

# **SELF REPRESENTATION IN CRIMINAL MATTERS**

**AN INFORMATION BOOKLET ON  
THE RIGHTS OF AN ACCUSED  
PERSONS IN CRIMINAL  
PROCEEDINGS**

**Produced by**

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## Self Representation in Criminal Matters

This booklet seeks to provide Kenyans with information about their rights in criminal proceedings.

The rights in this manual are premised on the provisions of the Bill of Rights in the Kenyan Constitution and related legislation.

It is our hope that this information will enable Kenyans to exercise their rights and will promote the respect of the rights highlighted in this manual.

We are grateful to our Mombasa regional office for professional input of this booklet. Appreciation also goes to the Research, Communication and Documentation Department (RCD) for their exceptional work in editing and production of this booklet especially Tobias Mwadime and Samuel Irungu.

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Gertrude Angote,

**Executive Director**

# Criminal Procedure: A Self-Representation Manual

## Criminal Proceedings

A criminal proceeding is a public dispute. In such a proceeding, the State prosecutes a person for committing a crime on behalf of the public. A criminal proceeding is different from a civil proceeding because civil proceedings generally involve disputes between two private individuals, one of whom is seeking compensation from the other.

When you are arrested, criminal proceedings begin. The process continues until you are found innocent or guilty of a crime. If you are found guilty, the proceedings may continue if you decide to appeal the decision.

## THE RIGHTS OF AN ARRESTED PERSON AND PROCEDURE FOR ARREST

If you are arrested, the police must be respectful of your rights. If your rights are not respected, you should make a complaint to the officer commanding the police station (OCS). If the police have injured you, you may make a claim in court for compensation – you can contact the Kenya National Commission on Human Rights (KNCHR) for assistance with this.



## These are your rights upon arrest:

### Reason for Arrest

- The person arresting you must tell you why he/she has arrested you.

### Identification of the Arresting Person

- The officer must tell you his/her name and rank, and must clearly display his/her service number on the uniform.
- If the officer is not in uniform, he/she must show you his/her police identity card.
- If a citizen, magistrate or chief is arresting you, they must tell you that they are not police officers, but that they are taking you to the police.

### Right to be Treated in a Humane Way

- The police must treat you with dignity and respect.

### Touching or Confining of the Arrested Person

- The person arresting you may touch you, confine you or put handcuffs on you IF you do not submit to custody or you try to run away.

### Use of Force In Carrying Out an Arrest

- Police officers **may** use reasonable force to arrest you if it is required, but may **NEVER** use enough force to kill you.
- Police officers may use force IF:
  - You are charged or convicted of a crime and you try to escape.
  - The officer reasonably thinks you are threatening his/her life at that moment.
- If an officer uses excessive force, which injures or kills you, he/she has committed a crime. You or your relatives may sue for compensation.
  - For example, if the police beat you up very badly when trying to arrest you, this is too much force and is against the law.

## Right to Remain Silent

- You must provide your name and address when you are arrested.
- You do not have to say anything that might be used against you, confess or admit to a crime. You do not have to make a statement or assist the police in their investigation.

## Right to Be Held Separately

- If you have been arrested, you are to be held separately from people who are serving a prison sentence.
- Men and women must be held in separate cells when arrested.
- Children should not be placed in cells with adults. Young girls should be placed in the care of a female officer.

## Right to be Brought to Court As Soon As Reasonably Possible

- If there is no warrant for your arrest, you must be taken before the magistrate immediately or released. A **warrant** is an order from the court for you to be arrested.
- If there is a warrant for your arrest, you should be brought to court within 48 hours of your arrest or within 14 days if you are charged with a capital offence like murder, treason or robbery with violence.
- If you are arrested on a weekend or holiday, you must be brought before the court on the first working court day.
- If you are arrested far away from a court, you should be brought before a court as quickly as circumstances allow.

\*\*If you are kept in jail for a period longer than allowed by law, inform your lawyer of this as soon as possible.

## WHO HAS THE POWER TO ARREST?

### Citizen

- You may be arrested by a fellow citizen if:



- You have committed a serious crime, like theft, assault, or murder.
- You have committed a crime and the police are looking for you.
- You have destroyed that citizen's property.
- If a citizen arrests you, you must be handed over to the police immediately
  - If no good reason exists for your arrest, the police must let you go.
  - If the police believe you have committed a crime, they may take you into custody for up to 48 hours while they investigate whether you committed the crime.
  - Once the investigation is complete, the police must either charge you or release you.

## **Law Enforcement Officer**

- A police officer has the authority to arrest you if:
  - You commit a crime or are reasonably suspected of committing a crime.
  - You interfere in his/her work or investigations
  - You try to escape police custody
  - You have run away from the army
  - You have a warrant issued against you

## **The Chief**

- You may be arrested by the Chief if:
  - You are suspected of committing or planning to commit a crime
  - You have a warrant issued against you

- If a chief arrests you, you must be handed over to the police.
- If you are arrested because the chief suspects you of something, you must be brought before a court within 12 hours or released.

## Magistrates

- You may be arrested by a magistrate if you commit a crime in his/her presence or in his/her location of authority (jurisdiction).

## Order of a Court

- The court may issue a warrant for your arrest if:
  - You have not abided by the conditions of your bond/bail.
  - You did not appear before the court when you were supposed to.



# PROCEDURE AT THE POLICE STATION

## General Rights when you are held in Police Custody

- You have the right to food, shelter, sanitation and health.
- You have the right to be informed of all decisions that affect you.
- You have the right to be treated respectfully and not to be abused.

## Search of an Arrested Person

- If you are arrested, the police may search you. They may take your belongings and store them safely, but may NOT take your shoes, socks, clothing or jacket.
  - The police must make a list of all property taken from you. You must sign this list if it is correct, the officer must also sign it.
  - The police may permanently take away any weapon you have.
- If you are a woman, ONLY a female officer may search you.

## Keeping Track of Where You Are: Recording the Arrest

- Your name, address and reason for arrest is to be recorded in the Occurrence Book at the front desk of the police station.

## Fingerprints and Photographs

- At the police station, the police may take your picture and your fingerprints. If you try to resist, they may use reasonable force.
- The police may use your fingerprints to:
  - Check if you have committed a crime in the past.
  - Check if your fingerprints are found on evidence at the scene of the crime you have been accused of committing.
  - Create a criminal record for you if you are found guilty of committing the crime you are accused of.

- Your picture may be used during a police investigation. For example, your picture may be shown to the victim of the crime so that the victim can say whether you harmed him/her.

## Statements

- Remember that **you have the right to remain silent** (explained earlier). Anything that you say may be used against you by the police.
- Statement under Enquiry – You have not yet been charged with a crime.
  - The police officer is asking you to make a statement so that he/she can determine your involvement in the crime.
  - If the officer believes that you had nothing to do with the crime that was committed, he/she may release you.
- Statements After You Have Been Charged



- Before you give a statement, the officer must remind you that you do not have to make a statement and that if you do make a statement voluntarily, it may be used against you. The police officer will then ask you to state what happened in the crime.
- Confessions – Admitting That You Are Guilty of the Crime
  - A confession made to a police officer will not be recognized in court. There should be no reason for an officer to force you to confess.
  - Confessions can only be made in court before a judge or magistrate. Here, your confession will be accepted as the truth.

