



LAWS OF KENYA

PENAL CODE

CHAPTER 63

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CHAPTER 63

PENAL CODE

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CHAPTER 63

PENAL CODE

[Date of commencement: 1st August, 1930.]

An Act of Parliament to establish a code of criminal law

[Cap. 24 (1948), Act No. 81 of 1948, Act No. 28 of 1950, Act No. 50 of 1950, Act No. 42 of 1951, Act No. 7 of 1952, Act No. 40 of 1952, Act No. 53 of 1952, Act No. 12 of 1955, Act No. 20 of 1955, Act No. 52 of 1955, Act No. 33 of 1956, L.N. 299/1956, L.N. 300/1956, Act No. 26 of 1957, Act No. 32 of 1958, Act No. 22 of 1959, Act No. 45 of 1960, Act No. 54 of 1960, L.N. 172/1960, L.N. 173/1960, Act No. 11 of 1961, Act No. 14 of 1961, Act No. 25 of 1961, L.N. 551/1961, Act No. 27 of 1962, Act No. 36 of 1962, Act No. 44 of 1962, Act No. 48 of 1962, L.N. 559/1962, Act No. 8 of 1963, Act No. 46 of 1963, L.N. 427/1963, L.N. 761/1963, Act No. 1 of 1964, Act No. 19 of 1964, Act No. 37 of 1964, L.N. 124/1964, L.N. 236/1964, Act No. 3 of 1965, Act No. 8 of 1965, Act No. 9 of 1966, Act No. 15 of 1966, Act No. 21 of 1966, Act No. 24 of 1967, Act No. 4 of 1968, Act No. 8 of 1968, Act No. 24 of 1968, Act No. 38 of 1968, Act No. 61 of 1968, Act No. 3 of 1969, Act No. 10 of 1969, Act No. 25 of 1971, Act No. 1 of 1973, Act No. 4 of 1973, Act No. 9 of 1976, Act No. 16 of 1977, Act No. 13 of 1978, Act No. 13 of 1982, Act No. 11 of 1983, Act No. 19 of 1984, Act No. 18 of 1986, Act No. 22 of 1987, Act No. 5 of 1989, Act No. 21 of 1990, Act No. 14 of 1991, Act No. 11 of 1993, Act No. 10 of 1997, Act No. 10 of 1998, Act No. 5 of 2003, Act No. 4 of 2004, Act No. 3 of 2006, Act No. 10 of 2006, Act No. 7 of 2007, Act No. 1 of 2009, Act No. 8 of 2010, Act No. 12 of 2012.]

PART I – GENERAL PROVISIONS

CHAPTER I – PRELIMINARY

1. Short title

This Act may be cited as the Penal Code and is hereinafter referred to as “this Code”.

2. Saving

Except as hereinafter expressly provided nothing in this Code shall affect—

- (a) the liability, trial or punishment of a person for an offence against the common law or against any other law in force in Kenya other than this Code; or
- (b) the liability of a person to be tried or punished under any law in force in Kenya relating to the jurisdiction of the courts of Kenya for an offence in respect of an act done beyond the ordinary jurisdiction of such courts; or
- (c) the power of any court to punish a person for contempt of such court; or
- (d) the liability or trial of a person, or the punishment of a person under any sentence passed or to be passed, in respect of any act done or commenced before the commencement of this Code; or
- (e) any power of the President to grant any pardon or to remit or commute in whole or in part or to respite the execution of any sentence passed or to be passed; or
- (f) any written law, Articles or Standing Orders for the time being in force for the government of the disciplined forces or the police force:

Provided that, if a person does an act which is punishable under this Code and is also punishable under another written law of any of the kinds mentioned in this section, he shall not be punished for that act both under that written law and also under this Code.

[L.N. 124/1964, Act No. 24 of 1967, Sch.]

CHAPTER II – INTERPRETATION

(1) the liability, trial or punishment of a person for an offence against the Common Law or against any other law in force in the Colony other than this Code ;
or

(2) the liability of a person to be tried or punished for an offence under the provisions of any law in force in the Colony relating to the jurisdiction of the Colonial courts in respect of acts done beyond the ordinary jurisdiction of such courts ; or

(3) the power of any court to punish a person for contempt of such court ; or

(4) the liability or trial of a person, or the punishment of a person under any sentence passed or to be passed, in respect of any act done or commenced before the commencement of this Code ; or

(5) any power of His Majesty, or of the Governor as the representative of His Majesty, to grant any pardon to remit or commute in whole or in part or to respite the execution of any sentence passed or to be passed; or

(6) any of the Statutes, Ordinances, Regulations or Articles for the time being in force for the government of His Majesty's military or naval or air forces, or the military or police forces of the Colony :

Provided that if a person does an act which is punishable under this Code and is also punishable under another Ordinance or Statute of any of the kinds mentioned in this section, he shall not be punished for that act both under that Ordinance or Statute and also under this Code.

3. Deleted by Act No 5 of 2003, s. 2.

4. Interpretation

In this Code, unless the context otherwise requires—

“**Act**” includes any order, rules or regulations made under any Act;

“**court**” means a court of competent jurisdiction;

“**dangerous harm**” means harm endangering life;

“**disciplined forces**” means the armed forces or the National Youth Service;

“**dwelling-house**” includes any building or structure or part of a building or structure which is for the time being kept by the owner or occupier for the residence therein of himself, his family or his servants or any of them, and it is immaterial that it is from time to time uninhabited; a building or structure adjacent to or occupied with a dwelling-house is deemed to be part of the dwelling-house if there is a communication between such building or structure and the dwelling-house, either immediate or by means of a covered and enclosed passage leading from the one to the other, but not otherwise;

“**electronic record**” means a record generated in digital form by an information system which can be transmitted within an information system or from one information system to another, and stored in an information system or other medium;

“**felony**” means an offence which is declared by law to be a felony or, if not declared to be a misdemeanour, is punishable, without proof of previous conviction, with death, or with imprisonment for three years or more;

“**Government**” *deleted by Act No. 24 of 1967, Sch;*

“**Government of kenya**” *deleted by Act No. 24 of 1967, Sch;*

“**grievous harm**” means any harm which amounts to a maim or dangerous harm, or seriously or permanently injures health, or which is likely so to injure health, or which extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, membrane or sense;

“**harm**” means any bodily hurt, disease or disorder whether permanent or temporary;

“**judicial proceeding**” includes any proceeding had or taken in or before any court, tribunal, commission of inquiry or person in which evidence may be taken on oath;

“**knowingly**”, used in connexion with any term denoting uttering or using, implies knowledge of the character of the thing uttered or used;

“**local authority**” *deleted by Act No. 24 of 1967, Sch;*

“**maim**” means the destruction or permanent disabling of any external or internal organ, member or sense;

“**misdemeanour**” means any offence which is not a felony;

“**money**” includes bank notes, currency notes, bank drafts, cheques and any other orders, warrants or requests for the payment of money;

“**night**” or “**night-time**” means the interval between half-past six o’clock in the evening and half-past six o’clock in the morning;

“**oath**” includes affirmation or declaration;

“**offence**” means an act, attempt or omission punishable by law;

“**person employed in the public service**” means any person holding, or performing with authority the duties of, any of the following offices (whether as principal or as deputy, and whether such service is permanent or temporary, paid or unpaid)—

- (a) any office the holder of which is appointed or removed by the President or by any public commission;
- (b) any office the holder of which is appointed, elected or otherwise selected in pursuance of some written law;
- (c) any office the holder of which is appointed by any person or persons holding, or performing with authority the duties of, an office of one of the kinds specified in paragraph (a) or paragraph (b),

and, without prejudice to the generality of the foregoing, includes—

- (i) an arbitrator or umpire in any proceeding or matter submitted to arbitration by order or with the sanction of any court or in pursuance of some written law;
- (ii) every member of a Commission of Inquiry or of a tribunal appointed or selected in pursuance of some written law;
- (iii) any person in the service of the disciplined forces;
- (iv) any person in the employment of the Government, the Community or any local authority;
- (v) any person employed to execute any process of a court;
- (vi) any person acting as a minister of religion, in respect of the exercise by him of any functions relating to the notification of intending marriage, or the solemnization of marriage, or the making or keeping of any register or certificate of marriage, birth, baptism, death or burial, but not in any other respect;

“**police force**” includes the Force defined in section 2 of the Police Act (Cap. 84), and the Administration Police Force established under the Administration Police Act (Cap. 85); and “**police officer**” shall be construed accordingly;

“possession”—

- (a) **“be in possession of”** or **“have in possession”** includes not only having in one’s own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to or occupied by oneself or not) for the use or benefit of oneself or of any other person;
- (b) if there are two or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them;

“premises” includes any land, any building and any other place whatsoever;

“print” means to produce or reproduce words or pictures in visible form by printing, writing, typewriting, duplicating, cyclostyling, lithography, photography or any other means of representing the same in visible form;

“prohibited publication” means any publication the importation of which has been prohibited under section 52, and any part, copy or reproduction of any such publication;

“property” includes any description of movable or immovable property, money, debts and legacies, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods, and also includes not only such property as has been originally in the possession or under the control of any person, but also any property into or for which the same has been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise;

“public” refers, not only to all persons within Kenya, but also to the persons inhabiting or using any particular place, or any number of such persons, and also to such indeterminate persons as may happen to be affected by the conduct in respect to which such expression is used;

“public place” or **“public premises”** includes any public way and any building, place or conveyance to which, for the time being, the public are entitled or permitted to have access either without any condition or upon condition of making any payment, and any building or place which is for the time being used for any public or religious meetings or assembly or as an open court;

“public way” includes any highway, market place, square, street, bridge or other way which is lawfully used by the public;

“publicly”, when applied to acts done, means either—

- (a) that they are so done in any public place as to be seen by any person whether such person be or be not in a public place; or
- (b) that they are so done in any place not being a public place as to be likely to be seen by any person in a public place;

“statute” *deleted by Act No. 24 of 1967, Sch.*

“**unlawful society**” means any unlawful society within the meaning of section 4(1) of the Societies Act (Cap. 108);

“**utter**” means and includes using or dealing with and attempting to use or deal with and attempting to induce any person to use, deal with, or act upon the thing in question;

“**valuable security**” includes any document which is the property of any person, and which is evidence of the ownership of any property or of the right to recover or receive any property;

“**vessel**” includes any ship, a boat and every other kind of vessel used in navigation either on the sea or in inland waters and includes aircraft;

“**wound**” means any incision or puncture which divides or pierces any exterior membrane of the body, and any membrane is exterior for the purpose of this definition which can be touched without dividing or piercing any other membrane;

“**written law**” means the Constitution, any Act of Parliament of Kenya, or any applied Act, and includes any orders, rules, regulations, by-laws or other subsidiary legislation made under any written law.

[Act No. 42 of 1951, s. 2, Act No. 54 of 1960, s. 2, L.N.427/1963, L.N.124/1964, Act No. 24 of 1967, Sch., Act No. 1 of 2009, Sixth Sch.]

CHAPTER III – TERRITORIAL APPLICATION OF CODE

5. Jurisdiction of local courts

The jurisdiction of the courts of Kenya for the purposes of this Code extends to every place within Kenya, including territorial waters.

[Act No. 24 of 1967, Sch.]

6. Offences committed partly within and partly beyond the jurisdiction

When an act which, if wholly done within the jurisdiction of the court, would be an offence against this Code, is done partly within and partly beyond the jurisdiction, every person who within the jurisdiction does or makes any part of such act may be tried and punished under this Code in the same manner as if such act had been done wholly within the jurisdiction.

CHAPTER IV – GENERAL RULES AS TO CRIMINAL RESPONSIBILITY

7. Ignorance of law

Ignorance of the law does not afford any excuse for any act or omission which would otherwise constitute an offence unless knowledge of the law by the offender is expressly declared to be an element of the offence.

8. *Bona fide* claim of right

A person is not criminally responsible in respect of an offence relating to property, if the act done or omitted to be done by him with respect to the property was done in the exercise of an honest claim of right and without intention to defraud.

9. Intention and motive

(1) Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident.

(2) Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission is immaterial.

(3) Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far as regards criminal responsibility.

10. Mistake of fact

(1) A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist.

(2) The operation of this section may be excluded by the express or implied provisions of the law relating to the subject.

11. Presumption of sanity

Every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved.

12. Insanity

A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is through any disease affecting his mind incapable of understanding what he is doing, or of knowing that he ought not to do the act or make the omission; but a person may be criminally responsible for an act or omission, although his mind is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects above mentioned in reference to that act or omission.

13. Intoxication

(1) Save as provided in this section, intoxication shall not constitute a defence to any criminal charge.

(2) Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and—

- (a) the state of intoxication was caused without his consent by the malicious or negligent act of another person; or
- (b) the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission.

(3) Where the defence under subsection (2) is established, then in a case falling under paragraph (a) thereof the accused shall be discharged, and in a case falling under paragraph (b) the provisions of this Code and of the Criminal Procedure Code (Cap. 75) relating to insanity shall apply.

(4) Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence.

(5) For the purpose of this section, "intoxication" includes a state produced by narcotics or drugs.

14. Immature age

(1) A person under the age of eight years is not criminally responsible for any act or omission.

(2) A person under the age of twelve years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.

(3) A male person under the age of twelve years is presumed to be incapable of having carnal knowledge.

[Act No. 8 of 1963, s. 81.]

15. Judicial officers

Except as expressly provided by this Code, a judicial officer is not criminally responsible for anything done or omitted to be done by him in the exercise of his judicial functions, although the act done is in excess of his judicial authority or although he is bound to do the act omitted to be done.

16. Compulsion

A person is not criminally responsible for an offence if it is committed by two or more offenders, and if the act is done or omitted only because during the whole of the time in which it is being done or omitted the person is compelled to do or omit to do the act by threats on the part of the other offender or offenders instantly to kill him or do him grievous bodily harm if he refuses; but threats of future injury do not excuse any offence, nor do any threats excuse the causing of, or the attempt to cause, death.

[Act No. 54 of 1960, s. 3, Act No. 8 of 1963, s. 81, Act No. 19 of 1964, s. 2.]

17. Defence of person or property

Subject to any express provisions in this Code or any other law in operation in Kenya, criminal responsibility for the use of force in the defence of person or property shall be determined according to the principles of English Common Law.

18. Use of force in effecting arrest

Where any person is charged with a criminal offence arising out of the lawful arrest, or attempted arrest, by him of a person who forcibly resists such arrest or attempts to evade being arrested, the court shall, in considering whether the means used were necessary, or the degree of force used was reasonable, for the

apprehension of such person, have regard to the gravity of the offence which had been or was being committed by such person and the circumstances in which such offence had been or was being committed by such person.

19. Compulsion by husband

A married woman is not free from criminal responsibility for doing or omitting to do an act merely because the act or omission takes place in the presence of her husband; but, on a charge against a wife for any offence other than treason or murder, it shall be a good defence to prove that the offence was committed in the presence of, and under the coercion of, the husband.

CHAPTER V – PARTIES TO OFFENCES

20. Principal offenders

(1) When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say—

- (a) every person who actually does the act or makes the omission which constitutes the offence;
- (b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;
- (c) every person who aids or abets another person in committing the offence;
- (d) any person who counsels or procures any other person to commit the offence,

and in the last-mentioned case he may be charged either with committing the offence or with counselling or procuring its commission.

(2) A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.

(3) Any person who procures another to do or omit to do any act of such a nature that, if he had himself done the act or made the omission, the act or omission would have constituted an offence on his part is guilty of an offence of the same kind, and is liable to the same punishment, as if he had himself done the act or made the omission; and he may be charged with doing the act or making the omission.

21. Joint offenders in prosecution of common purpose

When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.

22. Counselling another to commit offence

(1) When a person counsels another to commit an offence, and an offence is actually committed after such counsel by the person to whom it is given, it is immaterial whether the offence actually committed is the same as that counselled

or a different one, or whether the offence is committed in the way counselled or in a different way, provided in either case that the facts constituting the offence actually committed are a probable consequence of carrying out the counsel.

(2) In either case the person who gave the counsel is deemed to have counselled the other person to commit the offence actually committed by him.

23. Offences by corporations, societies, etc.

Where an offence is committed by any company or other body corporate, or by any society, association or body of persons, every person charged with, or concerned or acting in, the control or management of the affairs or activities of such company, body corporate, society, association or body of persons shall be guilty of that offence and liable to be punished accordingly, unless it is proved by such person that, through no act or omission on his part, he was not aware that the offence was being or was intended or about to be committed, or that he took all reasonable steps to prevent its commission.

[Act No. 54 of 1960, s. 5.]

CHAPTER VI – PUNISHMENTS

24. Different kinds of punishments

The following punishments may be inflicted by a court—

- (a) death;
- (b) imprisonment or, where the court so determines under the Community Service Orders Act, 1998, community service under a community service order;
- (c) detention under the Detention Camps Act;
- (d) *deleted by Act No. 5 of 2003, s. 3;*
- (e) fine;
- (f) forfeiture;
- (g) payment of compensation;
- (h) finding security to keep the peace and be of good behaviour;
- (i) any other punishment provided by this Code or by any other Act.

[Act No. 10 of 1998, s. 14, Act No. 5 of 2003, s. 3.]

25. Sentence of death

(1) Where any person is sentenced to death, the form of the sentence shall be to the effect only that he is to suffer death in the manner authorized by law.

(2) Sentence of death shall not be pronounced on or recorded against any person convicted of an offence if it appears to the court that at the time when the offence was committed he was under the age of eighteen years, but in lieu thereof the court shall sentence such person to be detained during the President's pleasure, and if so sentenced he shall be liable to be detained in such place and under such conditions as the President may direct, and whilst so detained shall be deemed to be in legal custody.

(3) When a person has been sentenced to be detained during the President's pleasure under subsection (2), the presiding judge shall forward to the President a copy of the notes of evidence taken on the trial, with a report in writing signed by him containing any recommendation or observations on the case he may think fit to make.

[Act No. 53 of 1952, s. 2, Act No. 36 of 1962, Sch.,
L.N. 124/1964, Act No. 21 of 1966, Second Sch.]

26. Imprisonment

(1) A sentence of imprisonment for any offence shall be to imprisonment or to imprisonment with hard labour as may be required or permitted by the law under which the offence is punishable.

(2) Save as may be expressly provided by the law under which the offence concerned is punishable, a person liable to imprisonment for life or any other period may be sentenced to any shorter term.

(3) A person liable to imprisonment for an offence may be sentenced to pay a fine in addition to or in substitution for imprisonment:

Provided that—

- (i) where the law concerned provides for a minimum sentence of imprisonment, a fine shall not be substituted for imprisonment;
- (ii) *deleted by Act No. 5 of 2003, s. 4.*

[Act No. 3 of 1969, s. 2, Act No. 5 of 2003, s. 4.]

26A. Recommendation for removal from Kenya

Where a person who is not a citizen of Kenya is convicted of an offence punishable with imprisonment for a term not exceeding twelve months the court by which he is convicted, or any court to which his case is brought by way of appeal against conviction or sentence may, by directions to the Commissioner of Police and the Commissioner of Prisons (including directions on how the order shall be carried out) order that the person be removed from and remain out of Kenya either immediately or on completion of any sentence of imprisonment imposed; but where the offence for which the person is convicted is punishable with imprisonment for a term exceeding twelve months, the court shall, where it is satisfied that the person may be removed from Kenya, recommend to the Minister for the time being responsible for immigration that an order for removal from Kenya be made in accordance with section 8 of the Immigration Act (Cap. 172).

[Act No. 24 of 1967, Sch., Act No. 19 of 1984, Sch.]

27. *Deleted by Act No. 5 of 2003, s. 5.*

[Act No. 3 of 1969, s. 3, Act No. 5 of 2003, s. 5.]

28. Fines

(1) Where a fine is imposed under any law, then in the absence of express provisions relating to the fine in that law the following provisions shall apply—

- (a) where no sum is expressed to which the fine may extend, the amount of the fine which may be imposed is unlimited, but shall not be excessive;
- (b) in the case of an offence punishable with a fine or a term of imprisonment, the imposition of a fine or a term of imprisonment shall be a matter for the discretion of the court;

- (c) in the case of an offence punishable with imprisonment as well as a fine in which the offender is sentenced to a fine with or without imprisonment, and in every case of an offence punishable with fine only in which the offender is sentenced to a fine, the court passing sentence may, in its discretion—
 - (i) direct by its sentence that in default of payment of the fine the offender shall suffer imprisonment for a certain term, which imprisonment shall be in addition to any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of sentence; and also
 - (ii) issue a warrant for the levy of the amount on the immovable and movable property of the offender by distress and sale under warrant:

Provided that if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no court shall issue a distress warrant unless for special reasons to be recorded in writing it considers it necessary to do so.

(2) In the absence of express provisions in any written law relating thereto, the term of imprisonment or detention under the Detention Camps Act (Cap. 91) ordered by a court in respect of the non-payment of any sum adjudged to be paid for costs under section 32 or compensation under section 31 or in respect of the non-payment of a fine or of any sum adjudged to be paid under the provisions of any written law shall be such term as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any such case the maximum fixed by the following scale—

Amount	Maximum period
Not exceeding Sh. 500	14 days
Exceeding Sh. 500 but not exceeding Sh. 2,500	1 month
Exceeding Sh. 2,500 but not exceeding Sh. 15,000	3 months
Exceeding Sh. 15,000 but not exceeding Sh.50,000	6 months
Exceeding Sh. 50,000	12 months

(3) The imprisonment or detention which is imposed in default of payment of a fine shall terminate whenever the fine is either paid or levied by process of law.

[Act No. 24 of 1967, Sch., Act No. 11 of 1983, Sch., Act No. 5 of 2003, s. 6.]

29. Forfeiture

(1) When any person is convicted of an offence under any of the following sections, namely, sections 118 and 119, the court may, in addition to or in lieu of any penalty which may be imposed, order the forfeiture of any property which has passed in connexion with the commission of the offence or, if the property cannot be forfeited or cannot be found, of such sum as the court shall assess as the value of the property; and any property or sum so forfeited shall be dealt with in such manner as the Attorney-General may direct.

(2) Payment of any sum so ordered to be forfeited may be enforced in the same manner and subject to the same incidents as in the case of the payment of a fine.

[Act No. 33 of 1956, s. 13, L.N. 299/1956, L.N. 172/1960, Act No. 24 of 1967, Sch.]

30. Suspension or forfeiture of right to carry on business

(1) Where a person is convicted of any offence mentioned in Chapter XXXI and the offence arose out of, or was committed in the course of, any trade or business, whether carried on by such person or not, the court by which the conviction is recorded may, in addition to any other penalty which it may impose, make an order, having effect for such period as the court may think fit, prohibiting such person from carrying on, or being concerned or employed, directly or indirectly, in carrying on, any such trade or business or any branch of any such trade or business of the same or similar character.

(2) Any person who fails to comply with an order made under subsection (1) is guilty of an offence and is liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding six months or to both.

[Act No. 40 of 1952, s. 2.]

31. Compensation

Any person who is convicted of an offence may be adjudged to make compensation to any person injured by his offence, and the compensation may be either in addition to or in substitution for any other punishment.

32. Costs

Subject to the limitations imposed by section 171 of the Criminal Procedure Code (Cap. 75), a court may order any person convicted of an offence to pay the costs of and incidental to the prosecution or any part thereof.

33. Security for keeping the peace

A person convicted of an offence not punishable with death may, instead of, or in addition to, any punishment to which he is liable, be ordered to enter into his own recognizance, with or without sureties, in such amount as the court thinks fit, conditioned that he shall keep the peace and be of good behaviour for a time to be fixed by the court, and may be ordered to be imprisoned until such recognizance, with sureties, if so directed, is entered into; but so that the imprisonment for not entering into the recognizance shall not extend for a term longer than one year, and shall not, together with the fixed term of imprisonment, if any, extend for a term longer than the longest term for which he might be sentenced to be imprisoned without fine.

34. Recognizances

(1) If at any time the court which convicted an offender is satisfied that he has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(2) An offender when apprehended on any such warrant shall be brought forthwith before the court by which the warrant was issued, and the court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned for his appearing for hearing or sentence; and the court may, after hearing the case, pass sentence.

(3) The provisions of sections 128, 129 and 131 of the Criminal Procedure Code (Cap. 75) shall apply *mutatis mutandis* to recognizances taken under section 33 of this Code.

[Act No. 22 of 1959, s. 30(2).]

35. Absolute and conditional discharge

(1) Where a court by or before which a person is convicted of an offence is of opinion, having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order under the Probation of Offenders Act (Cap. 64) is not appropriate, the court may make an order discharging him absolutely, or, if the court thinks fit, discharging him subject to the condition that he commits no offence during such period, not exceeding twelve months from the date of the order, as may be specified therein.

