



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

ARRANGEMENT OF SECTIONS

SECTIONS

TITLE

**PART ONE
PRELIMINARY PROVISIONS**

1. Short title and Commencement.
2. Interpretation.

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

3. Establishment of Kadhi's Courts.
4. Seal and stamps.
5. Jurisdiction of Kadhi's Court.
6. Law of Evidence.
7. Rules for Kadhi's Court.
8. Chief Kadhi and Deputy Chief Kadhi.
9. Tenure of Chief Kadhi and Deputy Chief Kadhi
10. Appellate Kadhi.
11. District Kadhi.
12. Registrar of Kadhi's Court.



13. Powers and functions of the Registrar.
14. Appellate Kadhi's Court.
15. Appeal from Appellate Kadhi's Court.
16. District Kadhi's Court.
17. Jurisdiction of District Kadhi's Court.
18. Appeal.

PART THREE MEDIATION

19. Powers to make orders and give directives for disposal of suits.
20. Submission of the suit for mediation.
21. Roles of Mediator.
22. Rights of parties to mediation.
23. Confidentiality.
24. Duration of mediation.
25. Cancellation of mediation.
26. End of mediation.
27. Failure to reach settlement by mediation.

PART FOUR MISCELLANEOUS PROVISIONS

28. Budget and Funds of the Kadhi's.
29. Language of Kadhi's Court.

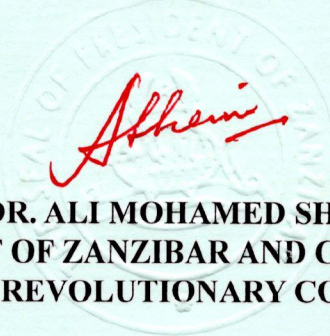


30. Contempt of Kadhi's Court.
31. Appearance of Advocate or Vakil.
32. Admission of Advocate and Vakil.
33. Immunity of Kadhis and officers.
34. Repeal and Savings.



ACT NO. 9 OF 2017

I ASSENT



{ DR. ALI MOHAMED SHEIN }
PRESIDENT OF ZANZIBAR AND CHAIRMAN OF
THE REVOLUTIONARY COUNCIL

1st November, 2017

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

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 immediately after being assented to by the President.

Interpretation.

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

“Advocate” means any person other than Vakil, admitted to practice before the High Court and Subordinate Courts thereto under the provisions of the Law regulating mode of admitting 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 Quran, Hadith, Ijmaa and Qiyas;

“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 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;

“Parties” means Plaintiff and Defendant in the case before the Kadhi’s Court;

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

“Ulamaa” means a person appointed under the Office of 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, COMPOSITION, JURISDICTION AND ADMINISTRATION OF KADHI’S COURTS

Establish-
ment of
Kadhi’s
Courts.

3.-(1) There is hereby established a Court to be known as Kadhi’s Court.

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

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



Seal and stamps.

4. The Kadhi's Courts shall have a seal bearing the style of the court approved by Chief Justice.

Jurisdiction of Kadhi's Court.

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 and other related issues;
- (b) personal status;
- (c) maintenances and custody of children;
- (d) wakf or religious charitable trusts, grants and gifts inter vivo;
- (e) wills and inheritance;
- (f) division of matrimonial assets if 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 to the provision of sub section (1) of this section, any person who is not a muslim may submit a claim to the Kadhi's Court against Muslim for any matter that the Kadhi's Court has jurisdiction.

(3) Every Kadhi shall have jurisdiction to try an 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.

Law of Evidence.

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

Rules for Kadhi's Court.

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

Chief Kadhi and Deputy Chief Kadhi.

8.-(1) There shall be a Chief Kadhi and Deputy Chief Kadhi who shall be appointed by the President upon recommendations of the Ulamaa 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 a 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 or acting 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 University;
- (c) has at least seven years experience in matters relating to Islamic Shariah; and
- (d) has the equivalent education and experience.

(6) The President may, after consultation with the Chief Justice, appoint the Deputy Chief Kadhi to be 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 for any reason.

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

Tenure of
Chief Kadhi
and Deputy
Chief Kadhi.

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 at age of sixty five years where he shall retire compulsorily.

(2) Notwithstanding the provision of sub section (1) of this section, the President may extend the tenure of the Chief Kadhi and Deputy Chief Kadhi for such period he deems fit but such period shall not exceed five years.



Appellate
Kadhi.

10.-(1) The Appellate Kadhi's Court shall be composed of the Chief Kadhi, Deputy Chief Kadhi and not more than three other appellate Kadhis to 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 to an oath 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 the Chief Justice upon recommendation of Ulamaa Council.