### **Contact With Others While You Are Held at the Police Station**

- If you have been arrested, you have the right to make one phone call to a relative, friend or lawyer.
- While you are being held, your lawyer may visit you as much as he/she needs to. However, family and friends may only visit between 6am and 6pm and these visits are supervised.

### **Identification Parade**

- An identification parade is a way for an eyewitness to confirm whether you are the person he/she saw committing the crime.
- You can choose whether you want to be in the parade.
- If you agree to be in the parade, there must be at least 7 others in the parade with you. The others should look as much like you as possible.

### **Possibility of Release from Police Custody before Appearing in Court**

- Bond is a way that you may be released from police custody before appearing before the court.
- If the crime you have been charged with is not serious, you may be released from the police station, by either giving cash deposit OR by giving your promise that you will go to court or return to the police station on the date/time specified.

- See “Bail/Bond” section below for more explanation

## Medical Report

A medical report may be used for a number of purposes including:

- To determine how likely it is that you committed the crime.
  - For example, if the criminal was injured when committing the crime, and you have no injury, you are not likely the criminal.
- To determine your age.
  - You must be 8 years or older to be charged with a crime.
  - If you are between the ages of 8 and 18 you are considered a minor and must be tried in children’s court. Also, you cannot be sentenced to death if found guilty.
- To determine your mental status
  - It must be determined whether you were of sound mind at the time you allegedly committed the crime.
  - Also, you must be of sound mind at the time of your hearing, because it is important that you understand what is happening in court.
  - The law assumes all people are of sound mind when they commit a crime, unless it is proved with medical evidence that they are not.

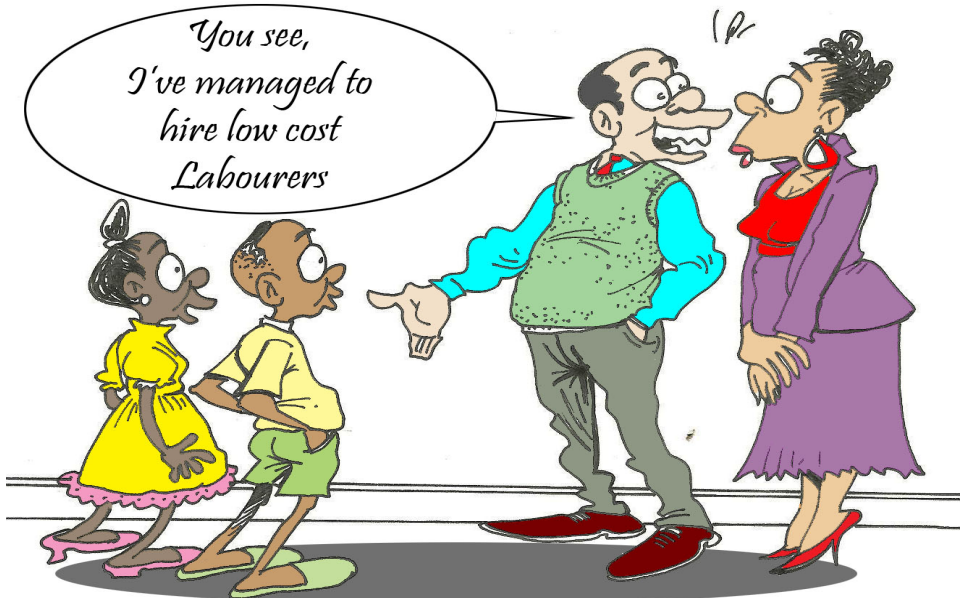
## Charges

- A **charge** is a statement in simple language of the crime you are being accused of committing. This includes:
  - The Law: The charge must state which law you are accused of breaking. If there is no law that was broken, you could not have committed a crime.
  - Particulars of the Offence: The date, time and place you allegedly committed the crime, and the facts about the crime committed.

- The charge helps you to understand the case against you so that you can defend yourself.

## TIPS IF YOU ARE BEING ARRESTED AND BROUGHT TO THE POLICE STATION

- Keep calm and do not resist arrest.
- Give your name, address and identification details.
- Be polite when speaking to the police officer.
- Ask for a relative or a friend to be informed that you have been arrested, and if you are under 18 years old, to be present at the police station.
- Ask to make a phone call to your lawyer or a relative or friend.
- Do not make or sign any written statement.
- Do not confess to something you have not done.
- Keep notes.



# PROCEDURE IN COURT

## Pleas

- When you have been charged with a crime, you are brought before the court. The charge and details of the offence are read to you. You must then respond by saying “guilty” or “not guilty” – this response is called your **plea**. A plea of “guilty” means that you are saying YES you did commit the crime you are charged with. A plea of “not guilty” means that you are saying NO you did not commit the alleged crime. Anything you say in court will be recorded.
- You must be able to understand what is happening in court. This means that the court may speak to you in English or Kiswahili. If you do not understand either of these languages, the court will provide an interpreter in your language free of charge.
- If you say “not guilty,” you will be given a date when you must come back to court for a trial. The trial will determine if you are guilty or innocent of the charges against you.
  - If you are granted bond/bail, you **MUST** come back to court on this date on your own, otherwise the court will give an order to have you arrested (warrant).
  - If you are not released on bond/bail, you will remain in prison until your trial date.
- If you say “guilty,” you have admitted that you committed the crime. The prosecuting lawyer will state the facts of the crime.
  - If you do not disagree with the facts, you will be determined guilty by the court (convicted) and punished accordingly. The punishment is called a sentence.
  - If it is not clear whether you are pleading guilty or not guilty because you disagree with the facts or disagree with being guilty, then the court must change your plea to “not guilty.”

## Mentions

- **Mentions** are letters from the court to ensure that you are still under the court’s authority.



- If you were released on bond/bail, mentions will be sent to you every 30 days after you have made a plea, until your trial has come to an end.
- If you are in prison, mentions are sent to you every 14 days after making your plea. They give you an opportunity to:
  - Request that the bail amount be reduced so that you can be released from prison during the course of your trial
  - Request that witness statements be given to you or your lawyer
  - Request that you be taken to a hospital if you are sick
  - Change your plea
  - Request a date for your hearing.

## PROSECUTION

If you enter a plea of “not guilty” to the charge against you, a trial takes place. In the trial there are two sides: **a)** the prosecution **b)** the defense (you, the accused person). The prosecution has the responsibility of making sure the court is aware of the facts and tries to prove that you committed the crime. Both sides give evidence and can call witnesses. After the facts are presented, the magistrate or judge makes a final decision based on the facts and his/her knowledge of the law.

