

LAWS OF KENYA

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**THE CRIMINAL PROCEDURE CODE**

CHAPTER 75

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CHAPTER 75

THE CRIMINAL PROCEDURE CODE

Cap. 27 (1948),  
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 20 of 1989, 7 of 1990,  
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 5 of 2003, 3 of 2006,  
 7 of 2007,  
 11 of 2008.

Commencement: *1st August 1930*

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

PART I - PRELIMINARY

- 1. This Act may be cited as the Criminal Procedure Code.
- 2. In this Code, unless the context otherwise requires -

Short title.

Interpretation.

39 of 1951, s.2,  
22 of 1959, s. 2,  
15 of 1961, Sch.,  
28 of 1961, Sch.,  
36 of 1962, Sch.,  
13 of 1967,  
1st Sch., 17 of 1967,  
s. 2, 8 of 1968, Sch.,  
13 of 1982, s. 2,  
L.N.124/1964.  
5 of 2003, s.59.  
5 of 2003, s. 60.  
7 of 2007,  
11 of 2008, s. 2.

“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” means an allegation that some person known or unknown has committed or is guilty of an offence;

“drug related offence” means any specified in Part V of the Dangerous Drugs Act and includes the possession, manufacture, distribution or receipt of any drug of any quantity whatsoever.

Cap. 245.

“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 Attorney-General 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;

Cap. 84.

“police station” means a police station within the meaning of section 2 of the Police Act;

“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 Attorney-General, the Solicitor-General, the Deputy Public Prosecutor, a state counsel, a person appointed under section 85 or a person acting under the directions of the Attorney-General;

”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.

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

Trial of offences under Penal Code and under other laws. 20 of 1965, s. 2. Cap. 63.

(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.

## PART II - POWERS OF COURTS

**4.** Subject to this Code, an offence under the Penal Code 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.

Offences under Penal Code. Cap. 63.

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

Offences under other laws. Cap. 63.

(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.

Sentences which  
High Court may pass.

6. The High Court may pass any sentence authorized by law.

Sentences which  
subordinate courts  
may pass. 17 of 1967,  
s. 24, 3 of 1969, s. 6,  
25 of 1971, Sch.,  
4 of 1974, Sch.,  
18 of 1979, Sch.,  
11 of 1983, Sch.,  
18 of 1986, Sch.  
14 of 1991, Sch.  
7 of 2007.

7. (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 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 5 of 2003, s.60.)*

(4) *(Deleted by 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.

**8.** 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.

Powers of Judicial Service Commission to extend jurisdiction of subordinate courts. 11 of 1983, Sch.

**9 to 11** [Repealed by 17 of 1967, s. 25].

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

Combination of sentences. 17 of 1967, s. 26.

**13.** [Repealed by 17 of 1967, s. 25.]

**14.** (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.

Sentences in cases of conviction of several offences at one trial. 17 of 1967, s. 46, 25 of 1971, Sch., 4 of 1974, Sch.

(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.

(3) 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.

Suspended  
Sentences.  
7 of 1990, s.4.

**15.** (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.

7 of 1990, s.4.

(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.

7 of 1990, s.4.

(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.

**16 to 20.** (*Repealed by No. 17 of 1967, s. 25.*)

### PART III - GENERAL PROVISIONS

#### ARREST, ESCAPE AND RETAKING

##### *Arrest Generally*

Arrest.

**21.** (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.

Search of place  
entered by person  
sought to be arrested.

**22.** (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.** 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.

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

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

No unnecessary restraint.

**25.** Whenever a person is arrested -

Search of arrested persons.

(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.** (1) A police officer, or other person authorized in writing in that behalf by the Commissioner of Police, may stop, search and detain -

Power to detain and search aircraft, vessels, vehicles and persons. 13 of 1967, Sch., L.N. 474/1963

(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

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(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; 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.

Mode of searching women.

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

Power to seize offensive weapons.

**28.** 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*

Arrest by police officer without warrant.

5 of 1958, s.2.  
13 of 1967, 1st Sch.,  
L.N.124/1964.

**29.** 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 or the Extradition (Commonwealth Countries) Act;

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(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.

**30.** An officer in charge of a police station may in the same manner arrest or cause to be arrested -

Arrest of vagabonds, habitual robbers, etc. 5 of 2003, s.61.

(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 5 of 2003, s.61.)*

(c) *(Repealed by 5 of 2003, s.61.)*

**31.** 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

Procedure when police officer deposes subordinate to arrest without warrant.

offence or other cause for which the arrest is to be made.

Refusal to give name and residence.

**32.** (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.

Disposal of persons arrested by police officer.

**33.** 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.

Arrest by private person.

**34.** (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.

Disposal of person arrested by private person.

**35.** (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.** 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:

Detention of persons arrested without warrant. 22 of 1959, s. 6. 13 of 1988, s. 36.

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.

**37.** 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.

Police to report apprehensions.

**38.** 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.

Offence committed in magistrate's presence.

**39.** 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.

Arrest by magistrate.

#### *Escape and Retaking*

**40.** 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.

Recapture of person escaping.

**41.** The provisions of sections 22 and 23 shall apply to arrests under section 40 although the person making the arrest is not acting

Provisions of sections 22 and 23 to apply to

arrests under section 40.

Assistance to magistrate or police officer.

under a warrant and is not a police officer having authority to arrest.

**42.** 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.

#### PREVENTION OF OFFENCES

##### *Security for Keeping the Peace and for Good Behaviour*

Security for keeping the peace.  
22 of 1959, s. 7.

**43.** (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.

Security for good behaviour

**44.** 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 -

from persons disseminating seditious matter. 33 of 1958, s.2. Cap.63. 5 of 2003, s.62.

(a) (*Repealed by 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.

**45.** 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.

Security for good behaviour from suspected persons.

**46.** 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 -

Security for good behaviour from habitual offenders. 57 of 1955, s.4, 25 of 1971, Sch.

(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

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

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.

Order to be made.  
33 of 1958, s.3,  
25 of 1971, s.6.

**47.** 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.

Procedure in case  
of person present in  
court.

**48.** 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.

Summons or warrant  
in case of person not  
so present.

**49.** 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.** 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.

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

**51.** 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.

Power to dispense with personal attendance.

**52.** (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.

Inquiry as to truth of information.

(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.** (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:

Order to give security.  
22 of 1959, s. 9.  
25 of 1971, Sch.

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.

**54.** 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.

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

**55.** (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 the 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.

**56.** 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.** 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.** (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

Discharge of person informed against. 25 of 1971, Sch.

Commencement of period for which security is required. 25 of 1971, Sch.

Contents of bond.

Power to reject sureties.

Procedure on failure of person to give security. 26 of 1957, s.2.

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.

**59.** 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.

Power to release persons imprisoned for failure to give security.

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

Power of High Court to cancel bond. 25 of 1971, Sch.

**61.** (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.

Discharge of sureties.

(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.

Breach of restriction order.  
25 of 1971, s.7.

**61A.** 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.

#### PREVENTIVE ACTION OF THE POLICE

Police to prevent cognizable offences.

**62.** 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.

Information of design to commit such offences.

**63.** 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.

Arrest to prevent such offences.

**64.** 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.

Prevention of injury to public property.

**65.** 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

General authority of courts.

**66.** 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.

Accused person to be sent to district where offence committed.

**67.** 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.** (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.

Removal of accused person under warrant. 13 of 1982, 1<sup>st</sup> Sch.

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

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

Powers of High Court. 13 of 1982, 1<sup>st</sup> Sch. 5 of 2003, s.63.

**70.** (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.

Place and date of sessions of the High Court. 13 of 1982, 1<sup>st</sup> Sch.

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

**71.** 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.

Ordinary place of inquiry and trial. 13 of 1982, 1<sup>st</sup> Sch.

**72.** 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.

Trial at place where act done or where consequence of offence ensues. 13 of 1982, 1<sup>st</sup> Sch.

**73.** 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.

Trial where offence is connected with another offence. 13 of 1982, 1<sup>st</sup> Sch.

**74.** When -

Trial where place of offence is uncertain.

13 of 1982, 1<sup>st</sup> Sch.

(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.

Offence committed on a journey.

13 of 1982, 1<sup>st</sup> Sch.

**75.** 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.

High Court to decide in cases of doubt.

13 of 1982, 1<sup>st</sup> Sch.