(2) Before making an order discharging a person subject to the condition referred to in subsection (1), the court shall explain to the offender in ordinary language that if he commits another offence during the period of conditional discharge he shall be liable to be sentenced for the original offence.

(3) Where an order discharging an offender under this section is made, the court may order him to pay the whole, or any part, of the costs of and incidental to the prosecution, and of any compensation adjudged under section 31.

[Act No. 54 of 1960, s. 8.]

36. General punishment for misdemeanours

When in this Code no punishment is specially provided for any misdemeanour, it shall be punishable with imprisonment for a term not exceeding two years or with a fine, or with both.

37. Sentences when cumulative

Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence, other than a sentence of death, which is passed upon him under the subsequent conviction shall be executed after the expiration of the former sentence, unless the court directs that it shall be executed concurrently with the former sentence or any part thereof:

Provided that it shall not be lawful for a court to direct that a sentence of imprisonment in default of payment of a fine shall be executed concurrently with a former sentence under subparagraph (i) of paragraph (c) of subsection (1) of section 28 or of any part thereof.

[Act No. 5 of 2003, s. 7.]

38. Sentence on escaped convict

When sentence is passed under this Code on an escaped convict, that sentence

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- (a) if of death, or fine, shall, subject to the provisions of this Code, take effect immediately;
 - (b) if of imprisonment, shall run consecutively or concurrently, as the court shall order, with the unexpired portion of the sentence which the convict was undergoing when he escaped.

[Act No. 5 of 2003, s. 8.]

39. Cancellation or suspension of certificate of competency

(1) Where any person has been convicted under this Code of an offence connected with the driving of any vehicle in respect of which a certificate of competency is required, the court before which the person is convicted may in addition to or in substitution for any other punishment—

- (a) if the person convicted holds a certificate of competency, suspend the certificate for such time as the court thinks fit, or cancel the certificate and declare the person convicted disqualified for obtaining another certificate either permanently or for a stated period, and shall cause particulars of the conviction and of any order of the court made under this section to be endorsed upon the certificate, and shall also cause a copy of these particulars and of the order to be sent to the Commissioner of Police, who shall endorse them on the duplicate certificate in his custody; or
- (b) if the person convicted does not hold a certificate of competency, declare him disqualified for obtaining such a certificate for such time as the court thinks fit.

(2) Any person so convicted as aforesaid shall, if he holds a certificate of competency, produce the certificate, within such reasonable time as the court may direct, for the purpose of the making of the endorsement referred to in subsection (1), and a person who fails so to produce the certificate is guilty of a misdemeanour and is liable to a fine not exceeding six hundred shillings or to imprisonment for a term not exceeding six months.

(3) A certificate of competency which has been suspended by the court under this section shall, during the term of the suspension, be of no effect, and a person whose certificate is suspended or who is declared by the court to be disqualified for obtaining a certificate of competency shall, during the period of the suspension or disqualification, as the case may be, be disqualified for obtaining such a certificate.

(4) Any person who is, by virtue of an order of the court under this section, disqualified for obtaining a certificate of competency may, within fourteen days of the making of the order, appeal against the order to the High Court; and the court by which the order was made may, if it thinks fit, direct that the operation of the order be suspended pending the appeal.

(5) Any person—

- (a) who, while disqualified by an order of a court under this section for obtaining a certificate of competency, applies for or obtains such a certificate while so disqualified; or
- (b) whose certificate of competency has been endorsed pursuant to this section applies for or obtains another such certificate without disclosing the particulars of the endorsement,

is guilty of an offence and is liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding six months, or to both.

[Act No. 42 of 1951, s. 4, L.N. 427/1963, Act No. 21 of 1966, Second Sch., Act No. 24 of 1967, Sch.]

PART II – CRIMES

Division I – Offences against Public Order

CHAPTER VII – TREASON AND ALLIED OFFENCES

40. Treason

(1) Any person who, owing allegiance to the Republic, in Kenya or elsewhere—

- (a) compasses, imagines, invents, devises or intends—
 - (i) the death, maiming or wounding, or the imprisonment or restraint, of the President; or
 - (ii) the deposing by unlawful means of the President from his position as President or from the style, honour and name of Head of State and Commander-in-Chief of the Armed Forces of the Republic of Kenya; or
 - (iii) the overthrow by unlawful means of the Government; and
- (b) expresses, utters or declares any such compassings, imaginations, inventions, devices or intentions by publishing any printing or writing or by any overt act or deed,

is guilty of the offence of treason.

(2) Any person who, owing allegiance to the Republic—

- (a) levies war in Kenya against the Republic; or
- (b) is adherent to the enemies of the Republic, or gives them aid or comfort, in Kenya or elsewhere; or
- (c) instigates whether in Kenya or elsewhere any person to invade Kenya with an armed force,

is guilty of the offence of treason.

(3) Any person who is guilty of the offence of treason shall be sentenced to death.

[Act No. 24 of 1967, s. 2.]

41. Deleted by Act No. 24 of 1967, s. 3.

42. Concealment of treason

Any person who—

- (a) becomes an accessory after the fact to treason; or
- (b) knowing that any person intends to commit treason, does not give information thereof with all reasonable despatch to the Attorney-General, administrative officer, magistrate, or officer in charge of a police station, or use other reasonable endeavours to prevent the commission of the offence,

is guilty of the felony termed misprision of treason and is liable to imprisonment for life.

[L.N. 124/1964, Act No. 24 of 1967, Sch.]

43. Treasonable felony

Any person who, not owing allegiance to the Republic, in Kenya or elsewhere, commits any act or combination of acts which, if it were committed by a person who owed such allegiance, would amount to the offence of treason under section 40, is guilty of a felony and is liable to imprisonment for life.

[Act No. 24 of 1967, s. 4.]

43A. Treachery

Any person who, with intent to help the enemy, does any act which is designed or likely to give assistance to the enemy, or to interfere with the maintenance of public order or the government of Kenya, or to impede the operation of the disciplined forces, or to endanger life, is guilty of a felony and is liable to imprisonment for life.

[Act No. 24 of 1967, s. 4.]

44. Promoting warlike undertaking

Any person who, without lawful authority, carries on, or makes preparation for carrying on, or aids in or advises the carrying on of, or preparation for, any war or warlike undertaking with, for, by or against any person or body or group of persons in Kenya, is guilty of a felony and is liable to imprisonment for life.

[Act No. 24 of 1967, s. 4.]

45. Provisions as to trial for treason, etc.

(1) A person cannot be tried for treason, or for any of the felonies defined in sections 42, 43, 43A and 44, unless the prosecution is commenced within two years after the offence is committed.

(2) No person charged with treason, or with any of such felonies, may be convicted, except on his own plea of guilty, or on the evidence in open court of two witnesses at the least to one overt act of the kind of treason or felony alleged, or the evidence of one witness to one overt act and one other witness to another overt act of the same kind of treason or felony.

(2A) If the facts or matters alleged in a charge for any of such felonies amount in law to treason, and if the facts or matters proved at the trial of the person charged amount in law to treason, such person shall not, by reason thereof, be entitled to be acquitted of the felony; but the person tried for the felony shall not afterwards be prosecuted for treason upon the same facts.

(2B) A person charged with treason or with any of such felonies who is in Kenya may, whether or not the offence was committed in Kenya, be taken in custody to any place in Kenya, and may be proceeded against, charged, tried and punished in any place in Kenya, as if the offence had been committed in Kenya, and for all purposes incidental to or consequential on the trial or punishment of the offence the offence shall be deemed to have been committed in Kenya.

(3) This section does not apply to cases in which the overt act of treason alleged is the killing of the President, or a direct attempt to endanger the life or injure the person of the President.

[Act No. 24 of 1967, Sch.]

46. Dissuasion from enlistment

Any person who wilfully dissuades or attempts to dissuade any other person from entering the disciplined forces or the police force is guilty of an offence and is liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both:

Provided that the provisions of this section do not extend to—

- (i) comments or criticisms of the policy of the Government in relation to such forces as aforesaid made in good faith; or
- (ii) advice given privately and in good faith by one person to another person for the benefit of that other person or of anyone in whom that other person is interested.

[Act No. 54 of 1960, s. 9, Act No. 3 of 1965, s. 26, Act No. 24 of 1967, Sch.]

47. Inciting to mutiny

Any person who advisedly attempts to effect any of the following purposes, that is to say—

- (a) to seduce any member of the disciplined forces or any police officer from his duty or allegiance; or
- (b) to incite any such persons to commit an act of mutiny or any traitorous or mutinous act; or
- (c) to incite any such persons to make or endeavour to make a mutinous assembly,

is guilty of a felony and is liable to imprisonment for life.

[Act No. 3 of 1965, s. 26, Act No. 24 of 1967, Sch.]

48. Aiding, etc., to mutiny, or inciting sedition or disobedience

Any person who—

- (a) aids or abets, or is accessory to, any act of mutiny by, or
- (b) incites to sedition or to disobedience to any lawful order given by a superior officer, any member of the disciplined forces or any police officer,

is guilty of a misdemeanour.

[Act No. 3 of 1965, s. 26, Act No. 24 of 1967, Sch.]

49. Inducing desertion

Any person who, by any means whatever, directly or indirectly—

- (a) procures or persuades or attempts to procure or persuade to desert; or
- (b) aids or abets, or is accessory to, the desertion of; or
- (c) having reason to believe he is a deserter, harbours or aids in concealing, any member of the military forces of Kenya or any police officer is guilty of a misdemeanour and is liable to imprisonment for six months.

[Act No. 24 of 1967, Sch.]

50. Aiding prisoners of war to escape

Any person who—

- (a) knowingly and advisedly aids an alien enemy, being a prisoner of war in Kenya, whether the prisoner is confined in a prison or elsewhere or is suffered to be at large on his parole, to escape from his prison or place of confinement, or, if he is at large on his parole, to escape from Kenya, is guilty of a felony and is liable to imprisonment for life;
- (b) negligently and unlawfully permits the escape of any such person as is mentioned in paragraph (a) is guilty of a misdemeanour.

[Act No. 24 of 1967, Sch.]

51. Definition of overt act

In the case of any of the offences defined in this Chapter, when the manifestation by an overt act of an intention to effect any purpose is an element of the offence, every act of conspiring with any person to effect that purpose, and every act done in furtherance of the purpose by any of the persons conspiring, is deemed to be an overt act manifesting the intention.

52. Power to prohibit publications

(1) Where the Minister, on reasonable grounds, considers that it is necessary in the interests of public order, health or morals, the security of Kenya, and to be reasonably justifiable in a democratic society, the Minister may, by order published in the *Gazette*, prohibit the importation of any publication.

(2) Where the Minister, on reasonable grounds, considers that it is necessary in the interests of defence, public order, public morality or public health so to do and to be reasonably justifiable in a democratic society, the Minister may, by order in the *Gazette*, declare any publication to be a prohibited publication.

(3) There is established a Board to be known as the Prohibited Publications Review Board (hereinafter referred to as “the Board”) which shall comprise—

- (a) the Attorney-General or his representative, who shall be the chairman;
- (aa) the Director of Public Prosecutions or his representative;
- (b) the Commissioner of Police or his representative;
- (c) the Director of Medical Services or his representative;
- (d) two persons from the religious community, to be appointed by the Minister; and
- (e) two other persons of integrity, good character and good standing to be appointed by the Minister.

(4) The members of the Board appointed under paragraphs (d) and (e) of subsection (3) shall hold office for terms of three years each, but shall be eligible for reappointment:

Provided that such members shall not hold office for more than two terms.

(5) The purposes for which the Board is established shall be—

- (a) to review all publications prohibited under this section as at the commencement of this subsection and advise the Minister as to whether such prohibition should be lifted; and
- (b) to advise the Minister generally on the exercise of his powers under this section.

(6) The Minister shall, as soon as reasonably practicable after the commencement of this subsection, cause a copy of each of the publications referred to in paragraph (a) of subsection (5) to be considered by the Board pursuant to the provisions of that paragraph.

(7) The Minister shall, within twenty-one days of the prohibition of any publication under this section, cause a copy thereof to be forwarded to the Board for consideration and appropriate advice.

(8) The Minister shall be obliged to act in accordance with any advice given by the Board under this section.

(9) The quorum for the conduct of a meeting of the Board shall be four members.

(10) Subject to subsection (9), the Board may regulate its own procedure.

(11) There shall be a secretary of the Board and such other staff as may be necessary for the proper functioning of the Board.

(12) The secretary and other staff of the Board shall be public officers appointed by the Minister for that purpose.

(13) The expenses of the Board shall be defrayed out of moneys provided by Parliament for that purpose.

[Act No. 54 of 1960, s. 11, Act No. 21 of 1966, First Sch., Act No. 10 of 1969, Sch., Act No. 10 of 1997, Sch., Act No. 12 of 2012, Sch.]

53. Penalty for prohibited publications

(1) Any person who, otherwise than in his capacity and in the course of his duties as a public officer, prints, makes, imports, publishes, sells, supplies, offers for sale or supply, distributes, reproduces or has in his possession or under his control any prohibited publication is guilty of an offence and is liable to imprisonment for a term not exceeding three years:

Provided that no person who—

- (i) forthwith on the importation of a publication being prohibited under section 52 of this code, or on the declaration of a publication as a prohibited publication, as the case may be, delivers to the nearest administrative officer or to the police officer in charge of the nearest police station all copies of the publication in his possession or under his control; or
- (ii) by reason of its being sent or delivered to him without his knowledge or privity or in response to a request made by him before the importation thereof was prohibited, or before the declaration of the publication as a prohibited publication, as the case may be, comes into possession or control of a prohibited publication, and who, forthwith on the nature of its contents becoming known to him,

shall be convicted of an offence under this section in respect of the copies so delivered by him as aforesaid.

[Act No. 54 of 1960, s. 11, Act No. 21 of 1966, First Sch.]

(2) Where in any prosecution under this section it is proved that a person printed, made, imported, published, sold, supplied, offered for sale or supply, distributed, reproduced or had in his possession or under his control a prohibited publication, it shall be presumed that he knew the nature and contents of the publication, unless and until he proves to the satisfaction of the court—

- (a) that he was not aware of the nature or contents of the publication in respect of which he is charged; and
- (b) that he printed, made, imported, published, sold, supplied, offered for sale or supply, distributed, reproduced or had in his possession or under his control the publication in such circumstances that at no time did he have reasonable cause to suspect that it was a prohibited publication.

54. Seizure and disposal of prohibited publications

(1) Any police officer or administrative officer may seize and detain any prohibited publication which he finds in circumstances which raise a reasonable presumption that an offence under this Act has been, is being or is intended to be committed in relation thereto, or which he finds abandoned or without an apparent owner or possessor or in the possession or custody of any unauthorized person.

(2) (a) Any—

- (i) officer of the Kenya Posts and Telecommunications Corporation authorized in that behalf, whether personally or by reference to a class to which such officer belongs, by the managing director;
- (ii) officer of the Customs and Excise Department authorized in that behalf, whether personally or by reference to a class to which such officer belongs, by the Commissioner of Customs and Excise;
- (iii) police officer not below the rank of Assistant Inspector; and
- (iv) any other officer authorized in that behalf, whether personally or by reference to a class to which the officer belongs, by the Minister,

may detain, open and examine any article or package which he suspects to contain any prohibited publication, and during the examination may detain any person importing, distributing or posting the article or package or in whose possession the article or package is found.

(b) If any prohibited publication is found in any such article or package as aforesaid, the whole article or package may be impounded and retained by the officer, and the person importing, distributing or posting it or in whose possession it was found may be arrested by the officer and delivered to and detained in police custody to be dealt with according to law.

(3) Any prohibited publication which is seized or detained as aforesaid, or which in any other manner comes into the possession or custody of any court or any public officer, shall be forfeited and may be destroyed or otherwise disposed of, as may be directed by such court or by the Commissioner of Police, as the case may be.

[Act No. 54 of 1960, s. 11, L.N. 427/1963, Act No. 24 of 1967, Sch., Act No. 29 of 1968, s. 7.]

55. Deleted by Act No. 46 of 1963, Second Sch.

(1) administers, or is present at and consents to the administering of, any oath, or engagement in the nature of an oath, purporting to bind the person who takes it to commit any offence punishable with death ; or

(2) takes any such oath or engagement, not being compelled to do so, is guilty of a felony, and is liable to imprisonment for life.

56. Deleted by Act No. 10 of 1997, Sch.

(1) administers, or is present at and consents to the administering of, any oath or engagement in the nature of an oath, purporting to bind the person who takes it to act in any of the ways following, that is to say—

- (a) to engage in any mutinous or seditious enterprise;
- (b) to commit any offence not punishable with death;
- (c) to disturb the public peace;
- (d) to be of any association, society or confederacy, formed for the purpose of doing any such act as aforesaid;
- (e) to obey the orders or commands of any committee or body of men not lawfully constituted, or of any leader or commander or other person not having authority by law for that purpose;
- (f) not to inform or give evidence against any associate, confederate or other person;
- (g) not to reveal or discover any unlawful association, society or confederacy, or any illegal act done or to be done, or any illegal oath or engagement that may have been administered or tendered to or taken by himself or any other person, or the import of any such oath or engagement ; or

(2) takes any such oath or engagement, not being Compelled to do so, is guilty of a felony, and is liable to imprisonment for seven years.

57. Deleted by Act No.10 of 1997, Sch.

58. Deleted by Act No. 10 of 1997, Sch.

59. Unlawful oaths to commit capital offences

Any person who—

- (a) is present at, and consents to the administering of, any oath, or engagement in the nature of an oath, purporting to bind the person who takes it to commit any offence punishable with death; or
- (b) takes any such oath or engagement, not being compelled to do so,

is guilty of a felony and is liable to imprisonment for life.

[Act No. 52 of 1955, s. 4.]

60. Administration of unlawful oaths to commit capital offences

Any person who administers an oath, or engagement in the nature of an oath, purporting to bind the person who takes it to commit any offence, punishable with death, is guilty of a felony and shall be sentenced to death.

[Act No. 52 of 1955, s. 5.]

61. Unlawful oaths to commit other offences

Any person who—

- (a) administers, or is present at and consents to the administering of, any oath or engagement in the nature of an oath, purporting to bind the person who takes it to act in any of the ways following, that is to say—
 - (i) to engage in any mutinous or seditious enterprise;
 - (ii) to commit any offence not punishable with death;
 - (iii) to disturb the public peace;
 - (iv) to be of any association, society or confederacy, formed for the purpose of doing any such act as aforesaid;
 - (v) to obey the orders or commands of any committee or body of men not lawfully constituted, or of any leader or commander or other person not having authority by law for that purpose;

- (vi) not to inform or give evidence against any associate, confederate or other person;
- (vii) not to reveal or discover any unlawful association, society or confederacy, or any illegal act done or to be done, or any illegal oath or engagement that may have been administered or tendered to or taken by himself or any other person, or the import of any such oath or engagement; or

(b) takes any such oath or engagement, not being compelled to do so, is guilty of a felony and is liable to imprisonment for ten years.

[Act No. 53 of 1952, Sch.]

62. Compelling another person to take an oath

(1) Any person who by the use of physical force, or by threat or intimidation of any kind, compels another person to take an oath or engagement in the nature of an oath purporting to bind the person who takes it to act or not to act in any way is guilty of a felony and is liable to imprisonment for ten years.

(2) Any person who is present at and consents to the administering, by physical force or under threat or intimidation of any kind, of any oath or engagement in the nature of an oath, to any person purporting to bind the person who takes it to act or not to act in any way is guilty of a felony and is liable to imprisonment for seven years.

[Act No. 50 of 1950, s. 2, Act No. 53 of 1952, Sch.]

63. Compulsion, how far a defence

It shall not be a defence for a person who takes any oath or engagement in the nature of an oath mentioned in section 59 or section 61 to prove that he was compelled to do so unless, within five days after the taking of the oath or engagement in the nature of an oath or, if he is prevented by physical force or sickness, within five days after the termination of the physical force or sickness, he reported to the police, or if he is in the actual service of the disciplined forces or the police force either he so reported as aforesaid or he reported to his commanding officer, everything he knows concerning the matter, including the person or persons by whom and in whose presence, and the place where, and the time when, the oath or engagement was administered or taken.

[Act No. 50 of 1950, s. 3, Act No. 52 of 1955, s. 6, Act No. 24 of 1967, Sch.]

64. Presence at oath administration

Any person who is present at the administering of an oath or engagement in the nature of an oath mentioned in section 59, section 61 or section 62 shall be deemed to have consented to the administering of the oath or engagement unless, within five days thereafter or, if he is prevented by physical force or sickness, within five days after the termination of the physical force or sickness, he reports to the police, or, if he is in the actual service of the disciplined forces or the police force he so reports as aforesaid, or he reports to his commanding officer, everything he knows concerning the matter, including the person or persons by whom and in whose presence, and the place where, and the time when, the oath or engagement in the nature of an oath was administered.

[Act No. 50 of 1950, s. 3, Act No. 24 of 1967, Sch.]

65. Unlawful drilling

(1) Any person who—

- (a) without the permission of the Minister trains or drills any other person to the use of arms or the practice of military exercises, movements or evolutions; or
- (b) is present at any meeting or assembly of persons, held without the permission of the Minister, for the purpose of training or drilling any other persons to the use of arms or the practice of military exercises, movements or evolutions,

is guilty of a felony and is liable to imprisonment for seven years.

(2) Any person who, at any meeting or assembly held without the permission of the Minister, is trained or drilled to the use of arms, or the practice of military exercises, movements or evolutions, or who is present at the meeting or assembly for the purpose of being so trained or drilled, is guilty of a misdemeanour.

[Act No. 36 of 1962, Sch.]

66. Alarming publications

(1) Any person who publishes any false statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace is guilty of a misdemeanour.

(2) It shall be a defence to a charge under subsection (1) if the accused proves that, prior to publication, he took such measures to verify the accuracy of the statement, rumour or report as to lead him reasonably to believe that it was true.

CHAPTER VIII – OFFENCES AFFECTING RELATIONS
WITH FOREIGN STATES AND EXTERNAL TRANQUILITY

67. Defamation of foreign princes

Any person who, without such justification or excuse as would be sufficient in the case of the defamation of a private person, publishes anything intended to be read, or any sign or visible representation, tending to degrade, revile or expose to hatred or contempt any foreign prince, potentate, ambassador or other foreign dignitary with intent to disturb peace and friendship between Kenya and the country to which such prince, potentate, ambassador or dignitary belongs is guilty of a misdemeanour.

[Act No. 24 of 1967, Sch.]

68. Foreign enlistment

(1) Any person who, without the authority of the President in writing—

- (a) prepares or fits out any naval or military expedition to proceed against the dominions of any friendly state, or is engaged in such preparation or fitting out or assists therein or is employed in any capacity in such expedition; or
- (b) being a citizen of Kenya accepts or agrees to accept any commission or engagement in the military, naval, air, police or other armed forces or service of any nature whatsoever, or, whether

- (c) being a citizen of Kenya, quits or goes on board any vessel with a view of quitting Kenya, with intent to accept any commission or engagement in the military, naval, air, police or other armed forces or service of any nature whatsoever of any, foreign state; or
- (d) being the master or owner of any vessel, knowingly either takes on board, or has on board such vessel, any illegally enlisted person; or
- (e) with intent or knowledge, or having reasonable cause to believe that the same will be employed in the military or naval service of any foreign state at war with a friendly state, builds, agrees to build, causes or allows to be dispatched any vessel, or issues or delivers any commission for any vessel,

shall, unless he proves to the satisfaction of the court that in any case falling within provisions of paragraph (b) and (c) the commission or engagement concerned was not voluntary, be guilty of an offence and liable to imprisonment for ten years.

(2) Notwithstanding subsection (1), a person building, causing to be built or equipping a vessel in pursuance of a contract made before the commencement of the war referred to in paragraph (e) of subsection (1), is not liable to any of the penalties specified in that subsection in respect of such building or equipping if—

- (a) upon a proclamation of neutrality being issued by the President he forthwith gives notice to the Minister that he is so building, causing to be built or equipping such vessel and furnishes such particulars of contract and of any matters relating to, or done, or to be done, under the contract as may be required by the Minister; and
- (b) he gives such security and takes and permits to be taken such other measures, if any, as the Minister may prescribe for ensuring that such vessel shall not be dispatched, delivered or removed without the authority of the President until the termination of the war.

[Act No. 24 of 1967, Sch., Act No. 21 of 1990, Sch.]

