



The Structure, Jurisdiction and Composition of the Judiciary and Independent Tribunals as Contemplated under Article 1 (3) (c) of the Constitution of Kenya

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Abstract

At the core of the quest for a new constitution in Kenya was the need to re-structure the government and this included re-configuring of the disgraced Judiciary. There was a need to ensure sufficient independence for the courts. A significant step towards achievement of this objective is the delegation of sovereign power to the Judiciary and independent tribunals under Article 1 (3) (c) of the Constitution. The courts and the tribunals have been empowered to interpret the constitution and to make pronouncements on the constitutionality of acts of state organs as part of the system of devolved power in Kenya.

Subject Areas

Law

Keywords

Judiciary, Tribunals, Court, Devolved, Power

1. Introduction

The constitution describes the basic principles of the state, the structures and processes of government and the fundamental rights of citizens in a higher law that cannot be unilaterally changed by an ordinary legislative act [1]. Decided cases are laws based on judicial decisions. The Judiciary derives its mandate from the Constitution of Kenya, Article 159 [2]. Statutory provisions refer to laws and regulations that are enacted by the government and are binding on individuals and organizations for example the Penal Code [3]. The structure of the Judiciary means the hier-

archal arrangement of the Judiciary from the superior to the subordinate courts [4].

Article 1 of 2010 Constitution, states that, all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with the Constitution [5]. The people may exercise their sovereign power either directly or through their democratically elected representatives (Parliament and County Assemblies); national executive and the executive structures in the county governments; the Judiciary and independent tribunals.

Article 1 (3) (c) delegates power to the Judiciary and independent tribunals [6]. The Judiciary, comprising of courts and independent tribunals, is the main formal institution in Kenya that is charged with conflict management and the formal administration of justice [7]. Article 169 (1) lists the local tribunals among the Magistrates courts, the *Kadhis'* courts, the Courts Martial as subordinate courts in Kenya while Article 162. (1) lists the superior courts as the Supreme Court, the Court of Appeal, the High Court and the courts established under Article 162. (2) is namely the employment and labour relations, and the environment and the use and occupation of, and title to, land [8].

Article 159 (1) of the Constitution states that “Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this Constitution”. The Constitution 2010 recognises tribunals and places them under the Judiciary through the office of Registrar Tribunals established by the Judicial Service Commission [9].

Tribunals are quasi-judicial bodies established by different Acts of Parliament to handle sector specific disputes. They are mandated to resolve disputes in a fast, simple and speedy manner as they offer faster, more specialized, and less formal alternatives to the regular courts for certain issues [10]. A decision from a tribunal, can be appealed through a written memorandum within a specified timeframe, to the tribunal's registry or to the High Court, depending on the tribunal's act. Tribunals where appeals are allowed to the High Court, some are allowed only on questions of law, others on both questions of law and fact [11]. In some Tribunals, the decision of the High Court on appeal is final whilst in others further appeals to the Court of Appeal are allowed. The right of appeal is exercisable within different periods, some within 14 days, others within 28 days, others within 30 days, others within 60 days and others within 90 days.

2. The Judiciary

Chapter 10 of the constitution establishes the Judiciary as an arm of Government in which judicial power is rested [12]. Article 161 lists judicial offices and officers, the judges of the superior courts, magistrates, other judicial officers and staff.

3. Structure of the Judiciary and Its Jurisdiction

According to the Legal Information Institute (LII), jurisdiction is the power of a court to adjudicate cases and issue orders [13]. The courts in Kenya are classified as superior and subordinate courts.

3.1. Superior Courts in Kenya

These include the Supreme Court, Court of Appeal, High Court, Employment and Labour Relations Court and Environment and Land Court. Under Article 163 of the Kenyan Constitution the Supreme Court consists of the Chief Justice, who is the president of the court; the Deputy Chief Justice and five other judges. The Court has the authority of the first and final decision to disputes relating to Presidential elections for example Raila one [14]. It also hears appeals from the Court of Appeal for example in the same sex attempted non-governmental organization (NGO) registration case (NGLHRC) case.

Article 164 of the Kenyan Constitution establishes the Court of Appeal which consists of judges, being not fewer than twelve, as an Act of Parliament may prescribe. There is a president of the court who is elected by the judges of the Court of Appeal from among themselves. It has jurisdiction to hear appeals from the High Court and any other court or tribunal as prescribed by an Act of Parliament, for instance, Paul Wanyagah vs. Market Development Trust [15].

