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**STRUCTURE OF THE KENYAN COURTS**

- The existing constitution of Kenya at Chapter 4 provides for various courts and defines their jurisdiction.
- There are 2 superior courts
  - court of appeal
  - the high court
- under the current constitution, the court of appeal is the highest court in Kenya. Its jurisdiction is to hear and determine appeals from the high court I.e it has only appellate jurisdiction and only with respect to cases already decided by the high court
- the only exception is in cases where the court of appeal is dealing with contempt of court committed against it.
- Under the proposed new constitution, there will be a proposed court of appeal and also a supreme court which will be superior to the court of appeal.
- The current constitution provides that there shall be judges of appeal not exceeding a specified number (9) including the Chief justice
- the proposed new constitution includes a deputy chief justice
- as a matter of procedure, the court of appeal bench is ordinarily 3 judges.
- The high court is described as a superior court of record (Sec 60 of the constitution);and has unlimited original jurisdiction to deal with civil, criminal, constitutional and other legal matters.
- The original jurisdiction of the high court means that fresh cases can be filed in the high court; some of the cases that must be filed by law in the high court include:
  - murder and treason charges
  - election petitions for parliamentary and presidential elections.
  - Matrimonial cases.
  - All cases concerning fundamental rights and freedoms
  - also cases of a financial worth more than 1 million shillings are to be filled in a high court unless a particular magistrates' court has been given enhanced jurisdiction
- the appellate jurisdiction of the high court involves all appeals from the magistrates courts of all ranks as well as other subordinate courts e.g Kadhi's courts and tribunals
- any party who disagreed by the decision of a subordinate court may appeal to the high court which may confirm, vary or quash the findings of the magistrate court
- the high court can order a case to be retried or completely terminate the case
- the court of appeal and the high court are based in Nairobi and has various other stations across the country (provincial headquarters and other selected towns)
- the high court has a specified number of judges; not exceeding 70.
- the proposed constitution provides for a principal judge who shall be the head of the high court
- Judges of appeal and judges of the high court are appointed by the president on the advice of the judicial service commission. However, the president do not need recommendation for appointment of the chief justice.

- The proposed new constitution requires that the chief justice and deputy chief justice as well as the other judges shall be appointed by the president on the recommendation of the judicial service commission and subject to approval by the national assembly
- Subordinate Courts
  - magistrates courts of all ranks are regarded as subordinate courts to the extent that they do not have the superior jurisdiction of the high court or court of appeal.
  - They are established by the constitution but their ranks and respective jurisdictions are defined in the magistrates courts act (chapter 10 of the laws of Kenya).
  - They include:
    - Chief magistrate's courts
    - senior magistrate's court
    - principal Magistrate's court
    - senior resident magistrate's court.
    - resident magistrate's court
    - District magistrate's court.
  - the magistrate's courts have both monetary and geographical boundaries.
  - Magistrates are employed and regulated by the judicial service commission
  - there are numerous magistrates courts stations across the country
- Kadhi's courts
  - are established under the current constitution and further elaborated in the Kadhi's courts act chap 11 Laws of Kenya.
  - They include Chief Kadhi and other Kadhis and they deal with matters of islamic law where both parties are Muslims.
- there are tribunals established by laws which are part of the subordinate court. They include:
  - rest restriction tribunal/residential premises tribunal
  - Business premises tribunal
  - procurement tribunal
  - water act tribunals
  - national environment tribunal