- See “Trial Process” section below for more details

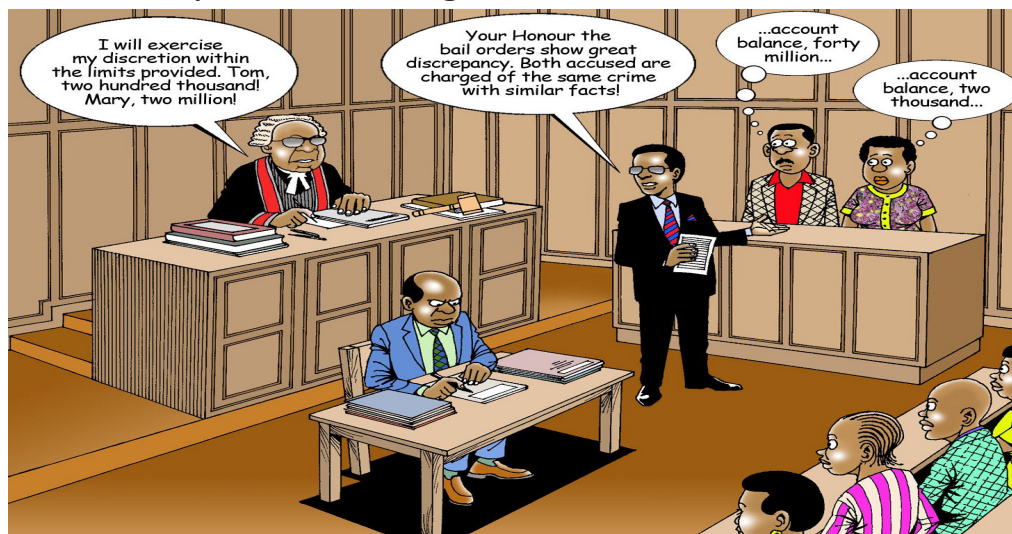
The prosecution must act fairly. Usually the State is the prosecutor and supervision of criminal prosecutions in Kenya is the responsibility of the Director of Public Prosecutions (DPP), which is a division of the Attorney General’s office. However, when the state does not take on a case, private individuals may also prosecute or be requested by the state to prosecute on their behalf.

### The decision to prosecute depends on many factors:

- 1) **There has to be enough evidence to prosecute.** The prosecutor will look at all the evidence and decide if there is enough evidence to prove a strong case. If there is not enough evidence, the charges will be dropped or withdrawn.

- 2) **The seriousness of the crime** is determined by the circumstances surrounding the offense, and the nature of the crime itself. If the prosecution feels the complaint is too minor or is motivated by a personal grudge, they may refuse to prosecute.
- 3) **If you are in poor health or suffering from mental illness**, the prosecution may decide not to continue with the case. If you have a mental illness, the prosecution can only begin the case after it has been certified by a medical practitioner that you are well enough to stand trial and the Attorney General has given his/her statutory consent to proceed.
- 4) **The attitude of the person making the complaint**, or the complainant, is also considered, mainly in cases where the crime is less serious. The prosecution needs the evidence of the complainant and if the prosecution feels the complainant may not follow through with the case, they will not want to prosecute.
- 5) **You must be tried in a court within the area where the offence was committed.** This is called jurisdiction of the court. The act must have taken place in Kenya or have a connection to Kenya to be prosecuted or investigated in Kenyan courts. There are limits on the magisterial courts regarding the type of sentence and fine they can impose. The High Courts have no such limits on their authority.

### Possibility of Release during a Trial: Bail/ Bond



**Bail** is an order by the court that temporarily releases you during the course of the trial with an understanding that you must come back to court for your hearing or mention. If you are given cash bail you are required to deposit a certain amount of money at the court registry. If you come back to court on all the days that you are required, this money will be given back to you, even if you are found to be guilty.

**Bond** is a similar order, but is for less serious crimes and does not involve money being directly deposited. Bond requires that you make a written promise that if you do not show up in court, you will pay a certain amount of money. You must provide documents to prove that you are able to pay the cash amount or its equivalent (for example: title deed, pay slips, bank statements etc.).

You may request to be released on bail while in custody at the police station or at the first appearance before the court. Generally, you are entitled by the constitution to be released on bail until the case is decided in court. However, bail may be refused if:

- The crime is very serious (capital offences like murder, treason, robbery with violence)
- You have no permanent address
- The court or police believe there is a good chance you will try to run away
- You have failed to come to court in the past
- It is believed that you will be a danger to the public or to witnesses.

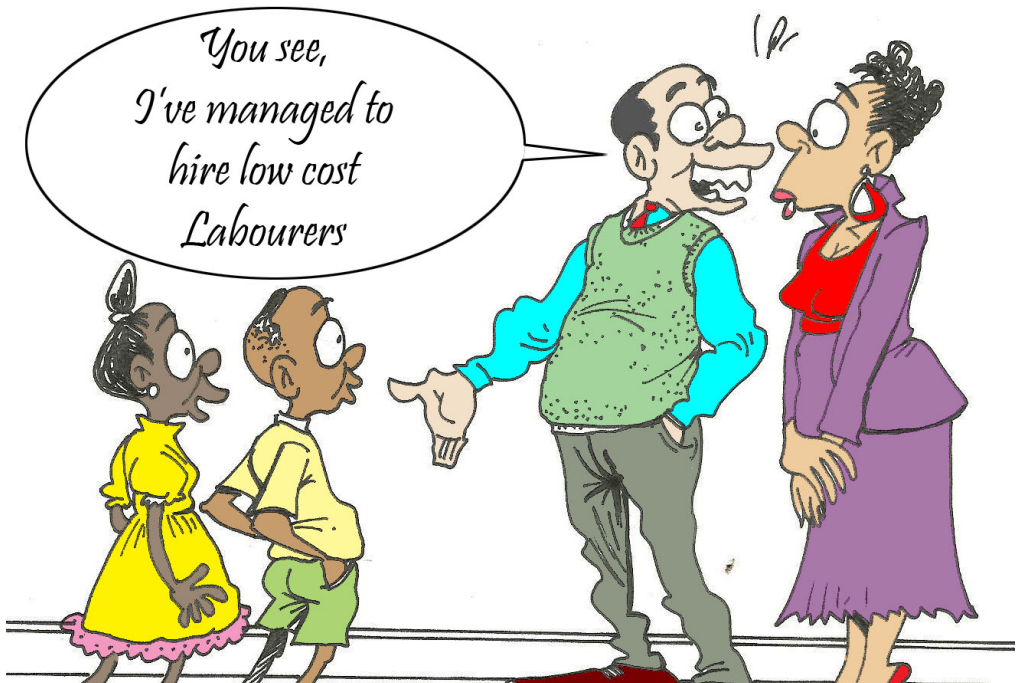
If you have been released on bail and do not follow the conditions set by the court, your bail can be cancelled and you can be ordered to pay money or be jailed.

## TRIAL PROCESS

You are thought to be innocent until you plead guilty or are proven guilty in a competent court of law of the correct authority (jurisdiction).

- At the start of the trial, the charge is read to you. The charge is a formal notice of the crime you are alleged to have committed.

- At this point in time, you can change your plea of Guilty or Not Guilty. If the plea does not change, the trial begins.
- **Before trial, you should prepare the following:**
  1. All the necessary materials and/or resources to use for your defence.
  2. If you do not understand English or Kiswahili, you should request an interpreter in advance. Interpreters are provided by the court, free of charge.
  3. It is your right to have access to prosecution statements and questions for witnesses, so you can prepare for trial. You should request this information as soon as possible.
- It is recommended that child offenders have the parents or guardians of the child present at all times during the trial.



## Length of a Trial

Any person charged with a criminal offence must be given a fair trial within a reasonable time. In reality, this does not happen because of poor investigations, lack of prosecution witnesses, an understaffed judiciary etc.

