

THE KADHIS' COURTS ACT

ARRANGEMENT OF SECTIONS

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I ASSENT



ALI HASSAN MWINYI
THE PRESIDENT OF ZANZIBAR AND
CHAIRMAN OF THE REVOLUTIONARY
COUNCIL

15.2.1985

AN ACT TO PROVIDE FOR THE ESTABLISHMENT
OF KADHIS' COURTS, TO PRESCRIBE CERTAIN
MATTERS RELATING TO KADHIS' COURTS AND
FOR PURPOSES CONNECTED THEREWITH AND
INCIDENTAL THERETO

ENACTED BY THE HOUSE OF REPRESENTATIVES OF ZANZIBAR.

Short
title and
commencement.

1. This Act may be cited as the Kadhis' Courts Act, 1985 shall come into operation retrospectively on the 12th day of January, 1985.

Interpre-
tation.

2. In this Act, unless the context otherwise requires "Chief Kadhi" means a person appointed to or to act in the office of Chief Kadhi under section 4 of this Act.

"Constitution" means the constitution of Zanzibar;

"Kadhis" means a person appointed to or to act in the office of Kadhi under section 5 of this Act;

"Kadhis Court" means a Kadhis Court established by section 3 of this Act;

"Minister" means the Minister for the time being responsible for legal affairs;

"Senior Kadhi" means Kadhi other than the Chief Kadhi appointed under section 5(2) of this Act.

Establishment
of Kadhis
Courts.

3. (1) In pursuance of section 99 (1) of the Constitution there are hereby established Kadhi Courts.

(2) There shall be a Chief Kadhis' Courts for Zanzibar and a Kadhi's Court in each District which shall have jurisdiction within such District.

Chief Kadhi
and Senior
Kadhis.

4. (1) There shall be a Chief Kadhi who shall be appointed by the President.

(2) The Chief Kadhi shall not enter upon the duties of his office until he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by the House of Representatives.

(3) A person shall be qualified to be appointed to hold or to act in the office of Chief Kadhi if, and shall not be so qualified unless:-

(a) he professes and follows the Muslim religion;

(b) he possesses such knowledge of the Muslim law which in the opinion of the President is qualified to be appointed as such.

(4) There shall be two Senior Kadhis, one based in Zanzibar and the other one in Pemba who together with the Chief Kadhi shall have jurisdiction on appeals from Kadhis' Courts,

provided that any one of the Senior Kadhis or the Chief Kadhi himself shall have power to hear and determine such appeal cases alone unless the chief Kadhi directs otherwise.

Kadhi.

5. (1) There shall be such number of Kadhis, being not less than 10 and not more than 15 who shall be appointed by the Judicial Service Commission in consultation with the Chief Kadhi.

(2) Two of the Kadhis appointed by the Judicial Service Commission shall, because of their qualifications be appointed as Senior Kadhis in the Chief Kadhis Court.

(3) A person shall not be qualified to be appointed to hold or to act in the office of Kadhi unless:-

- (a) he professes and follows the Muslim religion; and
- (b) he possesses such knowledge of the Muslim law applicable to any sect or sects of Muslims as qualifies him, in the opinion of the Commission to be a Kadhi.

**Jurisdiction
of Kadhis'
Courts.**

6. (1) A Kadhis Court shall have and exercise jurisdiction in the determination of question of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion.

(2) (i) Each of the Kadhis' Courts shall be a court subordinate to the High Court and shall be duly constituted when held by the Chief Kadhi, Senior Kadhi or a Kadhi.

(ii) For the purpose of this section, Kadhis' Court include Chief Kadhi's Court.

(3) A Kadhis' Court may be held at any place within the area of jurisdiction of the Court.

Evidence.

7. The law and rules of evidence to be applied in Kadhis' Courts including that of a Chief Kadhi shall be those applicable under Muslim law.

Provided that:-

- (i) all witnesses called shall be heard without discrimination on grounds of religion, sex or otherwise;
- (ii) each issue of fact shall be decided upon an assessment of the credibility of all evidence before the court and not upon the number of witnesses who have given evidence;

(iii) no finding, decree or order of the court shall be reversed or altered on appeal or revision on account of the application of the law or rules of evidence applicable in the High Court, unless such application has in fact occasioned a failure of justice.

