

*A Bill Supplement to the Zanzibar Government Gazette  
Vol. No. CXXVI 6649 of 20<sup>th</sup> April, 2017*

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**NOTICE**

The Bill following hereunder shall be presented before the House of Representatives for the first reading which will start its session on 10<sup>th</sup> May of 2017, and is gazetted for the public notice incorporating together with its objects and reasons.

**ZANZIBAR**  
20<sup>th</sup> April, 2017

(Dr. ABDULHAMID Y. MZEE)  
*Secretary to the Revolutionary  
Council and Chief Secretary*

**A BILL**  
*for*

**AN ACT TO REPEAL THE KADHIS' COURTS  
ACT NO. 3 OF 1985 AND TO PROVIDE  
FOR THE RE-ESTABLISHMENT OF KADHIS'  
COURT, TO PRESCRIBE CERTAIN MATTERS  
RELATING TO KADHIS' COURTS AND  
MATTERS INCIDENTAL THERETO**

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**ENACTED** by the House of Representatives of Zanzibar.

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ENACTED by the House of Representatives of Zanzibar.

**PART ONE  
PRELIMINARY PROVISIONS**

Short title  
and  
Commence-  
ment.

**1.** This Act may be cited as the Kadhi's Court Act of 2017 and shall come into operation on immediately after being assented to by the President.

Interpreta-  
tion.

**2.** In this Act, unless the context otherwise requires-

“Advocate” means any person other than Vakili, admitted to practice before the High Court under the provisions of the Law regulating the mode of admitting the person so to practice;

“Chief Justice” means the Chief Justice of Zanzibar; and includes acting Chief Justice;

“Chief Kadhi ” means a person appointed under Section 8 of this Act as a head of Kadhi's Court;

“Registrar” means the Registrar of Kadhi's Court appointed under section 12 of this Act;

“Islamic Shariah” means the legal system of Islam based on Islamic Law;

“Judicial Service Commission” means the Judicial Service Commission established under section 102 of the Zanzibar Constitution of 1984;

“Kadhi” means Chief Kadhi, Deputy Chief Kadhi, Acting Chief Kadhi, Appellate Kadhi and a District Kadhi;

“Kadhi's Court” includes Appellate Kadhi's Court and District Kadhi's Court, as provided for under section 3 of this Act;

“Minister” means the Minister responsible for legal affairs;

“President” means the President of Zanzibar and the Chairman of the Revolutionary Council;

“Ulamaa” means a Scholar in Islamic Sheriah appointed under the Mufti Act No. 9 of 2001 to be Ulamaa;

“Vakil” means a person admitted to appear as such before the Kadhis' Court and primary Court under the provisions of Law regulating the mode of admitting persons so to practice.

**PART TWO  
ESTABLISHMENT, JURISDICTION AND  
ADMINISTRATION OF KADHI'S COURT**

**3.**-(1) There is hereby established a Court to be known as Kadhis' Court. Establish-  
ment of  
Kadhi's  
courts.

(2) The Kadhi's Court shall be composed of the District Kadhis Court and the Appellate Kadhis Court.

(3) The District Kadhi's Court shall have original jurisdiction to proceedings on matters as provided in section 5 of this Act.

**4.** The Kadhi's Courts shall have a seal bearing the style of the court and any other device approved by Chief Justice. Seal and  
stamps.

**5.-(1)** The Kadhi's Court shall have exclusive jurisdiction over all matters and proceedings between parties who are Muslims relating to-

- (a) marriage, divorce, custody of children and other related issues;
- (b) personal status;
- (c) maintenances;
- (d) wakf or religious charitable trusts, grants and gifts inter vivo;
- (e) wills and inheritance;
- (f) division of matrimonial assets where there is actual contribution; and
- (g) any other matter in respect of which jurisdiction is conferred to Kadhi's Court by any written law.

(2) Without prejudice the provision of sub section (1) of this section, any person may submit a claim to the Kadhi's Court for any matter that the Kadhi's Court have jurisdiction.

(3) Every Kadhi's Court shall have jurisdiction to try any offence of contempt of court committed in the course of proceedings and shall have power to sentence an offender as provided for under this Act.

