subsequent offence, imprisonment for one year | Any subordinate court |
| 183 | Being a rogue or vagabond | May arrest without warrant | Imprisonment for three months for first offence, and for each subsequent offence, imprisonment for one year | Any subordinate court |
| 184(1) | Wearing uniform without authority | May arrest without warrant | Imprisonment for one month or a fine of six hundred shillings | Any subordinate court |
| (2) | Bringing contempt on uniform | May arrest without warrant | Imprisonment for three months or a fine of one thousand two hundred shillings | Any subordinate court |
| (3) | Importing or selling uniform without authority | May arrest without warrant | Imprisonment for six months or a fine of six thousand shillings | Any subordinate court |
| 185(2) | Wearing without authority uniform of public organization | May arrest without warrant | Imprisonment for one month or fine of two hundred shillings | Any subordinate court |
| (3) | Importing or selling without authority uniform of public organization | May arrest without warrant | Imprisonment for six months or fine of two thousand shillings | Any subordinate court |
| 186 | Doing act likely to spread infection of dangerous disease | May arrest without warrant | Imprisonment for two years | Any subordinate court |
| 187 | Adulteration of food or drink intended for sale | Shall not arrest without warrant | Imprisonment for two years | Any subordinate court |
| 188 | Selling, or offering or exposing for sale, noxious food or drink | Shall not arrest without warrant | Imprisonment for two years | Any subordinate court |
| 189 | Adulteration of drug intended for sale | Shall not arrest without warrant | Imprisonment for two years | Any subordinate court |
| 190 | Selling adulterated drug | Shall not arrest without warrant | Imprisonment for two years | Any subordinate court |
| 191 | Fouling water of public spring or reservoir | May arrest without warrant | Imprisonment for two years | Any subordinate court |

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| 192 | Making the atmosphere noxious to health | Shall not arrest without warrant | Imprisonment for two years | Any subordinate court |
| 193 | Carrying on offensive trade | Shall not arrest without warrant | Imprisonment for one year | Any subordinate court |
| CHAPTER XVIII – DEFAMATION | | | | |
| 194 | Libel | Shall not arrest without warrant | Imprisonment for two years | Subordinate court of the first class |
| DIVISION IV<br>OFFENCES AGAINST THE PERSON<br>CHAPTER XIX – MURDER AND MANSLAUGHTER | | | | |
| 202 | Manslaughter | May arrest without warrant | Imprisonment for life | Subordinate court of the first class presided over by a chief magistrate, senior principal magistrate, a principal magistrate or a senior resident magistrate |
| 203 | Murder | May arrest without warrant | Death | |
| 210 | Infanticide | May arrest without warrant | Imprisonment for life | Subordinate court of the first class presided over by a chief magistrate, senior principal magistrate, a principal magistrate or a senior resident magistrate |

CHAPTER XXI – OFFENCES CONNECTED WITH MURDER AND SUICIDE

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| 220 | Attempted murder | May arrest without warrant | Imprisonment for life | Subordinate court of the first class presided over by a chief magistrate, a senior principal magistrate, a principal magistrate or a senior resident magistrate |
| 221 | Attempted murder by convict | May arrest without warrant | Imprisonment for life with or without corporal punishment | Subordinate court of the first class presided over by a chief magistrate, a senior principal magistrate, a principal magistrate or a senior resident magistrate |
| 222 | Being accessory after the fact to murder | May arrest without warrant | Imprisonment for life | Subordinate court of the first class presided over by a chief magistrate, a senior principal magistrate, a principal magistrate or a senior resident magistrate |
| 223 | Threats to kill | May arrest without warrant | Imprisonment for ten years | Subordinate court of the first class |
| 224 | Conspiracy to murder | May arrest without warrant | Imprisonment for fourteen years | Subordinate court of the first class presided over by a chief magistrate, a senior principal magistrate, a principal magistrate or a senior resident magistrate |
| 225 | Aiding suicide | May arrest without warrant | Imprisonment for life | Subordinate court of the first class presided over by a chief magistrate, a senior principal magistrate, a principal magistrate or a senior resident magistrate |
| 226 | Attempted suicide | May arrest without warrant | Imprisonment for two years | Subordinate court of the first class |
| 227 | Concealing birth | May arrest without warrant | Imprisonment for two years | Any subordinate court |
| 228 | Killing unborn child | May arrest without warrant | Imprisonment for life | Subordinate court of the first class presided over by a chief magistrate, a senior principal magistrate, a principal magistrate or a senior resident magistrate |