Records and returns.

8. Every Kadhi's Court shall keep such records of proceedings and submit such returns of proceedings to the High Court as the Chief Justice may from time to time direct.

Procedure and practice.

9. (1) The Chief Justice in consultation with the Chief Kadhi may make rules of court providing for the procedure and practice to be followed in Kadhi's Courts.

(2) Until rules of court are made under subsection (1) of this section, and so far as such rules do not extend, procedure and practice in a Kadhi's Court shall be in accordance with those prescribed for subordinate courts by and under the Civil Procedure Decree.

Appeal from Kadhi's Court.

10. (1) The Chief Kadhis' Court shall not have an original jurisdiction but shall act as an appellate court for decisions from the Kadhis' Courts.

(2) An appeal shall lie to the High Court from any judgement of the Chief Kadhis' Court and such appeal shall be heard by a judge of the High Court and in the presence of **four** Sheikhs who are well conversant in Islamic Law (who together shall here in after **referred** to as members).

Provided that the High Courts decision on such appeal shall be based on the majority opinion of the members.

(3) The decision of the High Court shall be final on matters of Islamic Law and facts and shall not be subject to appeal to the Court of Appeal.


Protection of Kadhis etc.

11. (1) No Kadhi or any other person acting judicially shall 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 in good faith believed himself to have jurisdiction to do or order the act complained of.

(5)

(2) No officer of any Court or other person bound to execute the lawful warrants or orders of any Kadhi or other person acting judicially shall be liable to be sued in any civil Court for the execution of any warrant or order which he would be bound to execute if within the jurisdiction of the person issuing the same.

Passed in the House of Representatives on 22nd January, 1985


[IDI P. HASSAN]
CLERK TO THE HOUSE OF
REPRESENTATIVE
ZANZIBAR

/s.

SHERIA ZA MAHKAMA ZA KADHI

1985.

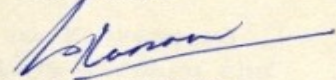
Sehemu:

1. Jina dogo na tarehe ya kuanza kutumika
2. Ufafanuzi
3. Kuanzishwa kwa Mahakama za Kadhi.
4. Kadhi Mkuu na Makadhi Waandamizi
5. Kadhi wengine
6. Mamlaka ya Mahkama ya Kadhi
7. Ushahidi
8. Kumbukumbu na marejesho
9. Mwenendo na utaratibu.
10. Rufaani katika Mahkama za Kadhi.
11. Kinga za Makadhi na kadhalika.

SERIKALI YA MAPINDUZI YA ZANZIBAR

NAM. 3 YA 1985

NAKUBALI



ALI HASSAN MWINYI
RAIS WA ZANZIBAR NA MWENYEKITI
WA BARAZA LA MAPINDUZI.

15.2.1985

SHERIA KWA AJILI YA KUWEKA SHERIA NA
KUANZISHA MAHAKAMA ZA KADHI KUAMURU
MAMBO YANAYOHUSIANA NA MAHKAMA ZA
KADHI NA KUSHUGHULIKIA MAMBO MENGINE
YANAYOHUSIANA NAYO.

IMETUNGWA NA BARAZA LA WAWAKILISHI.

Jina dogo
na tarehe
ya kuanza
kutumika.

1. Sheria hii itajulikana kama Sheria
ya Mahkama za Kadhi na itanza kutumika kuanzia
tarehe 12 Januari, 1985.

Ufafanuzi.

2. Katika Sheria hii isipokuwa kama
itaelezwa vyenginevyo:

"Kadhi Mkuu" maana yake ni mtu aliyeteuliwa
kufanyakazi au kushika nafasi ya Kadhi
Mkuu chini ya kifungu cha 4 cha Sheria
hii.

"Katiba" maana yake ni Katiba ya Zanzibar.

/2...

