

**LAWS OF KIRIBATI  
REVISED EDITION 1998**

**CHAPTER 52**

(Incorporated amendments up to 1 September 1998)

**MAGISTRATES' COURTS**

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#### SCHEDULES

**An Ordinance to provide for the constitution of magistrates' courts, for the appointment of presiding magistrates, magistrates and other officers of these courts,**

**and of justices of the peace, and for the regulation of their duties and jurisdiction, and for appeals and revision of the decisions of these courts, and for matters incidental thereto and connected therewith**

*Commencement: 1st May 1978*

*4 of 1981*

*10 of 1989*

*1 of 1990*

*8 of 1990*

**PART I  
PRELIMINARY**

**Short title and commencement on different dates and places**

1. (1) This Ordinance may be cited as the Magistrates' Courts Ordinance.

(2) This Ordinance shall come into operation on such date or dates and in such places as the Beretitenti may by notice appoint and different dates may be appointed for different places and for different provisions.

**Interpretation**

2. In this Ordinance unless the context otherwise requires—

"bailiff" means a person appointed to be a bailiff pursuant to section 19 and includes any assistant bailiff or any other person assisting a bailiff in the performance of his duties;

"Chief Registrar" means the person appointed to be Chief Registrar pursuant to section 20 of this Ordinance;

"clerk of court" and "clerk" means any person appointed to be a clerk of court pursuant to section 12 of this Ordinance and includes any assistant clerk and any other person assisting a clerk in the performance of his duties;

"criminal" includes quasi-criminal, and with reference to matters of jurisdiction, comprehends all such matters not falling within the term "civil" or within the term "lands causes and matters";

"district" means a district constituted in the manner prescribed in section 3 (2);

"island" includes any atoll and any chain of islands about a single lagoon or connected by a continuous reef formation and any place which the Chief Justice may by notice declare to be an island for the purposes of this Ordinance;

"judgment" and "decree" shall be deemed synonymous terms;

"land causes and matters" means all causes and matters concerning land, land boundaries and transfers of title to native land registered in the Register of Native Lands and any disputes concerning the possession and utilisation of native land, and includes causes and matters concerning native wills, native adoption, native customary fishing rights, native leases and

native paternity, and all matters referred to in Part VI and sections 35 and 36 of the Native Lands Ordinance; Cap. 61

"lands' jurisdiction" means the jurisdiction of the magistrates' court exercised by it when composed or deemed to be composed under the provisions of section 7 (4);

"magistrate" means any person appointed to sit as magistrate in a magistrates' court under section 7 or under section 10 or in the High Court under section 76 (2);

"matter" includes every proceeding in a court not in a cause;

"rules of court" means rules of court made under section 97 of the Constitution for the purpose of, or relating to, this Ordinance, or under section 88;

"Sheriff" means any person for the time being acting as Sheriff of the High Court and includes any deputy sheriff or under sheriff and any person lawfully authorised to execute the process of the High Court or the magistrates' courts;

"suit" includes action, and means a civil proceeding or a land cause or matter commenced by writ of summons or in such other matter as may be prescribed by rules of court, and does not include a criminal proceeding;

"warrant", in relation to the establishment or jurisdiction of any magistrates' court, means the warrant appointing magistrates to such courts as provided for in section 7 and, in relation to the High Court, section 76 (2).

## **PART II CONSTITUTION OF THE COURTS**

### **Establishment of magistrates' courts**

3. (1) There shall be and there are hereby established courts of summary jurisdiction, which shall be known as magistrates' courts and shall in accordance with S89 of the Constitution be subordinate to the High Court and shall be presided over by magistrates appointed under this Ordinance and such courts, subject to the provisions of any other Ordinance, shall exercise such jurisdiction as is by this Ordinance prescribed.
- (2) The Chief Justice may from time to time by order provide for the delimitation of districts for the purposes of this Ordinance and there shall be in each district such magistrates' courts as the Chief Justice may direct.
- (3) Any power, authority, function or discretion vested in a magistrates' court by this or any other Ordinance or law shall be possessed and may be exercised by magistrates sitting as in this Ordinance provided.
- (4) Every magistrates' court shall be a court of record.

### **Territorial limits of jurisdiction of the courts**

4. (1) Subject to any express provisions of this or any other Ordinance, every magistrates' court shall exercise jurisdiction within the limits of the district within which it is situated:

Provided that when there is more than 1 magistrates' court in the same district, the Chief Justice may direct the distribution of business between such courts.

- (2) The jurisdiction of each magistrates' court shall extend over any territorial waters adjacent to the district in which it is situated as well as over lagoon and inland waters whether within or adjacent to such district.

### **Seals**

5. Magistrates' courts shall use seals of such nature and pattern as the Chief Justice shall approve.

### **Contempt of court**

6. Magistrates' courts have the same powers as the High Court to deal with contempt of their authority.

## **PART III OFFICERS OF MAGISTRATES' COURTS**

### **Composition of magistrates' courts and appointment of magistrates**

7. (1) Subject to the provisions of subsections (4) and (5), each magistrates' court shall be composed of 3 members who shall be known as magistrates, 1 of whom shall be the presiding magistrate, and the presiding magistrate shall take precedence of the other magistrates.

*(S.7(1) amended by No.4 of 1981, S.2)*

“Provided that if the post of presiding magistrate is vacant, or if the presiding magistrate fails to attend any sitting of the court, the magistrate next in seniority according to his date of appointment as a magistrate shall act as presiding magistrate until a new presiding magistrate is appointed or for that sitting of the court.”

- (2) The Beretitenti, on the recommendation of the Chief Justice, by warrant under his hand may appoint fit and proper persons to be the magistrates of each magistrates' court, declaring which magistrate shall be the presiding magistrate and which shall be the ordinary magistrates, and may further appoint any person or persons to be temporary magistrates for the purposes of filling any vacancy that may occur due to the temporary incapacity of a magistrate or may appoint a person to be a magistrate for the provisions of subsection (5).
- (3) Save as is otherwise expressly provided in subsections (4) and (5) or by any law for the time being in force, every civil and criminal proceeding in any magistrates' court and all business arising therefrom shall be heard and determined by 3 magistrates of such court sitting together.

- (4) In land causes or matters in respect of any of the subjects or matters referred to in Part VI of this Ordinance a magistrates' court shall be composed of 5 magistrates, at least 3 of whom shall be drawn from among magistrates whose names appear on the Lands Magistrates' Panel, established pursuant to section 10, for the district in which the cause or matter arose or the land in question is situated.
- (5) Notwithstanding the other provisions of this section the Chief Justice may establish in such place or places as he may, by notice, specify, a magistrates' court or courts which shall each consist of a single magistrate appointed by the Beretitenti, on the recommendation of the Chief Justice, who shall exercise all the jurisdiction conferred upon a magistrates' court to the extent specified by the Chief Justice in civil, criminal or land causes and matters or in respect of any of the subject or matters referred to in Part VI of the Ordinance and such magistrates' court shall be deemed to be duly composed for the purposes of subsection (3) or subsection (4) or for the purposes of both subsections.

#### **Decisions of magistrates' court**

8. Any decision, whether final or not, of a magistrates' court shall be that of the 3 magistrates, of the 5 magistrates or of the single magistrate as the case may be, of which such court is composed or, failing agreement between them, the decision of the majority of the magistrates of which the court is composed shall prevail.

#### **Cancellation, restriction or suspension of warrants**

9. The Beretitenti may, on the recommendation of the Chief Justice, by written notice, cancel or suspend any warrant of appointment given in pursuance of section 7 or section 10, or in like manner suspend or remove either wholly or in part any restriction of the powers to be exercise contained in such warrant.

#### **Lands magistrates' panel**

10. There shall be established a panel which shall be called the Lands Magistrates' Panel which shall consist of such persons as the Governor may, on the recommendation of the Chief Justice after consultation with the Chief Lands Officer, by warrant under his hand appoint as magistrates for the purpose of hearing land causes and matters and opposite the name of each such magistrate shall be entered the district in respect of which he has been appointed by such warrant.