Article 165 of the Constitution establishes the High Court. It consists of the number of judges prescribed by an Act of Parliament, currently no more than 200 judges. There is a Principal Judge of the High Court, who is elected by the High Court judges from among themselves. For purposes of promoting effectiveness and efficiency in the administration of justice and promoting judicial performance, the Chief Justice may, where the workload and the number of judges in a station permit, establish any of the following divisions in the High Court-the Family and Children Division; the Commercial Division; the Admiralty Division; the Civil Division; the Criminal Division; the Constitutional and Human Rights Division; the Judicial Review Division; and any other division as the Chief Justice may, on the advice of the Principal Judge of the High Court, determine.

High Court has unlimited original jurisdiction to determine all criminal and civil matters. It interprets the Constitution under article 165(3)(d) [16] (for example the ruling on the election date for the Kenya's 2013 Elections) and hears cases concerning violation and infringement of the Bill of Rights. In addition, it handles appeals emanating from Subordinate Courts (for example, an Appeal against the judgment of Hon. C.O Nyawiri of Kilifi County Assembly). [17] and exercises supervisory jurisdiction over Subordinate Courts and over any person, body or authority exercising judicial or quasi-judicial function.

The courts of equal status to the High Court are the Environment and Land Court (see Act 19 of 2011) [18] as well as the Employment and Labour Relations Court (Industrial Court) under Article 162 (2) (a) of the Constitution of Kenya 2010 [19]. Environment court hear and determine disputes relating to the environment and the use and occupation of, and title to land (see the Kirima land case in Njiru within Nairobi's Embakasi region [20]). Industrial Court has original and appellate jurisdiction to hear and determine all disputes relating to employment and labour relations (see Kenya Medical, Pharmacists and Dentists Union (KMPDU) officials guilty of contempt for refusing to suspend their strike as ordered) [21].

3.2. Subordinate Courts

The subordinate courts are the Magistrates courts, Kadhis' courts, Courts-Martial, any other court or local tribunal as may be established by an Act of Parliament. A magistrate's court is constituted when presided over by a chief magistrate (proceedings of civil nature does not exceed 20 million shillings, a senior principal magistrate, proceedings of civil nature does not exceed 10 million shillings, a principal magistrate, proceedings of civil nature does not exceed 10 million shillings, a senior resident magistrate, proceedings of civil nature does not exceed 7 million shillings, or a resident magistrate, proceedings of civil nature does not exceed 5 million shillings (Magistrates' Courts Act) [22].

The Kadhis' court under Article 170 of the Constitution consists of a Chief Kadhi and such number, being not fewer than three, of other Kadhis as may be prescribed under an Act of Parliament. The jurisdiction of a Kadhis' court is limited to the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion and submit to the jurisdiction of the Kadhi's courts. The Court Martial hears cases involving people serving in the Military under the Kenya Defence Forces Act [23]. In the case of any proceedings, the Court Martial shall consist of Judge Advocate, at least five other members, appointed by the Defence Court-martial Administrator if an officer is being tried and not less than three other members in any other case.

Tribunals are bodies established by Acts of Parliament to exercise judicial or quasi-judicial functions [24]. They are independent special bodies or committees outside traditional courts that are appointed to deal with particular problems such as taxation, transport licensing, competition, copyright etc. They supplement ordinary courts in the administration of justice. However, they do not have penal jurisdiction. Out of the over 50 tribunals in Kenya, 20 have been transited to the Judiciary in compliance with the Constitution and are now coordinated through the office of Registrar of Tribunals [9].

The proposed Tribunals Bill Section aims to create a unified framework for the tribunals. In section 27. (1), it proposes that a person aggrieved by a decision of a Tribunal may appeal to the High Court or Court of equal status, the case may be, within thirty days from the date of such decision [25]. According to section 27. (2), the Court in subsection (1) shall within one year of the filing of the appeal, dispense with any appeal filed under this section and the decision of the Court shall be final.