"Kadhi" maana yake ni mtu aliyeteuliwa kufanya kazi au kushika nafasi ya kadhi chini ya kifungu cha 5 cha Sheria hii;

"Mahkama ya Kadhi" maana yake ni Mahkama ya Kadhi iliyoanzishwa chini ya kifungu cha 3 cha Sheria hii.

"Waziri" maana yake Waziri ambae kwa wakati huu anashughulikia mambo ya Sheria;

"Kadhi Muandamizi" maana yake ni mtu aliyeteuliwa kufanyakazi za kadhi Muandamizi chini ya kifungu cha 4(4) cha Sheria hii.

Kuanzishwa
kwa Mahakama
za Kadhi.

3.(1) Kwa mujibu wa (Kifungu cha 99(1) cha) Katiba panaanzishwa Mahakama za Kadhi.

(2) Kutakuwapo na Mahakama ya Kadhi Mkuu pamoja na Mahakama za Kadhi kwa kila Wilaya ambazo zitakuwa na mamlaka katika Wilaya hiyo.

Kadhi Mkuu
na Makadhi
Waandamizi.

4.(1) Atakuwepo Kadhi Mkuu ambae atateuliwa na Rais.

(2) Kadhi Mkuu hatoanza kazi mpaka kwanza **ale** kiapo cha kazi yake na kiapo chengine cho chote kama kitakavyowekwa na Baraza la Wawakilishi.

(3) Mtu atafaa kuteuliwa kushika au kufanyakazi katika Afisi ya Kadhi Mkuu ikiwa, na hatofaa isipokuwa awe:-

- (a) Anaamini na kufuata dini ya Kiislamu;
- (b) Anayo elimu ya Sheria ya Kiislamu ambayo kwa fikira za Rais anafaa kuchaguliwa kuwa Kadhi Mkuu.

(4) Watakuwepo Makadhi Waandamizi wawili, mmoja kwa Unguja na mwingine kwa Pemba ambao kwa kushirikiana na Kadhi Mkuu watasikiliza kesi za rufaa katika Mahkama ya Kadhi Mkuu;

ila tu ijuilikane kwamba Kadhi ye yote kati ya Makadhi wa Mahkama ya Kadhi Mkuu anaweza kusikiliza rufaa peke yake ila pale tu Kadhi Mkuu atapoamua vyenginevyo.

Kadhi
wengine.

5.(1) Kutakuwepo na Makadhi wasiopungua 10 na wasiozidi 15 ambao watateuliwa na Tume ya Utumishi ya Mahkama kwa kushauriana na Kadhi Mkuu.

(2) Wawili kati ya Makadhi walioteuliwa na Tume kutokana na sifa zao, watateuliwa kuwa Makadhi Waandamizi katika Mahkama ya Kadhi Mkuu.

(3) Mtu hatofaa kuteuliwa kushika Afisi ya Kadhi isipokuwa:-

- (a) Anaamini na kufuata dini ya Kiislamu; na
- (b) Anayo Elimu ya Sheria ya Kiislamu ambayo inakubalika kwa madhehebu ya Kiislamu ambayo kwa maoni ya Tume ya Uajiri ya Mahakama anaweza kuteuliwa kuwa Kadhi.

Mamlaka ya
Mahkama ya
Kadhi.

6.(1) Mahkama ya Kadhi itakuwa na uwezo wa mamlaka katika kuangalia masuala ya Sheria ya Kiislamu yanayohusiana na ndoa, talaka au mirathi katika masuala ambayo wahusika wote ni waumini wa dini ya Kiislamu.

(2) (i) Kila Mahkama ya Kadhi itakuwa chini ya Mahkama Kuu na itakuwa imetimia ikiwa inaendeshwa na Kadhi Mkuu au Kadhi Muandamizi au Kadhi.

(ii) Kwa madhumuni ya kifungu hiki, Mahkama ya Kadhi ni pamoja na Mahkama ya Kadhi Mkuu.

(3) Mahkama ya Kadhi itakuwepo sehemu ye yote katika eneo la Mamlaka ya Mahkama.

Ushahidi.

7. Sheria na kanuni zitakazotumika katika Mahkama za Kadhi pamoja na Mahkama ya Kadhi Mkuu ni zile zinazokubalika chini ya Sheria ya Kiislamu.