**76.** (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.

Court to be open. 13 of 1982, 1<sup>st</sup> Sch.

5 of 2003, s.64

**77.** (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 shall be held in private and no person shall, in relation to such trial, publish or cause to be published by any means -

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(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.

**77A.** (*Repealed by 5 of 2003, s. 65.*)

*Transfer of Cases*

**78.** (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.

Transfer of case where offence committed outside jurisdiction.

(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.** 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

Transfer of cases between magistrates. 17 of 1967, s. 27, 13 of 1982, 1<sup>st</sup> Sch. 5 of 2003, s.66.

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.

Transfer of part-heard cases.  
13 of 1982, 1<sup>st</sup> Sch.,  
5 of 2003, s.67.

**80.** 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.

Power of High Court to change venue.  
13 of 1982, 1<sup>st</sup> Sch.

**81.** (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 Attorney-General, be supported by affidavit.

(4) An accused person making any such application shall give to the Attorney-General 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.

#### CONTROL BY REPUBLIC IN CRIMINAL PROCEEDINGS

**82.** (1) In any criminal case and at any stage thereof before verdict or judgment, as the case may be, the Attorney-General 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.

Power of Attorney-General to enter *nolle prosequi*.

13 of 1967, 1<sup>st</sup> Sch.,  
13 of 1982, 1<sup>st</sup> Sch.

(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.

5 of 2003, s.68

**83.\*** The Attorney-General 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 Attorney-General:

Delegation of powers by Attorney-General.

39 of 1951, s. 3,  
12 of 1984, Sch.

Provided that the Attorney-General may in writing revoke an order made by him under this section.

**84.** (*Repealed by 5 of 2003, s. 69.*)

#### APPOINTMENT OF PUBLIC PROSECUTORS AND CONDUCT OF PROSECUTIONS

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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.)

Power to appoint public prosecutors. 22 of 1959, s.10.

**85.** (1) The Attorney-General, 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.

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(2) The Attorney-General, 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.

(3) Every public prosecutor shall be subject to the express directions of the Attorney-General.

Powers of public prosecutors. 28 of 1961, Sch., 13 of 1982, 1<sup>st</sup> Sch., 5 of 2003.

**86.** 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.

Withdrawal from prosecution in trials before subordinate courts.

**87.** In a trial before a subordinate court a public prosecutor may, with the consent of the court or on the instructions of the Attorney-General\*, 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.

Permission to conduct prosecution. L.N.299/1956, L.N.172/1960, L.N.474/1963, 13 of 1982, 1<sup>st</sup> Sch.

**88.** (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 Attorney-General 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.

#### INSTITUTION OF PROCEEDINGS

##### *Making of Complaint*

**89.** (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. Complaint and charge.  
10 of 1983, Sch.

(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.

**90.** (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: Issue of summons or warrant.  
13 of 1982, 1<sup>st</sup> Sch.

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.

PROCESSES TO COMPEL THE APPEARANCE OF  
ACCUSED PERSONS

*Summons*

Form and contents of summons.  
13 of 1982, 1<sup>st</sup> Sch.

**91.** (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.

Service of summons.

**92.** (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.

Service when person summoned cannot be found.

**93.** 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.

Procedure when service cannot be effected as before provided.

**94.** 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.

Service on servant of Government.  
22 of 1959, s.11,  
13 of 1967, 1<sup>st</sup> Sch.,  
L.N. 474/1963, 13 of  
1982, 1st Sch.

**95.** 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.

Service on company.  
L.N. 199/1966.

**96.** 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.

**97.** 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.

Service outside local limits of jurisdiction.

**98.** (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.

Proof of service when serving officer not present.

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

**99.** (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.

Power to dispense with personal attendance of accused.  
13 of 1982, 1<sup>st</sup> Sch.

(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.

### *Warrant of Arrest*

Warrant after issue of summons.

**100.** 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.

Warrant on disobedience of summons.

**101.** 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.

Form, contents and duration of warrant.

**102.** (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.

Court may direct security to be taken.

**103.** (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.** (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:

Warrants, to whom directed.

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.** (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.

Warrants may be directed to landholders, etc.

(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.** 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.

Execution of warrant directed to police officer.

**107.** 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.

Notification of substance of warrant.

Person arrested to be brought before court without delay.

**108.** 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.

Where warrant may be executed.

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

Forwarding of warrants for execution outside jurisdiction.

**110.** (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.

Warrant directed to police officer for execution outside jurisdiction.

**111.** (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.

Procedure on arrest of person outside jurisdiction.

**112.** (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.** 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.

Irregularities in warrant.  
13 of 1982, 1<sup>st</sup> Sch.

#### *Miscellaneous Provisions regarding Processes*

**114.** 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.

Power to take bond for appearance.

**115.** 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.

Arrest for breach of bond.

**116.** (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.

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

(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.

Provisions of this Part generally applicable to summonses and warrants.  
10 of 1983, Sch.

**117.** 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.

#### SEARCH WARRANTS

Power to issue search warrant. 22 of 1959, s.12, 10 of 1983, Sch.

**118.** 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.

Execution of search warrants.  
10 of 1983, Sch.

**119.** 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.

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

**120.** (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.

Detention of property seized.

**121.** (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.** 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 applicable to search warrants.

#### PROVISIONS AS TO BAIL

**123.** (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:

Bail in certain cases.  
22 of 1959, s.13,  
6 of 1976, Sch.,  
13 of 1978, Sch.,  
19 of 1984, Sch.,  
19 of 1985, Sch.,  
14 of 1991, Sch.  
7 of 1990, Sch.  
5 of 2003, s.71.

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.

**124.** 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.

Bail bond.  
L.N.142/1963.

**125.** (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.

Discharge from custody.

(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.

Deposit instead of  
recognizance.  
13 of 1967, 1<sup>st</sup> Sch.,  
4 of 1974, Sch.

**126.** 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.

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

**127.** 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.

Discharge of sureties.

**128.** (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.

Death of surety.

**129.** 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.

Persons bound  
by recognizance  
absconding may be  
committed.

**130.** 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.

Forfeiture of  
recognizance

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

Appeal from and revision of orders.

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

Power to direct levy of amount due on certain recognizances.

CHARGES AND INFORMATIONS

**134.** 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.

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

**135.** (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

Joinder of counts in a charge or information.

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.** 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, 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.** The following provisions shall apply to all charges and informations, and, notwithstanding any rule of law or practice, a charge

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

Cap. 63

Rules for the framing of charges and

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) 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) 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;

informations.  
22 of 1959, s. 14,  
13 of 1967, 1<sup>st</sup> Sch.,  
L.N.124/1964.

Mode in which  
offences are to be  
charged.

Provisions as to  
statutory offences.

Description of  
property.

- (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) 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;

Description of  
persons.

- (d) 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) 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;

Description of document.

(f) 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;

General rule as to description.

(g) 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;

Statement of intent.

(h) 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;

Mode of charging previous convictions.

(i) figures and abbreviations may be used for expressing anything which is commonly expressed thereby;

Use of figures and abbreviations.

(j) when a person is charged with an offence under section 280, 281, 282 or 283 of the Penal Code, 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 to have been committed without specifying particular times or exact dates.

Gross sum may be specified in certain cases of stealing. Cap. 63.

PLEA AGREEMENTS

11 of 2008.

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

Plea agreement negotiation.

- (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 sub-section (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 Attorney general.

Plea agreement on behalf of Republic.

**137B.** A plea agreement on behalf of the Republic shall be entered into by the Attorney-General, the Director of Public Prosecutions or officers authorised by the Attorney-General in accordance with section 26 (5) 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 prior written approval of the Attorney-General, 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).

Initiation of plea agreement.

**137C.** (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.

Consultation with victim, etc.

**137D.** 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.

**137E.** A plea agreement shall be in writing, and shall –

Form of plea agreement.

- (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.

**137F.** (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 –

Recording of plea agreement by court.

- (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.

Competence of accused to make a plea agreement.

**137G.** 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.

Record of factual basis of plea.

**137H.** (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.

**137I.** (1) Upon conviction, the court may invite the parties to address it on the issue of sentencing in accordance with section 216.

Address by parties.

(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.

**137J.** (1) Where the court rejects a plea agreement –

Rejection of 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.

Withdrawal of plea.

**137K.** 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.

Finality of judgement.