69. Deleted by Act No. 4 of 2009, s. 454.

CHAPTER IX – UNLAWFUL ASSEMBLIES, RIOTS AND OTHER OFFENCES AGAINST PUBLIC TRANQUILITY

70. Deleted by Act No. 4 of 1968, s. 54.

71. Deleted by Act No. 4 of 1968, s. 54.

72. Deleted by Act No. 4 of 1968, s. 54.

73. Deleted by Act No. 4 of 1968, s. 54.

74. Deleted by Act No. 4 of 1968, s. 54.

75. Deleted by Act No. 4 of 1968, s. 54.

76. Deleted by Act No. 4 of 1968, s. 54.

77. Subversive activities

(1) Any person who does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a subversive intention, or utters any words with a subversive intention, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

(2) Deleted by Act No. 5 of 2003, s. 9.

(3) For the purposes of this section, “**subversive**” means—

- (a) supporting, propagating (otherwise than with intent to attempt to procure by lawful means the alteration, correction, defeat, avoidance or punishment thereof) or advocating any act or thing prejudicial to public order, the security of Kenya or the administration of justice;
- (b) inciting to violence or other disorder or crime, or counselling defiance of or disobedience to the law or lawful authority;
- (c) intended or calculated to support or assist or benefit, in or in relation to such acts or intended acts as are hereinafter described, persons who act, intend to act or have acted in a manner prejudicial to public order, the security of Kenya or the administration of justice, or who incite, intend to incite or have incited to violence or other disorder or crime, or who counsel, intend to counsel or have counselled defiance of or disobedience to the law or lawful authority;
- (d) indicating, expressly or by implication, any connexion, association or affiliation with, or support for, any unlawful society;
- (e) intended or calculated to promote feelings of hatred or enmity between different races or communities in Kenya:

Provided that the provisions of this paragraph do not extend to comments or criticisms made in good faith and with a view to the removal of any causes of hatred or enmity between races or communities;

- (f) intended or calculated to bring into hatred or contempt or to excite disaffection against any public officer, or any class of public officers, in the execution of his or their duties, or any naval, military or air force or the National Youth Service for the time being lawfully in Kenya or any officer or member of any such force in the execution of his duties:

Provided that the provisions of this paragraph do not extend to comments or criticisms made in good faith and with a view to the remedying or correction of errors, defects or misconduct on the part of any such public officer, force or officer or member thereof as aforesaid and without attempting to bring into hatred or contempt, or to excite disaffection against, any such person or force; or

- (g) intended or calculated to seduce from his allegiance or duty any public officer or any officer or member of any naval, military or air force or the National Youth Service for the time being lawfully in Kenya.

[Act No. 54 of 1960, s. 16, Act No. 3 of 1965, s. 26,
Act No. 5 of 2003, s. 9, Act No. 7 of 2007, Sch.]

78. Definition of unlawful assembly and riot

(1) When three or more persons assemble with intent to commit an offence, or, being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause persons in the neighbourhood reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace, they are an unlawful assembly.

(2) It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with a common purpose in such a manner as aforesaid.

(3) When an unlawful assembly has begun to execute the purpose for which it assembled by a breach of the peace and to the terror of the public, the assembly is called a riot, and the persons assembled are said to be riotously assembled.

79. Punishment of unlawful assembly

Any person who takes part in an unlawful assembly is guilty of a misdemeanour and is liable to imprisonment for one year.

[Act No. 42 of 1951, s. 5.]

80. Punishment of riot

Any person who takes part in a riot is guilty of a misdemeanour.

81. Proclamation for rioters to disperse

(1) Any administrative officer or magistrate, or, in his absence, any gazetted officer or inspector of the Kenya Police Force or any commissioned officer in the military forces in Kenya, in whose view twelve or more persons are riotously assembled, or who apprehends that a riot is about to be committed by twelve or more persons assembled within his view, may make or cause to be made a proclamation, in such form as he thinks fit, commanding the rioters or persons so assembled to disperse peaceably.

(2) For the purposes of this section, “**military forces**” includes naval and air forces.

[Act No. 53 of 1952, s. 3, Act No. 52 of 1955, s.
8, Act No. 24 of 1967, Sch., Act No. 8 of 1968, Sch.]

82. Dispersal of rioters after proclamation

If upon the expiration of a reasonable time after such proclamation made, or after the making of such proclamation has been prevented by force, twelve or more persons continue riotously assembled together, any person authorized to make proclamation, or any police officer, or any other person acting in aid of

such person or police officer, may do all things necessary for dispersing the persons so continuing assembled and for apprehending them or any of them, and, if any person makes resistance, may use all such force as is reasonably necessary for overcoming such resistance, and shall not be liable in any criminal or civil proceeding for having, by the use of such force, caused harm or death to any person.

83. Rioting after proclamation

If proclamation is made commanding the persons engaged in a riot, or assembled with the purpose of committing a riot, to disperse, every person who, at or after the expiration of a reasonable time from the making of the proclamation, takes or continues to take part in the riot or assembly, is guilty of a felony and is liable to imprisonment for life.

[Act No. 53 of 1952, Sch.]

84. Preventing or obstructing proclamation

Any person who forcibly prevents or obstructs the making of a proclamation as is in section 81 mentioned is guilty of a felony and is liable to imprisonment for life; and, if the making of the proclamation is so prevented, every person who, knowing that it has been so prevented, takes or continues to take part in the riot or assembly, is liable to imprisonment for life.

[Act No. 53 of 1952, Sch.]

85. Rioters demolishing buildings, etc.

Any persons who, being riotously assembled together, unlawfully pull down or destroy, or begin to pull down or destroy, any building, railway, machinery or structures are guilty of a felony and each of them is liable to imprisonment for life.

86. Rioters injuring buildings, machinery, etc.

Any persons who, being riotously assembled together unlawfully damage any of the things in section 85 mentioned, are guilty of a felony and each of them is liable to imprisonment for seven years.

87. Riotously interfering with railway, vehicle or vessel

All persons are guilty of a misdemeanor who, being riotously assembled, unlawfully and with force prevent, hinder or obstruct the loading or unloading of any railway, vehicle or vessel, or the starting or transit of any railway or vehicle, or the sailing or navigation of any vessel, or unlawfully and with force board any railway, vehicle or vessel with intent to do so.

88. Going armed in public

Any person who goes armed in public without lawful occasion in such a manner as to cause terror to any person is guilty of a misdemeanour, and his arms may be forfeited.

89. Possession of firearms, etc.

(1) Any person who, without reasonable excuse, carries or has in his possession or under his control any firearm or other offensive weapon, or any

ammunition, incendiary material or explosive in circumstances which raise a reasonable presumption that the firearm, ammunition, offensive weapon, incendiary material or explosive is intended to be used or has recently been used in a manner or for a purpose prejudicial to public order is guilty of an offence and is liable to imprisonment for a term of not less than seven years and not more than fifteen years.

(2) Any person who consorts with, or is found in the company of, another person who, in contravention of subsection (1), is carrying or has in his possession or under his control any firearm or other offensive weapon, or any ammunition, incendiary material or explosive, in circumstances which raise a reasonable presumption that he intends to act or has recently acted with such other person in a manner or for a purpose prejudicial to public order, is guilty of an offence and is liable to imprisonment for a term not exceeding five years.

(3) In any prosecution for an offence under this section, it shall be presumed, until the contrary is proved, that a weapon having the appearance of a firearm is a firearm.

(4) In this section—

“**ammunition**” has the meaning assigned to it by the Firearms Act (Cap. 114);

“**explosive**” means any explosive within the meaning of the Explosives Act (Cap. 115);

“**firearm**” has the meaning assigned to it by the Firearms Act;

“**incendiary material**” means any material capable of being used for causing damage to property by fire and intended by the person having it in his possession or under his control for such use;

“**offensive weapon**” means any article made or adapted for use for causing injury to the person, or intended by the person having it in his possession or under his control for such use.

[Act No. 54 of 1960, s. 17, Act No. 11 of 1993, Sch.]

90. Forcible entry

Any person who, in order to take possession thereof, enters on any lands or tenements in a violent manner, whether the violence consists in actual force applied to any other person or in threats or in breaking open any house or in collecting an unusual number of people, and whether he is entitled to enter on the land or not, is guilty of the misdemeanour termed forcible entry:

Provided that a person who enters upon lands or tenements of his own, but which are in the custody of his servant or bailiff, does not commit the offence of forcible entry.

91. Forcible detainer

Any person who, being in actual possession of land without colour of right, holds possession of it, in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, against a person entitled by law to the possession of the land is guilty of the misdemeanour termed forcible detainer.

92. Affray

Any person who takes part in a fight in a public place is guilty of a misdemeanour and is liable to imprisonment for one year.

93. Challenge to duel

Any person who challenges another to fight a duel, or attempts to provoke another to fight a duel, or attempts to provoke any person to challenge another to fight a duel, is guilty of a misdemeanour.

94. Offensive conduct conducive to breaches of the peace

(1) Any person who in a public place or at a public gathering uses threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned is guilty of an offence and is liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both.

(2) In this section, “**public gathering**” means—

- (a) any meeting, gathering or concourse of ten or more persons in any public place; or
- (b) any meeting or gathering which the public or any section of the public or more than fifty persons are permitted to attend or do attend, whether on payment or otherwise; or
- (c) any procession in, to or from a public place.

[Act No. 54 of 1960, s. 18.]

95. Threatening breach of the peace or violence

(1) Any person who—

- (a) uses obscene, abusive or insulting language, to his employer or to any person placed in authority over him by his employer, in such a manner as is likely to cause a breach of the peace; or
- (b) brawls or in any other manner creates a disturbance in such a manner as is likely to cause a breach of the peace,

is guilty of a misdemeanour and is liable to imprisonment for six months.

(2) Any person who—

- (a) with intent to intimidate or annoy any person, threatens to break or injure a dwelling-house; or
- (b) with intent to alarm any person in a dwelling-house, discharges a loaded firearm or commits any other breach of the peace,

is guilty of a misdemeanour and is liable to imprisonment for three years, or, if the offence is committed in the night, to imprisonment for four years.

[Act No. 53 of 1952, Sch.]

96. Incitement to violence and disobedience of the law

Any person who, without lawful excuse, the burden of proof whereof shall lie upon him, utters, prints or publishes any words, or does any act or thing, indicating or implying that it is or might be desirable to do, or omit to do, any act the doing or omission of which is calculated—

- (a) to bring death or physical injury to any person or to any class, community or body of persons; or
- (b) to lead to the damage or destruction of any property; or
- (c) to prevent or defeat by violence or by other unlawful means the execution or enforcement of any written law or to lead to defiance or disobedience of any such law, or of any lawful authority,

is guilty of an offence and is liable to imprisonment for a term not exceeding five years.

[Act No. 32 of 1958, s. 2, Act No. 54 of 1960, s. 19, Act No. 5 of 2003, s. 10.]

97. Assembling for smuggling

Any persons who assemble together, to the number of two or more, for the purpose of unshipping, carrying or concealing any goods subject to customs duty and liable to forfeiture under any law relating to the customs, are guilty of a misdemeanour and each of them is liable to a fine not exceeding six thousand shillings or to imprisonment for six months.

[Act No. 40 of 1952, Sch.]

98. Wrongfully inducing a boycott

(1) Whenever the Minister is satisfied that any boycott is being conducted or is threatened or likely to be conducted in Kenya with the intention or effect of—

- (a) bringing into hatred or contempt, exciting disaffection against or undermining the lawful authority of the Government of Kenya, or any local authority, or of persuading any such body to alter any law or by-law, to appoint any commission or committee or to take any action which it is not by law required to take; or
- (b) endangering public order in Kenya; or
- (c) bringing the economic life of Kenya into jeopardy; or
- (d) raising discontent or disaffection amongst the inhabitants of Kenya, or engendering feelings of ill-will or hostility between different classes or different races of the population of Kenya,

he may, by notice published in the *Gazette*, designate that boycott for the purposes of this section and may, by the same or any subsequent notice so published, specify in relation to a designated boycott any action which he is satisfied is likely to further that boycott, including (but without prejudice to the generality of that power) any action falling within any of the following classes of action, that is to say—

- (i) abstaining from buying goods from or selling goods to any person or class of persons; or

- (ii) abstaining from buying or selling any goods or class of goods; or
- (iii) abstaining from entering or approaching or dealing at any premises at which any person or class of persons carries on trade or business; or
- (iv) abstaining from dealing with any person or class of persons in the course of his trade or business; or abstaining from using or providing any service or class of service; or
- (v) abstaining from working for or employing any person or class of persons; or
- (vi) abstaining from letting, hiring or allowing the use of any land or buildings to any person or class of persons; or
- (vii) abstaining from doing any other act which may lawfully be done.

(2) Any person who, with intent to further any designated boycott—

- (a) by word of mouth publicly; or
- (b) by making a publication (as defined in subsection (7)),

advises, induces or persuades or attempts to advise, induce or persuade any person or class of persons to take any action which has been specified in relation to that boycott is guilty of an offence and is liable to imprisonment for a term not exceeding six months.

(3) For the purposes of this section, in determining whether any words were spoken or any publication was made with intent to further a designated boycott, every person shall, unless the contrary be proved, be deemed to intend the consequences which would naturally follow from his conduct at the time and in the circumstances in which he so conducted himself.

(4) Nothing in this section shall be construed so as to make unlawful any action lawfully taken by a party to a trade dispute (as defined in the Trade Unions Act (Cap. 233)) in contemplation or in furtherance of that dispute.

(5) *Deleted by Act No. 5 of 2003, s. 11.*

(6) Any notice published under this section may at any time be amended, varied, suspended or revoked by a further notice so published.

(7) For the purposes of this section a person shall be deemed to make a publication if he prints it, makes it, publishes it, sells it, distributes it, offers it for sale or distribution or reproduces it.

[Act No. 54 of 1960, s. 21, L.N. 427/1963, Act No. 24 of 1967, Sch., L.N. 280 /1967, Act No. 5 of 2003, s. 11.]

DIVISION II – OFFENCES AGAINST THE ADMINISTRATION OF LAWFUL AUTHORITY

CHAPTER X – ABUSE OF OFFICE

99. Officers charged with administration of property of a special character or with special duties

Any person who, being employed in the public service, and being charged by

virtue of his employment with any judicial or administrative duties respecting property of a special character, or respecting the carrying on of any manufacture, trade or business of a special character, and having acquired or holding, directly or indirectly, a private interest in any such property, manufacture, trade or business, discharges any such duties with respect to the property, manufacture, trade or business in which he has such interest or with respect to the conduct of any person in relation thereto, is guilty of a felony.

[Act No. 7 of 2007, Sch.]

100. False claims by persons employed in the public service

Any person who, being employed in the public service in such a capacity as to require him or to enable him to furnish returns or statements touching any sum payable or claimed to be payable to himself or to any other person, or touching any other matter required to be certified for the purpose of any payment of money or delivery of goods to be made to any person, makes a return or statement touching any such matter which is, to his knowledge, false in any material particular is guilty of a felony.

[Act No. 7 of 2007, Sch.]

101. Abuse of office

(1) Any person who, being employed in the public service, does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another is guilty of a felony.

(2) *Deleted by Act No. 7 of 2007, Sch.*

(3) *Deleted by Act No. 5 of 2003, s. 12.*

[Act No. 5 of 2003, s. 12, Act No. 7 of 2007, Sch.]

102. False certificates by public officers

Any person who, being authorized or required by law to give any certificate touching any matter by virtue whereof the rights of any person may be prejudicially affected, gives a certificate which is, to his knowledge, false in any material particular, is guilty of a felony.

[Act No. 7 of 2007, Sch.]

102A. Penalties

A person convicted of an offence under sections 99, 100, 101 or 102 of this Part shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding 10 years or to both.

[Act No. 7 of 2007, Sch.]

103. Unauthorized administration of oaths

Any person who administers an oath, or takes solemn declaration or affirmation or affidavit, touching any matter with respect to which he has not by law any authority to do so is guilty of a misdemeanour and is liable to imprisonment for one year:

Provided that this section shall not apply to an oath, declaration, affirmation or affidavit administered by or taken before a magistrate in any matter relating to

the preservation of the peace or the punishment of offences or relating to inquiries respecting sudden deaths, nor to an oath, declaration, affirmation or affidavit administered or taken for some purpose which is lawful under the laws of another country, or for the purpose of giving validity to an instrument in writing which is intended to be used in another country.

104. False assumption of authority

Any person who—

- (a) not being a judicial officer, assumes to act as a judicial officer; or
- (b) without authority assumes to act as a person having authority by law to administer an oath or take a solemn declaration or affirmation or affidavit or to do any other act of a public nature which can only be done by persons authorized by law to do so; or
- (c) represents himself to be a person authorized by law to sign a document testifying to the contents of any register or record kept by lawful authority, or testifying to any fact or event, and signs such document as being so authorized, when he is not, and knows that he is not, in fact, so authorized,

is guilty of a misdemeanour.

105. Personating persons employed in the public service

Any person who—

- (a) personates any person employed in the public service on an occasion when the latter is required to do any act or attend in any place by virtue of his employment; or
- (b) falsely represents himself to be a person employed in the public service, and assumes to do any act or to attend in any place for the purpose of doing any act by virtue of such employment,

is guilty of a misdemeanour and is liable to imprisonment for three years.

106. Threat of injury to persons employed in public service

Whoever holds out any threat of injury to any person employed in the public service, or to any person in whom he believes that person employed in the public service to be interested, for the purpose of inducing that person employed in the public service to do any act or to forbear or delay to do any act connected with the exercise of the public functions of such person employed in the public service is guilty of a misdemeanour.

107. Tampering with public officers, etc.

Any person who—

- (a) induces or attempts to induce any public officer, or any sailor, soldier or airman being an officer or member of any naval, military or air force for the time being lawfully in Kenya, or any servant of a local authority, to fail in his duty, or to terminate his services in the discharge of his duty, or to commit a breach of discipline; or

- (b) with intent to influence any public officer, or any such sailor, soldier or airman as aforesaid, or any servant of a local authority, in or in relation to the discharge of his duty, or to cause him to fail in his duty, or to terminate his services in the discharge of his duty, or to commit a breach of discipline, refuses or threatens to refuse to deal or do trade or business with, or to supply or render, in the ordinary course of his trade or business, any goods or service to, any person,

is guilty of an offence and is liable to imprisonment for a term not exceeding three years.

[Act No. 54 of 1960, s. 22.]

CHAPTER XI – OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE

108. Perjury and subornation of perjury

- (a) Any person who, in any judicial proceeding, or for the purpose of instituting any judicial proceeding, knowingly gives false testimony touching any matter which is material to any question then pending in that proceeding or intended to be raised in that proceeding, is guilty of the misdemeanour termed perjury.
- (b) It is immaterial whether the testimony is given on oath or under any other sanction authorized by law.
- (c) The forms and ceremonies used in administering the oath or in otherwise binding the person giving the testimony to speak the truth are immaterial, if he assent to the forms and ceremonies actually used.
- (d) It is immaterial whether the false testimony is given orally or in writing.
- (e) It is immaterial whether the court or tribunal is properly constituted, or is held in the proper place or not, if it actually acts as a court or tribunal in the proceeding in which the testimony is given.
- (f) It is immaterial whether the person who gives the testimony is a competent witness or not, or whether the testimony is admissible in the proceeding or not.

(2) Any person who aids, abets, counsels, procures or suborns another person to commit perjury is guilty of the misdemeanour termed subornation of perjury.

[Act No. 13 of 1982, s. 15.]

109. False statements by interpreters

If any person, lawfully sworn as an interpreter in a judicial proceeding, wilfully makes a statement material in the proceeding which he knows to be false, or does not believe to be true, he shall be guilty of perjury.

110. Punishment of perjury and subornation of perjury

Any person who commits perjury or suborns perjury is liable to imprisonment for seven years.

111. Evidence of perjury or subornation of perjury

A person cannot be convicted of committing perjury or of subornation of perjury solely upon the evidence of one witness as to the falsity of any statement alleged to be false.

[L.N. 761/1963.]

112. Contradictory statements

(1) Where a witness in any judicial proceedings (other than a person accused of an offence in criminal proceedings) has made a statement on oath or affirmation of some fact relevant in the proceedings, contradicting in a material detail a previous statement made on oath or affirmation by the same witness before the same court or any other court or tribunal, such witness, if a court is satisfied that either of such statements was made with intent to deceive, is guilty of an offence and is liable to imprisonment for a term not exceeding two years.

(2) Upon the trial of any person for an offence under this section, it shall not be necessary to prove the falsity of either of the contradictory statements, but, upon proof that both the statements were made by him, the court, if satisfied that the statements, or either of them, were or was made with intent to deceive, shall convict the accused.

(3) At the trial of any person for an offence under this section, the record of a court or tribunal containing any statement made on oath or affirmation by the person charged shall be *prima facie* evidence of such statement.

(4) For the avoidance of doubt, it is hereby declared that a person shall be liable to be convicted of an offence under this section notwithstanding that any statement made by him before a court or tribunal was made in reply to a question which he was bound by law to answer, and any such statement shall be admissible in any proceedings under this section.

[Act No. 54 of 1960, s. 23.]

112A. Malicious information

(1) Any person who, with intent to cause harm or inconvenience to another person, gives or makes to—

- (a) any magistrate or member of the police force; or
- (b) any officer having power to apprehend or order the apprehension of offenders,

any information or complaint in relation to that other person that he knows to be false is guilty of a misdemeanour or, where subsection (3) or (4) applies, of a felony.

(2) Where, as a result of an offence under this section, any person sustains actual bodily harm, the offender shall on conviction be liable to be punished as for assault occasioning actual bodily harm.

[Section 251.]

(3) Where, as a result of an offence under this section, any person sustains grievous harm, the offender shall on conviction be liable to be punished as for doing grievous harm.

[Section 234.]

(4) Where, as a result of an offence under this section, any person dies, the offender shall on conviction be liable to be punished as for manslaughter.

[Section 205.]

(5) For the purposes of this section, any harm to or death of a person shall be deemed to have resulted from an offence under this section if the court is satisfied that, as a matter of fact, and without regard to the actions or motivations of any person other than the offender, the harm would not have been done or the death would not have occurred, as the case may be, if the offence had not been committed.

[Act No. 13 of 1982, s. 15, Act No. 5 of 2003, s. 13.]

113. Fabricating evidence

Any person who, with intent to mislead any tribunal in any judicial proceeding—

- (a) fabricates evidence by any means other than perjury or subornation of perjury; or
- (b) knowingly makes use of such fabricated evidence, is guilty of a misdemeanour and is liable to imprisonment for seven years.

114. False swearing

Any person who swears falsely or makes a false affirmation or declaration before any person authorized to administer an oath or take a declaration upon a matter of public concern under such circumstances that the false swearing or declaration if committed in a judicial proceeding would have amounted to perjury, is guilty of a misdemeanour.

115. Deceiving witnesses

Any person who practises any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token or writing to any person called or to be called as a witness in any judicial proceeding, with intent to affect the testimony of such person as a witness, is guilty of a misdemeanour.

116. Destroying evidence

Any person who, knowing that any book, document or thing of any kind whatsoever is or may be required in evidence in a judicial proceeding, wilfully removes or destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, is guilty of a misdemeanour.

117. Conspiracy to defeat justice and interference with witnesses

Any person who—

- (a) conspires with any other person to accuse any person falsely of any crime or to do anything to obstruct, prevent, pervert or defeat the course of justice; or

- (b) in order to obstruct the due course of justice, dissuades, hinders or prevents any person lawfully bound to appear and give evidence as a witness from so appearing and giving evidence, or endeavours to do so; or
- (c) obstructs or in any way interferes with or knowingly prevents the execution of any legal process, civil or criminal,

is guilty of an offence and is liable to imprisonment for five years.

[Act No. 53 of 1952, s. 4.]

118. Compounding felonies

Any person who asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person upon any agreement or understanding that he will compound or conceal a felony, or will abstain from, discontinue or delay a prosecution for a felony, or will withhold any evidence thereof, is guilty of a misdemeanour.

119. Compounding penal actions

Any person who, having brought, or under pretence of bringing, an action against another person upon a penal law in order to obtain from him a penalty for any offence committed or alleged to have been committed by him, compounds the action without the order or consent of the court in which the action is brought or is to be brought, is guilty of a misdemeanour.

[Act No. 24 of 1967, Sch.]

120. Advertisements for stolen property

Any person who—

- (a) publicly offers a reward for the return of any property which has been stolen or lost, and in the offer makes use of any words purporting that no questions will be asked, or that the person producing such property will not be seized or molested; or
- (b) publicly offers to return to any person who may have bought or advanced money by way of loan upon any stolen or lost property the money so paid or advanced, or any other sum of money or reward for the return of such property; or
- (c) prints or publishes any such offer,

is guilty of a misdemeanour.