- Generally, the time limits are not strictly followed and there are many reasons the courts give for temporarily delaying (adjourning) a trial.
- You or the prosecution can ask for an adjournment at any time of the trial. The court decides whether to accept or deny such requests. Examples of reasons for adjournment are where you are very sick etc.
- It is very important that this process is not abused and delaying tactics are not used to punish you. If you suspect this is happening, you may object and request dismissal of the case. The court must then decide how to proceed.
  - If, while waiting for your trial to be completed, you have spent more time in jail than the sentence term allowed by the law, you should bring this to the attention of the court. For example, if you have been in jail for 1 year, but the crime you are accused of carries a jail term of only 6 months, you must let the court know that this has happened.

### **Time limits for cases involving child offenders:**

- According to the Children's Act 2001, cases involving child offenders should take a maximum of 3 months from the date the plea is taken to its conclusion or be dismissed.
- For cases in the High court or Court of Appeal, the maximum time of trial should be 12 months and during that time the child should not be kept in detention for more than 6 months without bail.

## The Prosecution Case

It is the job of the prosecution to prove beyond a reasonable doubt that you committed the crime you are charged with. The prosecution will give evidence to prove the case by calling witnesses. The order of the prosecution case is:

### 1) The prosecution provides evidence against you.

The prosecution may call witnesses to present the facts of the case to the court.

### 2) Examination-in-chief

The witness will be called to the stand and must promise to tell the truth. This is called being “sworn in.” The prosecution will then ask questions to get information from the witness about what happened regarding the alleged crime.

### 3) Cross-Examination

This is when you have a right to ask questions of the prosecution witness. Your questions should try to show that the court should not believe the witness or that the witness does not have good information about what happened. The questions must be related to issues that were discussed during the examination-in-chief.

### 4) Re-examination

The prosecution is allowed to ask more questions to clarify or strengthen issues that have become confused during the cross-examination.

### 5) Ruling

At the end of the prosecution case, if the evidence is strong against you, the judge/magistrate will decide you have a case to answer. You are required to respond (see “Defence Case” section below for details). However, where the evidence is not strong, the court will find there is no case to answer and you will be free of the charges and allowed to go home unconditionally. This is called an acquittal.

**At any time before the ruling the prosecution can stop the case and have you discharged.** This does not prevent you from being charged again if the police were to find new evidence to make a strong case against you. However, **if you are acquitted**, you may NOT be charged again with the same facts, even

with new evidence. The case is finished. The acquittal must be appealed (see “Appeal” section below for details).

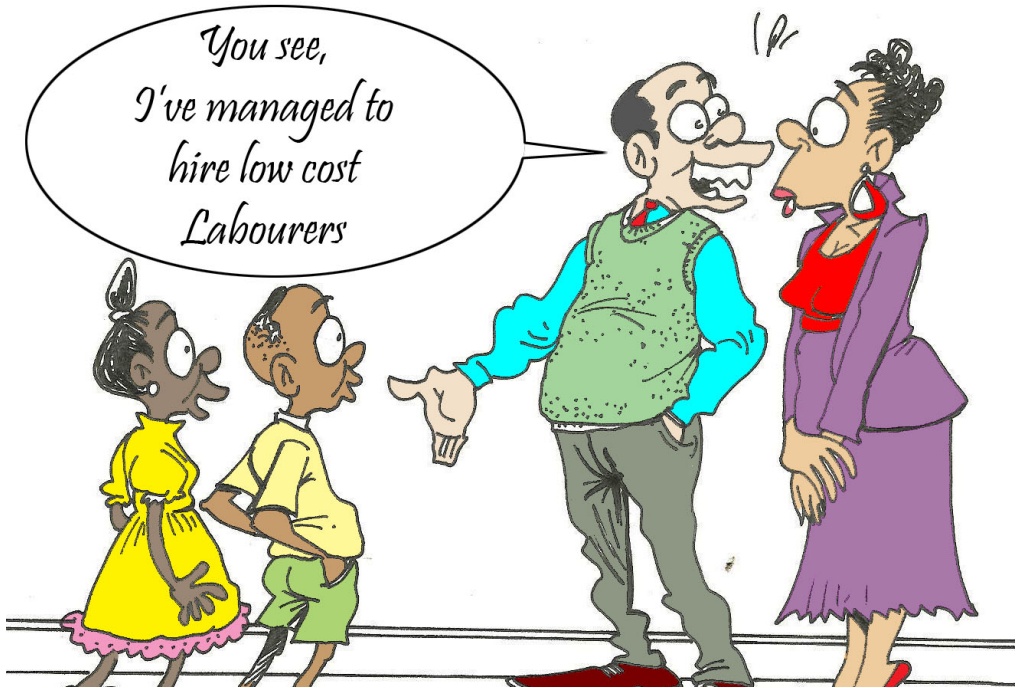
## The Defence Case

When the court decides that you have a **case to answer**, you have the right to give your defence and call witnesses. The format is the same as in Prosecution Case (see section above). You will ask questions for examination-in-chief and after the prosecution has the chance to do the cross-examination questions. You will also have an opportunity to do re-examination questions. Even if you do not call witnesses, the court will want to hear your story of what happened regarding the alleged offence.

**Depending on the circumstances of the case, you may choose to:**

- 1) **Keep quiet:** Sometimes, you may not have anything more to tell the court. In certain cases, talking more may only weaken your defence. If you do not say anything more, this does not mean that you agree with the prosecution. However, the court may want you to speak.
- 2) **Give unsworn evidence:** If you give unsworn evidence, you do not take the promise (oath) that you are telling the truth. This may make people think you are not telling the truth. You will not be asked questions by the court or prosecutor.
- 3) **Give sworn evidence:** If you give sworn evidence, it means that you promise to tell the truth when making your statement and can be asked questions. BUT if you make this promise and are found to be lying, you will be guilty of perjury, a serious crime that requires a jail term of 6 months.





## Submissions

After the prosecution and defence have presented all their evidence and finished their case, each side, starting with the prosecution, has a chance to give a summary of its evidence in oral or written statements. These are submissions. The prosecution tries to show that it has proved its case against you beyond a reasonable doubt. You, as the defence, should try to show that the evidence against you is not good enough to prove that you are guilty. Previous cases that have been decided by the courts on similar issues or offenses are called precedents. Precedents can be used as examples to convince the magistrate/judge of your position.

## JUDGMENT

Judgment is the judge/magistrate final decision about the case based on the facts presented to them and their knowledge of the relevant law.

- You will be told if you are found to be **guilty or not guilty** of the



alleged crime.

- You have the right to be present at the time of the judgment.
  - If found **guilty** (convicted), there will be a punishment, known as sentencing.
  - If found **not guilty**, you are free of the charges and can go home (acquittal).

## MITIGATION

Mitigation is allowing a convicted person to explain his/her circumstances and ask the judge/magistrate for a smaller punishment.

- Mitigation occurs before the judge/magistrate gives the punishment.
- As a convicted person, you must be given the chance to mitigate.
- Mitigation only happens when you are found to be guilty.
- You should NOT argue that you are not guilty but only ask to be shown mercy.
- You cannot be forced to say anything if you choose not to mitigate.
- In the case of child offenders, the law provides that when sentencing a child, the court must consider what is best for the child.