4. Conclusion

Kenya has a robust judicial system that is intended to be the custodian of justice in Kenya. Its primary role is to exercise judicial authority given to it, by the people of Kenya in line with the Constitution and other laws. Dispute settlement through the Judiciary can take years before the parties get justice. Litigation can be slow and too expensive. Tribunals established under various Acts of Parliament play an

important role in the administration of justice. There are many cases that are piling up in the courts even as some tribunals remain dormant. Other tribunals have more outstanding cases. The recent clashes between the Judiciary and the Executive as well as ongoing allegations of bribery and political bias have led to sustained petitions to remove judicial officers. Nominees to the tribunals and the courts are being confirmed at low rates, with a delay between nomination and confirmation of all.

Conflicts of Interest

The author declares no conflicts of interest.

References

- [1] Bulmer, E.W. (2014) What Is a Constitution? Principles and Concepts. The International Institute for Democracy and Electoral Assistance. International IDEA.
- [2] Republic of Kenya (2010) Republic of Kenya. Constitution of Kenya. Republic of Kenya.
- [3] Republic of Kenya (2015) Laws of Kenya: The Magistrates' Courts Act. Republic of Kenya.
- [4] Clegg, M., Ellena, K., Ennis, D. and Vickery, C. (2016) The Hierarchy of Laws: Understanding and Implementing the Legal Frameworks that Govern Elections. International Foundation for Electoral Systems.
- [5] Republic of Kenya (2010) Constitution 2010. Republic of Kenya.
- [6] The Kenya Law Reform Commission (KLRC) (2025) Constitution of Kenya. KLRC.
- [7] Muigua, K. (2021) Exploring Conflict Management and the Environment: The Kenyan Journey. *Journal of Conflict Management and Sustainable Development*, 7, 1-56. <https://doi.org/10.2139/ssrn.3908455>
- [8] Republic of Kenya (2014) Employment and Labour Relations Court Act Chapter 234B. The National Council for Law Reporting.
- [9] Judiciary of Kenya (2019) State of the Judiciary and the Administration of Justice Annual Report, 2017-2018. The Judiciary of Kenya.
- [10] Jerameel, K. (2020) Challenges Affecting Tribunals in Dispensing Justice: A Kenyan Discourse. <https://ssrn.com/abstract=3751271>
- [11] Dache, J. (2025) Reforming Tribunals in Kenya,.The Kenya Law Reform Commission (KLRC).
- [12] Ochieng, W.K. (2016) Judicial-Executive Relations in Kenya Post-2010. In: Fombad, C.M. (Ed.), *Separation of Powers in African Constitutionalism Stellenbosch Handbooks (African Constitutional Law)*, Oxford University Press.
- [13] LII: Jurisdiction. Cornell Law School. <https://www.law.cornell.edu/wex/jurisdiction>
- [14] Republic of Kenya (2022) Presidential Election Petition NOS. E001, E002, E003, E004, E007 & E008 of 2022 (Consolidated). <http://kenyalaw.org/caselaw/cases/view/240578/>
- [15] Republic of Kenya (2017) Paul Wanyangah v Market Development Trust t/a Kenya Markets Trust [2017] eKLR.
- [16] Electoral Law and Governance Institute for Africa (ELGIA) (2020) Standing the Test of Time: The Judiciary's Role in the 2013-2017 Electoral Cycle. ELGIA.

- [17] Republic of Kenya (2018) In the High Court of Kenya at Malindi Election Petition Appeal No. 3 of 2018.
- [18] Republic of Kenya (2012) Environment and Land Court Act: Chapter 2A. National Council for Law Reporting.
- [19] Republic of Kenya (2010) The Constitution of Kenya 2010. National Council for Law Reporting.
- [20] The Star (2023) Records Show Njiru Land Belongs to Kirima family—CS Wahome. The Star.
- [21] Kakah, M. (2016) KMPDU Officials Found Guilty of Disobeying Labour Court Order. Daily Nation.
- [22] Republic of Kenya (2012) Magistrates' Courts Act Chapter 10.
- [23] Republic of Kenya (2012) Kenya Defense Forces Act No 25 of 2012.
- [24] Blumer, E. (2019) Independent Regulatory and Oversight (Fourth-Branch) Institutions: International IDEA Constitution-Building Primer 19. International Institute for Democracy and Electoral Assistance. <https://doi.org/10.31752/idea.2019.27>
- [25] Republic of Kenya (2023) National Assembly Bills 2023. *The Kenya Gazette Supplement*, No. 131, 1331-1418.