#### **Procedure where magistrate is unable to adjudicate by reason of personal interest, etc**

11. Where a magistrate is a party to a cause or matter or is unable from personal interest or other sufficient reason to adjudicate on any cause or matter, he shall be replaced as a magistrate during such incapacity in accordance with the provisions contained in the court's warrant for the filling of casual vacancies, or if for any reason his replacement under those provisions is not possible, the Chief Justice may direct some other magistrate to act instead of the aforesaid magistrate for the hearing and determination of such particular cause or matter.

#### **Clerk of court**

- 12.** (1) There shall be a clerk of court attached to each magistrates' court who shall be appointed by the Chief Justice who shall, subject to the general supervision of the Chief Registrar, be under the immediate direction and control of the magistrates for the time being exercising the jurisdiction of the court to which he is attached.
- (2) The duties of every clerk of court shall be—
- (a) where the court or the presiding magistrate does not do so to keep true and accurate minutes of all proceedings in the court to which he is attached and to record minutes of all evidence given therein and the judgments, convictions and orders of such court;
  - (b) to fill up or cause to be filled up all summonses, warrants, orders, convictions, recognisances, writs of execution and other documents and to submit the same for the signature of the presiding magistrate for the time being of the court concerned or as may be otherwise prescribed or required;
  - (c) to issue any civil processes in accordance with the law;
  - (d) to attend all sittings of the magistrates' court;
  - (e) to receive or cause to be received all fees, fines and penalties and all other moneys paid or deposited in respect of proceedings in the magistrates' court and to keep or cause to be kept true and accurate accounts of the same, and;
  - (f) to perform such other duties as may be assigned to him by the Chief Justice.

### **Execution and service of processes**

- 13.** Any process of a magistrates' court may be executed or served by any person authorised to do so by such court, either generally or in any particular case, and such person shall for all purposes of such execution and connected therewith be an officer of the magistrates' court.

### **Protection of magistrates and officers of magistrates' courts**

- 14.** No magistrate shall be liable to be sued in any civil court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction, provided that he, at the time, in good faith believed himself to have jurisdiction to do or order the act complained of; and no officer of any magistrates' court shall be liable to be sued in any civil court for the execution of any warrant or order which he would be bound to execute if within the jurisdiction of the court issuing the same.

### **Records and returns**

- 15.** Every magistrates' court shall keep such written records and furnish such returns as may be required by this Ordinance or as the Chief Justice may from time to time direct.

### **Appointment and removal of justices of the peace**

16. (1) The Beretitenti, on the recommendation of the Chief Justice, may appoint any person to be justice of the peace and Beretitenti may remove any person so appointed from the office of justice of the peace.

(2) Every judge and every magistrate shall be ex officio a justice of the peace.

### **Powers and functions of justices of the peace**

17. Subject to the provisions of this and of any other Ordinance, every justice of the peace shall, subject to any exceptions which may be contained in his appointment, within the area in and for which he holds such office, have all the powers, rights and duties of a magistrate under this or any other Ordinance to—

- (i) issue summonses and warrants for the purpose of compelling the attendance of any accused person or witnesses before a court;
- (ii) such other powers and rights and shall perform such duties of magistrates as may be conferred or imposed upon him by rules of court made under section 97 of the Constitution or under this or any other Ordinance not involving the trial of causes or, in criminal cases, the holding of preliminary investigations.

### **Sheriff**

18. (1) There shall be a Sheriff who shall be charged with the execution of all orders and processes of magistrates' courts and for this purpose shall have the same powers, authority and immunities as may be conferred upon him by the law for the time being in respect of the orders and processes of the High Court.

(2) Every duty of the Sheriff in execution of any process of the court may be performed by such officers, non-commissioned officers or constables of the Police Force, or other persons, as may be authorised by the Sheriff and any officer, noncommissioned officer, constable or other person who is in possession of any such process shall be deemed to be duly so authorised, and shall for all purposes of such execution, and connected therewith, be an officer of the court.

(3) The Sheriff shall not be liable to be sued for any act or omission of any officer, non-commissioned officer, or constable, or other person, in the execution of any process which shall have been done or may have occurred, either through disobedience or neglect of the orders or instructions given by the Sheriff, or in the absence of any order or instruction given by the Sheriff.

### **Bailiffs**

19. Bailiffs shall be appointed by the Sheriff, with the approval of the magistrates exercising the jurisdiction of the magistrates' court to which they are to be attached, and may themselves or by their assistants serve and execute any process issued out of the magistrates' court; and when so directed by such magistrates they shall attend such court and obey all the directions of the magistrates for preserving order and decorum therein.

**Chief Registrar**

- 20.** There shall be a Chief Registrar who, subject to the overall control and direction of the Chief Justice, shall be in charge of the administration of all courts including the magistrates' courts and who shall perform such other functions and carry out such other duties as the Chief Justice may from time to time assign to him.

**Other officers**

- 21.** There shall be such public officers as may be necessary for the efficient exercise of jurisdiction by the magistrates' courts and the Chief Justice may attach such officers to any magistrates exercising judicial functions in a court under the provisions of this Ordinance.

**Transfer of functions**

- 22.** The Chief Justice may transfer any officer attached to any magistrates' court from time to time to any other magistrates' court either for temporary or permanent duty.

**PART IV**  
**JURISDICTION AND POWER OF THE MAGISTRATES' COURTS**

**Powers of magistrate's courts**

- 23.** (1) Subject to the other provisions of this Ordinance and of any other law for the time being in force, every magistrates' court shall have and exercise the jurisdiction in civil causes and matters for the time being set out in Schedule 1, in criminal causes and matters the jurisdiction for the time being set out in Schedule 2, and in land causes and matters the jurisdiction for the time being set out in Schedule 3.
- (2) The Chief Justice may by notice add to, amend or delete, any part of Schedules 1 or 2 and, after consultation with the Chief Lands Officer, may by notice add to, amend or delete, any part of Schedule 3.
- (3) Subject to any law for the time being in force if in any suit or civil cause or matter before a magistrates' court composed or deemed to be composed under section 7 (3) or 7 (5) the title to any land is disputed or the question of the ownership thereof arises the court shall-
- (a) where original jurisdiction to hear and determine such dispute or question is conferred by law upon a magistrates' court composed or deemed to be composed under section 7 (4), transfer the dispute or question to that magistrates' court for adjudication or determination; or
- (b) where original jurisdiction to hear and determine such dispute or question is not conferred by law on a magistrates' court composed or deemed to be composed under section 7 (4), if all the parties interested therein consent, adjudicate thereon or, if they do not so consent, apply to the High Court to transfer such suit, cause or matter to itself or to make such order or orders as to the High Court may appear to be just.

**Sentences which magistrates' court can pass**

**24.** (1) Subject to the other provisions of this Ordinance a magistrates' court may, in any case in which such sentences are authorised by law, pass the following sentences—

- (a) imprisonment for a term not exceeding 5 years; or
- (b) a fine not exceeding \$500; or
- (c) both such imprisonment and such fine; or
- (d) any sentence or order authorised by law.

(2) A magistrates' court may pass any lawful sentence combining any of the sentences or orders which it is authorised by law to pass.

(3) In determining the extent of magistrates' courts jurisdiction under subsection (1) to pass a sentence of imprisonment the magistrates' court shall be deemed to have jurisdiction to pass the full sentence of imprisonment provided for in the subsection in addition to any term of imprisonment which may be awarded in default of payment of a fine, costs or compensation.

(4) When a person is convicted at one trial of 2 or more distinct offences the court may sentence him, for such offences, to the several punishments prescribed therefor which such court is competent to impose, such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the court may direct, unless the court directs that such punishments shall run concurrently.