**There are many reasons courts may decide to show mercy and give a lighter sentence:**

- It is the first time you have committed a crime
- You are the only one who has a job in your family
- You are very sorry (remorseful)
- You were not aware of the law regarding the offence
- The offence was a technical one

- There were outside factors such as being pressured, intimidated, or intoxicated at the time of committing the crime that made it difficult for you to control yourself.

## SENTENCING

Sentencing is the punishment that is given for committing a crime. The law requires different sentences for different crimes and the judge/magistrate must follow these limits.

### Different sentences:

1. **Probation** is when the court allows you to go home if you promise to follow certain conditions and do not commit another crime or leave the area. You are assigned a Probation Officer and **MUST** keep in contact with the officer and obey the directions or you will be given stronger punishment.
2. **Community Service Order** is when you are ordered to do a public service, such as cleaning or picking garbage in the community, for a certain period of time. This sentence is recommended for minor crimes.
3. **Fines** are where the court orders you to pay a certain amount of money as punishment. The court may order the fine to be given to the victim of the case. If you do not pay, you will be put in prison until you can pay.

**Forfeiture** is usually used in cases of theft or fraud if you took property from the victim. You are ordered to give the property back to the state and it is given back to the victim.

4. **Imprisonment** is when you are put in prison for a certain period of time or for life. The law states the maximum time allowed in prison for each crime and it is the decision of the judge/magistrate whether to give the maximum time or not. Time in prison may be ordered in addition to or instead of a fine.

According to the Children's Act, 2001, child offenders who are 16 years or older are to be sent to Borstal institutions that provide educational, industrial and agricultural training. Based on the circumstances of the

case, the court must decide if this is the best option for the child.

## Nature of Sentences

### Concurrent and consecutive sentences

Where you are charged with more than one crime in the same case OR are found guilty and given punishments for different offences, concurrent and consecutive sentences occur.

- A **concurrent** sentence is when you serve more than one sentence at the same time. For example, if the first sentence is for 5 years and the second sentence is for 7 years, the total number of years in prison will be 7 years.
- A **consecutive** sentence is when you serve one sentence followed by another sentence, serving a sum total of all the sentences. For example, if you were given a sentence of 7 years for one charge and a sentence of 10 years for the second charge, the total years in prison would be 17 years.

### Remission

Remission is shortening your time in prison because of good behaviour.

- The Prisons Act says that every person sentenced to prison has a right to a remission of a third of the term. Example: a person sentenced to 9 years **may** only serve 6 years in total.
- To have a right to remission, you must be serving a sentence for a time longer than one month and must have been in prison for at least one calendar month already.
- If you misbehave in prison, you can lose the right to remission. However, you must be given a hearing before losing this right.
- If you are found guilty of certain crimes that require life terms in prison (murder, robbery with violence etc.) OR are kept in prison at the pleasure of the President, you do NOT have the right to remission.

## Suspended Sentence

A suspended sentence is when the court delays the punishment. This happens if the court is waiting to hear a decision from another court about an appeal (see section below). If the appeal is thrown out, the original sentence begins and you will serve the whole sentence. The court does NOT include the time that the sentence was delayed as part of your time served.

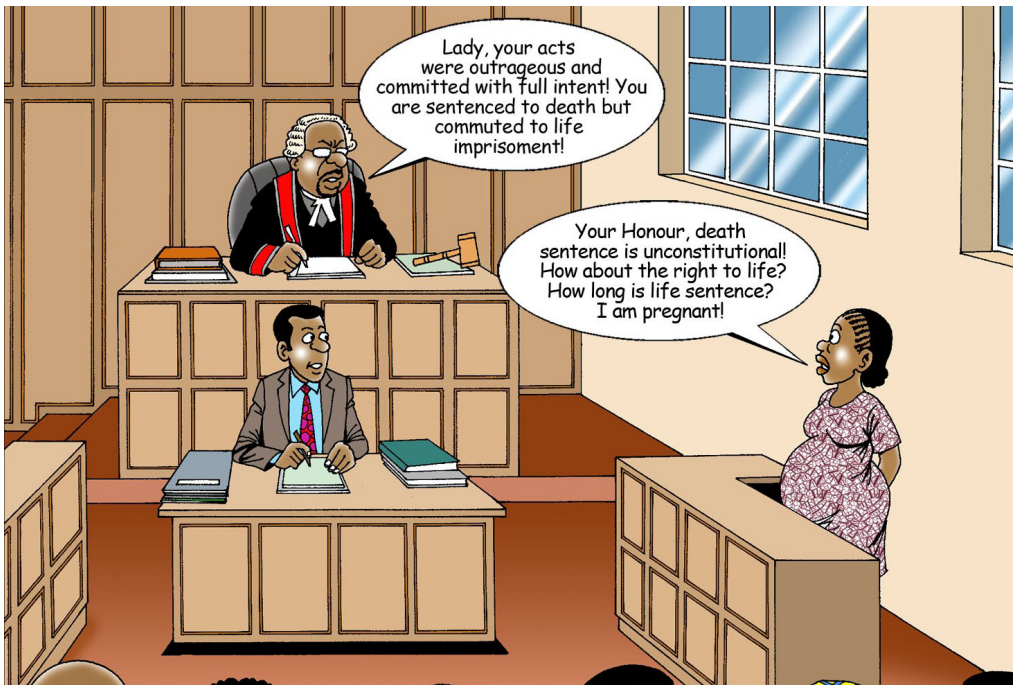
## Corporal Punishment

This punishment meant caning a person's buttocks. Corporal Punishment has been **abolished** by Kenya's most recent laws.

## Hard Labour

In some circumstances, the court may order that in addition to the time spent in prison, you must also do hard labour. This normally happens when the court feels that your sentence should be more serious than the punishment given in the law because you were particularly hateful or cruel in your acts.

## Death Sentence



When you are charged with and found guilty of murder, treason, robbery with violence or trying to rob using violence, the court orders punishment by death.

- In Kenyan law, the mode of execution is hanging by the neck until death.
- The death sentence cannot be ordered on a person under 18 years old at the time he/she committed the crime.
- The death sentence cannot be imposed on a pregnant woman.
- Since 1987, the Government of Kenya has not executed anyone through the courts. Kenya has signed an agreement to put a hold on the death sentence, but the number of people sentenced to death continues to increase.
- The President must sign an execution warrant for an execution to take place.
- The President has the power to forgive or reduce your sentence and can order your release OR change your sentence to life in prison.

## APPEALS

If you are convicted (guilty) of a crime, you have the right to appeal your conviction or your sentence. If you plead guilty, you may only appeal your sentence, not your conviction.

- Filing an Appeal
  - You have **14 days from the day of your conviction to file for an appeal**. If you do not file within this time, you must give the court a good reason for missing the deadline or your appeal will not be allowed.
  - If you lack the money to file an appeal, you may appeal as a pauper. (See the Civil Procedure Self-Representation Manual for details)
  - You must prepare a **“Petition of Appeal.”** This document states your reasons for appealing. Be sure to include ALL

reasons, because only those stated can be argued at your hearing. You or your lawyer must sign this document or it will not be valid.