## CHAPTER XXII - OFFENCES ENDANGERING LIFE AND HEALTH

| CHAPTER XXII – OFFENCES ENDANGERING LIFE AND HEALTH | | | | |
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| 229 | Disabling in order to commit felony or misdemeanour | May arrest without warrant | Imprisonment for life with or without corporal punishment | Subordinate court of the first class presided over by a chief magistrate, a senior principal magistrate, a principal magistrate or a senior resident magistrate |
| 230 | Stupefying in order to commit felony or misdemeanour | May arrest without warrant | Imprisonment for life | Subordinate court of the first class presided over by a chief magistrate, a senior principal magistrate, a principal magistrate or a senior resident magistrate |
| 231 | Doing act intended to cause grievous harm or prevent arrest | May arrest without warrant | Imprisonment for life | Subordinate court of the first class |
| 232 | Preventing escape from wreck | May arrest without warrant | Imprisonment for life | Subordinate court of the first class presided over by a chief magistrate, a senior principal magistrate, a principal magistrate or a senior resident magistrate |
| 233 | Intentionally endangering safety of person travelling by railway | May arrest without warrant | Imprisonment for life | Subordinate court of the first class |
| 234 | Doing grievous harm | May arrest without warrant | Imprisonment for life | Subordinate court of the first class |
| 235 | Attempting to injure by explosive substance | May arrest without warrant | Imprisonment for fourteen years | Subordinate court of the first class |
| 236 | Administering poison with intent to harm | May arrest without warrant | Imprisonment for fourteen years | Subordinate court of the first class |
| 237 | Wounding and similar acts | May arrest without warrant | Imprisonment for five years | Any subordinate court |
| 238 | Intimidation and molestation | May arrest without warrant | Imprisonment for three years | Subordinate court of the first class |
| 239 | Failing to provide necessaries of life | May arrest without warrant | Imprisonment for three years | Any subordinate court |
| CHAPTER XXIII – CRIMINAL RECKLESSNESS AND NEGLIGENCE | | | | |
| 243 | Rash and negligent acts | May arrest without warrant | Imprisonment for two years | Any subordinate court |
| 244 | Other negligent acts causing harm | May arrest without warrant | Imprisonment for six months | Any subordinate court |
| 245 | Dealing in poisonous substance in negligent manner | Shall not arrest without warrant | Imprisonment for six months or a fine of six thousand shillings | Any subordinate court |
| 246 | Endangering safety of person travelling by railway | May arrest without warrant | Imprisonment for two years | Any subordinate court |

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| 247 | Exhibiting false light, mark or buoy | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class presided over by a chief magistrate, a senior principal magistrate, a principal magistrate or a senior resident magistrate |
| 248 | Conveying person by water for hire in unsafe or overloaded vessel | May arrest without warrant | Imprisonment for two years | Any subordinate court |
| 249 | Causing danger or obstruction in public way or line of navigation | Shall not arrest without warrant | Fine | Any subordinate court |
| CHAPTER XXIV – ASSAULTS | | | | |
| 250 | Common assault | Shall not arrest without warrant | Imprisonment for one year | Any subordinate court |
| 251 | Assault occasioning actual bodily harm | May arrest without warrant | Imprisonment for five years with or without corporal punishment | Any subordinate court |
| 252 | Assaulting person protecting wreck | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |
| 253 | Various assaults | May arrest without warrant | Imprisonment for five years | Any subordinate court |

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| CHAPTER XXV – OFFENCES AGAINST LIBERTY | | | | |
| 257 | Kidnapping | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |
| 258 | Kidnapping or abducting in order to murder | May arrest without warrant | Imprisonment for ten years | Subordinate court of the first class |
| 259 | Kidnapping or abducting with intent to confine | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |
| 260 | Kidnapping or abducting in order to subject to grievous harm, slavery, etc. | May arrest without warrant | Imprisonment for ten years | Subordinate court of the first class |
| 261 | Wrongfully concealing or keeping in confinement kidnapped or abducted person | May arrest without warrant | Same punishment as for kidnapping or abduction | Subordinate court of the first class |
| 262 | Kidnapping or abducting child under fourteen with intent to steal from its person | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |
| 263 | Wrongful confinement | May arrest without warrant | Imprisonment for one year or a fine of fourteen thousand shillings | Any subordinate court |
| 264 | Buying or disposing of person as slave | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class presided over by a chief magistrate, a principal magistrate or a senior resident magistrate |