**137L.** (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 Attorney-General, 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 sub section (2), the provisions of section 137J shall apply *mutatis mutandis*.

Protection of plea agreement process.

**137M.** 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.

Application.

**137N.** This Part shall not apply to—

No. 3 of 2006.

(a) offences under the Sexual Offences Act, 2006;

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

**137O.** 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.

Rules under this sub-Part.

#### PREVIOUS CONVICTION OR ACQUITTAL

**138.** 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.

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

**139.** 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).

Person may be tried again for separate offence.

**140.** 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.

Consequences supervening or not known at time of former trial.

**141.** 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.

Where original court was not competent to try subsequent charge.

**142.** (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 -

Mode of proof of previous conviction. L.N.299/1956, L.N.172/1960, 13 of 1982, 1<sup>st</sup> Sch.

(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.

#### OFFENCES BY FOREIGNERS WITHIN TERRITORIAL WATERS

**143.** (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 Attorney-General 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 Attorney-General 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 Attorney-General and containing the consent and certificate shall be sufficient evidence for all the purposes of this section of that consent and certificate;

Leave of Attorney-General necessary before prosecution instituted. 13 of 1967, 1st Sch. L.N. 299/1956, L.N.172/1960, L.N. 474/1963. L.N. 6/89 2nd Sch.

(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.

#### COMPELLING ATTENDANCE OF WITNESSES

**144.** (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.

Summons for witness.  
46 of 1963,  
s. 183.

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

Cap. 80.

**145.** 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.

Warrant for witness who disobeys summons.

**146.** 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.

Warrant for witness in first instance.

**147.** 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.

Mode of dealing with witness arrested under warrant.

**148.** (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.

Power of court to order prisoner to be brought up 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.

Penalty for non-attendance of witness. 5 of 2003, s.72

**149.** (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.

#### EXAMINATION OF WITNESSES

Power to summon witnesses, or examine person present.

**150.** 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.

Evidence to be given on oath. 42 of 1954, s. 4.

**151.** 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.

Refractory witnesses.

**152.** (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 46 of 1963, Second Schedule.)*

#### COMMISSIONS FOR THE EXAMINATION OF WITNESSES

**154.** (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.

Issue of commission for examination of 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.** (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.

Parties may examine witnesses.

(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.

Power of magistrate to apply for issue of commission.

**156.** 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.

Return of commission.  
46 of 1963, s. 183.

**157.** (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.

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

Adjournment of inquiry or trial.

**158.** 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 46 of 1963, 2nd Sch.*)

Procedure where person charged is only witness.

**160.** 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.

Right of reply.

**161.** 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 Attorney-General or the Solicitor-General 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\*.** (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.

Inquiry by court as to soundness of mind of accused.

22 of 1959, s.15,  
13 of 1967, 1<sup>st</sup> Sch.,  
L.N.124/1964,  
13 of 1982, 1<sup>st</sup> Sch.

(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.

(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.

**163.** (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 Attorney-General.

Procedure where person of unsound mind subsequently found capable of making defence.  
22 of 1959, s. 16,  
13 of 1967, 1<sup>st</sup> Sch.  
20 of 1989, Sch.

(2) The Attorney-General 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.

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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.

(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.

Resumption of proceedings or trial. 5 of 2003, s.73.

**164.** 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 it for the first time.

**165.** (*Repealed by 5 of 2003, s. 74.*)

Defence of lunacy adduced at trial. 22 of 1959, s. 16, 13 of 1967, 1<sup>st</sup> Sch., L.N.124/1964

**166.** \*(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.

**167.** \*(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

Procedure when accused does not understand proceedings.  
22 of 1959, s.16,  
13 of 1967, 1<sup>st</sup> Sch.,  
L.N.124/1964,  
13 of 1982, s.4.  
5 of 2003, s.75.

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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.

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.

#### JUDGMENT

Mode of delivering judgment.

**168.** (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.

(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.

Contents of judgment.  
22 of 1959, s.17.

**169.** (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.

**170.** 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;

Copy of judgment, etc., to be given to accused on application. 5 of 2003, s.76.

#### COSTS AND COMPENSATION

**171.** (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.

Power to order costs against accused or private prosecutor. 5 of 2003, s.77.

(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.

**172.** 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.

Right of appeal from order as to costs.

**173.** (*Repealed by 13 of 1967, s.5.*)

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

Costs and compensation to be

specified in order,  
how recoverable.  
13 of 1967, 1<sup>st</sup> Sch.

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Power of courts to  
award expenses or  
compensation out  
of fine.  
5 of 2003, s. 78

(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, unless the costs shall be sooner paid:

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

**175.** (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; or

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(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.

**176.** 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.

Promotion of reconciliation.

#### RESTITUTION OF PROPERTY

**177.** 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 -

Property found on accused person.

(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.

Property stolen.  
27 of 1961, Sch.,  
11 of 1970, Sch.,  
Cap. 63.

**178.** (1) If a person guilty of an offence mentioned in Chapters XXVI to XXXI, both inclusive, of the Penal Code, 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:

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Provided that -

(i) where goods as defined in the Sale of Goods Act have been obtained by fraud or other wrongful means not amounting to stealing, the property in the goods shall not revert 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.

#### CONVICTIONS FOR OFFENCES OTHER THAN THOSE CHARGED

**179.** (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.

When offence proved is included in offence charged.

(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.** 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.

Persons charged with any offence may be convicted of attempt.

**181.** (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

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

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.

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(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, 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.

Charge of  
manslaughter in  
connexion  
with driving of motor  
vehicle.  
29 of 1967, 1<sup>st</sup> Sch.  
Cap. 403.

**182.** 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, he may be convicted of that offence although he was not charged with it.

Charge of  
administering oaths.  
57 of 1955, s. 5,  
19 of 1964, s. 2,  
L.N.761/1963.  
Cap. 63.

**183.** Where a person is charged with an offence under paragraph (a) of section 61 of the Penal Code, 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.

Charge of rape.  
3 of 2006, Sch. 2,  
s.3(2).

**184.** 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.

3 of 2006, Sch 2,  
s. 3 (3)

**185.** (*Repealed by 3 of 2006.*)

(b) With offences under the Sexual Offences Act;

**186.** 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.

Charge of defilement of a girl under 14 years of age. 15 of 1961, Sch., 10 of 1969, Sch., 3 of 2006, Sch 2, s. 3 (4).

**187.** When a person is charged with an offence mentioned in Chapter XXIX of the Penal Code and the court is of the opinion that he is not guilty of that offence but that he is guilty of another offence mentioned in that Chapter, he may be convicted of that other offence although he was not charged with it.

Charge of Burglary, etc. Cap. 63.

**188.** When a person is charged with stealing anything and -

Charge of stealing. 22 of 1959, s. 20.

(a) the facts proved amount to an offence under section 322 or section 323 of the Penal Code, he may be convicted of that offence although he was not charged with it;

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(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.

**189.** 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.

Charge of obtaining by false pretences.

**190.** When a person is charged with the offence of stock theft under the Penal Code and the court is of the opinion that he is not guilty of that offence but that he is guilty of an offence under section 9 of the Stock and Produce Theft Act, he may be convicted of that offence although he was not charged with it.

Charge of stock theft under the Penal Code. 13 of 1967, 1<sup>st</sup> Sch. Cap. 63. Cap. 355.

**191.** 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.

Construction of sections 179 to 190.

#### MISCELLANEOUS PROVISIONS

**192.** If on a trial for a misdemeanour the facts proved in evidence

Person charged with

misdemeanour not to be acquitted if felony proved, unless court so directs.

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.

Right of accused to be defended.

**193.** 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.

Concurrent criminal and civil proceedings. 5 of 2003, s.79

**193A.** 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.

## PART V - MODE OF TAKING AND RECORDING EVIDENCE IN TRIALS

### GENERAL

Evidence to be taken in presence of accused. 13 of 1982, 1<sup>st</sup> Sch.

**194.** 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).

**195 and 196.** (*Repealed by 46 of 1963, 2nd Sch.*)

### SUBORDINATE COURTS

Manner of recording evidence before magistrate. 57 of 1955, s. 6, 22 of 1959, s. 22, 13 of 1982, 1<sup>st</sup> Sch.

**197.** (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.

**198.** (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.

Interpretation of evidence to accused or his advocate. 17 of 1967, s. 28.