121. Offences relating to judicial proceedings

(1) Any person who—

- (a) within the premises in which any judicial proceeding is being had or taken, or within the precincts of the same, shows disrespect, in speech or manner, to or with reference to such proceeding, or any person before whom such proceeding is being had or taken; or
- (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

- (c) causes an obstruction or disturbance in the course of a judicial proceeding; or
- (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 parties to such proceeding, or calculated to lower the authority of any person before whom such proceeding is being had or taken; or
- (e) publishes a report of the evidence taken in any judicial proceeding which has been directed to be held in private; or
- (f) attempts wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he has given evidence, in connexion with such evidence; or
- (g) dismisses a servant because he has given evidence on behalf of a certain party to a judicial proceeding; or
- (h) wrongfully retakes possession of land from any person who has recently obtained possession by a writ of court; or
- (i) commits any other act of intentional disrespect to any judicial proceedings, or to any person before whom such proceeding is being had or taken,

is guilty of an offence and is liable to imprisonment for three years.

(2) When any offence under any of paragraphs (a), (b), (c), (d) and (i) of subsection (1) is committed in view of the court, the court may cause the offender to be detained in custody, and at any time before the rising of the court on the same day may take cognizance of the offence and sentence the offender to a fine not exceeding one thousand four hundred shillings or in default of payment to imprisonment for a term not exceeding one month.

(3) The provisions of this section shall be deemed to be in addition to and not in derogation from the power of the High Court to punish for contempt of court.

[Act No. 40 of 1952, Sch., Act No. 53 of 1952, Sch., Act No. 21 of 1966, Second Sch.]

CHAPTER XII – RESCUES AND ESCAPES AND OBSTRUCTING OFFICERS OF COURT

122. Rescue

(1) Any person who by force rescues or attempts to rescue from lawful custody any other person—

- (a) is, if the last-named person is under sentence of death or imprisonment for life, or charged with an offence punishable with death or imprisonment for life, guilty of a felony and is liable to imprisonment for life; and
- (b) is, if the other person is imprisoned on a charge or under sentence for any offence other than those specified above, guilty of a felony and is liable to imprisonment for seven years; and

(c) is, in any other case, guilty of a misdemeanour.

(2) If the person rescued is in the custody of a private person, the offender must have notice of the fact that the person rescued is in such custody.

SAMPLING FOR DNA IDENTIFICATION

122A. Senior police officer may order DNA sampling procedure on suspect

(1) A police officer of or above the rank of inspector may by order in writing require a person suspected of having committed a serious offence to undergo a DNA sampling procedure if there are reasonable grounds to believe that the procedure might produce evidence tending to confirm or disprove that the suspect committed the alleged offence.

(2) In this section—

“DNA sampling procedure” means a procedure, carried out by a medical practitioner, consisting of—

- (a) the taking of a sample of saliva or a sample by buccal swab;
- (b) the taking of a sample of blood;
- (c) the taking of a sample of hair from the head or underarm; or
- (d) the taking of a sample from a fingernail or toenail or from under the nail,

for the purpose of performing a test or analysis upon the sample in order to confirm or disprove a supposition concerning the identity of the person who committed a particular crime;

“serious offence” means an offence punishable by imprisonment for a term of twelve months or more.

[Act No. 5 of 2003, s. 14.]

122B. Suspect to comply with order

Where a suspect in respect of whom an order has been made under section 122A resists compliance with the order, members of the police force, under supervision of an officer of or above the rank of inspector, shall be entitled to use reasonable force in restraining the suspect for the purpose of effecting the procedure.

122C. Suspect may volunteer

(1) Nothing in section 122A shall be construed as preventing a suspect from undergoing a procedure by consent, without any order having been made:

Provided that every such consent shall be recorded in writing signed by the person giving the consent.

(2) Such consent may, where the suspect is a child or an incapable person, be given by the suspect's parent or guardian.

[Act No. 5 of 2003, s. 14.]

122D. Order or consent to be proven

The results of any test or analysis carried out on a sample obtained from a DNA sampling procedure within the meaning of section 122A shall not be admissible in evidence at the request of the prosecution in any proceedings against the suspect unless an order under section 122A or a consent under 122C is first proven to have been made or given.

[Act No. 5 of 2003, s. 14.]

123. Escape

Any person who, being in lawful custody, escapes from that custody is guilty of a misdemeanour.

124. Aiding escape

Any person who—

- (a) aids a prisoner in escaping or attempting to escape from lawful custody; or
- (b) conveys anything or causes anything to be conveyed into a prison with intent to facilitate the escape of a prisoner,

is guilty of a felony and is liable to imprisonment for seven years.

125. Removal, etc., of property under lawful seizure

Any person who, when any property has been attached or taken under the process of authority of any court, knowingly, and with intent to hinder or defeat the attachment or process, receives, removes, retains, conceals or disposes of that property is guilty of a felony and is liable to imprisonment for three years.

126. Obstructing court officers

Any person who wilfully obstructs or resists any person lawfully charged with the execution of an order or warrant of any court is guilty of a misdemeanour and is liable to imprisonment for one year.

CHAPTER XIII – MISCELLANEOUS
OFFENCES AGAINST PUBLIC AUTHORITY

127. Frauds and breaches of trust by persons employed in the public service

(1) Any person employed in the public service who, in the discharge of the duties of his office, commits any fraud or breach of trust affecting the public, whether the fraud or breach of trust would have been criminal or not if committed against a private person, is guilty of a felony.

(2) A person convicted of an offence under this section shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding ten years or to both.

[Act No. 5 of 2003, s. 14.]

128. Neglect of official duty

Every person employed in the public service who wilfully neglects to perform any duty which he is bound either by common law or by any written law to

perform, provided that the discharge of the duty is not attended with greater danger than a man of ordinary courage might be expected to face, is guilty of a misdemeanour.

129. False information to person employed in the public service

Whoever gives to any person employed in the public service any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, the person employed in the public service—

- (a) to do or omit anything which the person employed in the public service ought not to do or omit if the true state of facts respecting which such information is given were known to him; or
- (b) to use the lawful power of the person employed in the public service to the injury or annoyance of any person,

is guilty of a misdemeanour and is liable to imprisonment for three years.

[Act No. 7 of 2007, Sch.]

130. Disobedience of statutory duty

Everyone who wilfully disobeys any written law by doing any act which it forbids, or by omitting to do any act which it requires to be done, and which concerns the public or any part of the public, is guilty of a misdemeanour and is liable, unless it appears from the written law that it was the intention of Parliament to provide some other penalty for the disobedience, to imprisonment for two years.

[Act No. 24 of 1967, Sch.]

131. Disobedience of lawful orders

Everyone who disobeys any order, warrant or command duly made, issued or given by any court, officer or any person acting in any public capacity and duly authorized in that behalf, is guilty of a misdemeanour and is liable, unless any other penalty or mode of proceeding is expressly prescribed in respect of the disobedience, to imprisonment for two years.

132. Undermining authority of public officer

Any person who, without lawful excuse, the burden of proof whereof shall lie upon him, utters, prints, publishes any words, or does any act or thing, calculated to bring into contempt, or to excite defiance of or disobedience to, the lawful authority of a public officer or any class of public officers is guilty of an offence and is liable to imprisonment for a term not exceeding three years.

[Act No. 40 of 1952, Sch., Act No. 53 of 1952, s. 5.]

133. Destruction, etc., of statutory documents

(1) Any person who, knowingly and without lawful authority or excuse, destroys, mutilates, defaces, alters, abandons or fails to preserve any statutory document is guilty of an offence and is liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months, or to both.

(2) Any person who, in any manner or by whatever means, instigates, expressly or by implication, any person or class of persons to destroy, mutilate, deface, alter, abandon or fail to preserve any statutory document or any class of statutory documents, or who does any act with intent or knowing it to be likely that any person or class of persons will be instigated thereby to destroy, mutilate, deface, alter, abandon or fail to preserve any statutory document, is guilty of an offence and is liable to imprisonment for a term not exceeding three years.

(3) In this section, “**statutory document**” means any licence, permit, identity card, record or return or certificate of or relating to employment, and any other record of or document establishing status, identity, qualifications, service, authorization, eligibility or entitlement, made, granted, given or issued under and for the purposes of, and in a form prescribed by, any written law, and being of current validity, and includes any part thereof, and any copy thereof made, granted, given or issued as aforesaid.

[Act No. 24 of 1967, Sch.]

Division III – Offences Injurious to the Public in General

CHAPTER XIV – OFFENCES RELATING TO RELIGION

134. Insult to religion

Any person who destroys, damages or defiles any place of worship or any object which is held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, is guilty of a misdemeanour.

135. Disturbing religious assemblies

Any person who voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremony is guilty of a misdemeanour.

136. Trespassing on burial places

Every person who, with the intention of wounding the feelings of any person or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or in any place of sepulture, or in any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the purpose of funeral ceremonies, is guilty of a misdemeanour.

137. Hindering burial of dead body, etc.

Whoever unlawfully hinders the burial of the dead body of any person, or without lawful authority in that behalf disinters, dissects or harms the dead body of any person, or, being under a duty to cause the dead body of any person to be buried, fails to perform that duty, is guilty of a misdemeanour.

138. Writing or uttering words with intent to wound religious feelings

Any person who, with the deliberate intention of wounding the religious feelings of any other person, writes any word, or any person who, with the like intention, utters any word or makes any sound in the hearing of any other person or makes any gesture or places any object in the sight of any other person, is guilty of a misdemeanour and is liable to imprisonment for one year.

CHAPTER XV – OFFENCES AGAINST MORALITY

139. Deleted by Act No. 3 of 2006, Second Sch.

140. Deleted by Act No. 3 of 2006, Second Sch.

141. Deleted by Act No. 3 of 2006, Second Sch.

142. Deleted by Act No. 3 of 2006, Second Sch.

143. Deleted by Act No. 3 of 2006, Second Sch.

144. Deleted by Act No. 3 of 2006, Second Sch.

145. Deleted by Act No. 3 of 2006, Second Sch.

[Act No. 54 of 1960, s. 25.]

146. Defilement of idiots or imbeciles

Any person who, knowing a person to be an idiot or imbecile, has or attempts to have unlawful carnal connection with him or her under circumstances not amounting to rape, but which prove that the offender knew at the time of the commission of the offence that the person was an idiot or imbecile, is guilty of a felony and is liable to imprisonment with hard labour for fourteen years.

[Act No. 5 of 2003, s. 19.]

147. Deleted by Act No. 3 of 2006, Second Sch.

148. Deleted by Act No. 3 of 2006, Second Sch.

149. Deleted by Act No. 3 of 2006, Second Sch.

150. Deleted by Act No. 5 of 2003, s. 24.

151. Detention of females for immoral purposes

(1) Any person who detains any other person against his or her will—

- (a) in or upon any premises with intent that he or she may have unlawful sexual connection with any person, whether any particular person or generally; or
- (b) in any brothel,

is guilty of a felony.

(2) A person in or upon any premises for the purpose of having any unlawful sexual connection, or in any brothel, shall be deemed to be detained therein by any other person who, with intent to compel or induce that person to remain in or upon the premises or in the brothel—

- (a) withholds from that person any wearing apparel or other property belonging to that person; or

- (b) where wearing apparel has been lent or otherwise supplied to that person by or at his direction, threatens that person with legal proceedings in the event that that person should take away the wearing apparel so lent or supplied.

(3) No legal proceedings, whether civil or criminal, shall be taken against only such person for taking away or being found in possession of only such wearing apparel as was necessary to enable her leave such premises or brothel.

[Act No. 3 of 1969, First Sch.]

152. Power of search for persons detained

(1) If it appears to any magistrate, on information laid before him on oath by—

- (a) any parent, relative or guardian of a person named in the information; or
- (b) any other informant who, in the opinion of the magistrate, is acting *bona fide* in the interests of the person so named,

that there is reasonable cause to suspect that the person named in the information is unlawfully detained for immoral purposes by any person in any place within the jurisdiction of the magistrate, the magistrate may issue a warrant authorising the person charged with its execution to search for and, when found, to take to and detain in a place of safety the person named in the information until he or she can be brought before a magistrate.

(2) The magistrate before whom the person concerned is brought may cause the person to be delivered up to his or her parents or guardians or to be otherwise dealt with as circumstances may require.

(3) A magistrate issuing a warrant under subsection (1) may by the same or another warrant cause any person accused of unlawfully detaining the person concerned to be apprehended and brought before a magistrate, where he shall be dealt with according to law.

(4) A person shall be deemed to be unlawfully detained for immoral purposes if—

- (a) the person is detained for the purpose of having unlawful sexual connection with any person, whether any particular person or generally; and
- (b) the person—
 - (i) is under the age of sixteen years; or
 - (ii) being of or over the age of sixteen years and under the age of eighteen years, is so detained against his or her will or against the will of his or her father or mother or any person having the lawful care or charge of him or her; or
 - (iii) being of or over the age of eighteen years, is so detained against his or her own will.

(5) Any person authorised by warrant under this section to search for any person detained as abovementioned may enter (if need be, by force) any house, building or other place mentioned in the warrant, and may remove the person therefrom.

[Act No. 3 of 1969, First Sch., Act No. 5 of 2003, s. 20.]

153. Male person living on earnings of prostitution or soliciting

(1) Every male person who—

- (a) knowingly lives wholly or in part on the earnings of prostitution; or
- (b) in any public place persistently solicits or importunes for immoral purposes,

is guilty of a felony.

(2) Where a male person is proved to live with or to be habitually in the company of a prostitute or is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he is aiding, abetting or compelling her prostitution with any other person, or generally, he shall unless he satisfies the court to the contrary be deemed to be knowingly living on the earnings of prostitution.

[Act No. 5 of 2003, ss. 25 and 27.]

154. Woman living on earnings of prostitution or aiding, etc., prostitution

Every woman who knowingly lives wholly or in part on the earnings of prostitution, or who is proved to have, for the purpose of gain, exercised control, direction or influence over the movements of a prostitute in such a manner as to show that she is aiding, abetting or compelling her prostitution with any person, or generally, is guilty of a felony.

[Act No. 5 of 2003, s. 26.]

155. Premises used for prostitution

If it is made to appear to a magistrate by information on oath that there is reason to suspect that any house or any part of a house is used by a woman or girl for the purposes of prostitution, and that any person residing in or frequenting the house is living wholly or in part on the earnings of the prostitute, or is exercising control, direction or influence over the movements of the prostitute, the magistrate may issue a warrant authorizing any police officer to enter and search the house and to arrest such person.

156. Brothels

Any person who—

- (a) keeps or manages or assists in the management of a brothel; or
- (b) being the tenant, lessee or occupier, or person in charge, of any premises, knowingly permits the premises or any part thereof to be used as a brothel; or
- (c) being the lessor or landlord of any premises, or the agent of the lessor or landlord, lets the same or any part thereof with the knowledge that the premises or some part thereof are or is to be used as a brothel, or is wilfully a party to the continued use of the premises as a brothel,

is guilty of a felony.

[Act No. 5 of 2003, s. 29.]

157. Conspiracy to defile

(1) Any person who conspires with another to induce any woman or girl, by means of any false pretence or other fraudulent means, to permit any man to have unlawful carnal knowledge of her is guilty of a felony and is liable to imprisonment for three years.

(2) Any person who conspires with another to induce any man or boy, by means of any false pretence or other fraudulent means, to permit any person to have unlawful sexual connexion with him is guilty of a felony and is liable to imprisonment for three years.

[Act No. 42 of 1951, s. 6.]

158. Attempts to procure abortion

Any person who, with intent to procure miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, is guilty of a felony and is liable to imprisonment for fourteen years.

159. The like by woman with child

Any woman who, being with child, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used to her, is guilty of a felony and is liable to imprisonment for seven years.

160. Supplying drugs or instruments to procure abortion

Any person who unlawfully supplies to or procures for any person any thing whatever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman whether she is or is not with child, is guilty of a felony and is liable to imprisonment for three years.

161. Deleted by Act No. 3 of 2006, Second Sch.

162. Unnatural offences

Any person who—

- (a) has carnal knowledge of any person against the order of nature; or
- (b) has carnal knowledge of an animal; or
- (c) permits a male person to have carnal knowledge of him or her against the order of nature,

is guilty of a felony and is liable to imprisonment for fourteen years:

Provided that, in the case of an offence under paragraph (a), the offender shall be liable to imprisonment for twenty-one years if—

- (i) the offence was committed without the consent of the person who was carnally known; or
- (ii) the offence was committed with that person's consent but the consent was obtained by force or by means of threats or intimidation of some kind, or by fear of bodily harm, or by means of false representations as to the nature of the act.

[Act No. 42 of 1951, s. 6, Act No. 5 of 2003, s. 30.]

163. Attempt to commit unnatural offences

Any person who attempts to commit any of the offences specified in section 162 is guilty of a felony and is liable to imprisonment for seven years.

[Act No. 5 of 2003, s. 31.]

164. Deleted by Act No. 3 of 2006, Second Sch.

165. Indecent practices between males

Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony and is liable to imprisonment for five years.

[Act No. 5 of 2003, s. 32.]

166. Deleted by Act No. 3 of 2006, Second Sch.

167. Deleted by Act No. 3 of 2006, Second Sch.

168. Deleted by Act No. 3 of 2006, Second Sch.

169. Deleted by Act No. 5 of 2003, s. 36.

CHAPTER XVI – OFFENCES RELATING TO
MARRIAGE AND DOMESTIC OBLIGATIONS

170. Deleted by Act No. 7 of 2007, Sch.

171. Bigamy

Any person who, having a husband or wife living, goes through a ceremony of marriage which is void by reason of its taking place during the life of the husband or wife, is guilty of a felony and is liable to imprisonment for five years:

Provided that this section shall not extend to any person whose marriage with the husband or wife has been declared void by a court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife if the husband or wife, at the time of the subsequent marriage, has been continually absent from such person for the space of seven years, and has not been heard of by such person as being alive within that time.

172. Marriage with dishonest or fraudulent intent

Any person who dishonestly or with a fraudulent intention goes through the ceremony of marriage, knowing that he is not thereby lawfully married, is guilty of a felony and is liable to imprisonment for five years.

173. Master not providing for servants or apprentices

Any person who being legally liable, either as master or mistress, to provide for any apprentice or servant necessary food, clothing or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, or unlawfully and maliciously does or causes to be done any bodily harm to such apprentice or servant so that the life of such apprentice or servant is endangered or that his health has been or is likely to be permanently injured, is guilty of a misdemeanour.

174. Child stealing

(1) Any person who, with intent to deprive any parent, guardian or other person who has the lawful care or charge of a child under the age of fourteen years of the possession of the child—

- (a) forcibly or fraudulently takes or entices away or detains the child; or
- (b) receives or harbours the child, knowing it to have been so taken or enticed away or detained,

is guilty of a felony and is liable to imprisonment for seven years.

(2) It is a defence to a charge of any of the offences defined in this section to prove that the accused person claimed in good faith a right to the possession of the child, or, in the case of an illegitimate child, is its mother or claimed to be its father.

CHAPTER XVII – NUISANCES AND OFFENCES
AGAINST HEALTH AND CONVENIENCE

175. Common nuisance

(1) Any person who does an act not authorized by law or omits to discharge a legal duty and thereby causes any common injury, or danger or annoyance, or obstructs or causes inconvenience to the public in the exercise of common rights, commits the misdemeanour termed a common nuisance and is liable to imprisonment for one year.

(2) It is immaterial that the act or omission complained of is convenient to a larger number of the public than it inconveniences, but the fact that it facilitates the lawful exercise of their rights by a part of the public may show that it is not a nuisance to any of the public.

176. Deleted by Act No. 9 of 1966, s. 71.

177. Deleted by Act No. 9 of 1966, s. 71.

178. Deleted by Act No. 9 of 1966, s. 71.

179. Deleted by Act No. 9 of 1966, s. 71.

180. Deleted by Act No. 9 of 1966, s. 71.

181. Traffic in obscene publications

(1) Any person who—

- (a) for the purpose of or by way of trade or for the purpose of distribution or public exhibition, makes, produces or has in his possession any one or more obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films or any other obscene objects, or any other object tending to corrupt morals; or
- (b) for any of the purposes above mentioned imports, conveys or exports, or causes to be imported, conveyed or exported, any such matters or things, or in any manner whatsoever puts any of them in circulation; or

- (c) carries on or takes part in any business, whether public or private concerned with any such matters or things, or deals in any such matters or things in any manner whatsoever, or distributes any of them, or exhibits any of them publicly, or makes a business of lending any of them; or
- (d) advertises or makes known by any means whatsoever, with a view to assisting the circulation of or traffic in any such matters or things, that a person is engaged in any of the acts referred to in this section, or advertises or makes known how, or from whom, any such matters or things can be procured either directly or indirectly; or
- (e) publicly exhibits any indecent show or performance or any show or performance tending to corrupt morals,

is guilty of a misdemeanour and is liable to imprisonment for two years or to a fine of seven thousand shillings.

(2) If, in respect of any of the offences specified in paragraphs (a), (b), (c) and (d) of subsection (1), any constituent element thereof is committed in Kenya, such commission shall be sufficient to render the person accused of such offence triable therefore in Kenya.

(3) A court, on convicting any person of an offence against this section, may order to be destroyed any matter or thing made, possessed or used for the purpose of that offence.

(4) A court may, on the application of the Director of Public Prosecutions, the Solicitor-General, a State Counsel or a Superintendent of Police, order the destruction of any obscene matter or thing to which this section relates, whether any person may or may not have been convicted under this section in respect of the obscene matter or thing.

[Act No. 5 of 2003, s. 35.]

182. Idle and disorderly persons

The following persons—

- (a) every common prostitute behaving in a disorderly or indecent manner in any public place;
- (b) every person causing, procuring or encouraging any person to beg or gather alms;
- (c) *deleted by Act No. 61 of 1968, s. 22;*
- (d) every person who publicly conducts himself in a manner likely to cause a breach of the peace;
- (e) every person who without lawful excuse publicly does any indecent act;
- (f) every person who in any public place solicits for immoral purposes;
- (g) *deleted by Act No. 61 of 1968, s. 22,*

shall be deemed idle and disorderly persons, and are guilty of a misdemeanour and are liable for the first offence to imprisonment for one month or to a fine not exceeding one hundred shillings, or to both and for every subsequent offence to imprisonment for one year.

[Act No. 40 of 1952, Sch., Act No. 9 of 1966, s. 71, Act No. 24 of 1967, Sch., Act No. 61 of 1968, s. 22.]

183. Deleted by Act No. 5 of 2003, s. 37.

184. Unauthorized uniforms

(1) Any person who, not being a person serving in the disciplined forces or the police force, or any other armed forces for the time being lawfully present in Kenya, wears without the permission of the Minister or without other lawful authority the uniform of any of those forces, or any dress having the appearance or bearing any of the regimental or other distinctive marks of such uniform, is guilty of a misdemeanour and is liable to imprisonment for one month or to a fine of six hundred shillings:

Provided that nothing in this section shall prevent any person from wearing any uniform or dress in the course of a stage play performed in any place in which stage plays may lawfully be publicly performed, or in the course of a music-hall or circus performance or in the course of any *bona fide* military representation.

(2) Any person who unlawfully wears the uniform of any of the forces aforesaid, or any dress having the appearance or bearing any of the regimental or other distinctive marks of any such uniform, in such a manner or in such circumstances as to be likely to bring contempt on that uniform, or employs any other person so to wear such uniform or dress, is guilty of a misdemeanour and is liable to imprisonment for three months or to a fine of one thousand two hundred shillings.

(3) Any person who, not being in the service of Kenya or not having previously received the written permission of the Minister so to do, imports or sells or has in his possession for sale the uniform or dress mentioned in this section, or the buttons or badges appropriate thereto, is guilty of a misdemeanour and is liable to imprisonment for six months or to a fine of six thousand shillings:

Provided that nothing in this subsection shall be deemed to prohibit the importation of any such uniform or dress by any person who is lawfully in possession thereof.

(4) When any person has been convicted of any offence under this section, the uniform, dress, button, badge or other thing in respect of which the offence has been committed shall be forfeited unless the Minister otherwise orders.

[Act No. 40 of 1952, Sch.]

185. Wearing uniforms declared to be for exclusive use

(1) The Minister may, by notice in the *Gazette*, upon the application of any persons who perform, or who are members of any organization which performs, any service which in his opinion is in the public interest, declare that any uniform, badge, button or other distinctive mark used by those persons and described in the notice shall be for the exclusive use of those persons.

(2) Any person who, without the authority of the persons upon whose application a notice under this section has been published in the *Gazette*, uses or wears any uniform, badge, button or other distinctive mark described in the notice, or any uniform, badge, button or other distinctive mark so closely resembling

the same as to lead to the belief that it is a uniform, badge, button or other distinctive mark so described, is guilty of a misdemeanour and is liable to imprisonment for one month or to a fine of two hundred shillings:

Provided that nothing in this section shall prevent any person from using or wearing the uniform, badge, button or other distinctive mark in the course of a stage play performed in any public place in which stage plays may lawfully be publicly performed, or in the course of a music-hall or circus performance, or in the course of the making or production of a cinematograph film, if the uniform, badge, button or other distinctive mark is not used or worn in such a manner or in such circumstances as to bring it into contempt.

