



LAWS OF KENYA

**MOHAMMEDAN MARRIAGE, DIVORCE AND
SUCCESSION ACT**

CHAPTER 156

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CHAPTER 156

MOHAMMEDAN MARRIAGE, DIVORCE AND SUCCESSION ACT

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CHAPTER 156

MOHAMMEDAN MARRIAGE, DIVORCE AND SUCCESSION ACT

*[Date of commencement: 29th December, 1920.]***An Act to amend the law relating to divorce and matrimonial causes in the cases of Mohammedan marriages, and relating to intestate succession in certain cases**

[Act No. 34 of 1920, Cap. 148 of (1948), L.N. 2/1964, Act No. 14 of 1972.]

1. Short title

This Act may be cited as the Mohammedan Marriage, Divorce and Succession Act.

[L.N. 2/1964.]

2. Interpretation

In this Act, except where the context otherwise requires—

“**matrimonial cause or suit**” means any cause or suit relative to the validity of a marriage according to Mohammedan law, and any cause or suit relative to or claiming any species of relief, whether by way of divorce or otherwise, in respect of Mohammedan marriages, recognized or given by Mohammedan law;

“**Mohammedan marriage**” means any marriage contracted in accordance with and recognized as valid by Mohammedan law.

[L.N. 2/1964.]

3. Mohammedan marriage and divorce

(1) Mohammedan marriages, whether contracted before or after the commencement of this Act, shall be deemed to be valid marriages throughout Kenya, and the parties thereto shall, subject to the provisions of this Act, be entitled to any relief by way of divorce or otherwise which can be had, granted or obtained according to Mohammedan law, and such law shall apply accordingly.

(2) The Supreme Court and every judge thereof shall, subject to the provisions of this Act, have jurisdiction to hear and determine all matrimonial causes and suits arising out of Mohammedan marriages, wherever contracted, at the suit of either party to such marriages, whether such marriages are contracted before or after the commencement of this Act:

Provided that the Supreme Court shall not exercise any jurisdiction as is hereby conferred unless the petitioner is resident in Kenya at the time of the institution of such matrimonial cause or suit.

(3) In all such matrimonial causes or suits as are mentioned in subsection (1) of this section, the Supreme Court shall exercise its jurisdiction and act and give relief upon the principles of Mohammedan law applicable to the same respectively or otherwise.

(4) In any such matrimonial causes or suits as aforesaid, the onus of proof of the principles of Mohammedan law shall be on the parties alleging the same respectively.

(5) Nothing herein contained shall abridge, prejudice or in anywise affect the jurisdiction of any court of Kadhi as by law established.

(6) Nothing herein contained shall affect the rights or obligations of any person who at the time of entering into a Mohammedan marriage was already married under any law or custom relating to marriages other than Mohammedan marriages in force in, or recognized by the courts of Kenya.

[L.N. 2/1964.]

4. Deleted by Act No. 14 of 1972, Sch.

5. Marriages under Marriage Act

Whoever contracts a Mohammedan marriage being at the time married under the Marriage Act (Cap. 150) or in accordance with the law of any Christian country, and without having first obtained a lawful divorce, shall be guilty of an offence and liable to imprisonment for a term not exceeding five years, and in such a case Mohammedan law shall have no application.

[L.N. 2/1964.]

6. Marriages under native law and custom

Whoever contracts a Mohammedan marriage being at any time married in accordance with native law and custom to any person other than the person with whom such marriage is contracted, and without having first obtained a divorce in accordance with native law and custom, shall be guilty of an offence and liable to imprisonment for a term not exceeding five years, and in such a case Mohammedan law shall have no application.

7. Rules of court

The Chief Justice shall have power to make rules of court for the better carrying into effect of the provisions of this Act; and, in particular, for regulating the exercise of the jurisdiction by this Act conferred; assimilating, if he deems fit, as far as may be, the existing practice under the Matrimonial Causes Act (Cap. 152) to all or any of the matrimonial causes or suits under this Act.

[L.N. 2/1964.]