(5) In the case of consecutive sentences imposed by a magistrates' court in respect of 2 or more distinct offences arising out of the same facts it shall not be necessary for such magistrates' court to send the offender for trial or sentence to the High Court by reason only of the aggregate punishment for the several offences in respect of which such offences are imposed being in excess of the punishment which it is competent to impose on conviction of a single offence:

Provided that the aggregate punishment imposed in the form of consecutive sentences shall not exceed twice the amount of punishment which such magistrates' court is competent to impose in respect of 1 offence in the exercise of its ordinary jurisdiction.

(6) For the purposes of appeal or review the aggregate of consecutive sentences imposed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

(7) A magistrates' court may, in lieu of any other punishment, make an order placing an offender under the supervision of a probation officer or any other suitable person chosen by the court for that purpose for a period not exceeding 1 year and attach such conditions to the order as the court may think fit; and in the event of the offender's failure to comply with the order or of the commission of a further offence during the period of supervision, he shall appear before the magistrates' court which made such order or any other magistrates' court and may be sentenced in respect of the offence

for which he was placed on probation; and any sentence then passed upon him shall be in addition to any sentence imposed on him in respect of such further offence.

- (8) Whenever a magistrates' court imposes a fine, or a sentence of which a fine forms a part, such court may, when passing judgment, order the whole or any part of such fine to be paid to any person in compensation for any loss, injury or damage caused by the offence or in defraying any expenses incurred in bringing or prosecuting the charge.

### **Dismissal of charges**

25. Notwithstanding that any charge against an accused person is proved, a magistrates' court, if it is of the opinion that it is not expedient to inflict punishment, may make an order dismissing the charge either absolutely or conditionally.

### **Treatment of young offenders**

26. (1) In this section, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them, that is to say—

"child" means any person under the age of 14 years;

"young person" means a person who has attained the age of 14 years and is under the age of 17 years.

- (2) No magistrates' court shall impose imprisonment on any child.

- (3) No magistrates' court shall impose imprisonment on any young person unless—

- (a) he is over the apparent age of 15 years; and
- (b) unless the magistrates' court, having obtained and considered information about the circumstances of the offender and his age and character, is of the opinion that no other method of dealing with him is appropriate.

- (4) No imprisonment imposed under subsection (3) shall exceed 1 month in duration.

- (5) Where a child or young person is convicted by a magistrates' court of any offence for the commission of which a fine, damages or costs may be imposed, if such magistrates' court is of the opinion that the case would be best met by the imposition of a fine, damages or costs, whether with or without any other punishment, the magistrates' court may, and, in the case of child, shall order that the fine, damages or costs awarded be paid by the parent or guardian of the child or young person convicted, instead of by such child or young person, unless the magistrates' court is satisfied that the parent or guardian cannot be found or that he has not conduced to the commission of the offence by neglecting to exercise due care of the child or young person.

- (6) In the case of any child or young person convicted by it of any offence, a magistrates' court may order his parent or guardian to give security in some sum not exceeding \$50 for his good behaviour for any period not exceeding 1 year.

- (7) A magistrates' court may require the attendance before it of any parent or guardian of any child or young person charged with an offence before the court and if such parent or guardian will not appear voluntarily may compel his attendance in like manner to that in which witnesses are compelled to attend.
- (8) In lieu of any other sentences which a magistrates' court may lawfully impose on any male child or male young person, the provisions of section 24 (1) to the contrary notwithstanding, it may order that such child or young person be given a specific number of strokes of a cane not exceeding, in the case of a child, 6 strokes, and in the case of young person, 12 strokes, and any strokes so ordered shall be administered at the prison nearest such magistrates' court by the Superintendent of Prisons, or by an officer authorised by the Superintendent of Prisons, in the presence of a magistrate:

Provided that no such sentence shall be carried out or put into effect until the time within which notice or grounds of appeal against such conviction or sentence shall be filed has expired, unless within that time notice or grounds of appeal against conviction or sentence or against both conviction and sentence has been filed, whereupon no such sentence shall be carried out until the High Court has determined the appeal and made an order accordingly or the appeal is, for any reason, discontinued, and the accused shall in the meantime be remanded in custody or on bail at the discretion of the magistrates' court.

#### **Extension of civil jurisdiction**

27. Notwithstanding the provisions of section 23 (1), the Chief Justice, by order under his hand and the seal of the High Court, may authorise an increased jurisdiction in civil causes and matters to be exercised by the magistrates' court named in such order, within the district prescribed in the order and to the extent specified in the order. Such an order may at any time be revoked by the Chief Justice by an instrument under his hand and the seal of the High Court.

#### **Extension of criminal jurisdiction**

28. Notwithstanding the provisions of section 23 (1), the Chief Justice, by order under his hand and the seal of the High Court, may invest any magistrates' court with jurisdiction to try summarily an offence which would otherwise be beyond its jurisdiction. Such an order may at any time be revoked by the Chief Justice by an instrument under his hand and the seal of the High Court.

#### **Special jurisdiction in certain cases**

29. Where an offence over which a magistrates' court has jurisdiction is committed or any cause or matter arises in any vessel, such offence may be prosecuted or such cause or matter heard and determined either by the magistrates' court exercising jurisdiction over the place where such vessel is at the time when such offence is committed or such cause or matter arises, or by the magistrates' court exercising jurisdiction over any place where such vessel calls after such commission or arising.

#### **General powers of magistrates**

**30.** Every magistrate shall have power to issue writs of summons for the commencement of actions in a magistrates' court, to administer oaths and take solemn affirmations and declarations, to receive production of books and documents and to make such decrees and orders and issue such process and exercise such judicial and administrative powers in relation to the administration of justice as shall from time to time be prescribed by this or any other Ordinance, or by rules of court, or subject thereto by any special order of the Chief Justice.

#### **Acts of magistrates' courts not to be affected by error as to venue**

**31.** (1) Subject to the provisions of any other Ordinance, no act done by or under the authority of any magistrates' court shall be void or impeachable by reason only that such act was done, or that any act, offence or matter in respect of or in relation to which such act was done, occurred or was situated beyond the area of the jurisdiction of such magistrates' court.

(2) If the defendant in any civil or lands cause or matter, before, but not after, the time when he is required to answer such cause or matter, specially alleges that any of the grounds referred to in the preceding subsection exist, which, but for the provisions of that subsection, would be of force, the court shall consider the same, and if there is prima facie proof thereof such court shall report such cause or matter to the Chief Justice who shall make an order directing where the cause or matter shall be heard and determined, and such order shall not be subject to appeal.

#### **Proceedings by or against an officer of a magistrates' court**

**32.** Subject to the proceedings of section 11, any civil or lands proceeding by or against any magistrate or other officer of a magistrates' court for any offence recognisable by a magistrates' court may be brought in a magistrates' court in any other district.

#### **Administration of oaths**

**33.** (1) Every magistrate and every justice of the peace is hereby authorised to administer all oaths which may require to be taken before him in exercise of the jurisdiction and powers conferred upon him by this or any other Ordinance.

(2) Any such oath may also be administered by any clerk of court or other officer of the magistrates' court under the direction and in the presence of a magistrate.

(3) Every magistrate shall be a commissioner for oaths and shall have and may exercise the powers by law conferred thereon.

#### **Jurisdiction of Judges of High Court concurrent with that of magistrates**

**34.** No jurisdiction conferred upon any magistrate shall in any way restrict or affect the jurisdiction of the judges of the High Court, but such judges shall have in all causes and matters, civil and criminal, an original jurisdiction concurrent with the jurisdiction of the several magistrates:

Provided that the judges of the High Court shall not have any first instance jurisdiction in respect of land causes and matters.