**6.** The laws and rules of evidence of Islamic Sharia shall be applicable in the Kadhi's Courts.

**7.** The Chief Justice in consultation with the Chief Kadhi shall make rules of procedures to be applied in the Kadhis' Court.

**8.-(1)** There shall be a Chief Kadhi and Deputy Chief Kadhi who shall be appointed by the President upon recommendation of the Ulama Council.

**(2) The Chief Kadhi and Deputy Chief Kadhi shall, prior to taking office, be sworn in before the President.**

**(3) The Chief Kadhi shall be the Head of Kadhi's Court and be responsible for the overall supervision of the Kadhi's Court.**

**(4) The Deputy Chief Kadhi shall be principal assistant to Chief Kadhi and shall perform such other duties as may be assigned by the Chief Kadhi.**

(5) A person shall qualify to be appointed as the Chief Kadhi or Deputy Chief Kadhi if he professes and follows Islamic religion and he-

- (a) is a person of integrity;
- (b) holds at least bachelor degree in Islamic Shariah from any recognized institution; and
- (c) has at least five years' experience in matters relating to Islamic Shariah.

(6) The President, may after consultation with the Chief Justice, appoint the Deputy Chief Kadhi as the Acting Chief Kadhi, when it happens that-

- (a) the post of Chief Kadhi is vacant;
- (b) the Chief Kadhi is on leave or he is out of Tanzania; or
- (c) the Chief Kadhi is incapable of executing his duties.

(7) A person appointed as Acting Chief Kadhi shall have such powers as Chief and shall perform all functions of Chief Kadhi until the Chief Kadhi resume his office new Chief Kadhi is appointed.

**9.-(1) The Chief Kadhi and Deputy Chief Kadhi shall remain in his post until he reaches the age of sixty years where he may voluntarily retire or age of sixty five years where he shall retire compulsorily.**

**(2) Notwithstanding the provision of sub section (1), the President may extend the tenure of the Chief Kadhi and Deputy Chief Kadhi for such period deems fit.**

Appellate  
Kadhi.

**10.**-(1) There shall be not less three Appellate Kadhi's who shall be appointed by the President upon recommendation of Ulamaa Council.

(2) The Appellate Kadhi shall not enter upon the duties of his office until he has taken and subscribed oaths of allegiance and such other oath for the due execution of his office as prescribed by the law.

(3) A person shall qualify to be appointed as Appellate Kadhi if he professes and follows Islamic religion and has the same qualifications as Chief Kadhi or Deputy Chief Kadhi.

District  
Kadhis.

**11.**-(1) There shall be a District Kadhi in each district who shall be appointed by Judicial Service Commission upon recommendation from the Chief Justice.

(2) The District Kadhi shall not enter upon the duties of his office until he has taken and subscribed to the oaths of allegiance and such other oath for the due execution of his office as prescribed by the law, before the Chief Justice.

(3) A person shall be qualify to be appointed as a District Kadhi if he professes and follows the Islamic religion and he-

- (a) is a person of integrity; and
- (b) holds at least bachelor degree in Islamic Shariah from any recognized academic institution.

Registrar  
for Kadhi's  
Court.

**12.**-(1) There is hereby established the Office of Registrar for Kadhi's Court, who shall be appointed by Judicial Service Commission upon recommendations of the Chief Kadhi.

(2) The Registrar of the Kadhi's Court shall be responsible for administration of the Kadhi's Court.

(3) A person shall qualify to be appointed as Registrar of the Kadhi's Court if he-

- (a) is qualify to be appointed as a Kadhi; and
- (b) has at least five years experience in Court duties.

**13.**-(1) The Registrar of the Kadhi's Court shall have the following functions-

Functions  
and pow-  
ers of the  
Registrar

- (a) to exercise some powers and duties of Kadhi and pronounce judgments made by Kadhi's Court as instructed by Chief Kadhi;
- (b) to make orders and transact the business of the Kadhi's Court including-
  - (i) filing of appeals, review or revisions;
  - (ii) issue and service of summons;
  - (iii) adjournment of hearing proceedings;
  - (iv) applications relating to payment of a decree by instalments;
  - (v) withdrawal and adjustment of appeals, review or revision;
  - (vi) payment of costs and execution of decree generally.