(3) Any person who, without the authority of the persons upon whose application a notice under this section has been published in the *Gazette*, imports or sells or has in his possession for sale any uniform, badge, button or other distinctive mark described in the notice is guilty of a misdemeanour and is liable to imprisonment for six months or to a fine of two thousand shillings.

(4) Where any person has been convicted of any offence under this section, the uniform, badge, button or other distinctive mark in respect of which the offence has been committed shall be forfeited unless the Minister otherwise orders.

[Act No. 40 of 1952, Sch., Act No. 12 of 2012, Sch.]

186. Spreading infection

Any person who unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, is guilty of a misdemeanour.

187. Deleted by Act No. 8 of 1965, s. 40.

188. Deleted by Act No. 8 of 1965, s. 40.

189. Deleted by Act No. 8 of 1965, s. 40.

190. Deleted by Act No. 8 of 1965, s. 40.

191. Fouling water

Any person who voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, is guilty of a misdemeanour.

192. Fouling air

Any person who voluntarily vitiates the atmosphere in any place, so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, is guilty of a misdemeanour.

193. Offensive trades

Any person who, for the purposes of trade or otherwise, makes loud noises or offensive or unwholesome smells in such places and circumstances as to annoy any considerable number of persons in the exercise of their common rights commits an offence and is liable to be punished as for a common nuisance.

CHAPTER XVIII – DEFAMATION

194. Definition of libel

Any person who, by print, writing, painting or effigy, or by any means otherwise than solely by gestures, spoken words or other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, is guilty of the misdemeanour termed libel.

195. Definition of defamatory matter.

Defamatory matter is matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation; and it is immaterial whether at the time of the publication of the defamatory matter the person concerning whom the matter is published is living or dead.

[Act No. 42 of 1951, s. 10, Act No. 40 of 1952, Sch., L.N. 407/1961, Act No. 19 of 1964, s. 2, Act No. 24 of 1967, Sch.]

196. Definition of publication

(1) A person publishes a libel if he causes the print, writing, painting, effigy or other means by which the defamatory matter is conveyed to be so dealt with, either by exhibition, reading, recitation, description, delivery or otherwise, that the defamatory meaning thereof becomes known or is likely to become known to either the person defamed or any other person.

(2) It is not necessary for libel that a defamatory meaning should be directly or completely expressed; and it suffices if such meaning and its application to the person alleged to be defamed can be collected either from the alleged libel itself or from any extrinsic circumstances, or partly by the one and partly by the other means.

197. Definition of unlawful publication

Any publication of defamatory matter concerning a person is unlawful within the meaning of this Chapter, unless—

- (a) the matter is true and it was for the public benefit that it should be published; or
- (b) it is privileged on one of the grounds hereafter mentioned in this Chapter.

198. Cases in which publication of defamatory matter is absolutely privileged

(1) The publication of defamatory matter is absolutely privileged, and no person shall under any circumstances be liable to punishment under this Code in respect thereof, in any of the following cases, namely—

- (a) if the matter is published by the President, or by the Cabinet of Ministers, or in Parliament, in any case in an official document or proceeding; or
- (b) if the matter is published in the Cabinet of Ministers, or in Parliament, in any case by the President, or by a Minister, or by a Member of Parliament, as the case may be; or

- (c) if the matter is published by order of the President or by order of the Cabinet of Ministers; or
- (d) if the matter is published concerning a person subject to military or naval discipline for the time being, and relates to his conduct as a person subject to such discipline, and is published by some person having authority over him in respect of such conduct, and to some person having authority over him in respect of such conduct; or
- (e) if the matter is published in the course of any judicial proceedings by a person taking part therein as a judge, magistrate, commissioner, advocate, assessor, witness or party thereto; or
- (f) if the matter published is in fact a fair report of anything said, done or published in the Cabinet of Ministers or in Parliament; or
- (g) if the person publishing the matter is legally bound to publish it.

(2) Where a publication is absolutely privileged, it is immaterial for the purposes of this Chapter whether the matter be true or false, and whether it be or be not known or believed to be false, and whether it be or be not published in good faith:

Provided that nothing in this section shall exempt any person from any liability to punishment under any other Chapter of this Code or under any other written law in force within Kenya.

[L.N. 299/1956, L.N. 172/1960.]

199. Cases in which publication of defamatory matter is conditionally privileged

A publication of defamatory matter is privileged, on condition that it was published in good faith, if the relation between the parties by and to whom the publication is made is such that the person publishing the matter is under some legal, moral or social duty to publish it to the person to whom the publication is made or has a legitimate personal interest in so publishing it, provided that the publication does not exceed either in extent or matter what is reasonably sufficient for the occasion, and in any of the following cases, namely—

- (a) if the matter published is in fact a fair report of anything said, done or shown in a civil or criminal inquiry or proceeding before any court:
Provided that if the court prohibits the publication of anything said or shown before it, on the ground that it is seditious, immoral or blasphemous, the publication thereof shall not be privileged; or
- (b) if the matter published is a copy or reproduction, or in fact a fair abstract, of any matter which has been previously published, and the previous publication of it was or would have been privileged under section 198; or
- (c) if the matter is an expression of opinion in good faith as to the conduct of a person in a judicial, official or other public capacity, or as to his personal character so far as it appears in such conduct; or
- (d) if the matter is an expression of opinion in good faith as to the conduct of a person in relation to any public question or matter, or as to his personal character so far as it appears in such conduct; or

- (e) if the matter is an expression of opinion in good faith as to the conduct of any person as disclosed by evidence given in a public legal proceeding, whether civil or criminal, or as to the conduct of any person as a party, witness or otherwise in any such proceeding, or as to the character of any person so far as it appears in any such conduct as in this paragraph mentioned; or
- (f) if the matter is an expression of opinion in good faith as to the merits of any book, writing, painting, speech or other work, performance or act published or publicly done or made or submitted by a person to the judgment of the public, or as to the character of the person so far as it appears therein; or
- (g) if the matter is a censure passed by a person in good faith on the conduct of another person in any matter in respect of which he has authority, by contract or otherwise, over the other person, or on the character of the other person so far as it appears in such conduct; or
- (h) if the matter is a complaint or accusation made by a person in good faith against another person in respect of his conduct in any matter, or in respect of his character so far as it appears in such conduct, to any person having authority, by contract or otherwise, over that other person in respect of such conduct or matter, or having authority by law to inquire into or receive complaints respecting such conduct or matter; or
- (i) if the matter is published in good faith for the protection of the rights or interests of the person who publishes it, or of the person to whom it is published, or of some person in whom the person to whom it is published is interested.

200. Explanation as to good faith

A publication of defamatory matter shall be deemed not to have been made in good faith by a person, within the meaning of section 199, if it is made to appear either—

- (a) that the matter was untrue, and that he did not believe it to be true; or
- (b) that the matter was untrue, and that he published it without having taken reasonable care to ascertain whether it was true or false; or
- (c) that, in publishing the matter, he acted with intent to injure the person defamed in a substantially greater degree or substantially otherwise than was reasonably necessary for the interest of the public or for the protection of the private right or interest in respect of which he claims to be privileged.

[Act No. 5 of 2003, s. 38.]

201. Deleted by Act No. 24 of 1967, s. 7.*Division IV – Offences against the Person***CHAPTER XIX – MURDER AND MANSLAUGHTER****202. Manslaughter**

(1) Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed manslaughter.

(2) An unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily harm.

203. Murder

Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.

204. Punishment of murder

Any person convicted of murder shall be sentenced to death.

205. Punishment of manslaughter

Any person who commits the felony of manslaughter is liable to imprisonment for life.

206. Malice aforethought

Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances—

- (a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;
- (b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;
- (c) an intent to commit a felony;
- (d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.

207. Killing on provocation

When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation as hereinafter defined, and before there is time for his passion to cool, is guilty of manslaughter only.

208. Provocation defined

(1) The term “**provocation**” means and includes, except as hereinafter stated, any wrongful act or insult of such a nature as to be likely, when done to an ordinary person or in the presence of an ordinary person to another person who is under his immediate care, or to whom he stands in a conjugal, parental, filial or fraternal relation, or in the relation of master or servant, to deprive him of the power of self-control and to induce him to commit an assault of the kind which the person charged committed upon the person by whom the act or insult is done or offered.

(2) When such an act or insult is done or offered by one person to another, or in the presence of another to a person who is under the immediate care of that other, or to whom the latter stands in any such relation as aforesaid, the former is said to give to the latter provocation for an assault.

(3) A lawful act is not provocation to any person for an assault.

(4) An act which a person does in consequence of incitement given by another person in order to induce him to do the act and thereby to furnish an excuse for committing an assault is not provocation to that other person for an assault.

(5) An arrest which is unlawful is not necessarily provocation for an assault, but it may be evidence of provocation to a person who knows of the illegality.

209. Suicide pacts

(1) It shall be manslaughter, and shall not be murder, for a person acting in pursuance of a suicide pact between him and another to kill the other or be a party to the other killing himself or being killed by a third person.

(2) Where it is shown that a person charged with the murder of another killed the other or was a party to his killing himself or being killed, it shall be for the defence to prove that the person charged was acting in pursuance of a suicide pact between him and the other.

(3) For the purposes of this section, “**suicide pact**” means a common agreement between two or more persons having for its object the death of all of them, whether or not each is to take his own life, but nothing done by a person who enters into a suicide pact shall be treated as done by him in pursuance of the pact unless it is done while he has the settled intention of dying in pursuance of the pact.

[Act No. 15 of 1954, s. 3(l), L.N.427/1963, L.N. 124/1964,
Act No. 21 of 1966, Second Sch., Act No. 24 of 1967, Sch.]

210. Infanticide

Where a woman by any wilful act or omission causes the death of her child being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent on the birth of the child, then, notwithstanding that the circumstances were such that but for the provisions of this section the offence would have amounted to murder, she shall be guilty of a felony, to wit, infanticide, and may for that offence be dealt with and punished as if she had been guilty of manslaughter of the child.

211. Sentence of death not to be passed on pregnant woman

Where a woman convicted of an offence punishable with death is found in accordance with the provisions of section 212 to be pregnant, the sentence to be passed on her shall be a sentence of imprisonment for life instead of sentence of death.

212. Procedure where woman convicted of capital offence alleges she is pregnant

(1) Where a woman convicted of an offence punishable with death alleges that she is pregnant, or where the court before whom she is so convicted thinks fit so to order, the question whether or not the woman is pregnant shall, before sentence is passed on her, be determined by the trial judge.

(2) The question whether the woman is pregnant or not shall be determined by the judge on such evidence as may be laid before him on the part of the woman or on the part of the Republic, and the judge shall find that the woman is not pregnant unless it is proved affirmatively to his satisfaction that she is pregnant.

(3) Where in proceedings under this section the judge finds that the woman in question is not pregnant, the woman may appeal to the Court of Appeal, and that Court, if satisfied that for any reason the finding should be set aside, shall quash the sentence passed on her and instead thereof pass on her a sentence of imprisonment for life.

(4) If for any reason whatsoever the trial judge is unable to sit for the purpose of determining the question whether or not the woman is pregnant, then some other judge of the High Court shall sit and determine that question.

[Act No. 24 of 1967, Sch.]

213. Causing death defined

A person is deemed to have caused the death of another person although his act is not the immediate or the sole cause of death in any of the following cases—

- (a) if he inflicts bodily injury on another person in consequence of which that other person undergoes surgical or medical treatment which causes death. In this case it is immaterial whether the treatment was proper or mistaken, if it was employed in good faith and with common knowledge and skill; but the person inflicting the injury is not deemed to have caused the death if the treatment which was its immediate cause was not employed in good faith or was so employed without common knowledge or skill;
- (b) if he inflicts bodily injury on another which would not have caused death if the injured person had submitted to proper surgical or medical treatment or had observed proper precautions as to his mode of living;
- (c) if by actual or threatened violence he causes such other person to perform an act which causes the death of such person, such act being a means of avoiding such violence which in the circumstances would appear natural to the person whose death is so caused;
- (d) if by any act or omission he hastened the death of a person suffering under any disease or injury which apart from such act or omission would have caused death;
- (e) if his act or omission would not have caused death unless it had been accompanied by an act or omission of the person killed or of other persons.

214. When child deemed to be a person

A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is severed or not.

215. Limitation as to time of death

(1) A person is not deemed to have killed another if the death of that person does not take place within a year and a day of the cause of death.

(2) Such period is reckoned inclusive of the day on which the last unlawful act contributing to the cause of death was done.

(3) When the cause of death is an omission to observe or perform a duty, the period is reckoned inclusive of the day on which the omission ceased.

(4) When the cause of death is in part an unlawful act, and in part an omission to observe or perform a duty, the period is reckoned inclusive of the day on which the last unlawful act was done or the day on which the omission ceased, whichever is the later.

CHAPTER XX – DUTIES RELATING TO THE
PRESERVATION OF LIFE AND HEALTH

216. Responsibility of person who has charge of another

It is the duty of every person having charge of another who is unable by reason of age, sickness, unsoundness of mind, detention or any other cause to withdraw himself from such charge, and who is unable to provide himself with the necessaries of life, whether the charge is undertaken under a contract or is imposed by law, or arises by reason of any act, whether lawful or unlawful, of the person who has such charge, to provide for that other person the necessaries of life; and he shall be deemed to have caused any consequences which adversely affect the life or health of the other person by reason of any omission to perform that duty.

217. Duty of masters

It is the duty of every person who as master or mistress has contracted to provide necessary food, clothing or lodging for any servant or apprentice under the age of sixteen years to provide the same; and he or she shall be deemed to have caused any consequences which adversely affect the life or health of the servant or apprentice by reason of any omission to perform that duty.

218. Duty of persons doing dangerous acts

It is the duty of every person who, except in a case of necessity, undertakes to administer surgical or medical treatment to any other person, or to do any other lawful act which is or may be dangerous to human life or health, to have reasonable skill and to use reasonable care in doing the act; and he shall be deemed to have caused any consequences which adversely affect the life or health of any person by reason of any omission to observe or perform that duty.

219. Duty of persons in charge of dangerous things

It is the duty of every person who has in his charge or under his control anything, whether living or inanimate, and whether moving or stationary, of such a nature that, in the absence of care or precaution in its use or management, the life, safety or health of any person may be endangered, to use reasonable care and take reasonable precautions to avoid the danger; and he shall be deemed to have caused any consequences which adversely affect the life or health of any person by reason of any omission to perform that duty.

CHAPTER XXI – OFFENCES CONNECTED WITH MURDER AND SUICIDE

220. Attempt to murder

Any person who—

- (a) attempts unlawfully to cause the death of another; or
- (b) with intent unlawfully to cause the death of another does any act, or omits to do any act which it is his duty to do, such act or omission being of such a nature as to be likely to endanger human life,

is guilty of a felony and is liable to imprisonment for life.

221. Attempt to murder by convict

Any person who, being under a sentence of imprisonment for three years or more, attempts to commit murder is liable to imprisonment for life.

[Act No. 54 of 1960, s. 26.]

222. Accessory after the fact to murder

Any person who becomes an accessory after the fact to murder is guilty of a felony and is liable to imprisonment for life.

[Act No. 21 of 1966, Second Sch., Act No. 24 of 1967, Sch.]

223. Threats to kill

(1) Any person who without lawful excuse utters, or directly or indirectly causes any person to receive, a threat, whether in writing or not, to kill any person is guilty of a felony and is liable to imprisonment for ten years.

(2) *Deleted by Act No. 5 of 2003, s. 40.*

[Act No. 53 of 1952, Sch.]

224. Conspiracy to murder

Any person who conspires with any other person to kill any person, whether that person is in Kenya or elsewhere, is guilty of a felony and is liable to imprisonment for fourteen years.

225. Aiding suicide

Any person who—

- (a) procures another to kill himself; or
- (b) counsels another to kill himself and thereby induces him to do so; or
- (c) aids another in killing himself,

is guilty of a felony and is liable to imprisonment for life.

226. Attempting suicide

Any person who attempts to kill himself is guilty of a misdemeanour.

227. Concealing birth

Any person who, when a woman is delivered of a child, endeavours by any secret disposition of the dead body of the child to conceal the birth, whether the child died before, at or after its birth, is guilty of a misdemeanour.

228. Killing unborn child

Any person who, when a woman is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that, if the child had been born alive and had then died, he would be deemed to have unlawfully killed the child, is guilty of a felony and is liable to imprisonment for life.

CHAPTER XXII – OFFENCES ENDANGERING LIFE AND HEALTH

229. Disabling in order to commit felony or misdemeanour

Any person who, by any means calculated to choke, suffocate or strangle, and with intent to commit or to facilitate the commission of a felony or misdemeanour, or to facilitate the flight of an offender after the commission or attempted commission of a felony or misdemeanour, renders or attempts to render any person incapable of resistance, is guilty of a felony and is liable to imprisonment for life.

[Act No. 52 of 1955, s. 12.]

230. Stupefying in order to commit felony or misdemeanour

Any person who, with intent to commit or to facilitate the commission of a felony or misdemeanour, or to facilitate the flight of an offender after the commission or attempted commission of a felony or misdemeanour, administers or attempts to administer any stupefying or overpowering drug or thing to any person, is guilty of a felony and is liable to imprisonment for life.

231. Acts intended to cause grievous harm or to prevent arrest

Any person who, with intent to maim, disfigure or disable any person, or to do some grievous harm to any person, or to resist or prevent the lawful arrest or detention of any person—

- (a) unlawfully wounds or does any grievous harm to any person by any means whatever; or
- (b) unlawfully attempts in any manner to strike any person with any kind of projectile or with a spear, sword, knife or other dangerous or offensive weapon; or
- (c) unlawfully causes any explosive substance to explode; or
- (d) sends or delivers any explosive substance or other dangerous or noxious thing to any person; or
- (e) causes any such substance or thing to be taken or received by any person; or

- (f) puts any corrosive fluid or any destructive or explosive substance in any place; or
- (g) unlawfully casts or throws any such fluid or substance at or upon any person, or otherwise applies any such fluid or substance to the person of any person,

is guilty of a felony and is liable to imprisonment for life.

[Act No. 5 of 2003, s. 41.]

232. Preventing escape from wreck

Any person who unlawfully—

- (a) prevents or obstructs any person who is on board of, or is escaping from, a vessel which is in distress or wrecked, in his endeavours to save his life; or
- (b) obstructs any person in his endeavours to save the life of any person so situated,

is guilty of a felony and is liable to imprisonment for life.

233. Intentionally endangering safety of persons travelling by railway

Any person who, with intent to injure or to endanger the safety of any person travelling by any railway, whether a particular person or not—

- (a) places anything on the railway; or
- (b) deals with the railway, or with anything whatever upon or near the railway, in such a manner as to affect or endanger the free and safe use of the railway or the safety of any such person; or
- (c) shoots or throws anything at, into or upon, or causes anything to come into contact with, any person or thing on the railway; or
- (d) shows any light or signal, or in any way deals with any existing light or signal, upon or near the railway; or
- (e) by any omission to do any act which it is his duty to do causes the safety of any such person to be endangered,

is guilty of a felony and is liable to imprisonment for life.

[Act No. 54 of 1960, s. 27.]

234. Grievous harm

Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.

[Act No. 5 of 2003, s. 43.]

235. Attempting to injure by explosive substances

Any person who unlawfully, and with intent to do any harm to another, puts any explosive substance in any place whatever, is guilty of a felony and is liable to imprisonment for fourteen years.

236. Maliciously administering poison with intent to harm

Any person who unlawfully, and with intent to injure or annoy another, causes any poison or noxious thing to be administered to, or taken by, any person, and thereby endangers his life, or does him grievous harm, is guilty of a felony and is liable to imprisonment for fourteen years.

237. Unlawful wounding or poisoning

Any person who—

- (a) unlawfully wounds another; or
- (b) unlawfully, and with intent to injure or annoy any person, causes any poison or other noxious thing to be administered to, or taken by, any person,

is guilty of a misdemeanour and is liable to imprisonment for five years.

[Act No. 53 of 1952, Sch., Act No. 54 of 1960, s. 27, Act No. 5 of 2003, s. 44.]

238. Intimidation and molestation.

(1) Any person who intimidates or molests any other person is guilty of an offence and is liable to imprisonment for a term not exceeding three years.

(2) A person intimidates another person who, with intent to cause alarm to that person or to cause him to do any act which he is not legally bound to do or to omit to do any act which he is legally entitled to do, causes or threatens to cause unlawful injury to the person, reputation or property of that person or anyone in whom that person is interested.

(3) A person molests another person who, with intent as aforesaid, dissuades or attempts to dissuade, by whatever means, anyone from entering or approaching or dealing at any premises at which that person carries on trade or business or works or otherwise from dealing with that person, or with any person by whom that person is employed, in the course of his trade or business, or watches and besets any premises where that person resides or works or carries on trade or business or happens to be, or the approaches to such premises, or persistently follows that person or anyone in whom that person is interested from place to place, or interferes with any property owned or used by, or deprives of or hinders in the use of such property, that person or anyone in whom that person is interested.

(4) Nothing in subsection (3) shall apply to any peaceful picketing which is lawful under the provisions of any law relating to trade unions or trade disputes within the meaning of the Trade Unions Act (Cap. 233).

[Act No. 53 of 1952, Sch., Act No. 54 of 1960, s. 28.]

239. Failure to supply necessities

Any person who, being charged with the duty of providing for another the necessities of life, without lawful excuse fails to do so, whereby the life of that other person is or is likely to be endangered or his health is or is likely to be permanently injured, is guilty of a felony and is liable to imprisonment for three years.

240. Surgical operation

A person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for his benefit, or upon an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable, having regard to the patient's state at the time and to all the circumstances of the case.

241. Excess of force

Any person authorized by law or by the consent of the person injured by him to use force is criminally responsible for any excess, according to the nature and quality of the act which constitutes the excess.

242. Consent

Notwithstanding anything contained in section 241, consent by a person to the causing of his own death or his own maim does not affect the criminal responsibility of any person by whom the death or maim is caused.

242A. Supply of harmful substances to children

(1) Any person who supplies or offers to a child—

- (a) any petroleum distillate, glue or other substance consisting of or containing matter having stupefying or hallucinogenic properties; or
- (b) any substance which the Minister responsible for health has declared, by notice published in the *Gazette*, to be a substance to which this section applies,

with intent that the child should inhale, consume or otherwise abuse the substance, or knowing or having reasonable cause to suspect that the child is likely to do so, is guilty of a misdemeanour and liable to imprisonment for three years.

(2) The provisions of this section are in addition to, and do not limit the operation of—

- (a) any provision of Chapter XX or XXII or any other provision of this Code;
- (b) the provisions of section 16 and 22 of the Children Act (No. 8 of 2001); or
- (c) the provisions of the Narcotic Drugs and Psychotropic Substances (Control) Act (No. 4 of 1994) or any other written law.

(3) In this section, “**child**” means a person under the age of eighteen years.

[Act No. 53 of 1952, Sch., Act No. 54 of 1960, s. 28, Act No. 5 of 2003, s. 45.]

CHAPTER XXIII – CRIMINAL RECKLESSNESS AND NEGLIGENCE**243. Reckless and negligent acts**

Any person who, in a manner so rash or negligent as to endanger human life or to be likely to cause harm to any other person—

- (a) drives any vehicle or rides on any public way; or
- (b) navigates, or takes part in the navigation or working of, any vessel; or
- (c) does any act with fire or any combustible matter, or omits to take precautions against any probable danger from any fire or any combustible matter in his possession; or
- (d) omits to take precautions against any probable danger from any animal in his possession; or

- (e) gives medical or surgical treatment to any person whom he has undertaken to treat; or
- (f) dispenses, supplies, sells, administers or gives away any medicine or poisonous or dangerous matter; or
- (g) does any act with respect to, or omits to take proper precautions against any probable danger from, any machinery of which he is solely or partly in charge; or
- (h) does any act with respect to, or omits to take proper precautions against any probable danger from, any explosive in his possession,

is guilty of a misdemeanour.

244. Other negligent acts causing harm

Any person who unlawfully does any act, or omits to do any act which it is his duty to do, not being an act or omission specified in section 243 by which act or omission harm is caused to any person, is guilty of a misdemeanour and is liable to imprisonment for six months.

[Act No. 54 of 1960, s. 29.]

245. Dealing in poisonous substances in negligent manner

Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such care with any poisonous substance in his possession as is sufficient to guard against probable danger to human life from such poisonous substance, is guilty of a misdemeanour and is liable to imprisonment for six months or to a fine of seven thousand shillings.

[Act No. 5 of 2003, s. 46.]