(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.

**199.** 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.

Remarks respecting demeanour of witness.

**200.** (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 -

Conviction on evidence partly recorded by one magistrate and partly by another.

(a) deliver a judgment that has been written and signed but not delivered by his predecessor; or

13 of 1982, 1<sup>st</sup> sch., 11 of 1983, Sch.

(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.

#### HIGH COURT

Rules as to taking down of evidence. 27 of 1961, Sch.

**201.** (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.

7 of 2007.

(2) The provisions of section 200 of this Act shall apply *mutatis mutandis* to trials held in the High Court.

### PART VI - PROCEDURE IN TRIALS BEFORE SUBORDINATE COURTS

#### PROVISIONS RELATING TO THE HEARING AND DETERMINATION OF CASES

Non-appearance of complainant at hearing. 10 of 1969, Sch.

**202.** 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.

Appearance of both parties.

**203.** 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.

Withdrawal of complaint.

**204.** 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.** (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:

Adjournment.  
22 of 1959, s. 24,  
22 of 1959, s. 24,  
21 of 1971, s. 8.

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.

**206.** (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.

Non-appearance  
of parties after  
adjournment.

(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.

11 of 2008, s. 4.

(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.

Accused to be called upon to plead.

22 of 1959, s. 25,

13 of 1967, 1<sup>st</sup>

Sch., 4 of 1974, Sch.

11 of 2008, s. 4

**207.** (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.

**208.** (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.

Procedure on plea of not guilty.

(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 13 of 1982, 1<sup>st</sup> Sch.*)

**210.** 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.

Acquittal of accused person when no case to answer.  
13 of 1967, 1<sup>st</sup> Sch.

**211.** (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).

Defence.  
13 of 1967, 1<sup>st</sup> Sch.

(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.

**212.** 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.

Evidence in reply.

**213.** 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.

Order of speeches.  
13 of 1967, s. 2.

**214.** (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

Variance between charge and evidence, and amendment of charge.

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.

Decision.

**215.** 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.

Evidence relative to proper sentence or order. 22 of 1959, s.26.

**216.** 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.

Drawing up of conviction or order.

**217.** 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.

Order of acquittal bar to further procedure.

**218.** 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.** 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.

Limitation of time for summary trials in certain cases.

**220.** (*Repealed by 5 of 2003, s. 80.*)

**221.** (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.

Committal to higher court for sentence. 17 of 1967, s.29, 5 of 2003, s. 8.

(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.

**PART VII**

**222 to 229.** (*Repealed by 33 of 1963, 1st Sch.*)

## PART VIII

**230 to 235.** (Repealed by 5 of 2003, s. 82.)

**236 to 245.** (Repealed by 13 of 1982, s. 7.)

**246 to 253.** (Repealed by 5 of 2003, s. 82.)

**254 to 260.** (Repealed by 13 of 1982, s. 8.)

## PART IX - PROCEDURE IN TRIALS BEFORE THE HIGH COURT

**261.** (Repealed by 5 of 2003, s. 83.)

**262 - 263.** (Repealed by 7 of 2007)

**264.** (Repealed by 33 of 1963, 1st Sch.)

**265 - 266.** (Repealed by 7 of 2007)

**267 - 268.** (Repealed by 33 of 1963, 1st Sch.)

**269 - 271.** (Repealed by 7 of 2007)

**272.** (Repealed by 33 of 1963, 1st Sch.)

**273.** (Repealed by 7 of 2007)

### ARRAIGNMENT

Pleading to  
information.

**274.** 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.

Orders for  
amendment of  
information,  
separate trial, and  
postponement of  
trial.  
33 of 1963, 1<sup>st</sup> Sch.

**275.** (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 7 of 2007.*)

(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.

**276.** (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.

Quashing of information.

(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.** Where an information contains a count charging an accused person with having been previously convicted for an offence, the procedure shall be as follows -

Procedure in case of previous convictions. 33 of 1963, 1<sup>st</sup> Sch.

(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.

Effect of plea of "not guilty".

**278.** 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.

Plea of *autrefois acquit* and *autrefois convict*.

13 of 1967, 1<sup>st</sup> Sch.

**279.** (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.

Refusal to plead.  
L.N.124/1964.

**280.** (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.

**281.** (1) An accused person may plead not guilty, guilty, or guilty subject to a plea agreement.

Plea generally and application of Part IVA.

(2) Where an accused person pleads guilty subject to a plea agreement, the provisions of Part IV relating to plea agreements shall apply accordingly.

11 of 2008.

**282.** 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:

Procedure on plea of “not guilty”.  
33 of 1963, 1<sup>st</sup> Sch.  
7 of 2007

**283.** (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.

Power to postpone or adjourn proceedings.

(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 to 296.** (*Repealed by 33 of 1963, 1st Sch.*)

**297-299.** (*Repealed by 7 of 2007*)

#### CASE FOR THE PROSECUTION

**300.** 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.

Opening of case for prosecution.  
33 of 1963, 1<sup>st</sup> Sch.

7 of 2007

**301.** *(Repealed by 5 of 2003, s. 84.)*

Cross-examination  
of witnesses for  
prosecution.

**302.** 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 and 304.** *(Repealed by 13 of 1982, 1st Sch.)*

**305.** *(Repealed by 5 of 2003, s. 85.)*

Close of case for  
prosecution.  
33 of 1963, 1<sup>st</sup> Sch.,  
20 of 1965, s. 33,  
5 of 2003, s.86.

**306.** (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.

#### CASE FOR THE DEFENCE

Defence.  
13 of 1982,  
s. 10, 5 of 2003,  
s. 87.

**307.** (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 5 of 2003, s. 87.)*

**308.** 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. Additional witnesses for the defence. 13 of 1982, 1<sup>st</sup> Sch., 11 of 1983, Sch.

**309.** 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. Evidence in reply.

**310.** 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. Prosecutor's reply.

**311.** 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. Where accused adduces no evidence.

**312 to 321.** (*Repealed by 33 of 1963, 1st Sch.*)

#### CLOSE OF HEARING

**322.** (1) When the case on both sides is closed, the judge shall then give judgment. Delivery of judgment 7 of 2007.

(2) If the accused person is convicted, the judge shall pass sentence on him according to law.

#### PASSING SENTENCE

**323.** 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. Calling upon the accused. 33 of 1963, 1<sup>st</sup> Sch.

**324.** (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. Motion in arrest of judgment.

(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.

Sentence.

**325.** 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.

Power to reserve decision on question raised at trial.

**326.** 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.

Power to reserve questions arising in the course of the trial.

**327.** (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.

Objections cured by verdict.  
33 of 1963, 1<sup>st</sup> Sch.

**328.** 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.

Evidence for arriving at a proper sentence.

**329.** 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

Interpretation.  
5 of 2003, s. 88.

**329A.** 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.

**329B.** 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.

Application of Part. 5 of 2003, s. 88.

**329C.** (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.

When victim impact statements may be received and considered. 5 of 2003, s. 88.

(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.

**329D.** (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.

**329E.** (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.

**329F.** The Chief Justice may make any rules of court necessary or expedient to be made for carrying this Part into effect.

Victim impact statements discretionary. 5 of 2003, s.88.

Formal requirements for victim impact statements. 5 of 2003, s. 88.

Rules of court. 5 of 2003, s. 88.

## PART X - SENTENCES AND THEIR EXECUTION

### SENTENCE OF DEATH

**330.** 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.

Accused to be informed of right to appeal.

**331.** 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.

Authority for detention.

**332.** (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.

Record and report to be sent to President. 36 of 1962, Sch., L.N.182/1958, L.N.124/1964.

(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.

#### OTHER SENTENCES

Warrant in case of sentence of imprisonment.

**333.** (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.

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(2) Subject to the provisions of section 38 of the Penal Code 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.

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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.

Warrant for levy of fine, etc.

**334.** (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.

Objections to attachment.

**335.** (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 deposited 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.

Suspension of execution of sentence of imprisonment in default of fine.

**336.** (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 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

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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.

Commitment for want of distress.

**337.** 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.** 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.

Commitment in lieu of distress.

**339.** 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.

Payment in full after commitment.

**340.** (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.

Part payment after commitment.

(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.** 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.

Who may issue warrant.

Limitation of imprisonment for non-payment of fine, etc.