(2) Without prejudice sub section (1) of this section, the Chief Kadhi may, upon consultation with the Chief Justice assign duties and confer other powers to the Registrar of the Kadhi's Court.

(3) The Registrar of the Kadhi's Court shall administer the oath according to Islamic Law.

(4) The Registrar of the Kadhi's Court shall have with respect to appeal, revision or application entered in his registry, the same powers as those which may be exercised by the Registrar of the High Court.

(5) Any person who is dissatisfied with any order of the Registrar of Kadhi's Court (other than pronouncing judgment or passing a decree) may apply against that order to the Appellate Kadhis' Court.

(6) The Chief Kadhi, Deputy Chief Kadhi or Appellate Kadhi shall have power on the application of any person affected thereby to set aside any decree or order passed or made by the Registrar and make or pass such other decree or order as may be just.

(7) Application under sub section (6) of this section, shall be made within thirty days of the passing or making of such decree or order or such further time as the Chief Kadhi may allow.

(8) Such application shall not operate as a stay of any proceedings or of execution of any decree unless the Registrar of the Kadhi's Court, Chief Kadhi or Deputy Chief Kadhi (as the case may be) orders otherwise.

Budget and  
Funds of  
the Kadhi's  
Court

**14.-(1) The Kadhi's Court shall hold its own budget Vote through which all the funds appropriated or accrued for the use of the Kadhi's Court shall be disbursed.**

**(2) The Pay Master General shall appoint an accounting officer for the Kadhi's Court Vote and the Accountant General shall, allocate adquet staff to undertake the accounting work for the vote.**

**(3) The funds of the Kadhi's Court shall include-**

- (a) such amount of money appropriated by the House of Representatives in each financial year for the use of the Kadhi's Court;**
- (b) grants, donations and other funds received by the Kadhi's Court from other eligible sources;**

Language  
of Kadhi's  
Court.

**15.-(1) The language of the Kadhis' Court shall be in Kiswahili.**

(2) Where either of the parties is not conversant with Kiswahili language or that is dumb or has any other disability which hinders him from understanding Kiswahili the Court shall engage a translator.

(3) A translator shall take oath before the Court or Registrar of Kadhis' Court prior to perform his duty as a translator.

**16.-(1) There shall be Appellate Kadhi's Court for Zanzibar which shall have appellate and revisionary powers over the Kadhi's Courts.**

Appellate  
Kadhi's  
Court

(2) In exercising its appellate and revisionary powers, the Appellate Kadhis' Court shall be presided over by the Chief Kadhi's, Deputy Chief Kadhi or Appellate Kadhi.

(3) In exercising its jurisdiction the Appellate Kadhi's Court shall have the powers to-

- (a) up hold, reverse and vary all judgments, decisions and orders of the District Kadhi's Court;
- (b) order re-trial of any case heard or decided by the District Kadhi's Court;
- (c) return any case heard and decided in any court below it with such instruction as to any further proceedings as the Chief Kadhi's Court may deem necessary.

**17.-(1) An appeal or revision from any judgment of the Appellate Kadhi's Court shall be filed to the High Court.**

Appeal from  
Appellate  
Kadhi's  
Court.

(2) In exercising its appellate and revisionary powers, the High Court shall be duly constituted by a High Court Judge and four Islamic jurists known as ulamaa.

**(3) Ulamaa shall be appointed by the Registrar of the Kadhi's Court amongst persons recommended by the Ulamaa Council.**

**(4) Subject to the provisions of the Zanzibar Constitution of 1984, the decision of the High Court shall be final.**

(5) A Judge sitting in the High Court under this section shall be a male Muslim.

(6) In appointing Islamic jurists to sit with the High Court under subsection (2) of this section, the Registrar of Kadhi's Court shall consider sects of the parties.

(7) The decision of High the Court relating to cases originating from Kadhi's Court shall be binding to all Kadhi's Courts but on applying such a precedent sects of parties shall be taken into consideration.

(8) The panel of the High Court and Chief Kadhi's Court during the hearing of an appeal may invite any person conversant on a particular subject matter as a friend of the Court.

District  
Kadhi's  
Court.

**18.**-(1) The Chief Justice may establish District Kadhi's Court in every District in Zanzibar and the Court shall have jurisdiction in the designated district only.

(2) The district Kadhi's Court may be held at any place within area of its jurisdiction.