246. Endangering safety of persons travelling by railway

Any person who, by any unlawful act or omission not specified in section 233, causes the safety of any person travelling by any railway to be endangered, is guilty of a misdemeanour.

247. Exhibition of false light, mark or buoy

Any person who exhibits any false light, mark or buoy, intending or knowing it to be likely that the exhibition will mislead any navigator, is liable to imprisonment for seven years.

248. Conveying person by water for hire in unsafe or overloaded vessel

Any person who knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to be unsafe, is guilty of a misdemeanour.

249. Danger or obstruction in public way or line of navigation

Any person who by doing any act, or by omitting to take reasonable care with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, is liable to a fine.

CHAPTER XXIV – ASSAULTS

250. Common assault

Any person who unlawfully assaults another is guilty of a misdemeanour and, if the assault is not committed in circumstances for which a greater punishment is provided in this Code, is liable to imprisonment for one year.

251. Assault causing actual bodily harm

Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable to imprisonment for five years.

[Act No. 52 of 1955, s. 14.]

252. Assault on persons protecting wreck

Any person who assaults and strikes or wounds any magistrate, officer or other person lawfully authorized in or on account of the execution of his duty in or concerning the preservation of any vessel in distress, or of any vessel or goods or effects wrecked, stranded or cast on shore, or lying under water, is guilty of a misdemeanour and is liable to imprisonment for seven years.

253. Other assaults

Any person who—

- (a) assaults any person with intent to commit a felony or to resist or prevent the lawful apprehension or detainer of himself or of any other person for any offence; or
- (b) assaults, resists or wilfully obstructs any police officer in the due execution of his duty, or any person acting in aid of that officer; or
- (c) assaults any person in pursuance of any unlawful combination or conspiracy to raise the rate of wages, or respecting any trade, business or manufacture or respecting any person concerned or employed therein; or
- (d) assaults, resists or obstructs any person engaged in lawful execution of process, or in making a lawful distress, with intent to rescue any property lawfully taken under such process or distress; or
- (e) assaults any person on account of any act done by him in the execution of any duty imposed on him by law,

is guilty of a misdemeanour and is liable to imprisonment for five years.

CHAPTER XXV – OFFENCES AGAINST LIBERTY

254. Definition of kidnapping from Kenya

Any person who conveys any person beyond the limits of Kenya without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from Kenya.

255. Definition of kidnapping from lawful guardianship

Any person who takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind,

out of the keeping of a lawful guardian of the minor or person of unsound mind, without the consent of the guardian, is said to kidnap the minor or person from lawful guardianship.

256. Definition of abduction

Any person who by force compels, or by any deceitful means induces, any person to go from any place is said to abduct that person.

257. Punishment for kidnapping

Any person who kidnaps any person from Kenya or from lawful guardianship is guilty of a felony and is liable to imprisonment for seven years.

258. Kidnapping or abducting in order to murder

Any person who kidnaps or abducts any person in order that the person may be murdered, or may be so disposed of as to be put in danger of being murdered, is guilty of a felony and is liable to imprisonment for ten years.

259. Kidnapping or abducting with intent to confine

Any person who kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined is guilty of a felony and is liable to imprisonment for seven years.

260. Kidnapping or abducting in order to subject to grievous harm, slavery, etc.

Any person who kidnaps or abducts any person in order that the person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous harm, or knowing it to be likely that such person will be so subjected or disposed of, is guilty of a felony and is liable to imprisonment for ten years.

[Act No. 40 of 1952, Sch.]

261. Wrongfully concealing or keeping in confinement kidnapped or abducted person

Any person who, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person is guilty of a felony and shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose, as that with or for which he conceals or detains such person in confinement.

262. Kidnapping or abducting child under fourteen years with intent to steal from its person

Any person who kidnaps or abducts any child under the age of fourteen years with the intention of taking dishonestly any movable property from the person of such child is guilty of a felony and is liable to imprisonment for seven years.

263. Punishment for wrongful confinement

Whoever wrongfully confines any person is guilty of a misdemeanour and is liable to imprisonment for one year or to a fine of fourteen thousand shillings.

[Act No. 5 of 2003, s. 47.]

264. Deleted by Act No. 8 of 2010, Second Sch.

265. Deleted by Act No. 8 of 2010, Second Sch.

266. Unlawful compulsory labour

Any person who unlawfully compels any person to labour against the will of that person is guilty of a misdemeanour.

266A. Offences Under Part

Where it appears that any of the offences specified under this Part is committed for the purpose of exploitation, the person committing the offence shall be charged with the appropriate offence as specified in the Counter Trafficking in Persons Act.

[Act No. 8 of 2010, Second Sch.]

Division V – Offences relating to Property

CHAPTER XXVI – THEFT

267. Things capable of being stolen

(1) Every inanimate thing whatever which is the property of any person, and which is movable, is capable of being stolen.

(2) Every inanimate thing which is the property of any person, and which is capable of being made movable, is capable of being stolen as soon as it becomes movable, although it is made movable in order to steal it.

(3) Every tame animal, whether tame by nature or wild by nature and subsequently tamed, which is the property of any person is capable of being stolen.

(4) Animals wild by nature, of a kind which is not ordinarily found in a condition of natural liberty in Kenya, which are the property of any person, and which are usually kept in a state of confinement, are capable of being stolen, whether they are actually in confinement or have escaped from confinement.

(5) Animals wild by nature, of a kind which is ordinarily found in a condition of natural liberty in Kenya, which are the property of any person, are capable of being stolen while they are in confinement, and while they are being actually pursued after escaping from confinement, but not at any other time.

(6) An animal wild by nature is deemed to be in a state of confinement so long as it is in a den, cage, sty, tank or other small enclosure, or is otherwise so placed that it cannot escape and that its owner can take possession of it at pleasure.

(7) Wild animals in the enjoyment of their natural liberty are not capable of being stolen, but their dead bodies are capable of being stolen.

(8) Everything produced by or forming part of the body of an animal capable of being stolen is capable of being stolen.

(9) Information is capable of being stolen.

[Act No. 40 of 1952, Sch.]

268. Definition of stealing

(1) A person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person, other than the general or special owner thereof, any property, is said to steal that thing or property.

(2) A person who takes anything capable of being stolen or who converts any property is deemed to do so fraudulently if he does so with any of the following intents, that is to say—

- (a) an intent permanently to deprive the general or special owner of the thing of it;
- (b) an intent to use the thing as a pledge or security;
- (c) an intent to part with it on a condition as to its return which the person taking or converting it may be unable to perform;
- (d) an intent to deal with it in such a manner that it cannot be returned in the condition in which it was at the time of the taking or conversion;
- (e) in the case of money, an intent to use it at the will of the person who takes or converts it, although he may intend afterwards to repay the amount to the owner;

and “special owner” includes any person who has any charge or lien upon the thing in question, or any right arising from or dependent upon holding possession of the thing in question.

(3) When a thing stolen is converted, it is immaterial whether it is taken for the purpose of conversion, or whether it is at the time of the conversion in the possession of the person who converts it; and it is also immaterial that the person who converts the thing in question is the holder of a power of attorney for the disposition of it, or is otherwise authorized to dispose of it.

(4) When a thing converted has been lost by the owner and found by the person who converts it, the conversion is not deemed to be fraudulent if at the time of the conversion the person taking or converting the thing does not know who is the owner, and believes on reasonable grounds that the owner cannot be discovered.

(5) A person shall not be deemed to take a thing unless he moves the thing or causes it to move.

[Act No. 8 of 2010, Second Sch.]

269. Special cases

(1) When a factor or agent pledges or gives a lien on any goods or document of title to goods entrusted to him for the purpose of sale or otherwise for any sum of money not greater than the amount due to him from his principal at the time of pledging or giving the lien, together with the amount of any bill of exchange or promissory note accepted or made by him for or on account of his principal, such dealing with the goods or document of title is not deemed to be theft.

(2) When a servant, contrary to his master’s orders, takes from his possession any food in order that it may be given to an animal belonging to or in the possession of his master, such taking is not deemed to be theft.

270. Funds, etc., held under direction

When a person receives, either alone or jointly with another person, any money or valuable security or a power of attorney for the sale, mortgage, pledge or other disposition of any property, whether capable of being stolen or not, with a direction in either case that such money or any part thereof, or any other money received in exchange for it, or any part thereof, or the proceeds or any part of the proceeds of such security, or of such mortgage, pledge or other disposition, shall be applied to any purpose or paid to any person specified in the direction, such money and proceeds are deemed to be the property of the person from whom the money, security or power of attorney was received until the direction has been complied with.

271. Funds, etc., received by agents for sale

When a person receives, either alone or jointly with another person, any property from another on terms authorizing or requiring him to sell it or otherwise dispose of it, and requiring him to pay or account for the proceeds of the property, or any part of such proceeds, or to deliver anything received in exchange for the property, to the person from whom it is received or some other person, then the proceeds of the property, and anything so received in exchange for it, are deemed to be the property of the person from whom the property was so received, until they have been disposed of in accordance with the terms on which the property was received, unless it is a part of those terms that proceeds, if any, shall form an item in a debtor and creditor account between him and the person to whom he is to pay them or account for them and that the relation of debtor and creditor only shall exist between them in respect thereof.

272. Money received for another

When a person receives, either alone or jointly with another person, any money on behalf of another, the money is deemed to be the property of the person on whose behalf it is received, unless the money is received on the terms that it shall form an item in a debtor and creditor account, and that the relation of debtor and creditor only shall exist between the parties in respect of it.

273. Theft by person having an interest in the thing stolen

When any person takes or converts anything capable of being stolen, under such circumstances as would otherwise amount to theft, it is immaterial that he himself has a special property or interest therein, or that he himself is the owner of the thing taken or converted subject to some special property or interest of some other person therein, or that he is lessee of the thing, or that he himself is one of two or more joint owners of the thing, or that he is a director or officer of a corporation or company or society who are the owners of it.

274. Husband and wife

A person who, while a man and his wife are living together, procures either of them to deal with anything which is, to his knowledge, the property of the other in a manner which would be theft if they were not married, is deemed to have stolen the thing, and may be charged with theft.

275. General punishment for theft

Any person who steals anything capable of being stolen is guilty of the felony termed theft and is liable, unless owing to the circumstances of the theft or the nature of the thing stolen some other punishment is provided, to imprisonment for three years.

276. Stealing wills

If the thing stolen is a testamentary instrument, whether the testator is living or dead, the offender is liable to imprisonment for ten years.

277. Stealing postal matter, etc.

If the thing stolen is postal matter or any chattel, money or valuable security contained in any postal matter, the offender is liable to imprisonment for ten years.

278. Stealing stock

If the thing stolen is any of the following things, that is to say, a horse, mare, gelding, ass, mule, camel, ostrich, bull, cow, ox, ram, ewe, wether, goat or pig, or the young thereof the offender is liable to imprisonment for a period not exceeding fourteen years.

[Act No. 54 of 1960, s. 30.]

278A. Stealing motor vehicle

If the thing stolen is a motor vehicle within the meaning of the Traffic Act (Cap. 403), the offender is liable to imprisonment for seven years.

[Act No. 22 of 1987, Sch., Act No. 5 of 2003, s. 48.]

278B. Stealing fishing gear

If the thing stolen is fishing gear within the meaning of the Fisheries Act, 1988 (Cap. 378), the offender is liable to imprisonment for five years.

[Act No. 24 of 1967, s. 8, Act No. 5 of 2003, s. 49.]

279. Stealing from the person; stealing goods in transit, etc.

If the theft is committed under any of the circumstances following, that is to say

- (a) if the thing is stolen from the person of another;
- (b) if the thing is stolen in a dwelling-house, and its value exceeds one hundred shillings, or the offender at or immediately before or after the time of stealing uses or threatens to use violence to any person in the dwelling-house;
- (c) if the thing is stolen from any kind of vessel or vehicle or place of deposit used for the conveyance or custody of goods in transit from one place to another;
- (d) if the thing stolen is attached to or forms part of a railway;
- (e) if the thing is stolen from a vessel which is in distress or wrecked or stranded;

- (f) if the thing is stolen from a public office in which it is deposited or kept;
- (g) if the offender, in order to commit the offence, opens any locked room, box, vehicle or other receptacle, by means of a key or other instrument,

the offender is liable to imprisonment for fourteen years.

[Act No. 24 of 1968, s. 15, Act No. 5 of 2003, s. 50.]

280. Stealing by persons in the public service

If the offender is a person employed in the public service and the thing stolen is the property of the Government, or came into the possession of the offender by virtue of his employment, he is liable to imprisonment for seven years.

[Act No. 53 of 1952, Sch., Act No. 24 of 1967, Sch.]

281. Stealing by clerks and servants

If the offender is a clerk or servant, and the thing stolen is the property of his employer, or came into the possession of the offender on account of his employer, he is liable to imprisonment for seven years.

282. Stealing by directors or officers of companies

If the offender is a director or officer of a corporation or company, and the thing stolen is the property of the corporation or company, he is liable to imprisonment for seven years.

283. Stealing by agents, etc.

If the thing stolen is any of the things following, that is to say—

- (a) property which has been received by the offender with a power of attorney for the disposition thereof;
- (b) property which has been entrusted to the offender either alone or jointly with any other person for him to retain in safe custody or to apply, pay or deliver for any purpose or to any person the same or any part thereof or any proceeds thereof;
- (c) property which has been received by the offender either alone or jointly with any other person for or on account of any other person;
- (d) the whole or part of the proceeds of any valuable security which has been received by the offender with a direction that the proceeds thereof should be applied to any purpose or paid to any person specified in the direction;
- (e) the whole or part of the proceeds arising from any disposition of any property which has been received by the offender by virtue of a power of attorney for such disposition, such power of attorney having been received by the offender with a direction that such proceeds should be applied to any purpose or paid to any person specified in the direction,

the offender is liable to imprisonment for seven years.

284. Stealing by tenants or lodgers

If the thing stolen is a fixture or chattel let to the offender to be used by him with a house or lodging, and its value exceeds one hundred shillings, he is liable to imprisonment for seven years.

285. Stealing after previous conviction

If the offender, before committing the theft, had been convicted of a theft punishable under any of sections 275 to 284 inclusive, he is liable to imprisonment for seven years.

CHAPTER XXVII – OFFENCES ALLIED TO STEALING

286. Concealing registers

Any person who, with intent to defraud, conceals or takes from its place of deposit any register which is authorized or required by law to be kept for authenticating or recording the title to any property, or for recording births, baptisms, marriages, deaths or burials, or a copy of any part of any such register which is required by law to be sent to any public office, is guilty of a felony and is liable to imprisonment for ten years.

287. Concealing wills

Any person who, with intent to defraud, conceals any testamentary instrument, whether the testator is living or dead is guilty of a felony and is liable to imprisonment for seven years.

288. Concealing deeds

Any person who, with intent to defraud, conceals the whole or part of any document which is evidence of title to any land or estate in land, is guilty of a felony and is liable to imprisonment for three years.

289. Killing animals with intent to steal

Any person who kills any animal capable of being stolen with intent to steal the skin or carcass, or any part of the skin or carcass, is guilty of an offence and is liable to the same punishment as if he had stolen the animal.

290. Severing with intent to steal

Any person who makes anything movable with intent to steal it is guilty of an offence and is liable to the same punishment as if he had stolen the thing after it had become movable.

291. Fraudulent disposition of mortgaged goods

(1) Any person who, being the mortgagor of mortgaged goods, removes or disposes of the goods without the consent of the mortgagee, and with intent to defraud, is guilty of a misdemeanour.

(2) In this section, “**mortgaged goods**” includes any goods and chattels of any kind, and any animals, and any progeny of any animals, and any crops or

produce of the soil, whether growing or severed, which are subject for the time being, by virtue of any instrument or any written law, to a valid charge or lien by way of security for any debt or obligation.

[Act No. 53 of 1952, Sch., Act No. 24 of 1967, Sch., Act No. 5 of 2003, s. 51.]

292. Fraudulently dealing with minerals in mines

Any person who takes, conceals or otherwise disposes of any ore or any metal or mineral in or about a mine, with intent to defraud any person, is guilty of a felony and is liable to imprisonment for five years.

293. Fraudulent appropriation of power

Any person who fraudulently abstracts or diverts to his own use or to the use of any other person any mechanical, illuminating or electrical power derived from any machine, apparatus or substance, the property of another person, is guilty of a felony and is liable to imprisonment for five years.

294. Unlawful use of vehicles, animals, etc.

Any person who unlawfully and without colour of right, but not so as to be guilty of stealing, takes or converts to his own use or to the use of any other person any draught or riding animal or any vehicle or cycle, however propelled, or any vessel, is guilty of a misdemeanour and is liable to imprisonment for six months or to a fine of three thousand shillings or to both.

[L.N. 236/1964.]

CHAPTER XXVIII – ROBBERY AND EXTORTION

295. Definition of robbery

Any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained, is guilty of the felony termed robbery.

296. Punishment of robbery

(1) Any person who commits the felony of robbery is liable to imprisonment for fourteen years.

(2) If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death.

[Act No. 40 of 1952, Sch.]

297. Attempted robbery

(1) Any person who assaults any person with intent to steal anything, and, at or immediately before or immediately after the time of the assault, uses or

threatens to use actual violence to any person or property in order to obtain the thing intended to be stolen, or to prevent or overcome resistance to its being stolen, is guilty of a felony and is liable to imprisonment for seven years.

(2) If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the assault, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death.

[Act No. 24 of 1967, Sch., Act No. 3 of 1969, First Sch., Act No. 25 of 1971, s. 3, Act No. 1 of 1973, s. 2, Act No. 9 of 1976, s. 2, Act No. 5 of 2003, s. 52.]

298. Assault with intent to steal

Any person who assaults any person with intent to steal anything is guilty of a felony and is liable to imprisonment for five years.

[Act No. 3 of 1969, First Sch., Act No. 25 of 1971, s. 3, Act No. 1 of 1973, s. 3, Act No. 9 of 1976, s. 3.]

299. Demanding property by written threats

Any person who, with intent to extort or gain anything from any person, and knowing the contents of the writing, causes any person to receive any writing demanding anything from any person without reasonable or probable cause, and containing threats of any injury or detriment of any kind to be caused to any person, either by the offender or any other person, if the demand is not complied with, is guilty of a felony and is liable to imprisonment for fourteen years.

300. Attempts at extortion by threats

- (1) Any person who, with intent to extort or gain anything from any person—
- (a) accuses or threatens to accuse any person of committing any felony or misdemeanour, or of offering or making any solicitation or threat to any person as an inducement to commit or permit the commission of any felony or misdemeanour; or
 - (b) threatens that any person shall be accused by any other person of any felony or misdemeanour, or of any such act; or
 - (c) knowing the contents of the writing, causes any person to receive any writing containing any such accusation or threat as aforesaid,
is guilty of a felony, and if the accusation or threat of accusation is of—
 - (i) an offence for which the punishment of death or imprisonment for life may be inflicted; or
 - (ii) any of the offences defined in Chapter XV, or an attempt to commit any of such offences; or
 - (iii) an assault with intent to have carnal knowledge of any person against the order of nature, or an unlawful and indecent assault upon a male person; or
 - (iv) a solicitation or threat offered or made to any person as an inducement to commit or permit the commission of any of the offences aforesaid,

the offender is liable to imprisonment for fourteen years; and in any other case the offender is liable to imprisonment for three years.

(2) It is immaterial whether the person accused or threatened to be accused has or has not committed the offence or act of which he is accused or threatened to be accused.

301. Procuring execution of deeds, etc., by threats

Any person who, with intent to defraud, and by means of any unlawful violence to, or restraint of, the person of another, or by means of any threat of violence or restraint to be used to the person of another, or by means of accusing or threatening to accuse any person of committing any felony or misdemeanour, or by offering or making any solicitation or threat to any person as an inducement to commit or permit the commission of any offence, compels or induces any person—

- (a) to execute, make, accept, endorse, alter or destroy the whole or any part of any valuable security; or
- (b) to write any name or impress or affix any seal upon or to any paper or parchment, in order that it may be afterwards made or converted into or used or dealt with as a valuable security,

is guilty of a felony and is liable to imprisonment for fourteen years.

302. Demanding property with menaces

Any person who, with intent to steal any valuable thing, demands it from any person with menaces or force is guilty of a felony and is liable to imprisonment for ten years.

[Act No. 3 of 1969, First Sch., Act No. 25 of 1971, s. 3, Act No. 1 of 1973, s. 3, Act No. 9 of 1976, s. 3, Act No. 5 of 2003, s. 53.]

CHAPTER XXIX – BURGLARY, HOUSEBREAKING AND SIMILAR OFFENCES

303. Definition of breaking and entering

(1) A person who breaks any part, whether external or internal, of a building, or opens by unlocking, pulling, pushing, lifting or any other means whatever any door, window, shutter, cellar flap or other thing intended to close or cover an opening in a building, or an opening giving passage from one part of a building to another, is deemed to break the building.

(2) A person is deemed to enter a building as soon as any part of his body or any part of any instrument used by him is within the building.

(3) A person who obtains entrance into a building by means of any threat or artifice used for that purpose, or by collusion with any person in the building, or who enters any aperture of the building left open for any purpose, but not intended to be ordinarily used as a means of entrance, is deemed to have broken and entered the building.

[Act No. 53 of 1952, Sch.]

304. Housebreaking and burglary

(1) Any person who—

- (a) breaks and enters any building, tent or vessel used as a human dwelling with intent to commit a felony therein; or
- (b) having entered any building, tent or vessel used as a human dwelling with intent to commit a felony therein, or having committed a felony in any such building, tent or vessel, breaks out thereof,

is guilty of the felony termed housebreaking and is liable to imprisonment for seven years.

(2) If the offence is committed in the night, it is termed burglary, and the offender is liable to imprisonment for ten years.

[Act No. 42 of 1951, s. 11.]

305. Entering dwelling-house with intent to commit felony

(1) Any person who enters or is in any building, tent or vessel used as a human dwelling with intent to commit a felony therein is guilty of a felony and is liable to imprisonment for five years.

(2) If the offence is committed in the night, the offender is liable to imprisonment for seven years.

306. Breaking into building and committing felony

Any person who—

- (a) breaks and enters a schoolhouse, shop, warehouse, store, office, counting-house, garage, pavilion, club, factory or workshop, or any building belonging to a public body, or any building or part of a building licensed for the sale of intoxicating liquor, or a building which is adjacent to a dwelling-house and occupied with it but is not part of it, or any building used as a place of worship, and commits a felony therein; or
- (b) breaks out of the same having committed any felony therein,

is guilty of a felony and is liable to imprisonment for seven years.

[Act No. 42 of 1951, s. 12, L.N. 427/1963, L.N. 124/1964, Act No. 24 of 1967, Sch., Act No. 5 of 2003, s. 55.]

307. Breaking into building with intent to commit felony

Any person who breaks and enters a schoolhouse, shop, warehouse, store, office, counting-house, garage, pavilion, club, factory or workshop, or any building belonging to a public body, or any building or part of a building licensed for the sale of intoxicating liquor, or a building which is adjacent to a dwelling-house and occupied with it but is not part of it, or any building used as a place of worship, with intent to commit a felony therein, is guilty of a felony and is liable to imprisonment for five years.

[Act No. 24 of 1967, Sch., Act No. 5 of 2003, s. 54.]

308. Preparations to commit felony

(1) Any person found armed with any dangerous or offensive weapon in circumstances that indicate that he was so armed with intent to commit any felony is guilty of a felony and is liable to imprisonment of not less than seven years and not more than fifteen years.

(2) Any person who, when not at his place of abode, has with him any article for use in the course of or in connexion with any burglary, theft or cheating is guilty of a felony, and where any person is charged with an offence under this subsection proof that he had with him any article made or adapted for use in committing a burglary, theft or cheating shall be evidence that he had it with him for such use.

(3) Any person who is found—

- (a) having his face masked or blackened, or being otherwise disguised, with intent to commit a felony; or
- (b) in any building whatever by night with intent to commit a felony therein; or
- (c) in any building whatever by day with intent to commit a felony therein, having taken precautions to conceal his presence,

is guilty of a felony.

(4) Any person guilty of a felony under subsection (2) or (3) is liable to imprisonment with hard labour for five years or, if he has previously been convicted of a felony relating to property, to such imprisonment for ten years.

[Act No. 3 of 1969, s. 4, Act No. 22 of 1987, Sch.]

309. *Repealed by Act No. 48 of 1962, s. 13(1).*

310. Forfeiture of housebreaking instruments

When any person is convicted of an offence under this Chapter, the court may order that any dangerous or offensive weapon or instrument of housebreaking carried or used in connexion with any such offence shall be forfeited.