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| 265 | Habitually dealing in slaves | May arrest without warrant | Imprisonment for ten years | Subordinate court of the first class presided over by a chief magistrate, a senior principal magistrate, a principal magistrate or a senior resident magistrate |
| 266 | Unlawful compulsory labour | May arrest without warrant | Imprisonment for two years | Any subordinate court |
| DIVISION V<br>OFFENCES RELATING TO PROPERTY<br>CHAPTER XXVI – THEFT | | | | |
| 275 | Theft | May arrest without warrant | Imprisonment for three years | Any subordinate court |
| 276 | Stealing will | May arrest without warrant | Imprisonment for ten years | Any subordinate court |
| 277 | Stealing postal matter, etc. | May arrest without warrant | Imprisonment for ten years | Any subordinate court |
| 278 | Stealing stock | May arrest without warrant | Imprisonment for not less than seven and not more than fourteen years with corporal punishment | Any subordinate court |
| 278A | Stealing motor vehicle | May arrest without warrant | Imprisonment for seven years with corporal punishment | Any subordinate court |
| 279 | Stealing from the person, in a dwelling house, in transit, etc. | May arrest without warrant | Imprisonment for fourteen years with corporal punishment | Any subordinate court |
| 280 | Stealing by person in public service | May arrest without warrant | Imprisonment for seven years | Any subordinate court |
| 281 | Stealing by clerk or servant | May arrest without warrant | Imprisonment for seven years | Any subordinate court |
| 282 | Stealing by director or officer of company | May arrest without warrant | Imprisonment for seven years | Any subordinate court |
| 283 | Stealing by agent, etc. | May arrest without warrant | Imprisonment for seven years | Any subordinate court |
| 284 | Stealing by tenant or lodger | May arrest without warrant | Imprisonment for seven years | Any subordinate court |
| 285 | Stealing after previous conviction | May arrest without warrant | Imprisonment for seven years | Any subordinate court |
| CHAPTER XXVII – OFFENCES ALLIED TO STEALING | | | | |
| 286 | Concealing register | May arrest without warrant | Imprisonment for ten years | Subordinate court of the first class presided over by a chief magistrate, a senior principal magistrate, a principal magistrate or a senior resident magistrate |
| 287 | Concealing will | May arrest without warrant | Imprisonment for ten years | Subordinate court of the first class presided over by a chief magistrate, a senior principal magistrate, a principal magistrate or a senior resident magistrate |

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| 288 | Concealing deed | May arrest without warrant | Imprisonment for three years | Subordinate court of the first class presided over by a chief magistrate, a senior principal magistrate, a principal magistrate or a senior resident magistrate |
| 289 | Killing animal with intent to steal | May arrest without warrant | Same punishment as if the animal had been stolen | Any court by which the theft of the animal would be triable |
| 290 | Severing with intent to steal | May arrest without warrant | Same punishment as if the thing had been stolen | Any court by which the theft of the thing would be triable |
| 291 | Fraudulent disposition of mortgaged goods | May arrest without warrant | Imprisonment for two years | Any subordinate court |
| 292 | Fraudulently dealing with ore or mineral in mine | May arrest without warrant | Imprisonment for five years | Any subordinate court |
| 293 | Fraudulent appropriation of mechanical or electrical power | May arrest without warrant | Imprisonment for five years | Any subordinate court |
| 294 | Unlawfully using vehicle or animal, etc. | May arrest without warrant | Imprisonment for six months and/or fine of three thousand shillings | Any subordinate court |

## CHAPTER XXVIII - ROBBERY AND EXTORTION

CHAPTER XXVIII – ROBBERY AND EXTORTION

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| 296(1) | Robbery | May arrest without warrant | Imprisonment for fourteen years with corporal punishment | Subordinate court of the first class |
| (2) | Robbery with violence | May arrest without warrant | Death | Subordinate court of the first class presided over by a chief magistrate, a senior principal magistrate, a principal magistrate or a senior resident magistrate |
| 297(1) | Attempted robbery | May arrest without warrant | Imprisonment for seven years with corporal punishment | Subordinate court of the first class |
| (2) | Attempted robbery with violence | May arrest without warrant | Death | Subordinate court of the first class presided over by a chief magistrate, a senior principal magistrate, a principal magistrate or a senior resident magistrate |
| 298 | Assault with intent to steal | May arrest without warrant | Imprisonment for five years | Any subordinate court |
| 299 | Demanding property by written threats | May arrest without warrant | Imprisonment for fourteen years | Subordinate court of the first class |
| 300 | Threatening with intent to extort – in certain specified cases | May arrest without warrant | Imprisonment for fourteen years | Subordinate court of the first class |
| | in any other case | May arrest without warrant | Imprisonment for three years | Any subordinate court |