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

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

(a) is a person of integrity;

(b) holds at least bachelor degree in Islamic Shariah from any recognized academic university; and

(c) has at least five years experience in matters relating to Islamic Shariah.

Registrar
of 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) has been appointed or qualifies to be appointed as a District Kadhi; and

(b) has at least five years experience in Court's duties.



Powers and
functions of
the Registrar.

13.-(1) The Registrar of the Kadhi's Court shall have the power to exercise the following functions:

- (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 proceedings;
 - (iv) applications relating to payment of a decree by instalments;
 - (v) withdrawal and adjustment of appeals, review or revision; and
 - (vi) payment of costs and execution of decree generally.

(2) Without prejudice to 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 and 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 appeal against that order to the Appellate Kadhis' Court by application attached with affidavit as the case may be.

(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 or Appellate Kadhi as the case may be, orders otherwise.

Appellate
Kadhi's Court

14.-(1) There shall be an Appellate Kadhi's Court which shall have appellate and revisionary powers over the District Kadhi's Courts.

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

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

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

Appeal from
Appellate
Kadhi's
Court.

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

(2) In exercising its appellate and revisionary powers, the High Court shall be duly constituted by a High Court Judge and four Islamic 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 Ulamaa to sit with the High Court Judge under subsection (2) of this section, the Registrar shall consider sects of the parties.



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

(8) The panel of the High 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.

16.-(1) The Chief Justice may establish a 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 over by the District Kadhi.

Jurisdiction
of District
Kadhi's
Court.

17. The District Kadhi's Court shall exercise its original jurisdiction of hearing and determining all matters as mentioned in section 5 of this Act.

Appeal.

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

PART THREE MEDIATION

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

19.-(1) Notwithstanding the provisions of this Act, the District Kadhi's 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 directives 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.

(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 the Court with any such information as it considers fit, and may also give all such directives as it may appear to be necessary or desirable for securing the just, expeditious and economical disposal of the suit or proceedings.



Submission
of the suit for
mediation.

20.-(1) If the suit is not settled under the provisions of sub section (2) of section 21 of this Act, the Kadhi's 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.

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

Roles of
Mediator.

21.-(1) In conducting any mediation session under this Act:

- (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 the parties to the dispute in order to assist them in reaching a mutually acceptable solution.

(2) Subject to the general 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.

Rights of parties to mediation.

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

Confidentiality.

23. 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.

Duration of mediation.

24. 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.

Cancellation of mediation

25.-(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 Court.

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

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



End of mediation.

26. A mediation shall end when:

- (a) the mediator cancels mediation session for non-compliance of the mediation instruction or violation of the agreed principles by one or both parties;
- (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 should be terminated; or
- (e) a party makes a declaration to the mediator and the other party agrees to the effect that the mediation is terminated.

Failure to reach settlement by mediation.

27. 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

Budget and funds of the Kadhi's Court.

28.-(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 adequate 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.

29.-(1) The language of the Kadhis' Court shall be 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 language of the Court, 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.

Contempt of
Kadhi's Court.

30.-(1) The Court Kadhi's 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 a fine of not exceeding three hundred thousand shillings, or for a period not exceeding one month to the person convicted with that offence.

(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, or 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 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 upon conviction shall be liable to a fine not exceeding three hundred thousand shillings, or imprisonment for a term not exceeding one month or to both such fine and imprisonment.



(3) Where contempt is committed before 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 records 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 Advocate or Vakil.

31.-(1) Subject to the provisions of section 32 of this Act, an Advocate 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) Vakil and recognized agent 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 Vakil.

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) An Advocate or vakil to be admitted to appear before the Kadhi's Court shall possess the knowledge and experience in Islamic Shariah.

(3) The Chief Justice shall prescribe procedures for application for admission of the Advocate or vakil before Kadhi's Court.

Immunity of Kadhis and officers.

33. Kadhi or any other person acting with any Kadhi's Court functions shall not be liable to be sued in any civil or criminal suit for any act done or ordered to be done in the discharge of his judicial duties, if at the time of exercising such a duty, in good faith, he believed to have power to do or order the act complained of.

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 Kadhi's Court shall continue and be concluded under the repealed Act.

(3) Every decision or order of any Kadhi's Court which has not 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 Act, 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.

PASSED by the House of Representatives of Zanzibar on 27th September, 2017.

A handwritten signature in blue ink, appearing to read 'R. Issa Msellem', is written over a dotted line.

(RAYA ISSA MSELLEM)

Clerk of the House of Representatives of Zanzibar