**Reconciliation**

- 35.** (1) In criminal cases a magistrates' court may promote reconciliation and encourage and facilitate the settlement in an amicable way of proceedings for common assault, or for any offence of a personal or private nature not amounting to felony and not aggravated in degree, on terms of payment of compensation or other terms approved by such court, and may thereupon order the proceedings to be stayed or terminated.
- (2) In civil and land causes and matters a magistrates' court and the officers thereof shall, as far as there is proper opportunity, promote reconciliation among persons subject to its jurisdiction and encourage and facilitate settlement in an amicable way and without recourse to litigation of matters in difference between them.
- (3) Where a civil or land cause or matter is pending a magistrates' court and the officers thereof may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof.

**Transfer between magistrates' courts in the same district similarly composed**

- 36.** Where the Chief Justice assigns 2 or more magistrates' courts to any district, any such magistrates' court within such district may, for good reason, at any stage of the proceedings before final judgment, transfer, within the limits of such district, any cause or matter before it to any other such magistrates' court similarly composed and such cause or matter shall be commenced from the start again, inquired into, tried and disposed of by any similarly composed magistrates' court of competent jurisdiction to whom it has been transferred as if it had been instituted before that court.

Provided that no cause or matter which has been specifically transferred by the High Court for inquiry or trial by a particular magistrates' court shall again be transferred without leave of the Chief Justice.

**A cause may be reported for transfer**

- 37.** A magistrates' court may, of its own motion or on the application of any person concerned, report to the Chief Justice the pendency of any cause or matter which in the opinion of the presiding magistrate in such magistrates' court ought to be transferred from it to any other magistrates' court or to the High Court; and the Chief Justice shall by order direct in what mode and where the cause or matter shall be heard and determined.

**Transfer of cases by the High Court**

- 38.** (1) The High Court may at any time and at any stage thereof before judgment transfer any civil cause or matter (other than a land cause or matter) before a magistrates' court to any other magistrates' court or to the High Court, and such cause or matter may be transferred either entirely or in respect of any part thereof or procedure required to be taken therein.
- (2) The power of transfer shall be exercised by means of an order under the hand of the Chief Justice, and may apply either to any particular cause or causes, matter or matters in dependence either entirely or in respect of any part thereof or procedure required to

be taken therein, or generally to all such causes and matters as may be described in such order, and in the latter case may extend to future causes or matters as well as to such as may at the time of making such order be in dependence.

- (3) The High Court may at all times correct, alter, add to or amend any order under the preceding subsection.
- (4) The High Court may, if it appear expedient, in the first instance cause the contents of any such order to be telegraphed, and any such telegram shall, until receipt of the said order, have the same validity and effect as if it were the said order.

### **Effect of an order of transfer**

**39.** (1) Every order of transfer shall operate as a stay of proceedings in the magistrates' court to which it may be addressed in any cause or matter to which the order extends or is applicable, and the process and proceedings in every such cause or matter, and an attested copy of all entries in the books of such court relative thereto, shall be transmitted to the court to which the same shall be transferred and thenceforth all proceedings in the cause or matter shall be taken in such court as if the cause or matter had been commenced therein.

- (2) An order given under section 37 or section 38 shall not be subject to appeal.

### **Judgment may be entered in High Court on a judgment of a magistrates' court**

**40.** (1) A judge, if satisfied that a person, whether resident in Kiribati or not, against whom judgment for an amount exceeding \$40 has been obtained (whether by way of claim or counterclaim or costs or otherwise) in a magistrates' court other than one constituted under section 7 (4), has no goods or chattels within Kiribati which can be seized conveniently to satisfy the judgment, may if he thinks fit, and upon such terms as to costs as he may direct, by order under his hand and the seal of the High Court, remove the judgment into the High Court.

- (2) Upon the removal of a judgment into the High Court in pursuance of this section no further proceedings shall be had or taken thereon in the magistrates' court and the judgment shall be entered in the High Court for the amount due and payable under the judgment of the magistrates' court together with the costs as aforesaid, and a judgment so entered shall have the same force and effect and the same proceedings may be had thereon as if it were a judgment originally obtained in the High Court.
- (3) This section applies to orders obtained in a magistrates' court as it applies to judgments therein obtained.

## **PART V THE LAW TO BE APPLIED IN AND THE PRACTICE AND PROCEDURE OF MAGISTRATES' COURTS**

### **Language**

**41.** (1) The language of each magistrates' court shall be such language as the Chief Justice shall from time to time specify by order, and where no order is made the language of the court shall be I-Kiribati.

(2) In any proceedings in any magistrates' court in which the language spoken by any witness or party requires to be interpreted into the language of the magistrates' court, or vice versa, such magistrates' court may appoint any suitable person as interpreter.

### **The law to be applied in civil and criminal cases**

**42.** (1) Subject to the provisions of this Ordinance and to any law for the time being in force in the Gilbert Islands, the civil and criminal jurisdiction of magistrates' courts shall, so far as circumstances admit, be exercised upon the principles of and in conformity with –

- (a) the statutes of general application in force in England on the 1<sup>st</sup> day of January 1961, and
- (b) the substance of the English common law and doctrines of equity, and with the powers vested in and according to the course of procedure and practice observed by and before Courts of Justice in England, according to their respective jurisdiction and authorities:

Provided that the said common law, doctrines of equity and statutes of general application shall be in force so far only as the circumstances of the Gilbert Islands and its inhabitants and the limits of Her Majesty's jurisdiction permit and subject to such qualifications as local circumstances render necessary.

(2) Nothing in this Ordinance shall deprive any magistrates' court of the right to observe and enforce the observance, or shall deprive any person of the benefit, of any local law or custom not being repugnant to natural justice, equity and good conscience, and not incompatible either directly or by necessary implication with any Ordinance or other law for the time being in force in the Gilbert Islands.

### **Practice and procedure**

**43.** Subject to the provisions of any other law for the time being in force, the jurisdiction vested in the magistrates' courts shall be exercised (as far as regards practice and procedure) in the manner provided by this Ordinance or by any other Ordinance for the time being in force relating to criminal or civil procedure or by rules of court, and in default thereof, in substantial conformity with the law and practice for the time being observed in England in county courts and courts of summary jurisdiction.

### **Sittings**

**44.** (1) Each magistrates' court shall normally be held at the principal village on the island or in the district in which it is situated but should necessity arise, or the Chief Justice otherwise direct, it may be held at any other place within the jurisdiction.

(2) In construing this section the principal village of any island or district shall be that village where the headquarters of the local government of and for the island or district are situated, or such other village, as the Chief Justice may by notice declare in respect of any island or district to be the principal village thereof.

- (3) Each magistrates' court shall be held at least once in every calendar month and shall continue sitting, with such adjournments as the courts shall deem necessary until all outstanding causes and matters have been dealt with fully:

Provided, however, that, subject to the provisions of this Ordinance, a sitting of a magistrates' court may be held at any time the presiding magistrate thinks fit.

- (4) Civil and criminal matters, or either one or the other may be heard, determined and dealt with at any sitting of any magistrates' court.
- (5) Land causes and matters may be heard at the same sittings as civil and criminal matters provided that the court is lawfully composed pursuant to section 7 (4) or deemed to be composed.

### **Adjournments**

- 45.** (1) Any magistrates' court may adjourn such court from day to day or to any convenient day.
  - (2) If the 1, 3, or 5 magistrates as the case may be of which any magistrates' court is composed are not present at the time and place appointed for the sitting of a magistrates' court, any magistrate or officer of the court or other person authorised in that behalf by the magistrates may, by giving public notice, oral or written, adjourn the sitting until such time and to such place as may have been communicated to him by the court, or, in the absence of any such communication, to such time and place as may be convenient, and all persons bound to be present at the sittings so adjourned shall be equally bound to be present at the time and place appointed by such notice.
  - (3) When any day appointed for the sitting of a magistrates' court falls on a Sunday or a public holiday, the sitting shall not take place on that day and the magistrates shall in such case, if practicable, attend and transact the business appointed to be heard at such sitting as aforesaid on the day (not being a Sunday or a public holiday) next after the day appointed for such sitting.