**342.** 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.

**343 to 344.** (*Repealed by 5 of 2003, s. 89.*)

**343 to 344.** (*Repealed by 5 of 2003, s. 90.*)

**344A.** (*Repealed by 5 of 2003, s. 91.*)

**345.** (*Repealed by 5 of 2003, s. 92.*)

#### DEFECTS IN ORDER OR WARRANT

Errors and omissions in orders and warrants.

**346.** 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

#### APPEALS FROM SUBORDINATE COURTS

##### *Appeals*

Appeal to High Court. 17 of 1967, s. 30.

**347.** (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 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.

No appeal on plea of guilty, nor in petty cases. 17 of 1967, s. 31.

**348.** 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.

Right of appeal against acquittal, order of refusal or order of dismissal.

**348A.** When an accused person has been acquitted on a trial held by a subordinate 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, the Attorney-General may appeal to the High Court

from the acquittal or order on a matter of law.

13 of 1967, s. 3.

**349.** An appeal shall be entered within fourteen days of the date of the order or sentence appealed against:

Limitation of time of appeal.

57 of 1955, s. 9,  
22 of 1959, s. 34,  
17 of 1967, s. 32,  
L.N. 22/1984.

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.

**350.** (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.

Petition of appeal.

57 of 1955, s.10,  
L.N. 124/1964,  
L.N. 280/1967.

(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 Attorney-General 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.

Appellant in prison.

**351.** 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.

Summary rejection of appeal.  
17 of 1967, s. 33,  
5 of 2003, s.94.

**352.** (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 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 Attorney-General and to the appellant or his advocate.

**352A.** 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 Attorney-General has informed the court in writing that he does not support the conviction, the judge may summarily allow the appeal.

Summary allowance of appeal.  
17 of 1967, s. 34.

**353.** 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.

Notice of time and place of hearing.  
13 of 1967, 1st Sch.

**354.** (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.

Powers of High Court.  
22 of 1959, s. 35,  
13 of 1967, 1<sup>st</sup> Sch.,  
10 of 1969, 1<sup>st</sup> Sch., 5  
of 2003, s.95

(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;

(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.

**355.** (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.** (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.

Bail and stay of execution pending the entering of an appeal.  
22 of 1959, s. 36.

(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.

**357.** (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:

Admission to bail or suspension of sentence pending appeal.  
22 of 1959, s.37,  
27 of 1961, Sch.

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.

Power to take further evidence.

**358.** (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.

Number of judges on an appeal.  
16 of 1977, Sch.

**359.** (1) Appeals from subordinate courts shall be heard by two judges 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.

Abatement of appeals.

**360.** Every appeal from a subordinate court (except an appeal from a sentence of a fine) shall finally abate on the death of the appellant.

Second appeals.  
22 of 1959, s. 38,  
13 of 1978, Sch.,  
13 of 1982, s. 11.

**361.** (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.

#### *Revision*

**362.** The High Court may call for and examine the record of any

to call for records.

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.

Subordinate court may call for records of inferior court. 17 of 1967, s. 35.

**363.** (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.

Powers of High Court on revision. 10 of 1970, Sch.

**364.** (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.

(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.

**365.** No party has a right to be heard either personally or by an advocate before the High Court when exercising its powers of revision:

Discretion of court as to hearing parties.

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.** 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:

Number of judges in revision.

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.** 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.

High Court order to be certified to lower court.

**368 to 378.** (*Repealed by 13 of 1967, s. 5.*)

APPEALS FROM THE HIGH COURT

**379.** (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 -

Appeals from High Court to Court of Appeal. 22 of 1959, s. 39.

(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 Attorney-General 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 Attorney-General certifies that a sentence passed by the Court of Appeal 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.

## PART XII - SUPPLEMENTARY PROVISIONS

### IRREGULAR PROCEEDINGS

**380.** No finding, sentence or order of a criminal court shall be set

7 of 1990, Sch.,  
L.N. 274 of 1990.

Proceedings in wrong  
place.

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 33 of 1963, 1st Sch.)

**382.** 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: Finding or sentence when reversible by reason of error or omission in charge or other proceedings. 33 of 1963, 1<sup>st</sup> Sch.

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.

**383.** 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. Distress not illegal for defect in proceedings.

**384.** (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 - Statements irregularly taken under section 246. 5 of 2003, s.96

(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, the statement shall be admitted, if the error has not injured the accused as to his defence on the merits. Cap. 80.

INQUIRIES AS TO SUDDEN DEATHS AND MISSING PERSONS BELIEVED TO BE DEAD

**385.** 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. Magistrates empowered to hold inquests. L.N. 299/1956, L.N. 172/1960, L.N. 474/1963, 5 of 2003, s.97.

**386.** (1) The officer in charge of a police station, or any other officer specially empowered by the Minister in that behalf, on receiving Police to inquire and report on suicide, etc.

L.N.299/1956,  
L.N.172/1960,  
L.N. 11/1993, Sch.

information that a person -

- (a) has committed suicide; or
- (b) has been killed by another or by an accident; or
- (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 Attorney-General through the Commissioner of Police 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.

Inquiry by magistrate  
into cause of death.  
L.N. 474/1963,  
11 of 1993, Sch.

**387.** (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 Attorney-General.

(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 Attorney-General 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 should be reduced and if so what lesser period should, in the circumstances of the death, be substituted for the period of seven years.

Cap. 80.

**388.** (1) The Attorney-General 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.

Powers of Attorney-General as to inquiries into cause of death.  
22 of 1959, s. 40,  
11 of 1993, Sch.

(2) When an inquiry has been terminated under section 387, and it appears to the Attorney-General that further investigation is necessary, the Attorney-General 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 Attorney-General may also direct whether the body is to be disinterred and examined.

(4) Upon receiving a report under section 387 (6) the Attorney-General 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, 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. 160.

Cap. 149.

#### DIRECTIONS IN THE NATURE OF *Habeas Corpus*

Power to issue directions of the nature of *habeas corpus*.  
27 of 1961, Sch.,  
L.N. 124/ 1964.

**389.** (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

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 Attorney-General may also direct whether the body is to be disinterred and examined.

(4) Upon receiving a report under section 387 (6) the Attorney-General 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, 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.

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(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.

Procedure on  
forfeiture of goods.  
13 of 1967, s.4.

**389A.** (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.

#### MISCELLANEOUS

Persons before whom  
affidavits may be  
sworn.  
10 of 1983, Sch.

**390.** 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.

Shorthand notes of  
proceedings.  
22 of 1959, s. 41.

**391.** 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.

Right to copies of  
proceedings.

**392.** 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 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. Forms.

**394.** 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. Expenses of assessors, witnesses, etc.  
33 of 1963, 1<sup>st</sup> Sch.,  
L.N. 300/1956,  
L.N. 173/1960.  
7 of 2007.

1	2	3	4	5
	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
<b>OFFENCES UNDER THE PENAL CODE</b>				
<p><b>EXPLANATORY NOTE.</b> - 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.</p>				
<b>CHAPTER V-PARTIES TO OFFENCES</b>				
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
<b>CHAPTER VI-PUNISHMENTS</b>				
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 while disqualified.	Shall not arrest without warrant	Fine of two thousand shillings or imprisonment for six months or both	Any subordinate court

(As amended by 9 of 1951, s. 3; 39 of 1951, s. 5; 57 of 1955, s. 11; 33 of 1958, s. 4; 22 of 1959, s. 42; 54 of 1960, s. 33(2); 11 of 1961, s. 12(3); 25 of 1961, s. 47; 28 of 1961, Sch.; 48 of 1962, s. 13(2); 19 of 1964, s. 2; 13 of 1967, 2nd Sch.; 17 of 1967, s. 36; 3 of 1969, 2nd Sch.; 10 of 1969, Sch.; 25 of 1971, Sch.; 6 of 1976, Sch.; 13 of 1980, Sch.; 13 of 1982, s. 12; 11 of 1983, Sch.; 12 of 1984, Sch.; 18 of 1986, Sch.; 14 of 1991, Sch.; 5 of 2003, s. 98.)