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| 301 | Procuring execution of deeds, etc., by threats | May arrest without warrant | Imprisonment for fourteen years | Subordinate court of the first class |
| 302 | Demanding property with menaces with intent to steal | May arrest without warrant | Imprisonment for ten years | Any subordinate court |
| CHAPTER XXIX – BURGLARY, HOUSEBREAKING AND SIMILAR OFFENCES | | | | |
| 304(1) | Housebreaking | May arrest without warrant | Imprisonment for seven years | Any subordinate court |
| (2) | Burglary | May arrest without warrant | Imprisonment for ten years with corporal punishment | Any subordinate court |
| 305(1) | Entering dwelling house with intent to commit felony | May arrest without warrant | Imprisonment for five years | Any subordinate court |
| (2) | If offence is committed in the night | May arrest without warrant | Imprisonment for seven years | Any subordinate court |
| 306 | Breaking into building and committing felony | May arrest without warrant | Imprisonment for seven years with corporal punishment | Any subordinate court |
| 307 | Breaking into building with intent to commit felony | May arrest without warrant | Imprisonment for five years | Any subordinate court |
| 308(1) | Armed preparation for felony | May arrest without warrant | Imprisonment with hard labour for not less than ten or more than fourteen years together with corporal | Any subordinate court |

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| (2) | Possession of certain articles | May arrest without warrant | Imprisonment with hard labour for five years or for ten years after previous conviction of a felony relating to property | Any subordinate court |
| (3) | Other preparation for felony | May arrest without warrant | Imprisonment with hard labour for five years or for ten years after previous conviction of a felony relating to property | Any subordinate court |
| 311(4) | Damaging or unlawfully removing detained aircraft, vessel or vehicle | May arrest without warrant | Imprisonment for two years | Any subordinate court |
| CHAPTER XXX – FALSE PRETENCES | | | | |
| 313 | Obtaining property by false pretence | May arrest without warrant | Imprisonment for three years | Any subordinate court |
| 314 | Obtaining execution of security by false pretence | May arrest without warrant | Imprisonment for three years | Any subordinate court |
| 315 | Cheating | May arrest without warrant | Imprisonment for three years | Any subordinate court |
| 316 | Obtaining credit, etc., by false pretence | May arrest without warrant | Imprisonment for one year | Any subordinate court |
| 317 | Conspiracy to defraud | May arrest without warrant | Imprisonment for three years | Any subordinate court |

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| 318 | Fraud on sale or mortgage of property | May arrest without warrant | Imprisonment for two years | Any subordinate court |
| 319 | Pretending to tell fortunes | May arrest without warrant | Imprisonment for one year | Any subordinate court |
| 320 | Obtaining registration, etc., by false pretence | May arrest without warrant | Imprisonment for one year | Any subordinate court |
| 321 | False declaration for passport | May arrest without warrant | Imprisonment for two years | Any subordinate court |
| CHAPTER XXXI – RECEIVING PROPERTY STOLEN OR UNLAWFULLY OBTAINED AND LIKE OFFENCES | | | | |
| 322(2) | Handling stolen property | May arrest without warrant | Imprisonment with hard labour for not less than seven or more than fourteen years | Any subordinate court |
| 323 | Failing to account for possession of property suspected to be stolen or unlawfully obtained | May arrest without warrant | Imprisonment for two years | Any subordinate court |
| 324(2) | Unlawful possession of Government or Railway stores | May arrest without warrant | Imprisonment for two years | Any subordinate court |
| (3) | Unlawful possession of service stores | May arrest without warrant | Imprisonment for two years | Any subordinate court |
| 325(2) | Failing to account for possession of property | Shall not arrest without warrant | Fine of one thousand four hundred shillings or imprisonment for six months | Any subordinate court |