311. Forfeiture of aircraft, vessel or vehicle, and penalty for interfering with aircraft, vessel or vehicle when detained

(1) Where any person is convicted of an offence, or of an attempt to commit an offence or of counselling or procuring the commission of an offence, under the provisions of this Chapter, or of Chapter XXVI or Chapter XXVIII or section 322, and the court by which the person is convicted finds that any aircraft, vessel or vehicle was used or employed by that person in the commission or to facilitate the commission of the offence of which he is convicted, the aircraft, vessel or vehicle may be forfeited.

(2) An aircraft, vessel or vehicle which is liable to forfeiture under subsection (1) shall be dealt with in accordance with section 389A of the Criminal Procedure Code (Cap. 75).

(3) *Deleted by Act No. 24 of 1967, Sch.*

(4) Any person who damages or unlawfully removes any aircraft, vessel or vehicle while it is detained under section 26 of the Criminal Procedure Code is guilty of a misdemeanour.

(5) For the purposes of this section, “**aircraft**”, “**vessel**” and “**vehicle**”, respectively, include everything contained in, being on or attached to any aircraft, vessel or vehicle, as the case may be, which, in the opinion of the court, forms part of the equipment of the aircraft, vessel or vehicle.

[Act No. 3 of 1969, s. 4, Act No. 22 of 1987, Sch., Act No. 11 of 1993, Sch.]

CHAPTER XXX – FALSE PRETENCES

312. Definition of false pretence

Any representation, made by words, writing or conduct, of a matter of fact, either past or present, which representation is false in fact, and which the person making it knows to be false or does not believe to be true, is a false pretence.

313. Obtaining by false pretences

Any person who by any false pretence, and with intent to defraud, obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen, is guilty of a misdemeanour and is liable to imprisonment for three years.

[Act No. 3 of 1969, s. 4, Act No. 22 of 1987, Sch.,
Act No. 11 of 1993, Sch., Act No. 5 of 2003, s. 56.]

314. Obtaining execution of a security by false pretences

Any person who by any false pretence, and with intent to defraud, induces any person to execute, make, accept, endorse, alter or destroy the whole or any part of any valuable security, or to write any name or impress or affix any seal upon or to any paper or parchment in order that it may be afterwards made or converted into or used or dealt with as a valuable security, is guilty of a misdemeanour and is liable to imprisonment for three years.

315. Cheating

Any person who by means of any fraudulent trick or device obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen or to pay or deliver to any person any money or goods or any greater sum of money or greater quantity of goods than he would have paid or delivered but for such trick or device, is guilty of a misdemeanour and is liable to imprisonment for three years.

316. Obtaining credit, etc., by false pretences

Any person who—

- (a) in incurring any debt or liability, obtains credit by any false pretence or by means of any other fraud; or
- (b) with intent to defraud his creditors or any of them, makes or causes to be made any gift, delivery or transfer of or any charge on his property; or

- (c) with intent to defraud his creditors or any of them, conceals, sells or removes any part of his property, after or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him,

is guilty of a misdemeanour and is liable to imprisonment for one year.

316A. Bad cheques

(1) Any person who draws or issues a cheque on an account is guilty of a misdemeanour if the person—

- (a) knows that the account has insufficient funds;
- (b) knows that the account has been closed; or
- (c) has previously instructed the bank or other institution at which the account is held not to honour the cheque.

(2) Subsection (1)(a) does not apply with respect to a post-dated cheque.

(3) Any person who, by deceit or any other fraudulent means, assists a person to obtain anything on the basis of a cheque drawn or issued in the circumstances described in subsection (1) is guilty of a misdemeanour.

(4) A person who is guilty of a misdemeanour under this section is liable to a fine not exceeding fifty thousand shillings, or to imprisonment for term not exceeding one year, or to both.

[Act No. 54 of 1960, s. 31, Act No. 24 of 1967, Sch.]

316B. Certain felonies by banks or other institutions

(1) A bank or other institution is guilty of a felony if it—

- (a) with intent to conceal its true financial position, holds a cheque or similar instrument that cannot be settled for the amount due thereon;
- (b) assists a person to obtain money or credit on the basis of a cheque drawn or issued in the circumstances described in section 316A(1); or
- (c) with intent to defraud, facilitates the transfer of money to the holder of a false cheque or other instrument.

(2) A bank or other institution that is guilty of a felony under subsection (1) is liable to a fine not exceeding five hundred thousand shillings.

[Act No. 42 of 1951, s. 13.]

317. Conspiracy to defraud

Any person who conspires with another by deceit or any fraudulent means to affect the market price of anything publicly sold, or to defraud the public or any person, whether a particular person or not, or to extort any property from any person, is guilty of a misdemeanour and is liable to imprisonment for three years.

318. Frauds on sale or mortgage of property

Any person who, being a seller or mortgagor of any property, or being the advocate or agent of any such seller or mortgagor, with intent to induce the purchaser or mortgagee to accept the title offered or produced to him, and with intent to defraud—

- (a) conceals from the purchaser or mortgagee any instrument material to the title, or any encumbrance; or

- (b) falsifies any pedigree on which the title depends or may depend; or
- (c) makes any false statement as to the title offered or conceals any fact material thereto,

is guilty of a misdemeanour and is liable to imprisonment for two years.

319. Fortune-telling

Any person who for gain or reward undertakes to tell fortunes, or pretends from his skill or knowledge in any occult science to discover where or in what manner anything supposed to have been stolen or lost may be found, is guilty of a misdemeanour.

320. Obtaining registration, etc., by false pretence

Any person who wilfully procures or attempts to procure for himself or any other person any registration, licence or certificate under any law by any false pretence is guilty of a misdemeanour and is liable to imprisonment for one year.

321. False declaration for passport

Any person who makes a statement which is to his knowledge untrue for the purpose of procuring a passport, whether for himself or for any other person, is guilty of a misdemeanour.

CHAPTER XXXI – HANDLING PROPERTY STOLEN OR UNLAWFULLY OBTAINED AND LIKE OFFENCES

322. Handling stolen goods

(1) A person handles stolen goods if (otherwise than in the course of the stealing) knowing or having reason to believe them to be stolen goods he dishonestly receives or retains the goods, or dishonestly undertakes, or assists in, their retention, removal, disposal or realization by or for the benefit of another person, or if he arranges to do so.

(2) A person who handles stolen goods is guilty of a felony and is liable to imprisonment with hard labour for a term not exceeding fourteen years.

(3) For the purposes of this section—

- (a) goods shall be deemed to be stolen goods if they have been obtained in any way whatever under circumstances which amount to felony or misdemeanour, and “**steal**” means so to obtain;
- (b) no goods shall be regarded as having continued to be stolen goods after they have been restored to the person from whom they were stolen or to other lawful possession or custody, or after that person and any other person claiming through him have otherwise ceased as regards those goods to have any right to restitution in respect of the stealing.

(4) Where a person is charged with an offence under this section—

- (a) it shall not be necessary to allege or prove that the person charged knew or ought to have known of the particular offence by reason of which any goods are deemed to be stolen goods;

- (b) at any stage of the proceedings, if evidence has been given of the person charged having or arranging to have in his possession the goods the subject of the charge, or of his undertaking or assisting in, or arranging to undertake or assist in, their retention, removal, disposal or realization, the following evidence shall, notwithstanding the provisions of any other written law, be admissible for the purpose of proving that he knew or had reason to believe that the goods were stolen goods—
- (i) evidence that he has had in his possession, or has undertaken or assisted in the retention, removal, disposal or realization of, stolen goods from any offence taking place not earlier than twelve months before the offence charged;
 - (ii) (provided that seven days' notice in writing has been given to him of the intention to prove the conviction) evidence that he has within the five years preceding the date of the offence charged been convicted of stealing or of receiving or handling stolen goods.

[Act No. 4 of 2004, s. 62.]

323. Person suspected of having or conveying stolen property

Any person who has been detained as a result of the exercise of the powers conferred by section 26 of the Criminal Procedure Code (Cap. 75) and is charged with having in his possession or conveying in any manner anything which may be reasonably suspected of having been stolen or unlawfully obtained, and who does not give an account to the satisfaction of the court of how he came by the same, is guilty of a misdemeanour.

324. Marking and possession of public stores

(1) The Minister may, by notice in the *Gazette*, give directions as to the marks which may be applied in or on any stores under the control of any branch or department of, and being the property of, the Government of Kenya or the Kenya Railways Corporation and the Kenya Ports Authority.

(2) Any person who is charged with conveying or having in his possession, or keeping in any building or place, whether open or enclosed, any stores so marked, which may be reasonably suspected of having been stolen or unlawfully obtained, and who does not give an account to the satisfaction of the court how he came by the same, is guilty of a misdemeanour.

(3) Any person conveying or having in his possession, or keeping in any building or place, whether open or enclosed, any stores being the property of the disciplined forces, which may reasonably be suspected of having been stolen or unlawfully obtained, and who does not give an account to the satisfaction of the court of how he came by the same, shall be guilty of a misdemeanour.

(4) For the purposes of this section, “stores” includes all goods and chattels and any single store or article or part thereof, and “marks” includes any part of a mark.

[Act No. 4 of 2004, s. 62.]

325. Tracing possession

(1) If any person brought or appearing before a court under section 323 or section 324 declares that he received any such thing as therein mentioned from

some other person, or that he was employed as a carrier, agent or servant to convey the same for some other person, the court may cause every such other person, and also any other person through whose possession any such thing shall previously have passed, to be brought before it.

(2) Upon any such person as is mentioned in subsection (1) being brought before it, it shall be lawful for the court to examine him as to whether he has been in possession of any such thing as aforesaid, and upon his admitting such possession, or upon it being proved to the satisfaction of the court that such person has been in possession of any such thing, the court may call upon such person to give an account to the satisfaction of the court by what lawful means such person came by such thing, and if such person fails, within a reasonable time to be assigned by such court, to give such account, he is guilty of an offence and is liable to a fine not exceeding one thousand four hundred shillings or to imprisonment for a term not exceeding six months.

(3) For the purposes of this section, the possession of a carrier, agent or servant shall be deemed to be the possession of the person who shall have employed such carrier, agent or servant to convey the same.

[Act No. 3 of 1969, s. 5, Act No. 4 of 1973, Sch., Act No. 22 of 1987, Sch.]

326. Receiving goods stolen outside Kenya

Any person who, without lawful excuse, knowing or having reason to believe the same to have been stolen or obtained in any way whatsoever under such circumstances that if the act had been committed in Kenya the person committing it would have been guilty of a felony or misdemeanour, receives or has in his possession any property so stolen or obtained outside Kenya, is guilty of an offence of the like degree (whether felony or misdemeanour) and is liable to imprisonment for seven years.

CHAPTER XXXII – FRAUDS BY TRUSTEES AND PERSONS IN A POSITION OF TRUST, AND FALSE ACCOUNTING

327. Fraudulent disposal of trust property

(1) Any person who, being a trustee of any property, destroys the property with intent to defraud, or, with intent to defraud, converts the property to any use not authorized by the trust, is guilty of a felony and is liable to imprisonment for seven years.

(2) For the purposes of this section, “trustee” includes the following persons and no others, that is to say—

- (a) trustees upon express trusts created by a deed, will, or instrument in writing, whether for a public or private or charitable purpose;
- (b) trustees appointed by or under the authority of any written law for any such purpose;
- (c) the heir or personal representative of any trustee as aforesaid and any other person upon or to whom any such trust shall devolve or come;
- (d) executors, including executors *de son tort* and administrators;
- (e) managers appointed under the authority of the Mental Treatment Act (Cap. 248);

- (f) official managers, assignees, liquidators or other like officers, by whatsoever name called, acting under the authority of any written law relating to bankruptcy or joint stock companies.

[Act No. 36 of 1962, Sch., Act No. 24 of 1967, Sch.]

328. Fraudulent appropriation or accounting by directors or officers

Any person who—

- (a) being a director or officer of a corporation or company, receives or possesses himself as such of any of the property of the corporation or company otherwise than in payment of a just debt or demand, and, with intent to defraud, omits either to make a full and true entry thereof in the books and accounts of the corporation or company, or to cause or direct such an entry to be made therein; or
- (b) being a director, officer or member of a corporation or company, does any of the following acts with intent to defraud, that is to say—
- (i) destroys, alters, mutilates or falsifies any book, document, valuable security or account which belongs to the corporation or company, or any entry in any such book, document or account, or is privy to any such act; or
- (ii) makes, or is privy to making, any false entry in any such book, document or account; or
- (iii) omits, or is privy to omitting, any material particular from any such book, document or account,

is guilty of a felony and is liable to imprisonment for seven years.

329. False statements by officials of companies

Any person who, being a promoter, director, officer or auditor of a corporation or company, either existing or intended to be formed, makes, circulates or publishes, or concurs in making, circulating or publishing, any written statement or account which, in any material particular, is to his knowledge false, with intent thereby to effect any of the purposes following, that is to say—

- (a) to deceive or to defraud any member, shareholder or creditor of the corporation or company, whether a particular person or not;
- (b) to induce any person, whether a particular person or not, to become a member of, or to entrust or advance any property to, the corporation or company, or to enter into any security for the benefit thereof,

is guilty of a felony and is liable to imprisonment for seven years.

330. Fraudulent false accounting by clerk or servant

Any person who, being a clerk or servant, or being employed or acting in the capacity of a clerk or servant, does any of the acts following with intent to defraud, that is to say—

- (a) destroys, alters, mutilates or falsifies any book, document, valuable security or account which belongs to or is in the possession of his employer, or has been received by him on account of his employer, or any entry in any such book, document or account, or is privy to any such act; or

- (b) makes, or is privy to making, any false entry in any such book, document or account; or
- (c) omits, or is privy to omitting, any material particular from any such book, document or account,

is guilty of a felony and is liable to imprisonment for seven years.

331. False accounting by public officer

(1) Any person who, being an officer charged with the receipt, custody or management of any part of the public revenue or property, knowingly furnishes any false statement or return of any money or property received by him or entrusted to his care, or of any balance of money or property in his possession or under his control, is guilty of a felony.

(2) A person convicted of an offence under this section shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding ten years or to both.

[Act No. 40 of 1952, Sch.]

Division VI – Malicious Injuries to Property

CHAPTER XXXIII – OFFENCES CAUSING INJURY TO PROPERTY

332. Arson

Any person who wilfully and unlawfully sets fire to—

- (a) any building or structure whatever, whether completed or not; or
- (b) any vessel, whether completed or not; or
- (c) any stack of cultivated vegetable produce, or of mineral or vegetable fuel; or
- (d) a mine, or the workings, fittings or appliances of a mine,

is guilty of a felony and is liable to imprisonment for life.

333. Attempts to commit arson

Any person who—

- (a) attempts unlawfully to set fire to any such thing as is mentioned in section 332; or
- (b) wilfully and unlawfully sets fire to anything which is so situated that any such thing as is mentioned in that section is likely to catch fire from it,

is guilty of a felony and is liable to imprisonment for fourteen years.

334. Setting fire to crops, etc.

Any person who wilfully and unlawfully sets fire to, cuts down, destroys or seriously or permanently injures—

- (a) a crop of cultivated produce, whether standing, picked or cut; or
- (b) a crop of hay or grass under cultivation, whether the natural or indigenous product of the soil or not, and whether standing or cut; or

- (c) any standing trees, saplings or shrubs, whether indigenous or not, under cultivation,

is guilty of a felony and is liable to imprisonment for fourteen years.

[Act No. 42 of 1951, s. 15, L.N. 124/1964, Act No. 24 of 1967, Sch.]

335. Attempting to set fire to crops, etc.

Any person who—

- (a) attempts unlawfully to set fire to, cut down, destroy or seriously or permanently injure any such thing as is mentioned in section 334; or
- (b) wilfully and unlawfully sets fire to anything which is so situated that any such thing as is mentioned in that section is likely to catch fire from it,

is guilty of a felony and is liable to imprisonment for seven years.

[Act No. 7 of 2007, Sch.]

336. Casting away vessels

Any person who—

- (a) wilfully and unlawfully casts away or destroys any vessel, whether completed or not; or
- (b) wilfully and unlawfully does any act which tends to the immediate loss or destruction of a vessel in distress; or
- (c) with intent to bring a vessel into danger, interferes with any light, beacon, buoy, mark or signal used for purposes of navigation, or exhibits any false light or signal,

is guilty of a felony and is liable to imprisonment for fourteen years.

337. Attempts to cast away vessels

Any person who attempts unlawfully to cast away or destroy a vessel, whether completed or not, or attempts unlawfully to do any act tending to the immediate loss or destruction of a vessel in distress, is guilty of a felony and is liable to imprisonment for seven years.

338. Injuring animals

Any person who wilfully and unlawfully kills, maims or wounds any animal capable of being stolen is guilty of a felony and is liable, if the animal is an animal such as is referred to in section 278, to imprisonment for fourteen years, and, in any other case, to imprisonment for three years.

[Act No. 53 of 1952, s. 6.]

339. Malicious injuries to property

(1) Any person who wilfully and unlawfully destroys or damages any property is guilty of an offence, which, unless otherwise stated, is a misdemeanour, and is liable, if no other punishment is provided, to imprisonment for five years.

(2) If the property in question is a dwelling-house or a vessel, and the injury is caused by the explosion of any explosive substance, and if—

- (a) any person is in the dwelling-house or vessel; or

(b) the destruction or damage actually endangers the life of any person, the offender is guilty of a felony and is liable to imprisonment for life.

(3) If the property in question—

- (a) is a bank or wall of a river, canal, aqueduct, reservoir or inland water, or a work which appertains to a dock, reservoir or inland water, and the injury causes actual danger of inundation or damage to any land or building; or
- (b) is a railway or is a bridge, viaduct or aqueduct which is constructed over a highway, railway or canal, or over which a railway, highway or canal passes, and the property is destroyed; or
- (c) being a railway, or being a bridge, viaduct or aqueduct, is damaged, and the damage is done with intent to render the railway, bridge, viaduct or aqueduct, or the highway, railway or canal passing over or under the same, or any part thereof, dangerous or impassable, and the same or any part thereof is thereby rendered dangerous or impassable,

the offender is guilty of a felony and is liable to imprisonment for life.

(4) If the property in question is a testamentary instrument, whether the testator is living or dead, or a register which is authorized or required by law to be kept for authenticating or recording the title to any property, or for recording births, baptisms, marriages, deaths or burials, or a copy of any part of any such register which is required by law to be sent to any public officer, the offender is guilty of a felony and is liable to imprisonment for fourteen years.

(5) If the property in question is a vessel in distress or wrecked, or stranded, or anything which belongs to that vessel, the offender is guilty of a felony and is liable to imprisonment for seven years.

(6) If the property in question is any part of a railway or any work connected with a railway, the offender is guilty of a felony and is liable to imprisonment for fourteen years.

(7) If the property in question—

- (a) being a vessel, whether completed or not, is destroyed; or
- (b) being a vessel, whether completed or not, is damaged, and the damage is done with intent to destroy it or render it useless; or
- (c) is a light, beacon, buoy, mark or signal used for the purposes of navigation, or for the guidance of persons engaged in navigation; or
- (d) is a bank or wall of a river, canal, aqueduct, reservoir or inland water, or a work which appertains to a dock, canal, aqueduct, reservoir or inland water, or which is used for the purposes of lading or unlading goods; or
- (e) being a railway, or being a bridge, viaduct or aqueduct which is constructed over a highway, railway or canal, or over which a highway, railway or canal passes, is damaged, and the damage is done with intent to render the railway, bridge, viaduct or aqueduct, or the highway, railway or canal passing over or under the same, or any part thereof, dangerous or impassable; or

- (f) being anything in process of manufacture, or an agricultural or manufacturing machine, or a manufacturing implement, or a machine or appliance used or intended to be used for performing any process connected with the preparation of any agricultural or pastoral produce, is destroyed; or
- (g) being any such thing, machine, implement or appliance as last aforesaid, is damaged, and the damage is done with intent to destroy the thing in question, or to render it useless; or
- (h) is a shaft of a passage of a mine, and the injury is done with intent to damage the mine or to obstruct its working; or
- (i) is a machine, appliance, apparatus, building, erection, bridge or road, appertaining to or used with a mine, whether the thing in question is completed or not; or
- (j) being a rope, chain, or tackle of whatever material, which is used in a mine, or upon any way or work appertaining to or used with a mine, is destroyed; or
- (k) being any such rope, chain or tackle, as last aforesaid, is damaged, and the damage is done with intent to destroy the thing in question or to render it useless; or
- (l) is a well, or bore for water, or the dam, bank, wall or floodgate of a millpond or pool,

the offender is guilty of a felony and is liable to imprisonment for ten years.

(8) If the property in question is a document which is deposited or kept in a public office, or which is evidence of title to any land or estate in land, the offender is guilty of a felony and is liable to imprisonment for ten years.

[Act No. 53 of 1952, s. 8.]

340. Attempts to destroy property by explosives

Any person who, unlawfully and with intent to destroy or damage any property, puts any explosive substance in any place whatever, is guilty of a felony and is liable to imprisonment for fourteen years.

341. Communicating infectious diseases to animals

Any person who wilfully and unlawfully causes, or is concerned in causing or attempts to cause, any infectious disease to be communicated to or among any animal or animals capable of being stolen, is guilty of a felony and is liable to imprisonment for seven years.

342. Penalties for damage, etc., to railway works

Any person who—

- (a) wilfully damages, injures or obstructs any work, way, road, building, turnstile, gate, toll bar, fence, weighing machine, engine, tender, carriage, wagon, truck, material or plant, acquired for or belonging to any railway works; or

- (b) pulls up, removes, defaces or destroys, or in any way interferes with, any poles, stakes, pegs, lines, marks, or anything driven or stones or buildings, or any other material, belonging to any railway works; or
- (c) commits any nuisance or trespass in or upon any land, buildings or premises, acquired for or belonging to any railway works; or
- (d) wilfully molests, hinders or obstructs the officer in charge of any railway or his assistants or workmen in the execution of any work done or to be done in reference to the construction or maintenance of any such railway,

is guilty of a misdemeanour and is liable to imprisonment for three months, or to a fine of one thousand two hundred shillings.

[Act No. 53 of 1952, Sch.]

343. Sabotage

Any person who, wilfully and unlawfully, destroys or damages, or does any act with intent to, or knowing it to be likely that such act will, impair the usefulness or efficiency or prevent or impede the working of, any property used or intended to be used in the service of the Government or any local authority, or for the purposes of any airport or air service or any supply of water or electricity to any person or community of persons, or in the performance of any other service essential to the life of the community, is guilty of an offence and—

- (a) if the offence is committed with intent to endanger life or with the knowledge that it is likely to endanger life, is liable to imprisonment for life; and
- (b) in any other case, is liable to imprisonment for a term not exceeding five years.

[Act No. 53 of 1952, Sch., Act No. 5 of 2003, s. 57.]

344. Threats to burn, etc.

Any person who, knowing the contents thereof, sends, delivers, utters or directly or indirectly causes to be received any letter or writing threatening to burn or destroy any house, barn or other building, or any rick or stack of grain, hay or straw, or other agricultural produce, whether in or under any building or not, or any vessel, or to kill, maim or wound any cattle, is guilty of a felony and is liable to imprisonment for seven years.

Division VII – Forgery, Coining, Counterfeiting and similar Offences

CHAPTER XXXIV – DEFINITIONS

345. Definition of forgery

Forgery is the making of a false document with intent to defraud or to deceive.

346. Document

In this division of this Code, “document” does not include a trade mark or any other sign used in connexion with articles of commerce though they may be written or printed or in electronic form.

[Act No. 40 of 1952, Sch.]

347. Making a false document

Any person makes a false document who—

- (a) makes a document purporting to be what in fact it is not; or
- (b) alters a document without authority in such a manner that if the alteration had been authorized it would have altered the effect of the document; or
- (c) introduces into a document without authority whilst it is being drawn up matter which if it had been authorized would have altered the effect of the document; or
- (d) signs a document—
 - (i) in the name of any person without his authority, whether such name is or is not the same as that of the person signing; or
 - (ii) in the name of any fictitious person alleged to exist, whether the fictitious person is or is not alleged to be of the same name as the person signing; or
 - (iii) in the name represented as being the name of a different person from that of the person signing it and intended to be mistaken for the name of that person; or
 - (iv) in the name of a person personated by the person signing the document, provided that the effect of the instrument depends upon the identity between the person signing the document and the person whom he professes to be;
- (e) fraudulently—
 - (i) makes or transmits any electronic record or part of an electronic record;
 - (ii) affixes any digital signature on any electronic record; or
 - (iii) makes any mark denoting the authenticity of a digital signature, with the intention of causing it to be believed that such record, or part of document, electronic record or digital signature was made, signed, executed, transmitted or affixed by or by the authority of a person by whom or whose authority he knows that it was not made, signed, executed or affixed;
- (f) without lawful authority or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with a digital signature either by himself or by any other person, whether such person is living or dead at the time of such alter;
- (g) fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of deception practised upon him, does not know the contents of the document or electronic record or the nature of the alteration.