### **Completion of process issued**

- 46.** Where a magistrate has issued any summons or otherwise taken or commenced any proceeding or matter, whether civil, criminal or in respect of land causes and matters, under any authority howsoever conferred, and subsequently ceases to act as such magistrate, it shall be lawful for the person in whose hands such summons or warrants may be to execute the same in the same manner as if the magistrate who issued the summons or warrant had not ceased to act as such magistrate and any successor of such magistrate, or any person acting for such magistrate, may hear, determine, execute, enforce, and carry to completion any proceeding or matter so commenced as aforesaid in accordance with the provisions of this Ordinance save that, except where otherwise provided by any other Ordinance for the time being in force relating to criminal or civil procedure, such magistrate shall commence the trial of any such cause or matters *ab initio*.

**Sittings to be in public**

47. All sittings of the magistrates' courts shall be open to the public unless proceedings in camera or in chambers shall have been authorised by law.

**Issue of process**

48. All summonses, warrants, orders, convictions and recognisances and all other processes, whether civil or criminal or in respect of land causes and matters of any magistrates) court shall be issued or made under the hand of the presiding magistrate for the time being thereof:

Provided that, where expressly authorised by rules of court, writs of summons and other civil process or process in land causes and matters may be issued under the hand of a clerk of court.

**Duty of police to obey magistrates' court**

49. All members of the Police Force are hereby authorised and required to obey the warrants, orders and directions of a magistrates' court in the exercise of its criminal jurisdiction and, in so far as such obedience may be authorised by any Ordinance in that behalf, of its civil jurisdiction and its jurisdiction in land causes and matters.

**Mode of securing attendance of accused persons, parties and witnesses**

50. The attendance before a magistrates' court of accused persons and witnesses in any criminal cause or matter, or of parties and witnesses in any civil or land cause or matter, shall be secured in the rules of Court.

**Examination on oath**

51. Any person attending any magistrates' court as a witness, or summoned or brought on a warrant before it for the purpose of giving evidence, in any cause may be examined or give evidence on oath in the form or with the ceremony that he declares binding on his conscience.

**Records and returns**

52. Every magistrates' court shall keep such written records and furnish such returns as may be required by this Ordinance or as the Chief Justice may from time to time direct.

**Civil jurisdiction in criminal cases**

53. (1) In addition to any other powers conferred upon a magistrates' court such a court may, when it hears a criminal case, if requested in writing by any person or persons having a civil action or claim arising out of the criminal offence, hear such person or persons and any witnesses he or they may wish to call on the civil aspect, and may permit such person or persons to cross examine the witnesses, if any, for both the prosecution and the defence, and may, whether the accused in the criminal charge be convicted or not, make an award in damages against him within the limits of its jurisdiction and powers if in the opinion of the court the civil claim has been proved by him, or them on a balance of probabilities.

- (2) The procedure to be adopted in such actions or claims shall be in the manner prescribed in the rules of court.

### **Inspection**

- 54.** In any cause or matter or in any land cause or matter, a magistrates' court may make such order for inspection by the court, parties or witnesses of any real or personal property, the inspection of which may be material to the determination of the matter in dispute, and may give such directions with regard to such inspection as to the court may seem fit.

### **No person entitled to inspection of the record of evidence**

- 55.** Subject to section 10(3) of the Constitution, no person shall be entitled, as of right, at any time or for any purpose, to inspect the record of evidence given in any case before any magistrates' court, or to receive a copy of the notes of such court, save as may be expressly provided by any rules of court, or unless the leave of the presiding magistrate to make such inspection or receive such copy has been first had and obtained.

## **PART VI - LAND CAUSES AND MATTERS**

### **Interpretation**

- 56.** In this Part unless the context otherwise requires—

"Code" or "Lands Code" means the Gilbert and Phoenix Islands Lands Code;

"Commission" means the Native Lands Commission which was constituted under the terms of the Native Lands Commission Ordinance;

"court" means a magistrates' court composed of 5 members in the manner provided in section 7 (4) or deemed to be so composed;

"leases register" means the book kept for the purpose of registering leases under section 64 (1);

"lessee" means the registered lease holder;

"native" notwithstanding the provisions of section 2 of the Native Status Ordinance means any aboriginal inhabitant of Kiribati and a descendant of any aboriginal inhabitant, whether wholly or partly of aboriginal descent, who has not acquired non-native status under the Native Status Ordinance;

"native adoption" means the adoption of one native by another in accordance with native customary law;

"native land" means land owned by a native or natives;

"native lease" means a lease of native land to a native where the term of the lease does not exceed 21 years and where the land the subject of the lease does not exceed 5 acres, and includes a sub-lease;

"native will" means any will codicil or other testamentary instrument made by a native and duly attested in accordance with customary law;

"non-native" means any person other than a native;

"register of native lands" means a register of native lands established in any island of Kiribati under the provisions of the Native Lands Commission Ordinance and maintained by the magistrates' courts under the provisions of this Ordinance and means also a register compiled under the Lands Registration (Tarawa and Tabiteuea) Ordinance 1969;

"sub-leases register" means the book kept for the purpose of registering sub-leases under 64 (1);

"title" means right, title or interest.

### **Persons, subject to jurisdiction of magistrates' courts in lands matter**

**57.** All persons who own or who are eligible to own native lands shall be subject to the jurisdiction of the magistrates' court composed as provided in subsection (4) of section 7 or deemed to be so composed.

### **Certain powers of court relating to land (Cap.61)**

**58.** (1) Subject to sections 31 (1) and 33 of the Native Lands Ordinance the court shall hear and adjudicate in accordance with the provisions of the Lands Code applicable or, where the Code is not applicable, the local customary law, all cases concerning land, land boundaries and transfers of title to native land registered in the register of native lands and any disputes concerning the possession and utilisation of native land.

(2) Every attempt to transfer, transmit or otherwise deal with native land except in accordance with the provisions of this section shall be null and void and of no effect.

### **Unregistered titles**

**59.** The court may, subject to the approval of the Chief Lands Officer, register or cause to be registered in the register of native lands any title to native land which it finds to have existed at the time of the inquiry of the Commission held on the island but which was not registered by the Commission:

Provided that no judgment or order of the Commission shall thereby be revised or amended.

### **Native wills**

**60.** The court shall be a court of probate in respect of native wills and shall have the power to adjudicate in accordance with native customary law on all cases arising from the administration, devolution and partition of native estates.

### **Native adoption**

**61.** The court shall adjudicate on all cases brought before it, concerning native adoption and the conveyance of land which such adoption may entail.

### **Customary fishing rights**

**62.** The court shall adjudicate on all cases brought before it, concerning the determination of native customary fishing rights.

### **Native leases (Cap.61)**

**63.** (1) The court may approve or disallow all native leases as provided for in Part VI of the Native Lands Ordinance.

(2) The court may order the payment of rent or of damages for failure to perform any legal undertaking provided for in native leases and may, if necessary, enforce such order by seizure or sale of the goods of the party concerned to the amount fixed by the order, which may not, however, exceed the sum of \$250.

(3) The court may, on the application of a lessor of a native lease and on proof that the lessee committed a breach of any of the covenants of the lease whether expressed or implied, make an order of possession in favour of the lessor on such terms as it may deem just.

### **Court registers**

**64.** (1) Each magistrates' court shall keep registers in the form prescribed by the Chief Justice and shall therein register or cause to be registered—

- (a) all transfers of titles to land approved by the court;
- (b) titles to garden pits, ponds, fish traps and sea walls constructed with its permission subsequent to the registration of titles by the Commission;
- (c) all native wills deposited with the court;
- (d) all native adoptions approved by the court;
- (e) all native leases approved by the court.

(2) Only the Chief Justice, or a judge, the Chief Registrar, the presiding magistrate and the clerk of the court may make entries in the court registers.