(3) The District Kadhi's Court shall be presided by the District Kadhi.

Jurisdiction  
of District  
Kadhi's  
Court.

**19.** The District Kadhi's Court shall exercise its original jurisdiction of hearing and determining all matters as mentioned by section 4 of this Act.

Appeal.

**20.** An Appeal from the decision of a District Kadhi's Court shall lie to the Appellate Kadhi's Court.

### **PART THREE MEDIATION**

**21.**-(1) Notwithstanding the provisions of this Act, the District Kadhis' Court may within five working days from the date of filing the pleadings, on its own motion, direct any party or parties to the proceedings to appear before it in order that the court may make such order or give such direction in relation to any interim applications which the parties have filed or intend to file as it considers fit for the just, expeditious and economical disposal of the suit.

Powers to  
make orders  
and give  
directions  
for disposal  
of suits.

(2) The Court may also consider any matter including the possibility of settlement of all or any of the issues in the suit or proceedings and require the parties to furnish to the Court with any such information as it considers fit, and may also give all such directions as it may appear to be necessary or desirable for securing the just, expeditious and economical disposal of the suit or proceedings.

**22.**-(1) If the suit is not settled under the provisions of section 23 of this Act, the Court may direct the parties to submit their case to mediation and upon making such order, the Court shall appoint a mediator who shall arrange a date for mediation process to commence unless the parties have jointly filed a declaration to the effect that mediation is not worthwhile.

Submission  
of the suit  
for media-  
tion

(2) For the purpose of this section, the mediator shall be appointed from among persons who are respectful, having integrity and conversant with Islamic Sheriah and who shall be accepted by the parties.

**23.**-(1) In conducting any mediation session under this Act-

Roles of  
Mediator

- (a) the mediator shall assist the parties to reduce cost and delay in litigation and facilitate timely and fair resolution of disputes;
- (b) the mediator shall facilitate communication between or among the parties to the dispute in order to assist them in reaching a mutually acceptable resolution.

(2) Subject to the provisions of sub section (1) of this section, the mediator-

- (a) shall, in an independent and impartial manner, strive to help the parties to resolve their dispute;
- (b) may, where necessary, conduct joint or separate meetings with the parties and may make recommendations for a settlement;
- (c) may, where services of an expert may be obtained at no cost or where such services may be obtained at a cost and if parties agree to pay such costs or expenses, obtain expert advice on a technical aspect of the dispute, which advice shall be given in an independent and impartial manner;
- (d) shall be guided by principles of objectivity, fairness and natural justice and shall give consideration to, among other things the rights and obligations of the parties and the circumstances surrounding the disputes;
- (e) may, at any stage of the mediation proceedings and in a manner that the mediator considers appropriate, take into account the wishes of the parties including any request by either of the parties that the mediator shall hear oral statements for a speedy settlement of the dispute; and
- (f) may, at any stage of the mediation proceedings make proposals for the settlement of the dispute.

(3) Where the parties have reached into agreement during the mediation, the mediator shall reduce the agreement in writing and the settlement agreement shall be signed by the parties and the mediator as a witness.

(4) The mediator shall submit to the Kadhi assigned with the suit under mediation the settlement agreement.

**24.**-(1) During the mediation process, disputing parties shall have the right to resolve any matter regarding the issue tabled for mediation. Rights of parties to mediation

(2) A party which needs consent from the other before the commencement of mediation or during mediation process may establish communication with the other party involved in the mediation.

**25.** All communications at a mediation session the mediation notes and records of the mediation shall be deemed to be confidential and a party to a mediation shall not, thereafter rely on the record thereof, statement made thereat or any information obtained during the mediation as evidence in proceedings before Court or any other subsequent settlement initiative, except in relation to proceedings brought by either party to vitiate the settlement agreement on the grounds of fraud. Confidentiality.

**26.** A mediation period shall not exceed a period of fourteen days from the date of the first session of the mediation and if there is necessity for an additional time such additional time shall be approved by the parties. Duration of mediation.

**27.**-(1) If it is impossible to proceed with mediation due to failure of one party to attend the proceedings with no justifiable reasons or by any reason beyond the control of the mediator, the mediator may cancel the mediation and revert the matter to the Kadhi. Cancellation of mediation

(2) A party who disagree with the decision of mediation cancelation, within seven days from the date the decision was given, may apply to the Court responsible for their case, the restoration of the mediation.