[Act No. 54 of 1960, s. 32, Act No. 24 of 1967, Sch., L.N. 280/1967.]

348. Intent to defraud

An intent to defraud is presumed to exist if it appears that at the time when the false document was made there was in existence a specific person ascertained or unascertained capable of being defrauded thereby, and this presumption is not rebutted by proof that the offender took or intended to take measures to prevent such person from being defrauded in fact, nor by the fact that he had or thought he had a right to the thing to be obtained by the false document.

CHAPTER XXXV – PUNISHMENT FOR FORGERY

349. General punishment for forgery

Any person who forges any document or electronic record is guilty of an offence which, unless otherwise stated, is a felony and he is liable, unless owing to the circumstances of the forgery or the nature of the thing forged some other punishment is provided, to imprisonment for three years.

[Act No. 1 of 2009, Sixth Sch.]

350. Forgery of wills, etc.

(1) Any person who forges any will, document of title to land, judicial record, power of attorney, bank note, currency note, bill of exchange, promissory note or other negotiable instrument, policy of insurance, cheque or other authority for the payment of money by a person carrying on business as a banker, is liable to imprisonment for life, and the court may in addition order that any such document as aforesaid shall be forfeited.

(2) In this section, “document of title to land” includes any deed, map, roll, register or instrument in writing being or containing evidence of the title, or of any part of the title, to any land or to any interest in or arising out of any land, or any authenticated copy thereof.

[Act No. 1 of 2009, Sixth Sch.]

351. Forgery of judicial or official document

Any person who forges any judicial or official document is liable to imprisonment for seven years.

352. Forgery of, and other offences in relation to, stamps

Any person who—

- (a) forges any stamp, whether impressed or adhesive, used for the purposes of revenue or accounting by any Government department; or
- (b) without lawful excuse, the proof whereof shall lie upon him, makes or has knowingly in his possession any die or instrument capable of making the impression of any such stamp; or
- (c) fraudulently cuts, tears in any way or removes from any material any stamp used for purposes of revenue or accounting by the Government, with intent that another use shall be made of such stamp or any part thereof; or
- (d) fraudulently mutilates any such stamp as last aforesaid, with intent that another use shall be made of such stamp; or

- (e) fraudulently fixes or places upon any material or upon any such stamp as last aforesaid any stamp or part of a stamp which, whether fraudulently or not, has been cut, torn or in any way removed from any other material or out of or from any other stamp; or
- (f) fraudulently erases or otherwise either really or apparently removes from any stamped material any name, sum, date or other matter or thing whatsoever written thereon with the intent that another use shall be made of the stamp upon such material; or
- (g) knowingly and without lawful excuse, the proof whereof shall lie upon him, has in his possession any stamp or part of a stamp which has been fraudulently cut, torn, or otherwise removed from any material, or any stamp which has been fraudulently mutilated, or any stamped material out of which any name, sum, date or other matter or thing has been fraudulently erased or otherwise really or apparently removed,

is liable to imprisonment for seven years.

[Act No. 1 of 2009, Sixth Sch.]

353. Uttering false documents

Any person who knowingly and fraudulently utters a false document is guilty of an offence of the same kind and is liable to the same punishment as if he had forged the thing in question.

354. Uttering cancelled or exhausted documents

Any person who knowingly utters as and for a subsisting and effectual document any document or electronic record which has by any lawful authority been ordered to be revoked, cancelled or suspended, or the operation of which has ceased by effluxion of time, or by death, or by the happening of any other event, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had forged the document.

[L.N. 124/1964, Act No. 24 of 1967, Sch.]

355. Procuring execution of documents by false pretences

Any person who, by means of any false and fraudulent representations as to the nature, contents or operation of a document or electronic record, procures another to sign or execute the document or electronic record, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had forged the document or electronic record.

[L.N. 559/1962.]

356. Altering crossings on cheques

Any person who, with intent to defraud—

- (a) obliterates, adds to or alters the crossing on a cheque; or
- (b) knowingly utters a crossed cheque, the crossing on which has been obliterated, added to or altered,

is guilty of a felony and is liable to imprisonment for seven years.

357. Making documents without authority

Any person who, with intent to defraud or to deceive—

- (a) without lawful authority or excuse makes, signs or executes for or in the name or on account of another person, whether by procuration or otherwise, any document or electronic record or writing; or
- (b) knowingly utters any document or electronic record or writing so made, signed or executed by another person,

is guilty of a felony and is liable to imprisonment for seven years.

[L.N. 559/1962, Act No. 1 of 2009, Sixth Sch.]

358. Demanding property upon forged testamentary instruments

Any person who procures the delivery or payment to himself or any other person of any property or money by virtue of any probate or letters of administration granted upon a forged testamentary instrument, knowing the testamentary instrument to have been forged, or upon or by virtue of any probate or letters of administration obtained by false evidence, knowing the grant to have been so obtained, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had forged the document or thing by virtue whereof he procures the delivery or payment.

359. Purchasing forged notes

Any person who, without lawful authority or excuse, the proof of which lies on him, imports or purchases, or receives from any person, or has in his possession, a forged bank note or currency note, whether filled up or in blank, knowing it to be forged, is guilty of a felony and is liable to imprisonment for seven years.

360. Falsifying warrants for money payable under public authority

Any person who, being employed in the public service, knowingly and with intent to defraud makes out or delivers to any person a warrant for the payment of any money payable by public authority, for a greater or less amount than that to which the person on whose behalf the warrant is made out is entitled, is guilty of a felony and is liable to imprisonment for seven years.

361. Falsification of register

Any person who, having the actual custody of any register or record kept by lawful authority, knowingly permits any entry which in any material particular is to his knowledge false, to be made in the register or record, is guilty of a felony and is liable to imprisonment for seven years.

362. Sending false certificate of marriage to registrar

Any person who signs or transmits to a person authorized by law to register marriages a certificate of marriage, or any document purporting to be a certificate of marriage, which in any material particular is to his knowledge false, is guilty of a felony and is liable to imprisonment for seven years.

363. False statements for registers of births, deaths and marriages

Any person who knowingly, and with intent to procure the same to be inserted in a register of births, deaths or marriages, makes any false statement touching any matter required by law to be registered in the register is guilty of a felony and is liable to imprisonment for three years.

CHAPTER XXXVI – OFFENCES RELATING TO
COIN AND BANK AND CURRENCY NOTES**364. Definitions**

In this Chapter—

“**coin**” includes any coin which is legal tender in Kenya by virtue of the Central Bank of Kenya Act (Cap. 491), and any coin of a foreign Sovereign or State;

“**counterfeit coin**” means coin not genuine but resembling or apparently intended to resemble or pass for genuine coin; and includes genuine coin prepared or altered so as to pass for coin of a higher denomination.

[Act No. 1 of 2009, Sixth Sch.]

365. Counterfeiting coin

Any person who makes or begins to make any counterfeit coin is guilty of a felony and is liable to imprisonment for life.

366. Preparations for coining

Any person who—

- (a) gilds or silvers any piece of metal of a fit size or figure to be coined, with intent that it shall be coined into counterfeit coin; or
- (b) makes any piece of metal into a fit size or figure to facilitate the coining from it of any counterfeit coin, with intent that such counterfeit coin shall be made from it; or
- (c) without lawful authority or excuse, the proof of which lies on him—
 - (i) buys, sells, receives, pays or disposes of any counterfeit coin at a lower rate than it imports or is apparently intended to import, or offers to do any such thing; or
 - (ii) brings or receive into Kenya any counterfeit coin knowing it to be counterfeit; or
 - (iii) makes or mends, or begins or prepares to make or mend, or has in his possession, or disposes of, any stamp or mould which is adapted to make the resemblance of both or either of the sides of any coin, or any part of either side thereof, knowing the same to be a stamp or mould, or to be so adapted; or
 - (iv) makes or mends, or begins or prepares to make or mend, or has in his possession or disposes of, any tool, instrument or machine which is adapted and intended to be used for marking coin round the edges with marks or figures apparently resembling those on the edges of any coin, knowing the same to be so adapted and intended; or
 - (v) makes or mends, or begins or prepares to make or mend, or has in his possession or disposes of, any press for coinage, or

is guilty of a felony and is liable to imprisonment for life.

367. Making or having in possession papers or implements for forgery

Any person who, without lawful authority or excuse, the proof of which lies on him—

- (a) makes, uses or knowingly has in his custody or possession any paper intended to resemble and pass as a special paper such as is provided and used for making any bank note or currency note; or
- (b) makes, uses or knowingly has in his custody or possession any frame, mould or instrument for making such paper, or for producing in or on such paper any words, figures, letters, marks, lines or devices peculiar to and used in or on any such paper; or
- (c) engraves or in anywise makes upon any plate, wood, stone or other material any words, figures, letters, marks, lines or devices the print whereof resembles in whole or in part any words, figures, letters, marks, lines or devices peculiar to and used in or on any bank note or currency note; or
- (d) uses or knowingly has in his custody or possession any plate, wood, stone or other material upon which any such words, figures, letters, marks, lines or devices have been engraved or in anywise made as aforesaid; or
- (e) uses or knowingly has in his custody or possession any paper upon which any such words, figures, letters, marks, lines or devices have been printed or in anywise made as aforesaid,

is guilty of a felony and is liable to imprisonment for seven years.

367A. Mutilating currency notes

Any person who wilfully and without lawful authority or excuse defaces, tears, cuts or otherwise mutilates any currency note shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding three months or to a fine not exceeding two thousand shillings or to both such imprisonment and fine.

[Act No. 15 of 1966, Sch.]

368. Clipping

Any person who deals with any coin in such a manner as to diminish its weight with intent that when so dealt with it may pass as coin is guilty of a felony and is liable to imprisonment for seven years.

369. Melting down of currency

Any person who melts down, breaks up, defaces by stamping thereon any name, word or mark, or uses otherwise than as currency any coin current for the time being in Kenya is guilty of a misdemeanour and is liable on conviction to a fine not exceeding eight thousand shillings or to imprisonment for six months or to both.

[Act No. 15 of 1966, Sch.]

370. Impounding and destruction of counterfeit coins

(1) Any officer of the Government or the manager of any bank who receives, during the performance of his duties, any coin which he has reasonable ground for believing to be counterfeit coin shall impound the coin and transmit it to the Governor of the Central Bank of Kenya who may cut, deface or destroy it with or without compensation, as he thinks fit if in his opinion it is counterfeit.

(2) For the purposes of this section, the decision of the Governor of the Central Bank of Kenya that the coin is counterfeit and that compensation shall be granted or withheld shall be final, and no person shall be entitled to claim and no proceedings or action shall be brought against the Governor, the Government, the officer of Government concerned, the manager of the bank concerned or his bank in respect of any loss or damage suffered by reason of the impounding and cutting, defacing or destruction.

[Act No. 15 of 1966, Sch., Act No. 10 of 2006, s. 32.]

371. Possession of clippings

Any person who unlawfully has in his possession or disposes of any filings, or clipping of gold or silver, or any gold or silver in bullion, dust, solution, or any other state, obtained by dealing with gold or silver coin in such a manner as to diminish its weight, knowing the same to have been so obtained, is guilty of a felony and is liable to imprisonment for seven years.

372. Uttering counterfeit coin

Any person who utters any counterfeit coin, knowing it to be counterfeit, is guilty of a misdemeanour.

373. Repeated uttering

Any person who—

- (a) utters any counterfeit coin knowing it to be counterfeit, and at the time of such uttering has in his possession any other counterfeit coin; or
- (b) utters any counterfeit coin knowing it to be counterfeit, and either on the same day or on any of the ten days next ensuing utters any other counterfeit coin knowing it to be counterfeit; or
- (c) receives, obtains or has in his possession any counterfeit coin knowing it to be counterfeit, with intent to utter it,

is guilty of a felony and is liable to imprisonment for three years.

374. Uttering metal or coin not current as coin

(1) Any person who, with intent to defraud, utters as and for coin any medal or piece of metal is guilty of a misdemeanour and is liable to imprisonment for one year.

(2) Any person who, with intent to defraud, utters as and for coin lawfully current in Kenya by virtue of any Act, proclamation or otherwise any coin not so lawfully current is guilty of a misdemeanour and is liable to imprisonment for one year.

375. Exporting counterfeit coin

Any person who, without lawful authority or excuse, the proof of which lies on him, exports or puts on board of a vessel or vehicle of any kind for the purpose of being exported any counterfeit coin whatever, knowing it to be counterfeit, is guilty of a misdemeanour.

376. Selling articles bearing designs in imitation of currency

Any person who, without lawful authority or excuse, the proof whereof lies upon him, sells or offers or exposes for sale any article which bears a design in imitation of any currency or bank note or coin in current use in Kenya or elsewhere is guilty of a misdemeanour and is liable to imprisonment for six months.

377. Forfeiture

When any person is convicted of an offence under this Chapter or under Chapter XXXV, the court shall order the forfeiture of any forged bank note or currency note or of any counterfeit coin or any stamp, mould, tool, instrument, machine or press, or any coin, bullion or metal, or any article bearing a design in imitation of any currency, bank note or coin used or employed in the commission of any such offence.

CHAPTER XXXVII – COUNTERFEIT STAMPS**378. Possession of die used for making stamps**

Any person who, without lawful authority or excuse, the proof of which lies on him—

- (a) makes or mends, or begins or prepares to make or mend, or uses, or knowingly has in his possession, or disposes of, any die, plate or instrument capable of making an impression resembling that made by any die, plate or instrument used for the purpose of making any stamp, whether impressed or adhesive, which is used for the purposes of the public revenue or of the Kenya Posts and Telecommunications Corporation in Kenya or in any foreign country, or capable of producing in or on paper any words, figures, letters, marks or lines resembling any words, figures, letters, marks or lines used in or on any paper specially provided by the proper authority for any such purpose; or
- (b) knowingly has in his possession or disposes of any paper or other material which has on it the impression of any such die, plate or instrument, or any paper which has on it or in it any such words, figures, letters, marks or lines as aforesaid; or
- (c) fraudulently, and with intent that use may be made of any such stamp as aforesaid, or of any part of it, removes the stamp from any material in any way whatever; or
- (d) fraudulently, and with intent that use may be made of any part of such stamp, mutilates the stamp; or
- (e) fraudulently fixes or places upon any material or upon any such stamp any stamp or part of a stamp which has been in any way removed from any other material, or out of or from any other stamp; or

- (f) fraudulently, and with intent that use may be made of any such stamp which has been already impressed upon or attached to any material, erases or otherwise removes, either really or apparently, from such material anything whatever written on it; or
- (g) knowingly has in his possession or disposes of anything obtained or prepared by any such unlawful act as aforesaid; or
- (h) fraudulently or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government for the purpose of revenue which he knows to have been before used,

is guilty of a felony and is liable to imprisonment for seven years, and any die, plate, instrument, paper or other thing as aforesaid which are found in his possession shall be forfeited.

[Act No. 40 of 1952, Sch., Act No. 24 of 1967, Sch.]

379. Paper and dies for postage stamps

(1) Any person who, without lawful authority or excuse, the proof of which lies on him—

- (a) makes, or begins or prepares to make, or uses for any postal purpose, or has in his possession, or disposes of, any imitation or representation on paper or any other material of any stamp used for denoting any rate of postage of Kenya, or of any foreign country; or
- (b) makes or mends, or begins or prepares to make or mend, or uses, or has in his possession, or disposes of, any die, plate, instrument or material for making any such imitation or representation,

is guilty of a misdemeanour and is liable to imprisonment for one year, or to a fine of three thousand shillings; and any stamps, and any other such things as aforesaid, which are found in his possession, shall be forfeited.

(2) For the purposes of this section, a stamp purporting to denote a rate of postage of any country is to be taken to be a stamp used for postal purposes in that country until the contrary is shown.

[Act No. 7 of 1952, s. 2, Act No. 20 of 1955, s. 2, L.N. 551/1961, Act No. 13 of 1978, Sch.]

CHAPTER XXXVIII – COUNTERFEITING TRADEMARKS

380. Trade marks defined

A trade mark is—

- (a) a mark, other than a trade mark registered under the Trade Marks Act (Cap. 506), lawfully used by any person to denote any chattel to be an article or thing of the manufacture, workmanship, production or merchandise of such person or to be an article or thing of any peculiar or particular description made or sold by such person; or
- (b) any mark or sign which in pursuance of any law in force for the time being relating to registered designs is to be put or placed upon or attached to any chattel or article during the existence or continuance of any copyright or other sole right acquired under the provision of such law.

[Act No. 24 of 1967, Sch.]

381. Counterfeiting trade marks

(1) Any person who does any of the following things, that is to say—

- (a) forges or counterfeits any trade mark;
- (b) applies any trade mark, or any forged or counterfeit trade mark, to any chattel or article, not being the merchandise of any person whose trade mark is so forged or counterfeited;
- (c) applies any trade mark, or any forged or counterfeited trade mark, to any chattel or article, not being the particular or peculiar description of merchandise denoted or intended to be denoted by such trade mark or by such forged or counterfeited trade mark;
- (d) applies any trade mark, or any forged or counterfeited trade mark, to any thing intended for any purpose of trade or manufacture, or in, on or with which any chattel or article is intended to be sold, or is sold or offered or exposed for sale;
- (e) encloses or places any chattel or article in, upon, under or with any thing to which any trade mark has been falsely applied, or to which any forged or counterfeit trade mark has been applied;
- (f) applies or attaches any chattel or article to any case, cover, reel, ticket, label or other thing to which any trade mark has been falsely applied, or to which any false or counterfeit trade mark has been applied;
- (g) encloses, places or attaches any chattel or article in, upon, under, with or to any thing having thereon any trade mark of any other person,

is guilty of a misdemeanour, unless he proves that he acted without intent to defraud any person.

(2) Every person committing any such misdemeanour as aforesaid shall forfeit

- (a) all chattels and articles to which any such trade mark or counterfeit trade mark is applied or caused or procured to be applied;
- (b) every instrument for applying such trade mark or counterfeit trade mark in his possession or power;
- (c) the chattels and articles and the things mentioned in paragraphs (d), (e) and (g) of subsection (1), and all similar things made to be used in like manner in his possession or power.

[Act No. 40 of 1952, Sch., Act No. 24 of 1967, Sch.]

CHAPTER XXXIX – PERSONATION**382. Personation in general**

(1) Any person who, with intent to defraud any person, falsely represents himself to be some other person, living or dead, is guilty of a misdemeanour.

(2) If the representation is that the offender is a person entitled by will or operation of law to any specific property and he commits the offence to obtain such property or possession thereof, he is liable to imprisonment for seven years.

383. Falsely acknowledging deeds, recognizances, etc

Any person who, without lawful authority or excuse, the proof of which lies on him, makes in the name of any other person, before any court or person lawfully authorized to take such an acknowledgment, an acknowledgment of liability of any kind, or an acknowledgment of a deed or other instrument, is guilty of a misdemeanour.

384. Personation of a person named in a certificate

Any person who utters any document which has been issued by lawful authority to another person, whereby that other person is certified to be a person possessed of any qualification recognized by law for any purpose, or to be the holder of any office, or to be entitled to exercise any profession, trade or business, or to be entitled to any right or privilege, or to enjoy any rank or status, and falsely represents himself to be the person named in the document, is guilty of an offence of the same kind and is liable to the same punishment as if he had forged the document.

385. Lending, etc., certificate for personation

Any person who, being a person to whom any document has been issued by lawful authority whereby he is certified to be a person possessed of any qualification recognized by law for any purpose, or to be the holder of any office or to be entitled to exercise any profession, trade or business, or to be entitled to any right or privilege, or to enjoy any rank or status, sells, gives or lends the document to another person with intent that that other person may represent himself to be the person named therein, is guilty of a misdemeanour.

386. Personation of person named in testimonial

Any person who, for the purpose of obtaining any employment, utters any document of the nature of a testimonial of character given to another person, is guilty of a misdemeanour and is liable to imprisonment for one year.

387. Lending, etc., testimonial for personation

Any person who, being a person to whom any such document as is mentioned in section 386 has been given, gives, sells or lends the document to another person with the intent that that other person may utter the document for the purpose of obtaining any employment, is guilty of a misdemeanour.

*Division VIII – Attempts and Conspiracies to
Commit Crimes and Accessories after the Fact*

CHAPTER XL – ATTEMPTS

388. Attempt defined

(1) When a person, intending to commit an offence, begins to put his intention into execution by means adapted to its fulfillment, and manifests his intention by some overt act, but does not fulfill his intention to such an extent as to commit the offence, he is deemed to attempt to commit the offence.

(2) It is immaterial, except so far as regards punishment, whether the offender does all that is necessary on his part for completing the commission of the offence, or whether the complete fulfillment of his intention is prevented by circumstances independent of his will, or whether he desists of his own motion from the further prosecution of his intention.

(3) It is immaterial that by reason of circumstances not known to the offender it is impossible in fact to commit the offence.

389. Attempts to commit offences.

Any person who attempts to commit a felony or a misdemeanour is guilty of an offence and is liable, if no other punishment is provided, to one-half of such punishment as may be provided for the offence attempted, but so that if that offence is one punishable by death or life imprisonment he shall not be liable to imprisonment for a term exceeding seven years.

[Act No. 27 of 1962, s. 19.]

390. *Repealed by Act No. 10 of 1969, Sch.*

391. Soliciting or inciting others to commit offence

Any person who solicits or incites or attempts to procure another to do any act or make any omission, whether in Kenya or elsewhere, of such a nature that, if the act were done or the omission were made, an offence would thereby be committed, under the laws of Kenya or the laws in force in the place where the act or omission is proposed to be done or made, whether by himself or by that other person, is guilty of an offence of the same kind and is liable to the same punishment as if he had himself attempted to do the same act or make the same omission in Kenya:

Provided that—

- (i) if the act or omission is proposed to be done or made at a place not in Kenya, the punishment shall not exceed that which he would have incurred under the laws in force where the act or omission was proposed to be done or made, if he had himself attempted to do the proposed act or make the proposed omission;
- (ii) a prosecution shall not be instituted in the last-mentioned case except at the request of the Government of the State having jurisdiction in the place where the act or omission was proposed to be done or made.

392. Neglect to prevent felony

Every person who, knowing that a person designs to commit or is committing a felony, fails to use all reasonable means to prevent the commission or completion thereof is guilty of a misdemeanour.

CHAPTER XLI – CONSPIRACIES

393. Conspiracy to commit felony

Any person who conspires with another to commit any felony, or to do any act in any part of the world which if done in Kenya would be a felony, and which is an offence under the laws in force in the place where it is proposed to be done, is

guilty of a felony and is liable, if no other punishment is provided, to imprisonment for seven years, or, if the greatest punishment to which a person convicted of the felony in question is liable is less than imprisonment for seven years, then to that lesser punishment.

394. Conspiracy to commit misdemeanour

Any person who conspires with another to commit a misdemeanour, or to do any act in any part of the world which if done in Kenya would be a misdemeanour, and which is an offence under the laws in force in the place where it is proposed to be done, is guilty of a misdemeanour.

395. Other conspiracies

Any person who conspires with another to effect any of the purposes following, that is to say—

- (a) to prevent or defeat the execution or enforcement of any written law; or
- (b) to cause any injury to the person or reputation of any person or to depreciate the value of any property of any person; or
- (c) to prevent or obstruct the free and lawful disposition of any property by the owner thereof for its fair value; or
- (d) to injure any person in his trade or profession; or
- (e) to prevent or obstruct, by means of any act or acts which if done by an individual person would constitute an offence on his part, the free and lawful exercise by any person of his trade, profession or occupation; or
- (f) to effect any unlawful purpose; or
- (g) to effect any lawful purpose by any unlawful means,

is guilty of a misdemeanour.

CHAPTER XLII – ACCESSORIES AFTER THE FACT

396. Definition of accessories after the fact

(1) A person who receives or assists another who is, to his knowledge, guilty of an offence, in order to enable him to escape punishment, is said to become an accessory after the fact to the offence.

(2) A wife does not become an accessory after the fact to an offence of which her husband is guilty by receiving or assisting him in order to enable him to escape punishment; or by receiving or assisting in her husband's presence and by his authority another person who is guilty of an offence in the commission of which her husband has taken part, in order to enable that other person to escape punishment; nor does a husband become an accessory after the fact to an offence of which his wife is guilty by receiving or assisting her in order to enable her to escape punishment.

397. Punishment of accessories after the fact to felonies

Any person who becomes an accessory after the fact to a felony is guilty of a felony and is liable, if no other punishment is provided, to imprisonment for three years.

398. Punishment of accessories after the fact to misdemeanours

Any person who becomes an accessory after the fact to a misdemeanour is guilty of a misdemeanour.

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Note.—This index is not part of the Act, and is inserted only for convenience.

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