(3) Each such entry shall be notified to the native lands registrar and to the Chief Lands Officer and shall make reference to the judgment or order in the court minutes on the authority of which the entry is made; and the reference shall include the number of the case or the page and number of the minute book where the judgment or order is recorded.

### **Paternity**

- 65.** (1) If in any island or district where a magistrates' court is situated a single woman is delivered of a child, the court may summon before it that woman and all other such persons as it may think fit and may enquire into the paternity of the child.
- (2) Subject to anything to the contrary in the native customary law, the court may make an order regarding the paternity of the child and its future support in one of the following ways—
- (i) If the father being a native accepts the child as being his, such child shall after reaching the age of 2 reside with the father or his relations and shall in accordance with native customary law inherit land and property from his father in the same way as the father's legitimate children; or
  - (ii) If the putative father being a native does not acknowledge paternity of the child, but the court is satisfied that he is the father of the child, it may order that the child shall live with the mother and may transfer to the child title to any such portion of land or other property owned by the putative father as shall be necessary for the maintenance and support of the child; and
  - (iii) If the putative father being a native does not acknowledge paternity of the child, but the court is satisfied that he is the father of the child, it may order that the child shall live with the mother and may if such putative father owns no land which will be of assistance in maintaining the child, order monetary maintenance up to an amount not exceeding \$2 per month or maintenance by supply of foodstuffs to be paid by the father to the mother or whoever is supporting the child, until such time as the child reaches the age of 21, or the father inherits sufficient land to allow for a transfer as provided for in paragraph (ii), and in which event a transfer shall be ordered in substitution for the order for maintenance, and any sum of money or foodstuffs due under such a maintenance order may be claimed as a civil debt in the magistrates' court.

## PART VII

### APPEAL FROM MAGISTRATES' COURTS IN CIVIL AND CRIMINAL MATTERS

#### Civil appeals

- 66.** (1) Subject to the provisions of this or any other Ordinance or rules of court for the time being in force, an appeal shall lie from any judgment or decision, whether final or otherwise, of any magistrates' court to the High Court—
- (a) in exercise of its jurisdiction in divorce; or
  - (b) in any suit, civil cause or matter before it, in which the value of the property, debt or damage (whether as a balance of account or not) comprising the subject matter of the claims exceeded \$20;
- but not otherwise.
- (2) Subject to the provisions of any rules of court every appeal shall be in the form of a petition in writing signed by the appellant or his advocate and shall be presented to the

magistrates' court from the judgment or decision of which the appeal is lodged within 3 months of the date of the judgment or decision appealed against.  
(S.66(2) now S.65(2), amended by No.1 of 1990, S.2)

- (3) The High Court may, at any time, enlarge the period of limitation prescribed by this section.

### **Criminal appeals**

**67.** (1) Subject to the provisions of this or any other Ordinance for the time being in force, any person convicted on a trial before any magistrates' court and who has been sentenced in respect of such conviction to—

- (a) undergo any term of imprisonment without the option of a fine; or
- (b) pay any fine in excess of \$20; or
- (c) undergo imprisonment for a term exceeding 7 days in default of the payment of all or any part of any fine; or
- (d) undergo any corporal punishment; or
- (e) a community service order,

but not otherwise, may within 3 months of the passing of such conviction and sentence appeal to the High Court against his conviction or against such sentence except when it is one fixed by law:

Provided however that no appeal shall lie in the case of any person who has pleaded guilty and been convicted on such plea except as to the extent or legality of the sentence.  
(S.67(1) now S.66(1), amended by No.1 of 1990, S.2)

- (2) In this section, "sentence" includes any order made on conviction with reference to the person so convicted.

### **Discretionary power of the High Court to entertain appeals**

**68.** Notwithstanding anything hereinbefore contained the High Court may entertain any appeal from a magistrates' court on any terms which it thinks just.

### **Summary dismissal of criminal appeals**

**69.** (1) When the High Court has received the notice of any criminal appeal and the record of proceedings, the judge holding such court shall peruse the same.

- (2) Where an appeal is brought on the ground, either so expressed or in words to the like effect, that the decision is unreasonable or cannot be supported having regard to the evidence, or that the sentence is excessive, and it appears to the judge that the evidence is sufficient to support the conviction and that there are no circumstances which would raise a reasonable doubt whether the conviction was right or lead him to the opinion that the sentence ought to be reduced, the appeal may, without being set

down for hearing, be summarily dismissed by order of the judge certifying he has perused the record and is satisfied that the appeal has been lodged without sufficient ground of complaint.

### **Powers of High Court in regard to criminal appeals**

**70.** (1) At the hearing of any criminal appeal the High Court shall hear the appellant, or his advocate, if he appear, and the High Court may thereupon confirm, reverse or vary the decision of the magistrates' court, or may make such other order in the matter as to it may seem just, and may by such order exercise any power which the magistrates' court might have exercised:

Provided that the High Court may, notwithstanding that it is of the opinion that the point raised in such appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

- (2) At the hearing of any criminal appeal against sentence, the High Court may, if it thinks that a different sentence should have been passed, quash the sentence passed by the magistrates' court and pass such other sentence warranted in law (whether more or less severe) in substitution therefor as it thinks ought to have been passed.
- (3) If it shall appear to the High Court on hearing any criminal appeal under this Part of this Ordinance that a new trial ought to be had, it shall be lawful for such Court, if it shall think fit, to order that the decision of the magistrates' court shall be set aside and that a new trial shall be had.

### **Additional evidence in any criminal appeal**

**71.** (1) In dealing with any criminal appeal under this Part, the High Court, if it thinks additional evidence is necessary, may either take such evidence itself or direct it to be taken by any magistrates' court.

- (2) When additional evidence is taken by any magistrates' court such magistrates' court shall certify such evidence to the High Court which shall thereupon proceed to dispose of the appeal.
- (3) Evidence taken in pursuance of this section shall be taken as if it were evidence taken at a trial before a magistrates' court.

### **Power of High Court in regard to civil appeal**

**72.** (1) In any civil appeal under this Part the High Court shall have power to draw any inference of fact and to give any judgment or make any order which ought to have been made and to make such further or other order as the case may require.

- (2) For all purposes of and incidental to the hearing and determination of any civil appeal under this Part and the amendment, execution or enforcement of any order, judgment or decision made thereon, the High Court shall have all the powers, authority and jurisdiction of any magistrates' court.

- (3) If it shall appear to the High Court on hearing any civil appeal under this Part, that a new trial ought to be had, it shall be lawful for such Court, if it shall think fit, to order that the decision of the magistrates' court shall be set aside and that a new trial shall be had.

### **Further evidence at civil appeal**

- 73.** (1) It shall not be open, as of right, to any party to any civil appeal under this Part of this Ordinance to adduce new evidence in support of his original case, but a party may allege any facts essential to the issue which have come to his knowledge after the date of the judgment or decision from which the appeal is brought, which facts were not ascertainable at the trial, and may adduce evidence in support of his allegations.
- (2) The High Court may in any case, if it thinks fit, allow or require new evidence to be adduced either by oral examination in court or by affidavit.

### **Neither notice of appeal nor appeal to operate as stay of execution**

- 74.** In the case of any civil proceedings neither notice of appeal nor an appeal shall operate as a stay of execution or of proceedings under the judgment appealed from, except so far as the magistrates' court which gave such judgment, or the High Court, may direct, and any such direction may be given with or without the application of either party.

## **PART VIII APPEALS IN LAND CAUSES AND MATTERS**

### **Appeals in land causes and matters**

- 75.** (1) Subject to the provisions of this or any other Ordinance or rules of court for the time being in force, an appeal shall lie from any judgment, decision or order, whether final or otherwise, of any magistrates' court, composed in pursuance of section 7 (4) or deemed to be so composed, to the High Court in any land cause or matter or in respect of any matter provided in Part VII.