- Include a copy of the charge sheet, court proceedings and court decision.
- If you are in prison, the Officer in Charge can file your appeal through the court's registrar for you.
- Courts You Can Appeal To
  - If convicted by a Magistrate, your appeal will go to the High Court.
  - If convicted by the High Court, your appeal will go to the Court of Appeal.
  - You can appeal to the Supreme Court if it is a matter of general public importance. You cannot appeal any further.
- Appeal Hearing
  - There are no witnesses at an appeal hearing. The original evidence is reviewed and arguments from you and the prosecution are heard. New evidence may be accepted only if the court thinks it is necessary.
  - The court then arrives at a decision to either:
    - Agree that you are guilty and uphold your conviction.
    - Decide that you are innocent and cancel your conviction.
    - Shorten, lengthen or change your sentence.
    - Order that you be given a new trial.
- Appeal by Persons Found Guilty but Not of Sound Mind
  - If you are found guilty but not of sound mind, you may be detained without being given a release date. This means it is possible you will remain detained for a very long time, or

forever. You cannot be released until a doctor states that you are well enough to be released.

- You may want to appeal the finding that you are not of sound mind, so that you will be given a definite release date.
- Bail Pending Appeal
  - If you have been found guilty and are appealing your conviction, you can apply to be released on bail while you wait for your appeal hearing.
  - If the lower court does not give bail, you may apply to the High Court.
  - Bail will only be granted if it is likely you will be found innocent at your appeal hearing. If it is likely that you will be found guilty again, or the courts have denied your bail before, the courts will not give you bail because they fear that you will run away.

## TIPS FOR REPRESENTING YOURSELF IN COURT

- **Make a good impression.** Dress neatly and in clean clothes. It tells the judge that you respect the court and care about your case.
- **Be respectful.** Be respectful to everyone in the court and courthouse. Do not interrupt the judge/magistrate when he/she is talking. How you act is as important as how you look.
- **Arrive early.** If your matter is being held in the morning, arrive in court before 8AM. If your matter is being heard in the afternoon, arrive in court before 2PM. Inform the court clerk that you have arrived. If you are late, your case may be postponed, or dismissed. If you fail to show up for court, you may be fined or jailed.
- **Know what to ask.** You can ask court staff for information about the process and what type of information to put on the forms, but they can't tell you what to write on the forms or what to say at a hearing. You must ask a lawyer for that type of help.

- **Come prepared.** Make sure you have all of the documents with you at the hearing and bring the correct number of copies with you. Remind your witnesses to be on time for the court case. Make sure you bring your witnesses with you to the hearing and that they are ready to tell their stories in court. Write out the questions you plan to ask and go over them with your witnesses before the hearing.
- **Do not bring your children to court.** The courts do not provide day care. Children may not be left unattended. Children will not be allowed in the courtrooms unless they are needed to give evidence.
- **Wait until the judge speaks to you before talking.** Address people in the courtroom by their last name and title (for example, Mr. Kamau, Mrs. Wanjiku). In Lower Court, call the Magistrate “your Honour.” In High Court, use “my Lord” or “my Lady.”
- **Tell the truth.**



# **KUJIWAKILISHA KATIKA MASUALA YA JINAI**

**KIJITABU CHA HABARI KUHUSU HAKI  
ZA MFUNGWA KATIKA MASWALA YA  
JINAI**

## KUJIWAKILISHA KATIKA MASUALA YA JINAI

Kijitabu hiki kinalenga kuwafahamisha wakenya kuhusu haki zao katika utaratibu wamasuala jinai.

Haki zinazozungumziwa katika mwongozo huu ni zakikatiba humuKenya na sheria zilizobuniwa bunge.

Ni matumaini yetu kuwa ufahamu huu utawawezesha wakenya kufurahikia haki zao na kuwezesha haki zilizozungumziwa humu kuheshimiwa

Tunashukuru mafisa naafisi zetu za Mombasa kwa ujuzi wa kitaalamu waliouchangia katika kijitabu hiki.

Shukurani pia zinawaendea wafadhili wetu UNDP-Amkeni kwa mchango wao uliowezesha uchapishaji wa Kijitabu hiki.

Gertrude Angote

Mkurugenzi Mtendaji

# **MPANGILIO**

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# MWONGOZO WA KUJIWAKILISHA

## Utaratibu wa masuala ya jinai

Makosa ya jinai ni mgogoro wa umma. Katika maswala ya jinai, serikali inamshitaki aliyefanya makosa ya jinai kwa niaba ya umma. Hii ni tofauti na kesi za kiraia ambazo zinahusu watu binafsi ambapo, kwa mfano, mmoja wao anahitaji kufidhiwa na mwingine.

Utaratibu wa masuala ya jinai huanza mara unapokamatwa. Utaratibu huu unaendelea hadi unapopatikanaau kutopatikana na hatia. Unapopatikana na hatia, utaratibu huu unaweza kuendelea iwapo utakata rufaa.

## HAKI ZA ALIYEKAMATWA NA UTARATIBU WA KUKAMATWA

Hizi ndizo Haki zako unapokamatwa:

### Sababu za kukamatwa

- Anayekukamata sharti akufahamisha kiini cha kukukamata



## Kujitambulisha kwa anayekukamata

- Afisa anayekukamata sharti ajitambulishe kwa jina na cheo chake, na kwa uwazi lazima nambari yake ya kazi iwe katika sharti lake
- Kama afisa hajavaa sare zake rasmi, lazima akuonyeshe kitambulisho chake cha polisi
- Ikiwa unakamatwa na raia, hakimumu au chifu, lazima akufahamishwe kuwa yeye sio afisa wa polisi na kuwa anakupeleka kwa polisi

## Haki ya kufanyiwa utu

- Afisa wa polisi sharti akufanyie utu na heshima

## Kuguswa au Kuzuiliwa kwa mtuhumiwa



- Anayekukamata anaweza kukugusa, kukuzuilia au kukuweka pingu ikiwa unakataa kuwa mikononi mwake ama unapojaribu kutoroka

## **Matumizi ya Nguvu wakati wa kukamata**

- Afisa wa polisi anaweza kutumia nguvu za kadri anapokukamata ikiwa itahitajika kufanya hivyo. Lakini hafai kutumia nguvu ambazo zitasababisha kifo.
- Afisa wa polisi anaweza kutumia nguvu ikiwa:
  - Umeshitakiwa au kuhukumiwa kwa makosa ya jinai na unajaribu kutoroka
  - Ikiwa unatishia maisha ya afisa huyo kwa wakati huo
- Ikiwa afisa atatumia nguvu kupita kiasi, akusababishie majeraha au kukuua, atakuwa amefanya kosa la jinai. Wewe au jamaa zako wanaweza kumshitaki ili kuwepo na ridhaa.
  - Kwa mfano, itakuwa kinyume cha sheria ikiwa polisi atakuchapa hadi kukuumiza anapokukamata.

## **Haki ya kukimya**

- Ni sharti utoe jina na anwani yako unapokamatwa
- Haikulazimu kunena jambo lolote ambalo linaweza kutumika dhidi yako, kukiri au kusadiki makosa ya jinai. Haikulazimu kuandikisha taarifa au kusaidia polisi katika uchunguzi.

## **Haki ya Kutengwa Kizuizini**

- Ikiwa umekamatwa, unafaa kuzuiliwa kando na wanaotumikia

kifungo gerezani

- Waume wanafaa kuzuiliwa katika vyumba tofauti na vya wanawake
- Watato hawafai kuwekwa pamoja na watu wazima katika chumba kimoja. Wasichana wadogo wanafaa kuwekwa katika usimamizi wa afisa wa polisi wa kike.