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| 326 | Receiving goods stolen outside Kenya | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |
| CHAPTER XXXII – FRAUDS BY TRUSTEES AND PERSONS IN A POSITION OF TRUST, AND FALSE ACCOUNTING | | | | |
| 327 | Fraudulently disposing of trust property | May arrest without warrant | Imprisonment for seven years | Any subordinate court |
| 328 | Fraudulent appropriation or accounting by director or officer | May arrest without warrant | Imprisonment for seven years | Any subordinate court |
| 329 | False statement by official or corporation | May arrest without warrant | Imprisonment for seven years | Any subordinate court |
| 330 | Fraudulent false accounting by clerk or servant | May arrest without warrant | Imprisonment for seven years | Any subordinate court |
| 331 | False accounting by public officer | May arrest without warrant | Imprisonment for two years | Any subordinate court |
| DIVISION VI<br>MALICIOUS INJURIES TO PROPERTY<br>CHAPTER XXXIII – OFFENCES CAUSING INJURY TO PROPERTY | | | | |
| 332 | Arson | May arrest without warrant | Imprisonment for life | Subordinate court of the first class |
| 333 | Attempt to commit arson | May arrest without warrant | Imprisonment for fourteen years | Subordinate court of the first class |
| 334 | Setting fire to crops or growing plants | May arrest without warrant | Imprisonment for fourteen years | Subordinate court of the first class |

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| 335 | Attempting to set fire to crops or growing plants | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |
| 336 | Casting away vessel | May arrest without warrant | Imprisonment for fourteen years | Subordinate court of the first class presided over by a chief magistrate, senior principal magistrate, a principal magistrate or a senior resident magistrate |
| 337 | Attempt to cast away vessel | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |
| 338 | Killing or wounding animal— | | | |
| (a) | if stock as defined in section 278 of the Penal Code | May arrest without warrant | Imprisonment for fourteen years | Subordinate court of the first class |
| (b) | in any other case | May arrest without warrant | Imprisonment for three years | Subordinate court of the first class |
| 339(1) | Destroying or damaging property in general | May arrest without warrant | Imprisonment for five years | Any subordinate court |
| (2) | Destroying or damaging inhabited house or vessel with explosives | May arrest without warrant | Imprisonment for life with or without corporal punishment | Subordinate court of the first class |
| (3) | Destroying or damaging river bank or wall, or navigation work, or bridge | May arrest without warrant | Imprisonment for life | Subordinate court of the first class |
| (4) | Destroying or damaging will or register | May arrest without warrant | Imprisonment for fourteen years | Subordinate court of the first class |
| (5) | Destroying or damaging wreck | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |
| (6) | Destroying or damaging railway | May arrest without warrant | Imprisonment for fourteen years | Subordinate court of the first class |
| (7) | Destroying or damaging property of special value | May arrest without warrant | Imprisonment for ten years | Subordinate court of the first class |
| (8) | Destroying or damaging deed or records | May arrest without warrant | Imprisonment for ten years | Subordinate court of the first class |
| 340 | Attempt to destroy or damage property by use of explosives | May arrest without warrant | Imprisonment for fourteen years | Subordinate court of the first class |
| 341 | Communicating infectious disease to animals | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |
| 342 | Injuring or obstructing railway works, etc. | May arrest without warrant | Imprisonment for three months or a fine of one thousand two hundred shillings | Any subordinate court |
| 343 | Sabotage | May arrest without warrant | Life imprisonment/ imprisonment for five years | Subordinate court of the first class |
| 344 | Threatening to burn any building, etc., or to kill or wound any cattle | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |

| DIVISION VII<br>FORGERY, COINING, COUNTERFEITING AND SIMILAR OFFENCES<br>CHAPTER XXXV – PUNISHMENT FOR FORGERY | | | | |
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| 349 | Forgery (where no special punishment is provided) | May arrest without warrant | Imprisonment for three years | Subordinate court of the first class |
| 350 | Forgery of will, document of title, security, cheque, etc. | May arrest without warrant | Imprisonment for life | Subordinate court of the first class |
| 351 | Forgery of judicial or official document | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |
| 352 | Forgery, etc., of stamps | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |
| 353 | Uttering false document | May arrest without warrant | Same punishment as for forgery of document | Any court by which forgery of document would be triable |
| 354 | Uttering cancelled or exhausted document | May arrest without warrant | Same punishment as for forgery of document | Any court by which forgery of document would be triable |
| 355 | Procuring execution of document by false pretences | May arrest without warrant | Same punishment as for forgery of document | Any court by which forgery of document would be triable |
| 356 | Obliterating or altering crossing on cheque | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |
| 357 | Making or executing document without authority | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |
| 358 | Demanding property upon forged testamentary instrument | May arrest without warrant | Same punishment as for forgery of instrument | Any court by which forgery of instrument would be triable |
| 359 | Purchasing or receiving forged bank note | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |
| 360 | Falsifying warrant for money payable under public authority | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |
| 361 | Permitting falsification of register of record | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |
| 362 | Sending false certificate of marriage to registrar | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |
| 363 | Making false statement for insertion in register of births, deaths or marriages | May arrest without warrant | Imprisonment for three years | Any subordinate court |
| CHAPTER XXXVI – OFFENCES RELATING TO COIN AND BANK AND CURRENCY NOTES | | | | |
| 365 | Counterfeiting coin | May arrest without warrant | Imprisonment for life | Subordinate court of the first class |
| 366 | Making preparation for coining | May arrest without warrant | Imprisonment for life | Subordinate court of the first class |