DIVISION I OFFENCES AGAINST PUBLIC ORDER					
CHAPTER VII – TREASON AND OTHER OFFENCES AGAINST THE AUTHORITY OF THE REPUBLIC					
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	
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
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
<b>CHAPTER VIII—OFFENCES AFFECTING RELATIONS WITH FOREIGN STATES AND EXTERNAL TRANQUILITY</b>				
67	Defamation of foreign princes	Shall not arrest without warrant	Imprisonment for two years	Any subordinate court
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
<b>CHAPTER IX-UNLAWFUL ASSEMBLIES, RIOTS AND OTHER OFFENCES AGAINST PUBLIC TRANQUILITY</b>				
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
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 OFFENCES AGAINST THE ADMINISTRATION OF LAWFUL AUTHORITY 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
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
(b)	if person rescued is imprisoned on a charge or under sentence for any other offence	May arrest without warrant	Imprisonment for seven years
(c)	in any other case	May arrest without warrant	Imprisonment for two years
123	Escape	May arrest without warrant	Imprisonment for two years
124	Aiding escape	May arrest without warrant	Imprisonment for seven years
125	Removal, etc., of property under lawful seizure	May arrest without warrant	Imprisonment for three years
126	Obstructing court officers	May arrest without warrant	Imprisonment for one year
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
128	Neglect of official duty	Shall not arrest without warrant	Imprisonment for two years
129	False information to person in public service	May arrest without warrant	Imprisonment for three years
130	Disobedience of statutory duty	Shall not arrest without warrant	Imprisonment for two years
131	Disobedience of lawful order	Shall not arrest without warrant	Imprisonment for two years
132	Undermining authority of public officer	May arrest without warrant	Imprisonment for three years
133	Destruction, etc., of statutory documents	May arrest without warrant	Fine of five thousand shillings or imprisonment for six months

DIVISION III OFFENCES INJURIOUS TO THE PUBLIC IN GENERAL 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

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
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
(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
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
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 OFFENCES AGAINST THE PERSON 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					
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				
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 necessities 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

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
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
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 OFFENCES RELATING TO PROPERTY 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

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				
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

	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
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

(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
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
326	Receiving goods stolen outside Kenya	May arrest without warrant	Imprisonment for seven years	Any subordinate court
<b>CHAPTER XXXII-FRAUDS BY TRUSTEES AND PERSONS IN A POSITION OF TRUST, AND FALSE ACCOUNTING</b>				
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
<b>DIVISION VI MALICIOUS INJURIES TO PROPERTY CHAPTER XXXIII-OFFENCES CAUSING INJURY TO PROPERTY</b>				
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
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, a 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 FORGERY, COINING, COUNTERFEITING AND SIMILAR OFFENCES CHAPTER XXXV-PUNISHMENT FOR FORGERY				
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
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 ATTEMPTS AND CONSPIRACIES TO COMMIT CRIMES AND ACCESSORIES AFTER THE FACT 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 (s. 137 (a) (iv))
(As amended by 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 ..... 19 ....., 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 murder C.C., did on the ..... day of ....., in ..... District within the ..... Province and on other days thereafter receive, comfort, harbour, 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 ..... 19 ....., 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 ..... 19 ....., in ..... District within the ..... Province, had carnal knowledge of E.F., without her consent.

## SECOND SCHEDULE-(Contd.)

## 5 - WOUNDING

*First Count*

Wounding with intent, contrary to section 231 of the Penal Code.

## PARTICULARS OF OFFENCE

A.B., on the ..... day of ..... 19 ....., 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 .....19....., 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 ..... 19....., 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 ..... 19....., in ..... District within the ..... Province, did receive a bag, the property of C.D., knowing the same to have been stolen.

SECOND SCHEDULE-(Contd.)

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 ..... 19 ....., 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 ..... 19 ....., 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 ..... 19 ....., in ..... District within the ..... Province, did break and enter the dwelling-house of C.D., with intent to steal therein, and did steal therein one 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 ..... 19 ....., in ..... District within the ..... Province, with intent to extort money from C.D., caused the said C.D.

## SECOND SCHEDULE-(Contd.)

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 ..... 19 ....., 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 ..... 19 ....., 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 ..... 19 ....., 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.

---

## SECOND SCHEDULE-(Contd.)

## 14 - ARSON

Arson, contrary to section 332 of the Penal Code.

## PARTICULARS OF OFFENCE

A.B., on the ..... day of ..... 19 ....., 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 .....19 ....., 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 ..... 19 ....., 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 ..... 19 ....., in ..... District within the ..... Province, forged a certain will purporting to be the will of C.D.

## SECOND SCHEDULE-(Contd.)

*Second Count*

Uttering a false document, contrary to section 353 of the Penal Code.

## PARTICULARS OF OFFENCE

A.B., on the ..... day of ..... 19 ....., 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 ..... 19 ....., 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 ..... 19 ....., 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 ..... 19 ....., 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.)

## SECOND SCHEDULE-(Contd.)

## 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 ..... 19 ....., 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 ..... 19 ....., 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 ..... 19 ....., 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 ..... 19 ....., in ..... District

## SECOND SCHEDULE-(Contd.)

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 ..... 19 ....., at the ..... held at .....

Third Schedule - [Spent].

Fourth Schedule - [Repealed by 46 of 1963, 2nd Sch.]

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[Subsidiary]

## SUBSIDIARY LEGISLATION

**Public prosecutors appointed under section 85 (1)**

*Appointments of individual persons by name are not referenced.*

All police officers, other than administration police officers, of the rank of Assistant Inspector or above are appointed public prosecutors for Kenya generally. L.N. 234/ 1972

The officers designated in the Schedule hereunder are appointed public prosecutors, in any district in which a park or reserve, or any part of a park or reserve, mentioned in that Schedule is situated, for offences under the Wildlife (Conservation and Management) Act or under subsidiary legislation made thereunder. G.N. 1424/ 1957, G.N. 1664/ 1960. cap. 376.

## SCHEDULE

The Director, National Park of Kenya.  
 The Warden, Aberdare National Park.  
 The Warden, Amboseli National Park.  
 The Warden, Nairobi National Park.  
 The Warden, Marsabit National Reserve.  
 The Warden, Mt. Kenya National Park.  
 The Warden, Tsavo National Park (East).  
 The Warden, Tsavo National Park (West).

The several persons holding the offices and appointments specified in the first column of the Schedule hereunder are appointed public prosecutors for Kenya for offences under the Acts, or under the provisions of Acts, as the case may be, respectively specified in relation to those persons in the second column of that Schedule, and offences under any subsidiary legislation made thereunder. L.N. 7281/ 1961, L.N. 343/ 1966, L.N. 256/ 1972, L.N. 179/ 1981.

SCHEDULE

[Subsidiary]

Offices	Acts or provisions of Act
Labour Commissioner. Deputy Labour Commissioner. Assistant Labour Commissioner. Senior Labour Officer. Labour Officer. Senior Labour Inspector. Labour Inspector. Wages Inspector.  Principal Registrar, registrar and assistant registrar appointed under the Registration of Persons Act (Cap. 107).	Sections 129, 243 (c), (g) and (h), 244 and 266 of the Penal Code (Cap. 63). Registration of Persons Act (Cap. 107) Employment Act (Cap. 226). Regulations of Wages and Conditions of Employment Act (Cap. 229). Mombasa Shop Hours Act (Cap. 232). Trade Unions Act (Cap. 233). Workmen's Compensation Act (Cap. 236).
Registrar-General. Deputy Registrar-General. Senior Assistant Registrar-General. Assistant Registrar-General.  Legal Assistant in the Registrar-General's Department.	Bankruptcy Act (Cap. 53). Societies Act (Cap. 108). Books and Newspapers Act (Cap. 111). Births and Deaths Registration Act (Cap. 149). Marriage Act (Cap. 150). Trade Unions Act (Cap. 233). Estate Duty Act (Cap. 483). Companies Act (Cap. 486). Insurance Companies Act (Cap. 487). Banking Act (Cap. 488). Building Societies Act (Cap. 489). Registration of Business Names Act (Cap. 499). Trade Marks Act (Cap. 506). Patents Registration Act (Cap. 508). Unit Trusts Act (Cap. 521).
Principal Immigration Officer. Deputy Principal Immigration Officer. Senior Immigration Officer.  Immigration Officer.  Inspector of Weights and Measures appointed under the Weights and Measures Act (Cap. 513).	Section 11 of the Oaths and Statutory Declarations Act (Cap. 15). Sections 114, 129, 130, 320, 321, 349, 353, 354, 357, 382, 384 and 385 of the Penal Code (Cap. 63). Immigration Act (Cap. 172). Petroleum Act (Cap. 116). Price Control Act (Cap. 504).
Price Inspector. Assistant Commissioner for Co-operative Development and Head of Legal and Field Services Section. Provincial Co-operative Legal Officer.  Co-operative Officer, Legal and Field Services Section.	Price Control Act (Cap. 504).  Co-operative Societies Act (Cap. 490).