\* \* \* \* \*

*(S.75(2) now S.74(2), repealed by No.4 of 1981, S.3)*

- (3) Subject to the provisions of any rule of court every appeal shall be in the form of a petition in writing signed by the appellant or his advocate and shall be presented to the magistrates' court from the judgment decision or order of which the appeal is lodged within (3 months)of the date of the judgment, decision or order appealed against.

*(S.75(3) now S.74(3) amended by No.1 of 1990, S.2)*

- (4) The High Court may, at any time, enlarge the period of limitation prescribed by this section.

### **High Court shall sit with magistrates**

**76.** (1) When the High Court sits to hear and determine any appeal under the provisions of section 75 of this Ordinance the Court shall consist of the Chief Justice or a judge together with at least 2 magistrates appointed by the Chief Justice from among the magistrates whose names appear on the Lands Magistrates Appeals Panel.

*(S.76(1) now S.75(1), amended by No.4 of 1981, S.4)*

(2) There shall be and there is hereby established a Land Magistrates Appeals Panel which shall consist of such persons suitably qualified to hear appeals as magistrates in land causes and matters as the Beretitenti on the recommendation of the Chief Justice, may by warrant appoint for such term or terms as he may see fit.

(3) The decision of the High Court constituted under the provisions of this section in any appeal before it shall be the decision of the majority so sitting.

(4) The Chief Justice or a judge or any of the magistrates sitting on any appeal under section 75 may write a decision dissenting from that of the majority of the Court.

### **Powers of High Court constituted under section 76**

**77.** The powers of the High Court constituted under the provisions of section 76 (1) shall in all respects be the same as those which it would have if it consisted of the Chief Justice or a judge sitting alone.

### **Decisions of High Court**

**78.** Decisions of the High Court constituted under the provisions of section 76 (1) shall be appealable to the Kiribati Court of Appeal.

*(S.78 now S.77, amended by No.8 of 1990, S.2)*

### **Civil and criminal decisions not final**

**79.** Subject to the provisions of this or any Ordinance or rules of law an appeal shall lie against any judgment or decision of the High Court in any criminal or civil appeal and in such manner as may be prescribed by law.

*(S.79 now S.78, amended by No.8 of 1990, S.3)*

## **PART IX CASES STATED AND POWERS OF REVISION**

### **Power to reserve question of law**

**80.** In addition to and without prejudice to the right of appeal conferred by this Ordinance, a magistrates' court may, on its own volition or on the request of any party, reserve for the consideration of the High Court on a case stated any question of law which may arise on the trial of any suit or matter and any judgment or decision in such case shall be subject to the opinion of the High Court, and the High Court shall have power to determine, with or without hearing argument, every such question.

### **Review by High Court of magistrates' court cases**

**81.** (1) The High Court may, either of its own motion or on the petition of any person interested therein, call for the record of any case before a magistrates' court and, either without seeing such record or after hearing argument as it may determine, exercise in the case of any criminal proceedings or in the case of any suit, civil cause or matter the powers conferred by subsections (2) and (3) respectively and in the exercise of such powers it shall have all the powers, authority and jurisdiction vested in the magistrates' court which dealt with or determined the case under review.

(2) In the case of any criminal proceeding the High Court may—

- (a) subject to any law fixing a minimum penalty, reduce or alter the nature of but not increase a sentence; or
- (b) subject to any law requiring a particular order to be made, set aside an order or modify an order in such form as it thinks fit; or
- (c) set aside the conviction, in which case the person convicted, if under detention in respect of that conviction only, shall be forthwith set at liberty, or in the case of a fine having been imposed thereon such fine, if already paid, shall be refunded to the person fined, or if security has been required and given, he shall be freed from such security; or
- (d) set aside the conviction and convict the accused person on the evidence of any offence of which he has not been specifically acquitted and of which he might have been convicted by the magistrates' court which convicted him and sentenced him accordingly; or
- (e) set aside the conviction and substitute a special finding to the effect that the person convicted guilty of the act or omission charged was insane so as not to be responsible for his action at the time when he did the act or made the omission, and order such person to be kept in custody as a criminal lunatic in such place and manner as the High Court may direct, and such special finding shall be forthwith reported for the order of the Beretitenti who may order the person convicted to be confined in a mental health wing, prison or other suitable place of safe custody; or
- (f) set aside the conviction and order a new trial before the magistrates' court which made the conviction in question or any other magistrates' court; or
- (g) order further evidence to be taken either generally or on some particular point by the magistrates' court which passed the sentence or by any other magistrates' court, and order in the meantime any person who shall have been convicted to be liberated on bail or on his own recognisance; and
- (h) make such order as justice may require and give all necessary and consequential directions:

Provided always that when a person convicted shall have appealed against such conviction or any sentence imposed in respect thereof under the provisions of this Ordinance relating to such appeals, the High Court shall not exercise the powers conferred by this subsection:

And provided further that nothing in this subsection shall be deemed to authorise the conversion of a finding of acquittal into one of conviction.

- (3) In the case of any suit, civil cause or matter the High Court may—
- (a) set aside any judgment, decision or order made by the magistrates' court and substitute any judgment or order which ought to have been made;
  - (b) direct the magistrates' court which gave the judgment or direction or made the order, or any other magistrates' court, to take further evidence either generally or on some particular point, and in the meantime order the stay of any proceedings for the execution of any judgment or order;
  - (c) set aside the judgment and order a retrial before the magistrates' court which heard and determined the proceedings in question or any other magistrates' court; or
  - (d) make any other order as justice may require and give all necessary and consequential directions:

Provided always when a party shall have appealed against any judgment or order under the provisions of this Ordinance relating to appeals, the High Court shall not exercise the powers conferred by this subsection.

- (4) The powers conferred by this section shall not be exercised in respect of any case after the expiration of 12 months from the date of the passing of the sentence or the giving of judgment, order or decision terminating the proceedings in such case in the magistrates' court, and in respect of which the High Court shall not up to then have taken any action.
- (5) For the purpose of facilitating the exercise of the powers conferred by this section, the Chief Registrar may, by order under his hand, direct that until such time as he shall otherwise order the clerk of any magistrates' court specified therein shall, at the end of each and every month, cause to be sent to the Chief Registrar true and complete copies of a list of all causes brought before such magistrates' court during that month.
- (6) In the case of criminal proceedings there shall be set out in such list the names, sex and age of each defendant, the offence with which he was charged and brief details thereof, his plea thereto, and, if convicted, the date of the conviction and the sentence or order in full.
- (7) In the case of any suit, civil cause or matter there shall be set out in such list the names of the parties, the nature and subject matter of the claim and brief details of the judgments or other order made.

### **Composition of High Court in land causes and matters**

**82.** This Part shall apply to magistrates' courts composed or deemed to be composed under the provisions of section 7 (4):

Provided that where a magistrates' court is so composed or matters deemed to be so composed the High Court shall not adjudicate upon any matter coming within the provisions of section 80 or section 81 unless it is composed as provided under section 76 (1).

## **PART X MISCELLANEOUS**

### **Representation of Crown, public officers in their official capacity and departments of the Government**

**83.** Subject to the provisions of section 15 of the Proceedings by and against the Republic Ordinance 1979, in any suit or matter in which the Crown, or any public officer in his official capacity or any department of the Government of the Republic of Kiribati is a party or in any suit of matter affecting the services of the Republic of Kiribati, the Crown or that officer or department may be represented by the Attorney-General, State Advocate, a legal practitioner or other person duly authorised in that behalf by the (Beretitenti) or by the public officer in charge of the department concerned.

### **Employment of legal practitioners**

**84.** The employment of legal practitioners shall, save as may be otherwise specifically provided, be allowed in causes and matters, whether civil or criminal, before any magistrates' court.

### **Fees and costs**

**85.** The fees and costs set forth in the rules of court or in or under or any other Ordinance for the time being in force relating to criminal, civil or land procedure may be demanded and received by the clerks of court or other persons appointed to receive such fees and costs for and in respect of the several matters therein mentioned:

Provided that, in the absence of the clerk of court from any magistrates' court or in the event of there being no such clerk or other person appointed to receive such fees and costs in any such court, the presiding magistrate thereof may demand and receive such fees and costs.