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| 367 | Making or possessing paper or implements of forgery | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |
| 368 | Clipping coin | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |
| 369 | Melting down currency | May arrest without warrant | Imprisonment for six months and/or fine of eight thousand shillings | Any subordinate court |
| 371 | Being in possession of clippings | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |
| 372 | Uttering counterfeit coin | May arrest without warrant | Imprisonment for two years | Subordinate court of the first class |
| 373 | Repeated uttering of counterfeit coin | May arrest without warrant | Imprisonment for three years | Subordinate court of the first class |
| 374 | Uttering piece of metal as coin | May arrest without warrant | Imprisonment for one year | Subordinate court of the first class |
| 375 | Exporting counterfeit coin | May arrest without warrant | Imprisonment for two years | Subordinate court of the first class |
| 376 | Selling article bearing design in imitation currency | May arrest without warrant | Imprisonment for six months | Any subordinate court |
| | CHAPTER XXXVII – COUNTERFEIT STAMPS | | | |
| 378 | Being in possession, etc., of die or paper used for making revenue stamps | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |
| 379 | Being in possession, etc., of die or paper used for postage stamps | May arrest without warrant | Imprisonment for one year or fine of three thousand shillings | Subordinate court of the first class |
| | CHAPTER XXXVIII – COUNTERFEITING TRADE MARKS | | | |
| 381 | Counterfeiting, etc., trade mark | Shall not arrest without warrant | Imprisonment for two years | Any subordinate court |
| | CHAPTER XXXIX – PERSONATION | | | |
| 382(1) | Personation in general | May arrest without warrant | Imprisonment for two years | Any subordinate court |
| (2) | If representation is that offender is person entitled by will or operation of law to specific property and he commits offence to obtain such property | May arrest without warrant | Imprisonment for seven years | Subordinate court of the first class |
| 383 | Falsely acknowledging deed, recognizances, etc. | May arrest without warrant | Imprisonment for two years | Any subordinate court |
| 384 | Personation of person named in certificate | May arrest without warrant | Same punishment as for forgery of certificate | Any court by which forgery of certificate would be triable |
| 385 | Lending, etc., certificate for purposes of personation | May arrest without warrant | Imprisonment for two years | Any subordinate court |

| | | | | |
|---|---|---|---|---|
| 386 | Personation of person named in testimonial | May arrest without warrant | Imprisonment for one year | Any subordinate court |
| 387 | Lending, etc., testimonial for purposes of personation | May arrest without warrant | Imprisonment for two years | Any subordinate court |
| | DIVISION VIII<br>ATTEMPTS AND CONSPIRACIES TO COMMIT CRIMES AND ACCESSORIES AFTER THE FACT<br>CHAPTER XL – ATTEMPTS | | | |
| 389 | Attempt to commit felony or misdemeanour | According as to whether or not the offence is one for which the police may arrest without a warrant | Imprisonment for two years | Any court by which the felony or misdemeanour attempted would be triable |
| 390 | Attempt to commit felony punishable with death or imprisonment for fourteen years or upwards | May arrest without warrant | Imprisonment for seven years | Any court by which the felony attempted would be triable |
| 391 | Soliciting or inciting another to commit offence in Kenya or elsewhere | May arrest without warrant if arrest for offence solicited or incited may be made without warrant, but not otherwise | Same punishment as for the offence solicited or incited | Any court by which the offence solicited or incited would be triable |
| 392 | Neglecting to prevent commission or completion of felony | Shall not arrest without warrant | Imprisonment for two years | Any subordinate court |