## **Haki ya kuwasilishwa mahakamani haraka iwezekanavyo**

- Ikiwa hamna amri ya kukukamata, lazima upelekwe kwa hakimu bila kucheleweshwa au uachiliwe huru.
- Ikiwa kuna amri ya kukukamata, lazima upelekwe kotini kabla ya masaa 48 kukamilika au kabla ya siku 14 kukamilika ikiwa unashitakiwa na makosa kama ya mauaji, au wizi wa kimabavu
- Ukikamatwa siku ya likizo ya kitaifa au wikendi, lazima uletwe kotini siku ya kwanza ya kikazi inayofuata
- Ukikamatwa mbali na koti, lazima uletwe kotini haraka iwezekanavyo

\*\*\*\*Ukizuiliwa Kwakipindi kirefu kinyume na sheria, mfahamishe wakili wako haraka iwezekanavyo.

## **NANI ALIYE NA MAMLAKA YA KUKUKAMATA?**

### **Raia**

- Raia mwenzako anaweza kukukamata ikiwa:
  - Umefanya kosa kuu la jinai kama vile; wizi, mauaji, au kumuumiza mwingine
  - Umefanya kosa la jinai na polisi wanakutafuta
  - Umeharibu mali ya raia huyo



- Ikiwa raia atakukamata, lazima upelekwe kwa kituo cha polisi haraka iwezekanavyo

- Ikiwa hamna sababu kuu ya kukukamata, itabidi polisi wakuachilie huru
- Polisi wakithibitisha kuwa huenda umefanya kosa la jinai, wanaweza kukuzuilia hadi masaa 48 wakifanya uchunguzi
- Uchunguzi ukikamilika, polisi wanaweza kukushitaki au wakuachilie huru

### **Afisa mtekelezaji wa sheria**

- Afisa wa polisi ana mamlaka ya kukukamata ikiwa:
  - Umefanya au anashukiwa kufanya kosa la jinai
  - Unazuia utendakazi wake au uchunguzi anaoufanya
  - Unapojaribu kutoroka kutoka kizuizini
  - Ukiasi jeshi
  - Kuna kibali cha mahaka ukamatwe

### **Chifu**

- Chifu anaweza kukukamata ikiwa:
  - Unatuhumiwa kufanya au kupanga kufanya kosa la jinai
  - Kuna kibali cha mahakama ukamatwe
- Chifu akikukamata lazima upelekwe kwa polisi
- Chifu akikukamata ikiwa unatuhumiwa kufanya jambo fulani, lazima upelekwe kotini kabla ya masaa 12 au uachiliwe huru

### **Hakimu**

- Hakimu anaweza kukukamata ikiwa utafanya kosa la jinai ukiwa

mbele yake au katika mahali ampapo anatekeleza mamlaka yake ya kikazi

### **Kibali cha mahakama**

- Mahakama inawezakutoa kibali ukamatwe ikiwa:
  - Haujatimiza masharti ya bondi/dhamana uliyopewa
  - Haujajiwazilisha mbele ya mahakama inavyotakikana

## **UTARATIBU KATIKA KITUO CHA POLISI**

### **Haki za Kijumla ukiwa Kizuizini mwa Polisi**

- Una haki ya kupata chakula, malazi, usafi na afya njema
- Una haki ya kufahamishwa maamuzi yoyote yanayokuhusu
- Unahaki ya kuheshimiwa na dhidi ya kufanyiwa unyama

### **Ukaguzi wa aliyekamatwa**

- Ikiwa umekamatwa, polisi wanaweza kukukagua. Wanaweza kuchukua vilivyo vyako na kuvihifadi mahali salama. Polisi hawafai kuchukua viatu au mavazi yako
  - Lazima polisi wanukuu mali yako yote waliyohifadhi. Lazima udhibitishie na kutia sahihi. Polisi pia lazima watie sahihi.
  - Polisi wanaweza kuchukua na wasikurudishie silaha uliyokuwa nayo
- Ikiwa wewe ni mwanamke, polisi wa kike ndiye atakayekukagua pekee.

### **Kufuatilia uliko: Kunukuu Kukamatwa**

- Jina lako, anwani yako na sababu za kukamatwa zinafaa kunukuliwa

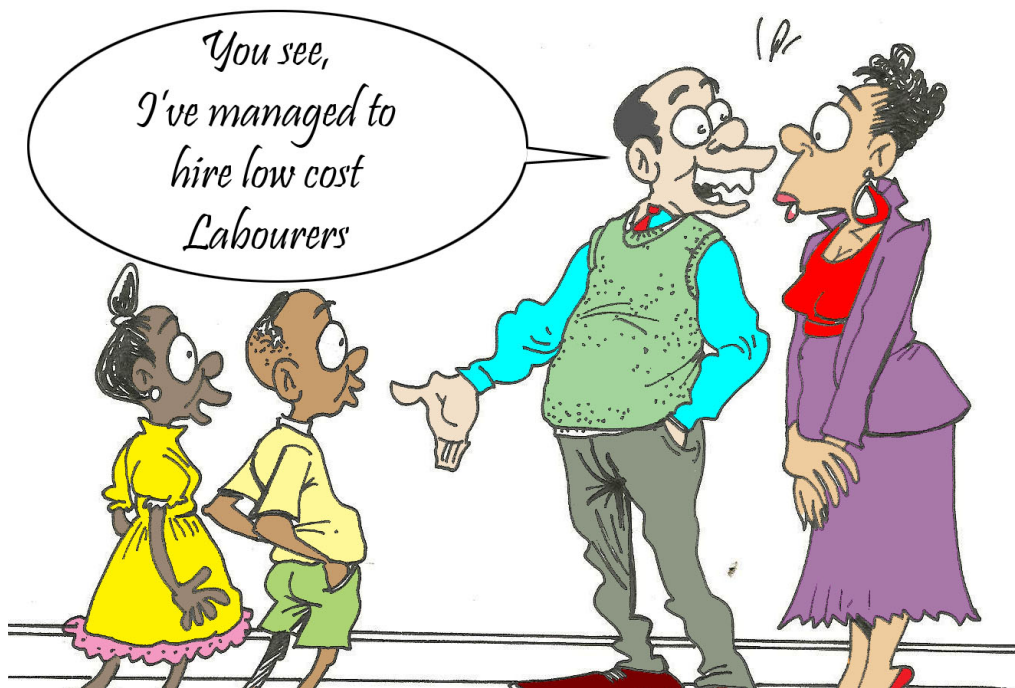
katika kitabu spesheli cha kunukuu mkasa (Occurrence Book) unapoingia katika kituo cha polisi

## Alama za Vidole na Picha

- Ukiwa katika kituo cha polisi, picha yako na alama za vidole zinaweza kuchukuliwa. Polisi wanaweza kutumia nguvu za kadiri kuchukua picha na alama za vidole ikiwa utakataa kuzitoa kwa hiari
- Polisi wanaweza kutumia alama za vidole:
  - Kubaini ikiwa umewahi kufanya kosa la jinai hapo wali
  - Kubaini ikiwa alama zako za vidole zinafanana na zile zilizopo mahali pa tukio la kosa la jinai unaloshukiwa kufanya
  - Kuhifadhi rekodi ya kosa la jinai unalotuhumiwa kufanya ikiwa utapatikana na hatia
  - Picha yako yaweza kutumika katika uchunguzi wa polisi. Kwa mfano, mhadhiriwa wa tendo la jinai anaweza kuonyeshwa picha yako imsaidie kutambua ikiwa ndiwe uliyemdhuru.