[Subsidiary]

G.N. 574/1955.

Form of certificate prescribed under section 142(2).  
POLICE C. 9a  
For use of Criminal Record Office

CRIMINAL RECORD OFFICE,  
CRIMINAL INVESTIGATION DEPT.,  
P.O. BOX NO. 30460, NAIROBI.  
Date .....

C.F. No. ....  
Docket No. ....

THE KENYA POLICE  
CERTIFICATE OF PREVIOUS CONVICTIONS  
Under Section 142(2) of the Criminal Procedure Code

To Officer-in-Charge Police,

I hereby certify that the Finger Impressions of ..... taken at ..... Police Station have been searched for and traced, and his previous convictions, according to the records of the Criminal Record Office, are as follows-

Court and place of trial	Date of sentence	Sentence	Offence (quoting law and section)	Name convicted under

.....  
*Signature of Officer-in-Charge,  
Criminal Record Office.*

RESULT OF TRIAL ON PRESENT CHARGE [In cases where option of fine is given, state if fine was paid.]

Court, place of trial and Court file No.	Date of sentence	Sentence	Offence (quoting law and section)	Name convicted under	C.F. No.

Note.- ORIGINAL to be returned to the Criminal Record Office. TRIPLICATE to be attached to committal warrant for information of Prison.  
DUPLICATE for case file. QUADRUPPLICATE to be handed into Court for filing with the Court Case file.

Station .....Date ..... 19 .....  
*Signature of Officer filling in result of trial*

**Rules Under Section 201**[Subsidiary]  
L.N. 344/1958.**THE CRIMINAL PROCEDURE (RECORD OF EVIDENCE  
IN THE HIGH COURT) RULES**

1. These Rules may be cited as the Criminal Procedure (Record of Evidence in the High Court) Rules.

2. In cases coming before the High Court, the evidence of each witness shall be recorded in the manner prescribed by sections 197, 198 and 199 of the Code for recording evidence in trials before a magistrate:

Provided that -

- (i) a judge of the High Court shall not be required to sign the evidence of each witness or to inform each witness that he is entitled to have his evidence read over to him;
- (ii) nothing herein shall derogate from the provisions of section 391 of the Code.

**Persons exempted from liability to serve as assessors, under section 266 (k)**33 of 1963, 2nd Sch.,  
L.N.345/1962.

The following persons are exempted from liability to serve as assessors:

- (a) Permanent Secretaries of Ministries and of the President's Office;
- (b) Managing Director, Kenya Railways Corporation;
- (c) Managing Director, Kenya Posts and Telecommunications Corporation;
- (d) officers engaged in the administration of justice, including magistrates, officers of the Judicial Department and of the Office of the Attorney-General, the Principal Probation Officer and probation officers;
- (e) officers of the Prisons Department, the Chief Inspector of Approved Schools and officers on the staffs of approved schools;
- (f) dentists in active practice;

[Subsidiary]

(g) consular offices *de carriere* and consular employees;

(h) mayors; chairmen of county councils; town clerks and clerks to county councils.

#### **Rules under section 344 (2)**

### **THE CRIMINAL PROCEDURE (POLICE SUPERVISION) RULES**

L.N. 33 of 1966.

1. These Rules may be cited as the Criminal Procedure (Police Supervision) Rules.

2. In these Rules, “police officer in charge of the area” includes the person in charge of the office of that police officer.

3. Before the date of release from prison of a person who is made subject to police supervision by order under section 343 of the Code (hereinafter referred to as a police supervisee), the officer in charge of the prison shall inform the officer in charge of the Criminal Records Office, Nairobi, and the police officer in charge of the area in which the police supervisee has been directed to reside under section 344 (1) (a) of the Code, or, where no such direction has been given, the police officer in charge of the area in which the police supervisee intends to reside after release from prison, of the date of release from prison of that police supervisee.

4. (1) The officer in charge of the prison shall inform every police supervisee before his release from prison of the requirements with which the court has directed him to comply under section 344 of the Code, and shall issue to the police supervisee an identity card (hereinafter referred to as the identity card) in the form in the Schedule in which shall be entered such particulars as are applicable to the police supervisee.

(2) A copy of these Rules shall be annexed to each identity card issued under this rule.

5. When a police supervisee has been directed to comply with any requirements specified under section 344 of the Code other than a requirement to reside within the limits of a specified area, he shall, one month before the date of his release from prison, inform the officer in charge of the prison of the area in which he intends to reside after his release from prison and the officer shall enter particulars of that area in the identity card of the police supervisee.

6. Any written consent given under paragraph (b) or paragraph

(c) of section 344 (1) of the Code shall be recorded in the identity card of the police supervisee by the police officer in charge of the area in which the supervisee resides.

[Subsidiary]

7. When a police supervisee has been directed under section 344 (1) (d) of the Code to keep the police officer in charge of the area in which he resides notified of the house or place in which he resides, any such notification and the date thereof shall be recorded in the identity card of the police supervisee by that police officer.

8. (1) When a police supervisee has been directed under section 344 (1) (e) of the Code to present himself whenever called upon by the police officer in charge of the area in which he is to reside after his release from prison, the police officer of that area shall, before the date of release from prison of the police supervisee, inform him through the officer in charge of the prison of the place at which and date on which he is to present himself, and the officer in charge of the prison shall endorse the identity card of the police supervisee accordingly.

(2) Whenever a police supervisee, after the date of his release, presents himself in accordance with a direction under section 344 (1) (e) of the Code, the police officer in charge of the area shall record the fact in the identity card of the police supervisee.

(3) If from illness or other reasonable cause (the proof of which shall lie upon him) a police supervisee is prevented from presenting himself in person, he may do so in any one of the following ways-

(a) in person, to the chief or assistant chief exercising jurisdiction in the area in which he resides; or

(b) by oral communication sent by a messenger, and by production of his identity card to the person to whom he has been called upon to present himself.

(4) Where a police supervisee has presented himself in accordance with paragraph (3) (a) to any person, that person shall inform the person to whom the police supervisee should have presented himself, as soon as may be convenient, that the police supervisee has presented himself, and shall forward the identity card of the police supervisee for endorsement accordingly.

9. (1) A police supervisee shall produce his identity card to the police officer in charge of the area whenever he requires consent to transfer his residence or to leave the area in which he resides, or whenever he makes any notification, or whenever he presents himself in accordance with the Code or any rules made thereunder.

[Subsidiary]

(2) If a police supervisee loses his identity card, he shall forthwith report the loss to the police officer in charge of the area in which he resides and apply to that police officer for a new identity card, which shall be issued to him with the necessary particulars entered therein by that police officer.

10. At the end of the term of police supervision ordered by the court, the police supervisee shall surrender his identity card to the police officer in charge of the area for transmission to the officer in charge of the Criminal Records Office, Nairobi.

11. (1) For the purpose of giving directions or of varying directions under section 344 of the Code, the court may issue a summons to a police supervisee requiring his attendance before the court at such time and place as may be specified.

(2) Sections 145, 146, 147, 148 and 149 of the Code shall apply, *mutatis mutandis*, to a police supervisee as they apply to a witness.

#### SCHEDULE

(r. 4)

#### POLICE SUPERVISION-CRIMINAL PROCEDURE CODE

(Sections 343 to 345)

#### IDENTITY CARD

Supervisee No. ....  
 Prison No. ....  
 Name .....  
 Registration No. ....  
 Aliases .....  
 Court in which order made .....  
 Criminal Court Case File No. ....  
 Police Case File No. ....  
 Offence convicted of, with section of law .....  
 Sentence last served .....

#### GENERAL DESCRIPTION

Tribe or nationality .....  
 District of origin .....  
 Chief .....  
 Assistant Chief .....  
 Village .....  
 Sex ..... Age .....  
 Height ..... Marks or scars .....

\*Place of intended residence as supplied by police supervisee / place of residence as directed by court .....

[Subsidiary]

.....