| | | | | |
|---|---|---|---|---|
| | CHAPTER XLI – CONSPIRACIES | | | |
| 393 | Conspiracy to commit felony | May arrest without warrant | Imprisonment for seven years | Any court by which the felony would be triable |
| 394 | Conspiracy to commit misdemeanour | According to whether or not the misdemeanour is one for which the police may arrest without warrant | Imprisonment for two years | Any court by which the misdemeanour would be triable |
| 395 | Conspiracy to effect certain specified purposes | Shall not arrest without warrant | Imprisonment for two years | Any subordinate court |
| | CHAPTER XLII – ACCESSORIES AFTER THE FACT | | | |
| 397 | Being an accessory after the fact to felony | May arrest without warrant | Imprisonment for three years | Any subordinate court |
| 398 | Being an accessory after the fact to misdemeanour | Shall not arrest without warrant | Imprisonment for two years | Any subordinate court |
| | OFFENCES UNDER OTHER LAWS | | | |
| | If punishable with death or imprisonment for more than ten years | May arrest without warrant | — | |
| | If punishable with imprisonment for three years or upwards, but not more than ten | May arrest without warrant | — | Subordinate court of the first class |
| | If punishable with imprisonment for less than three years or with fine only. | Shall not arrest without warrant | | Any subordinate court |

## SECOND SCHEDULE

[Section 137(a)(iv), Act No. 28 of 1961, Sch., L.N. 474/1963, L.N. 18/1964.]

## FORMS OF STATING OFFENCES IN INFORMATIONS

### 1 – MURDER

Murder, contrary to section 204 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., 20 ....., in ..... District within the ..... Province murdered J.S.

---

### 2 – ACCESSORY AFTER THE FACT TO MURDER

Accessory after the fact to murder, contrary to section 222 of the Penal Code

PARTICULARS OF OFFENCE

A.B., well knowing that one, H.C., did on the ..... day of ....., in ..... District within the ..... Province and on other days thereafter receive, comfort, harbor, assist and maintain the said H.C.

---

### 3 – MANSLAUGHTER

Manslaughter, contrary to section 205 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., 20 ....., in ..... District within the ..... Province, unlawfully killed J.S.

---

### 4 – RAPE

Rape, contrary to section 140 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., 20 ....., in ..... District within the ..... Province, had carnal knowledge of E.F., without her consent.

---

5 – WOUNDING

*First Count*

Wounding with intent, contrary to section 231 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., 20 ....., in ..... District within the ..... Province, wounded C.D., with intent to maim, disfigure or disable, or to do some grievous harm, or to resist the lawful arrest of him the said A.B.

*Second Count*

Wounding, contrary to section 237 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., 20 ....., in ..... District within the ..... Province, unlawfully wounded C.D.

---

6 – THEFT

*First Count*

Stealing, contrary to section 275 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., 20 ....., in ..... District within the..... Province, stole a bag, the property of C.D.

*Second Count*

Receiving stolen goods, contrary to section 322 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., 20 ....., in ..... District within the ..... Province, did receive a bag, the property of C.D., knowing the same to have been stolen.

---

7 – THEFT BY CLERK

Stealing by clerks and servants, contrary to section 281 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., 20 ....., in ..... District within the ..... Province, being clerk or servant to M.N., stole from the said M.N. ten yards of cloth.

---

8 – ROBBERY

Robbery with violence, contrary to section 296 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., 20 ....., in ..... District within the ..... Province, robbed C.D., of a watch, and at, or immediately before or immediately after, the time of such robbery did use personal violence to the said C.D.

---

9 – BURGLARY

Burglary, contrary to section 304, and stealing, contrary to section 279 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., in the night of the ..... day of ....., 20 ....., in ..... District within the ..... Province, did break and enter the dwelling-house of C.D., with intent to steal therein, and did steal therein on watch, the property of S.T., the said watch being of the value of sh. 200.

---

10 – THREATS

Demanding property by written threats, contrary to section 299 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., 20....., in ..... District within the ..... Province, with intent to extort money from C.D., caused the said C.D. to receive a letter containing threats of injury or detriment to be caused to E.F.

---

11 – ATTEMPTS TO EXTORT

Attempt to extort by threats, contrary to section 300 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., 20....., in ..... District within the ..... Province, with intent to extort money from C.D., accused or threatened to accuse the said C.D. of an unnatural offence.

---

## 12 – FALSE PRETENCES

Obtaining by false pretences, contrary to section 313 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., 20....., in ..... District within the..... Province, with intent to defraud, obtained from S.P. five yards of cloth by falsely pretending that the said A.B. was a servant to J.S., and that he, the said A.B., had then been sent by the said J.S. to S.P., for the said cloth, and that he, the said A.B., was then authorized by the said J.S. to receive the said cloth on behalf of the said J.S.