Isipokuwa kwamba:-

- (i) Mashahidi wote watasikilizwa bila kubagua kutokana na hali ya dini jinsi au vyenginevyo.
- (ii) Kila jambo la tukio litaamuliwa kutokana na uthibitisho wa ushahidi wote mbele ya Mahkama na sio kutokana wingi wa mashahidi waliotoa ushahidi.
- (iii) Hakuna sheria au amri ya Mahkama ya Kadhi itakayobadilishwa au itakayorekebishwa katika rufaani au katika masahihisho au mapitio kutokana na sheria au kanuni za ushahidi inavyotumika Mahkama Kuu, isipokuwa ombi hilo liwe kweli umesababisha maonevu na kunyimwa haki ya mtu anaehusika.

Kumbukumbu na marejesho.

8. Kila Mahkama ya Kadhi itaweka kumbukumbu ya mashauri ya kupeleka marejesho ya mashauri katika Mahkama Kuu kama ambayo Jaji Mkuu atakavyoagiza mara kwa mara.

Mwenendo na utaratibu.

9.)1) Jaji Mkuu kwa kushauriana na Kadhi Mkuu anaweza kuweka kanuni za Mahkama kuhusiana na mwenendo na utaratibu wa kufuata katika Mahkama za Kadhi.

(2) Mpaka hapo Kanuni zitakavyotengenezwa chini ya kifungu cha (1) cha kifungu hiki na kwa vile kanuni hizo bado kutumika mwenendo na utaratibu katika Mahkama ya Kadhi utakuwa ni ule ule uliowekwa kutumika katika Mahkama za chini ya sheria ya Mwenendo wa Madai.

Rufaani
katika
Mahkama
za Kadhi.

10. (1) Mahkama ya Kadhi Mkuu haitokuwa na uwezo wa kusikiliza kesi za awali, lakini itakuwa ni Mahkama ya Rufaa tu kutokana na maamuzi ya Mahkama za Kadhi.

(2) Rufaa itakwenda Mahkama Kuu kutokana na hukumu ya Mahkama ya Kadhi Mkuu na rufaani hiyo itasikilizwa na Jaji wa Mahkama Kuu pamoja na Masheikh wanne ambao ni wataalamu wa dini ya Kiislamu (na ambao kwa pamoja humu watajulikana wajumbe) na kwamba uamuzi wa Mahkama Kuu kuhusu rufaa hiyo itazingatia wingi wa kura za wajumbe.

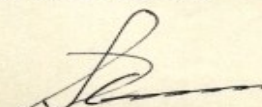
(3) Uamuzi wa Mahkama Kuu utakuwa wa mwisho kwa maswala ya Kiislamu kisheria na kimazingara (law and facts) na hayawezi tena kukatiwa rufaa kwenda katika Mahkama ya Rufaa.

Kinga za
Mahkadhi
na
kadhalika.

11. (1) Hakuna kadhi au mtu ye yote anaefanya shughuli za Mahkama ya Kadhi ataeshitakiwa katika kesi za hukukia kwa kitendo cho chote alichokifanya au alichoaamriwa kukifanya katika kutekeleza wajibu wake iwe katika mamlaka yake au vyenginevyo ikiwa wakati huo, na kwa nia njema alikuwa akiamini kwamba anao uwezo wa kufanya au kuamrisha kufanywa kwa kitendo hicho kinachodaiwa.

(2) Hakuna Fisa ye yote wa Mahkama yo yote ya Kadhi alieamrisha kutekeleza hati au amri halali zilizotolewa na Kadhi au mtu mwengine ye yote anaetimiza wajibu wake ataeshtakiwa kwa kosa la hukukia katika Mahkama yo yote kwa kutekeleza amri hizo ambazo anawajibu kuzitekeleza katika mamlaka ya mtu aliezitoa.

Imepitishwa katika Baraza la Wawakilishi tarehe
22 Januari, 1985.


(Iddi Pandu Hassan)
KATIBU,

BARAZA LA WAWAKILISHI,
ZANZIBAR.