### **By whom fees and costs payable**

**86.** All fees and costs payable under or by virtue of this Ordinance shall in the first instance be paid by the party applying for the summons, warrant, or other process or document in respect whereof the same are payable:

Provided that no fees shall be payable by any public officer or public department in any case instituted by any public officer when acting in his official capacity or in any case in which the presiding magistrate endorses on the plaint, information or complaint, as the case may be, that it is a fit one for remission of fees on account of the poverty of the party or for any other sufficient reason; and in every such case such fees and costs shall, in the discretion of the presiding magistrate, be recoverable from the other party, if the decision be given against him.

**All fees and moneys received in magistrates' courts to be subject to foregoing provisions**

**87.** Sections 85 and 86 shall apply to all moneys received by a clerk of court or other person appointed to receive fees and costs in any magistrates' court under the provisions of this or any other Ordinance, whether the same be fees, costs, fines, forfeiture penalties or money paid into court for any purpose or received or recovered under or by virtue of any process of execution of distress.

**Rules of court**

**88.** Subject to section 97 of the Constitution, the Chief Justice may make such rules of court as may seem to him expedient for the carrying into effect of any of the objects, intentions, or provisions of this Ordinance and, without derogation from the generality of the foregoing or of any other provisions of this Ordinance relating to the making of such rules, for all or any of the following provisions—

- (a) for regulating the procedure and practice to be followed in any cause or matter;
- (b) for regulating forms to be used and all matters connected therewith;
- (c) for regulating the procedure and practice to be followed in any appeal;
- (d) for providing the form and manner in which any notice of appeal is to be given;
- (e) for providing for the giving of security and for the payment of fees or costs in appeals in land causes and matters;
- (f) for providing for the giving of security and for the payment of fees and costs in any civil appeal;
- (g) for providing for the release from custody of any appellant pending the determination of any criminal appeal and for the giving of security by such appellant;
- (h) for prescribing any fee, matter or thing which is required, or appears to be expedient, to be prescribed under or in connection with the provisions of Parts VII and VIII;
- (i) for regulating the receipt of money paid into a magistrates' court or received or recovered under or by virtue of any process of execution or distress;
- (j) for regulating the payment out of a magistrates' court of any money to any person entitled thereto;
- (k) for prescribing books and forms of account to be kept or used in magistrates' courts;

- (l) for prescribing fees, costs, amounts for service and execution of process which may be received by clerks of courts and others in connection with the practice and procedure in magistrates' courts;
- (m) for prescribing for the acceptance, retention and disposal of fees and costs;
- (n) for prescribing provision for the payment of any sum, or sums, of money to persons required to attend any magistrates' court as witnesses for defraying their reasonable expenses, and allowing them reasonable compensation for their trouble and loss of time involved in any such attendance;
- (o) after consultation with the Minister of Finance, for providing the sitting fees and other emoluments, of any of the presiding magistrates, magistrates and other officers of the magistrates' courts;
- (p) for prescribing rules of evidence to be observed in proceedings before magistrates' courts;
- (q) for providing for the appointment and terms and conditions of service of probation officers and for their powers, duties and functions;
- (r) for prescribing for the procedural rules to be applied in actions and claims under section 53 (2).

### **SCHEDULE 1**

(Section 23)

(Incorporating amendments up to 1981 Revision)

#### *JURISDICTION IN CIVIL CAUSES AND MATTERS*

1. Each magistrates' court shall have jurisdiction to entertain, hear, try, determine and otherwise deal with—
  - (a) any petition for divorce under the Native Divorce Ordinance or proceeding arising therefrom in which the petitioner is resident in the jurisdiction of the court and both the petitioner and the respondent are domiciled in the Gilbert Islands;
  - (b) any personal suit, whether arising from contract or from tort, or both, in which the defendant is ordinarily resident within the jurisdiction of such court or in which the cause or action arose in such jurisdiction and where the value of the property debt or damage claimed (whether as a balance or account or otherwise) is under \$3000.
2. For the avoidance of possible doubt it is hereby declared that no magistrates' court shall have jurisdiction to try any case, cause or matter in respect of which original jurisdiction to hear and determine the same is conferred on a magistrates' court composed under the provisions of section 7 (4) unless such court is so composed.
3. Each Magistrates' court shall have jurisdiction to grant an injunction in any case upon application made by any party to an action or claim, in order to preserve the status quo or

to preserve the subject matter of an action or claim or any part of such subject matter from interference, alteration or destruction, and shall have power to impose imprisonment and order removal, destruction and payment of compensation for breach of such injunction and generally.

*JURISDICTION IN CRIMINAL CAUSES AND MATTERS*

Any magistrates' court shall, subject to the limitations imposed by this Ordinance have jurisdiction to hear, try and determine in accordance with the prescribed procedure any criminal proceedings arising in or from a charge made before such court that any person has committed, or is suspected of committing, within the jurisdiction of such court any offence the maximum punishment for which is a fine of \$500 and 5 years' imprisonment, or any offence under the provisions of the enactments set forth below, that is to say—

Ordinance	Section or regulation in respect of which jurisdiction is conferred
(i) Any Ordinance in which such jurisdiction is expressly conferred upon a magistrates' court	
(ii) Penal Code (Cap.67) (excluding sections 64 to 80 inclusive)	(a) All sections carrying a sentence of 5 years' imprisonment and a fine of \$500 or any lesser punishment, with the exception of the sections contained in Part VII, Part VIII and Part XVI of the Penal Code. (b) Sections 118, 254, 262, 271, 292, 293, 294, 295, 306, 307, 348 (5), 349 (1) (b) and 376 of the Penal Code.
(iii) Penal Code (sections 64 to 80 inclusive)	No section or regulation
(iv) Any Ordinance which expressly excludes the jurisdiction of the magistrates' court	No section or regulation

**SCHEDULE 3**

(Section 23)

(Incorporating amendments up to 1981 Revision)

1. Each magistrates' court composed of 5 members in pursuance of section 7 (4) or deemed to be so composed shall have jurisdiction to hear, try, determine and otherwise deal with land causes and matters.
2. In dealing with land causes and matters a magistrates' court shall, subject to sections 10 (1) and 12 of the Native Lands Ordinance, hear and adjudicate in accordance with the provisions of the Land Code applicable or, where the Code is not applicable, the local customary law, all cases concerning land, land boundaries and transfers of titles to native lands registered in the registers of native lands and any disputes concerning the possession and utilisation of native land.

3. Each magistrates' court composed as in paragraph 1 hereof shall have jurisdiction to hear, try, determine and otherwise deal with the subject matter of Part VI.
4. Each magistrates' court dealing with land causes and matters shall have jurisdiction to grant injunction in any cause or matter upon application made by any party to the cause or matter being death with in order to preserve the *status quo* or to preserve the subject matter of an action, claims or boundary dispute or any part of such subject matter from interference, alteration, damage, destruction or being built upon or over and shall have power to impose imprisonment, and order removal, destruction and payment of compensation for breach of such injunction and generally.

## NOTES

1. The Magistrates Courts Ordinance No.17 of 1977 commenced 1 May 1978.
2. The Revised Edition 1998 of the Magistrates' Court Ordinance incorporates the following amendments:-
  - (1) No.4 of 1981  
Commencement: 29 December 1981  
Date of assent: 29 December 1981
  - (2) No.10 of 1989  
Commencement:  
Assent date: 23 February 1990
  - (3) No.1 of 1990  
Commencement: 6 July 1990  
Date of assent: 6 July 1990
  - (4) No.8 of 1990  
Commencement: 9 January 1991  
Date of assent: 9 January 1991
  - (5) No.5 of 1993  
Assent withheld