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## 13 – CONSPIRACY TO DEFRAUD

Conspiracy to defraud, contrary to section 317 of the Penal Code

PARTICULARS OF OFFENCE

A.B. and C.D., on the ..... day of ..... 20....., and on divers days between that day and the ..... day of ....., in ..... District within the ..... Province, conspired together with intent to defraud by means of an advertisement inserted by them, the said A.B. and C.D. in the H.S. newspaper, falsely representing that A.B. and C.D. were then carrying on a genuine business as jewellers at ....., in ..... District within the ..... Province, and that they were then able to supply certain articles of jewellery to whomsoever would remit to them the sum of Sh. 40.

---

## 14 – ARSON

Arson, contrary to section 332 of the Penal Code.

PARTICULARS OF OFFENCCE

A.B., on the ..... day of ....., 20....., in ..... District within the ..... Province, wilfully and unlawfully set fire to a house.

---

## 15 – ARSON AND ACCESSORY BEFORE THE FACT

A.B., Arson, contrary to section 332 of the Penal Code.
C.D., accessory before the fact to same offence.

PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., 20....., in ..... District within the ..... Province, wilfully and unlawfully set fire to a house.

C.D., on the same day, in ..... District within the ..... Province, did counsel or procure the said A.B. to commit the said offence.

---

## 16 – DAMAGE

Damaging trees, contrary to section 339 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., 20....., in ..... District within the ..... Province, wilfully and unlawfully damaged a coffee tree there growing.

---

## 17 – FORGERY

*First Count*

Forgery, contrary to section 350 of the Penal Code.

*PARTICULARS OF* OFFENCE

A.B., on the ..... day of ....., 20....., in ..... District within the ..... Province, forged a certain will purporting to be the will of C.D.

*Second Count*

Uttering a false document, contrary to section 353 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., 20....., in ..... District within the ..... Province, knowingly and fraudulently uttered a certain forged will purporting to be the will of C.D.

---

## 18 – COUNTERFEIT COIN

Uttering a counterfeit coin, contrary to section 372 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., 20....., at ..... market in ..... District within the ..... Province, uttered a counterfeit shilling, knowing the same to be counterfeit.

---

## 19 – PERJURY

Perjury, contrary to section 108 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., 20....., in ..... District within the ..... Province, being a witness upon the trial of an action in the High Court of Kenya at Nairobi, in which one .... ..... was plaintiff, and one ..... was defendant, knowingly gave false testimony that he saw one, M.W., in the street called the ... ..... on the ..... day of .....

---

## 20 – DEFAMATORY LIBEL

Publishing defamatory matter, contrary to section 194 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., 20....., in ..... District within the ..... Province, published defamatory matter affecting E.F., in the form of a letter (book, pamphlet, picture, or as the case may be).

(Innuendo should be stated where necessary.)

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## 21 – FALSE ACCOUNTING

*First Count*

Fraudulent false accounting, contrary to section 330 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., 20....., in ..... District within the ..... Province, being clerk or servant to C.D., with intent to defraud, made or was privy to making a false entry in a cash book belonging to the said C.D., his employer, purporting to show that on the said day Sh. 2,000 had been paid to L.M.

*Second Count*

Same as first count.

PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., 20....., in ..... District with the ..... Province, being clerk or servant to C.D., with intent to defraud, omitted or was privy to omitting from a cash book belonging to the said C.D., his employer, a material particular, that is to say, the receipt on the said day of Sh. 1,000 from H.S.

---

## 22 – THEFT BY AGENT

*First Count*

Stealing by agents and others, contrary to section 283 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., 20....., in ..... District within the ..... Province, stole Sh. 2,000 which had been entrusted to him by H.S., for him, the said A.B., to retain in safe custody.

*Second Count*

Stealing by agents and others, contrary to section 283 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., 20....., in ..... District within the ..... Province, stole Sh. 2,000 which had been received by him, for and on account of L.M.

---

## 23 – PREVIOUS CONVICTION

Prior to the commission of the said offence, the said A.B. had been previously convicted of ..... on the ..... day of ....., 20 ....., at the ..... held at .....

Third Schedule - [*Spent*].

Fourth Schedule - *Repealed by Act No. 46 of 1963, Second Sch.*

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# INDEX TO THE CRIMINAL PROCEDURE CODE

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