(3) If it is satisfied that the mediation fees have been duly paid, the mediator shall cancel the prior decision of cancelation and with the consent from both parties, he shall resume the mediation.

(4) Once the parties agree with the mediation, the mediator shall in writing record the agreement with signatures and the parties shall sign settlement agreement.

End of mediation.

**28.** A mediation shall end when-

- (a) the mediator cancels a mediation session for non-compliance or violation of the agreed principles by one or both parties on the part or any party;
- (b) the parties executed a settlement agreement;
- (c) the mediator, after consultation with the parties, makes a declaration to the effect that further mediation is not possible or worthwhile;
- (d) the parties jointly agree that the mediation is to be terminated; or
- (e) a party makes a declaration to the mediator and the other party to the effect that the mediation is terminated.

Failure to reach settlement by mediation.

**29.** Where upon the conclusion of mediation no settlement agreement is reached, the matter shall revert to the Kadhi who shall continue with trial from the point when and at which the suit was referred for mediation.

**PART FOUR  
MISCELLANEOUS PROVISIONS**

Contempt of Kadhi's Court.

**30.-(1)** The Court shall have the jurisdiction to commence proceedings against any person for contempt of Kadhi's Court and may, in such proceedings, make an order of committal for a period not exceeding one month or a fine of not exceeding three hundred thousand shillings.

(2) Any person who-

- (a) within the premises of which any court proceeding is being held or taken, or within the precincts of the same, shows disrespect, in speech or manner, to or in reference to such proceedings, or any person before whom such proceeding is being held or taken;

- (b) having been called upon to give evidence in a judicial proceeding fails to attend or having attended, refuses to be sworn or to make an affirmation, refuses without a lawful excuse to answer a question or to produce a document, or remain in the room in which proceeding have been held or taken, after has being ordered to leave such a room;
- (c) causes an obstruction or disturbance in the cause of judicial proceedings;
- (d) while a judicial proceeding is pending, makes use of any speech or writing, misrepresenting such proceeding or capable of prejudicing any person in favour of or against any party to such proceeding, or calculated to lower the authority of any person before whom such a proceeding is being held or taken;
- (e) attempts wrongfully to interfere with or influence a witness in a judicial proceedings;
- (f) commits any other act of intentional impertinence or disruption to any judicial proceeding, or to any person to whom such proceeding is being heard or taken;

commits a contempt of court and shall be liable to imprisonment for a term of not exceeding one month or to a fine of not exceeding three hundred thousand shillings or to both such fine and imprisonment.

(3) Where contempt is committed in the face of the Court, it shall not be necessary for the Court to serve the notice to show cause but the Court shall ensure that the person alleged to be in contempt understands the nature of the offence alleged against him and has the opportunity to be heard in his own defence, and proper record of the proceedings shall be made.

(4) In the case of contempt committed outside Court, notice to show why an action or proceedings should not be taken against him shall be served to the person alleged to have committed such contempt.



Appearance  
of Advocates  
or Vakils

**31.**-(1) Subject to the provisions of section 32 of this Act, an Advocates and recognized agents duly authorized may appear for and on behalf of any party in the District or Appellate Kadhi's Court or in the High Court.

(2) Vakils and recognized agents duly authorized may appear in the District Kadhi's Court and Appellate Kadhi's Court subject to the provisions of section 32 of this Act.

Admission  
of Advocate  
and Wakil

**32.**-(1) The Chief Justice may, upon consultation with the Chief Kadhi, admit any advocate or vakil to appear before the Kadhi's Court.

(2) Any Advocate or vakil to be admitted to appear before the Kadhi's Court shall possess the knowledge and experience in Islamic Sheriah.

(3) The Chief Justice shall prescribe procedures for application for admission of the Advocate or vakil.

Immunity of  
Kadhis and  
officers.

**33.**-(1) Kadhi or any other person acting judicially shall not be liable to be sued in any civil court for any act done or ordered to be done in the discharge of his judicial duty whether or not within the limits of his jurisdiction, if he, at the time of exercising such a duty, in good faith he believed to have jurisdiction to do or order the act complained of.