*Signature of Prison Officer*

*Issuing Identity Card.*

\_\_\_\_\_

DIRECTIONS OF THE COURT UNDER SECTION 344 OF THE CRIMINAL PROCEDURE CODE

(a) To reside within the limits of the .....  
.....

*(specify area)*

(b) Not to transfer his residence to any other area without the written consent of the police officer in charge of the area in which he resides.

(c) Not to leave the limits of the area within which he has been ordered to reside by the court without the written consent of the police officer in charge of the area in which he resides.

(d) At all times to keep the police officer in charge of the area in which he resides notified of the house or place in which he resides.

(e) To present himself whenever called upon to do so by the police officer in charge of the area in which he resides.

*Note. - Strike out whichever paragraph is not applicable.*

I certify that I have explained the above requirements to the police supervisee ..... and have informed him that if he does not comply with them he is guilty of an offence.

.....  
*Officer in Charge*  
.....*Prison.*

[Subsidiary]

TRANSFER OF RESIDENCE

(Section 344 (1) (b) of the Criminal Procedure Code)

Police supervisee ..... is hereby authorized to transfer his residence -

From	To	Signature of the police officer in charge of the area consenting to transfer

PERMIT TO LEAVE THE LIMITS OF THE AREA IN WHICH HE HAS BEEN ORDERED TO RESIDE

(Section 344 (1) (c) of the Criminal Procedure Code)

Police supervisee ..... is hereby authorized to leave the limits of the ..... area in which he has been ordered to reside.

Destination	Date of leaving	Period	Instructions	Signature of the police officer in charge of the area consenting

NOTIFICATION OF PLACE OF RESIDENCE  
(Section 344 (1) (d) of the Criminal Procedure Code)

Police supervisee ..... has notified me  
that he resides at -

Place	Date	Signature of the police officer in charge of the area

REPORTS

(Section 344 (1) (e) of the Criminal Procedure Code)

I hereby certify that I have informed police supervisee  
.....  
..... C.I.D. Docket No. .... that he is called  
upon to report on the ..... of each month  
to ..... police station.

(Signed) .....

O.C.S.

(Name, rank, printed)

\_\_\_\_\_

REPORTS

(Section 344 (1) (e) of the Criminal Procedure Code)

Police supervisee ..... has presented himself at -

Place	To	Date	Signature of police officer to whom supervisee has presented himself

Prison from which released .....  
Date released from prison .....  
Date of expiry of order .....

[Subsidiary]

Space for photograph when available	Right thumb impression

### Rules Under Section 357 (3)

#### THE CRIMINAL PROCEDURE (APPEAL FROM REFUSAL OF BAIL) RULES

L.N. 363/1959.

1. These Rules may be cited as the Criminal Procedure (Appeal from Refusal of Bail) Rules.

2. Where a person, convicted on a trial held by a subordinate court, who has entered an appeal to the High Court and has been refused bail by the subordinate court desires to appeal against refusal to the High Court under the proviso to subsection (1) of section 357 of the Code, his appeal against refusal shall be made in the form of a petition in writing presented by the appellant or his advocate.

3. The petition shall set out clearly and fully the grounds upon which the application for bail to the subordinate court was made and the grounds of the appeal, and shall be lodged with the Registrar of the High Court.

4. A copy of the petition shall, at least three days before the day fixed for the hearing of the appeal, be served by the appellant or his advocate on the Attorney-General, unless the judge for special reasons dispenses with that service.

5. An affidavit may be filed on behalf of the Attorney-General in reply to the petition.

6. The judge may require either the appellant or the respondent to file an affidavit or an additional affidavit.

[Subsidiary]

**Rules under section 389(2)****THE CRIMINAL PROCEDURE (DIRECTIONS IN THE NATURE OF HABEAS CORPUS) RULES**

Cap. 27 (1948), (Sub. Leg.), L.N. 474/1963.

- |   |   |
|---|---|
| 1. These Rules may be cited as the Criminal Procedure (Directions in the Nature of Habeas Corpus) Rules.  | Citation.   |
| 2. An application for the issue of directions in the nature of habeas corpus shall be made in the first instance to a judge in chambers <i>ex parte</i> , supported by affidavit in triplicate.   | Application to judge in chambers.                                       |
| 3. If the application is not dismissed, the judge shall order a summons to be issued directed to the person in whose custody the person alleged to be improperly detained is said to be, requiring his appearance in person or by advocate, together with the original of any warrant or order for the detention, at a place and time named therein, to show cause why the person so detained should not be forthwith released. | Issue of summons.   |
| 4. The summons shall be accompanied by a copy of all affidavits lodged in support of the application, and where the person detained is in public custody a duplicate of the application, of the summons and of all affidavits lodged in support thereof shall be forwarded to the Attorney-General.   | Where custody public, copy of summons to be served on Attorney-General. |
| 5. Affidavits in reply shall be filed in duplicate, of which one copy shall be served on the applicant.   | Affidavits in reply.  |
| 6. The date fixed for the return to the summons shall be as soon as may be convenient after its issue to permit of the attendance of the parties served.  | Date of return to summons.  |
| 7. Pending the return to the summons, the person detained, if in public custody, may be admitted to bail, and if in private custody may be released on such terms and conditions as the court may deem fit.   | Admission to bail pending hearing.                                      |
| 8. At the hearing of the summons, the applicant shall begin, and the party resisting the application shall then be heard, and in that case the applicant shall be entitled to reply.  | Procedure at hearing.   |
| 9. If the court orders the release of the person detained, the order of the court shall be drawn up and served on the gaoler or other person having the custody of the person so detained.  | Order of release to be directed to gaoler.                              |
| 10. Where the evidence of a person who is in public custody is required at a trial or proceeding before a civil court, or before a  | Habeas corpus ad testificandum.   |

[Subsidiary]

court martial, or before commissioners acting under the authority of a commission, any party to the trial or proceeding may make application *ex parte* to a judge in chambers supported by affidavit that the prisoner be brought before such court or commissioners for the purpose of giving evidence, and the judge may thereupon direct that the prisoner be produced accordingly, and that the party requiring his production lodge a sufficient sum in court to meet the costs thereof.

Production of civil prisoner for trial by court martial or commissioners.

11. In the case of a prisoner detained in public custody whose presence is required before a court martial or commissioners acting under the authority of a commission for trial, a judge in chambers may, on application made by the chief military authority, or on behalf of the commissioners, order the prisoner to be produced before the court martial or commissioners for trial, but shall not do so without first hearing the prisoner or an advocate on his behalf.

Production of prisoner in court.

12. A judge may, in addition to any other order that he may make under these Rules, order the body of any person alleged to be improperly detained to be produced before him in court.

#### Rules under section 394

Cap. 27 (1948), (Sub. Leg.), 33 of 1963, 2nd Sch., L.N. 474/1963.

#### THE CRIMINAL PROCEDURE (REMUNERATION OF WITNESSES AND ASSESSORS) RULES

1. These Rules may be cited as the Criminal Procedure (Remuneration of Witnesses and Assessors) Rules.

2. A criminal court may order payment of the expenses of any person summoned under the Code to attend before a court as an assessor or witness, or as a complainant attending court as a necessary witness, as follows -

- (a) if a public officer, such reasonable out-of-pocket expenses as he may have incurred, other than those payable from departmental votes in accordance with the regulations obtaining at the time;
- (b) if a person other than a public officer, his reasonable travelling and out-of-pocket expenses.

[Subsidiary]

**THE CRIMINAL PROCEDURE (EXPERT WITNESSES FEES) RULES**

1. These Rules may be cited as the Criminal Procedure (Expert Witnesses Fees) Rules. L.N. 478/ 1961, 17 of 1967, s. 45.

2. (1) A court before which a skilled witness has been summoned by a court to give expert evidence for the purpose of a trial or other proceedings under the Criminal Procedure Code may order that the witness be paid such fee not exceeding one hundred and twenty shillings per day as to the court seems reasonable.

(2) In addition to any fee ordered to be paid under paragraph (1) the court may order the payment to the witness of an allowance for qualifying to give evidence.

3. Where a court makes an order under these Rules, the judge or magistrate shall so certify on the record of the case, and thereafter the amount so ordered shall be paid to the witness.

4. A fee or allowance ordered to be paid under these Rules shall be in addition to any reasonable out-of-pocket and travelling expenses paid under any other written law for the time being in force.