

**THE KADHIS' COURTS
ACT NO. 3 OF 1985**

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ACT NO. 3 OF 1985

I ASSENT

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

1st February, 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.

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

Short title
and
commence-
ment.

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.

Interpreta-
tion.

"Constitution" means the Constitution of Zanzibar;

"Kadhi" 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 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 Kadhis Courts.

(2) There shall be a Chief Kadhis' Court for Zanzibar and a Kadhis' 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.

(5) Anyone 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 sector sects of Muslims as qualifies him, in the opinion of the Commission to be a Kadhi.

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

- (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' Courts include Chief Kadhi's Court.

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

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. Evidence.

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 Kadhis' Court shall be in accordance with those prescribed for subordinate courts by and under the Civil Procedure Decree.

Appeal from Kadhis' Court.

10.(1) The Chief Kadhis' Court shall not Kadhis' 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 judgment 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 hereinafter be referred to as members).

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

(3) The decision of the High Court on such appeal 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.

(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 the 22nd day of January, 1985.

(IDI PANDU HASSAN)
Clerk of the House of Representatives of Zanzibar