(2) No officer of any court or other person bound to execute the lawful warrant or order of any Kadhi or other person acting judicially shall be liable to prosecution in any Civil Court for the execution of any warrant or order, which he is bound to execute, if such warrant or order have been issued by the right authority.

Repeal and  
Savings.

**34.**-(1) The Kadhi's Court Act, No. 3 of 1985 is hereby repealed.

(2) Notwithstanding the repeal of the Kadhi's Court Act, No. 3 of 1985, all matters and proceedings pending before any court shall continue and concluded under the repealed Act.

(3) Every decision or order of any Kadhi's Court which shall not have been fully executed or enforced before the coming into force of this Act, may be executed and enforced as if it is a decision or order of such court established by this Act.

(4) Notwithstanding the repeal of the Kadhi's Court Act, No.3 of 1985, all matters and decisions made or done under the repealed Rules shall be regarded to have been done under the provision of this Act.

(5) Notwithstanding any provision made under this Act, existing Kadhi shall continue to hold their offices.

## OBJECTS AND REASONS

The objects of this Bill is to repeal the existing Kadhi's Court Act, No. 3 of 1985 and enact new Act to re-establish the Kadhi's Court in Zanzibar. The idea to come with the new establishment of the Kadhi's Court originated from the research conducted by the consultant on 2013. The study revealed that, majority of the Zanzibar society loose trust and confidence to Kadhi's Courts due to poor administration of justice occasioned by several gaps. The existing Kadhi's Court is not so independent, it is like a division of the High Court.

Therefore, the study among others suggested that, the new Kadhi's Court should be established with its own administration separate from the administration of other courts. The new Kadhi's Court should have its own Registrar. The Registrar be appointed by the Judicial Service Commission. The Kadhis Court be restructured by establishing Chief Kadhi who shall be the Head of the Kadhis' Court assisted by Deputy Chief Kadhi. The adjudicational powers of the Chief and Deputy Chief Kadhi shall be in appellate level, whereby their decision shall be brought to the High Court which shall be presided over by the Judge who shall be muslim male Judge sitting with four Ulamaa appointed by Registrar up on recommendation of Ulamaa Council. The decision of the High Court shall be final and conclusive which means no further appeal thereafter.

In addition, there shall be District Kadhis' Court at every district level Unguja and Pemba to be manned by District Kadhi at that district area. Original jurisdiction of District Kadhis Court be extended to all matters incidental to the marriage including division of matrimonial assets under Islamic perspectives. Pecuniary jurisdiction of the District Kadhis' Court for matters of maintenance should not be limited. Kadhis' Court are given powers to deal with offenders of contempt of Court like Secular courts. Qualifications of Kadhis are improved to means that, qualifications a person to be appointed as Kadhi shall have a Degree of Islamic Shariah in particular Usulul fiqhi.

Therefore, this Bill is divided into Four Parts.

**Part One** is about preliminary provisions which contain short title and commencement date, and interpretation of some important words used therein.

**Part two** is about establishment, jurisdiction and administration of Kadhi's Court. In this part the provision relating to Establishment of Kadhi's courts, Jurisdiction of Kadhi's Court, application of law and rules of evidence, Rules for Kadhi's Court, appointment of Chief and Deputy Chief Kadhi, Tenure of Chief Kadhi, appointment of District Kadhis, Registrar for Kadhi's Court, and Deputy Chief Kadhi Language of Kadhi's Court, Budget and Funds of Kadhi's Court and others are well provided therein.

**Part Three** provides for provisions relating to Mediation, which inter alia contain power to make orders and give directions for disposal of suits, Submission of the suit for mediation, Roles of Mediator, Rights of parties to mediation, Confidentiality, Duration of mediation, Cancellation of mediation and situation where failure to reach settlement by mediation.

**Part Four** is miscellaneous provisions which contain provisions relating to Contempt of Kadhi's Court, Appearance of Advocates or Vakils, Immunity of Kadhis and officers and Repealing of Kadhis' Court Act No. 3 of 1985 and saving.

**ZANZIBAR**

20<sup>th</sup> March, 2017.

(Haroun Ali Suleiman)

***Minister of State (PO), Constitutional and Legal Affairs, Public Service and Good Governance.***