## Taarifa

- Kumbuka kuwa una **haki ya kukimya** (iliyoeleza hapo awali). Chochote utakachonena chaweza kutumiwa na polisi dhidi yako.
- Taarifa uchunguzi unapofanywa—bado haujashitakiwa kwa kosa la jinai
  - Afisa wa polisi atakuomba uandike taarifa ili kubaini ikiwa ulihusika na kosa la jinai
  - Afisa akiamini kuwa hukuhusika na kosala jinai lililotendeka, atakuachilia huru.



- Taarifa baada ya kushitakiwa
  - Kabla ya kutoa taarifa, afisa wa polisi lazima akufahamishe kuwa haikulazimu kutoa taarifa hiyo na ikiwa utaitoa, itakuwa kwa hiari na yaweza kutumiwa dhidi yako. Afisa wa polisi atakuomba uarifu kilichotendeka.
- Kuungama – kukubali kuwa una hatia ya kosa la jinai
  - Kuungama kunakofanywa kwa afisa wa polisi hakuwezi kubaliwa mbele ya mahakama. Afisa wa polisi hana sababu yoyote ya kukulazimu kuungama.
  - Mtu anaweza kuungama mahakamani, mbele ya hakim au jaji pekee. Kuungama huku ndiko kunakokubalika na kuchukuliwa kama wa ukweli.

## **Kuwasiliana na wengine ukizuiliwa katika Kituo cha Polisi**

- Ukikamatwa, unahaki ya kumpigia jamaa, rafiki au wakili simu - mara moja pekee
- Ukiwa kizuizini, wakili wako anaweza kukutembelea awezavyo. Jamaa au rafiki anaweza kukutembelea kizuizini kati ya saa kumi na mbili asubuhi hadi saa kumi na mbili jioni pekee – chini ya uangalifu wa afisa wa polisi.

## **Kutambuliwa katika waride**

- Waride hii inamsaidia aliyeshuhudia kosa la jinai kudhibitisha kuwa wewe ndiye aliyeona ukifanya kosa hilo.
- Uamuzi ni wako ikiwa ungependa kuwa katika waride hiyo
- Ukiamua kuwa katika waride hiyo, lazima wawepo watu 7 pia – wakipungua. Watu hawa inabidi wakaribie kufanana nawe iwezekanavyo.

## **Uwezekano wa kuachiliwa kabla ya kupelekwa mahakamani**

- Bondi ni njia mojawapo ambayo unaweza kuachiliwa kutoka kizuizini mwa polisi kabla ya kupelekwa mahakamani
- Ikiwa hatia uliyoshukiwa kufanya sio kubwa, unaweza kuachiliwa kutoka kituo cha polisi kwa kutoa amana ya pesa taslimu au kuahidi kuwa utaenda kotini au utarudu katika kituo cha polisi kwa tarehe/masaa yaliliyowekwa.
  - Tazama kipengee cha “bondi/dhamana” kilichomo hapa chini kwa ufahamu zaidi.

## **Ripoti ya Daktari**

Ripoti ya daktari inaweza kutumika kwasababu zifuatazo:

- Kubaini uwezekano kuwa ulifanya kosa la jinai.
  - Kwa mfano, ikiwa mtuhumiwa aliumia akifanya kosa la jinai, na hauna majeraha, kuna uwezekano kuwa mtuhumiwa huyo sio wewe.
- Kubaini umri wako.
  - Lazima uwe na umri wa zaidi ya miaka minane ili ushitakiwe kwa kosa la jinai.
  - Ikiwa una umri wa kati ya miaka 8 na 18, unatambuliwa kisheria kuwa mtoto na unafaa kushitakiwa katika mahakama ya watoto. Pia, huwezi kuhukumiwa kifo iwapo utapatikana na hatia.
- Kubaini hali yako ya akili
  - Lazima ibainike kuwa ulikuwa wa akili timamu wakati unatuhumiwa ulifanya kosa la jinai
  - Pia, lazima uwe wa akili timamu wakati kesi yako inaposikizwa. Jambo hili ni muhimu kwa sababu unafaa kuelewa yanayoendelea mahakamani.
  - Sheria inatambua kuwa watu wote wana akili timamu wanapofanya makosa ya jinai hadi kutokananaushahidi wa ripoti za daktari itambulike kuwa sivyo.

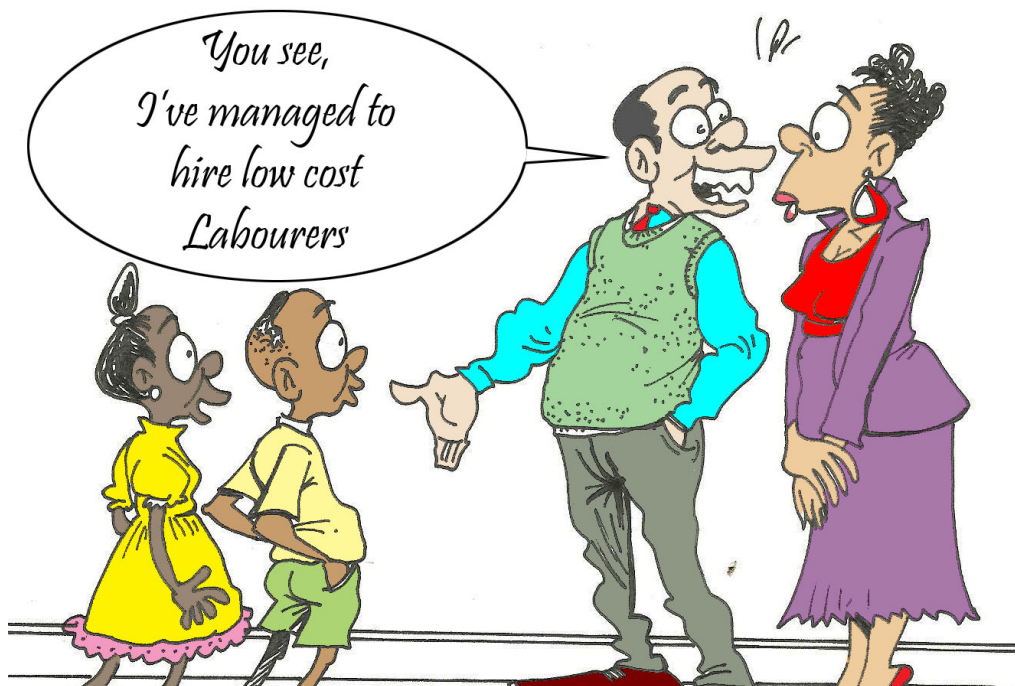
## **Mashitaka**

- Kwa lugha iliyo wazi, shitaka ni kosa la jinai unalotuhumiwa kufanya. Shitaka linajumlisha:
  - Sheria: Shitaka lazima litaje sheria unayotuhumiwa kukiuka. Ikiwa hamna sheria uliyokiukwa, basi hamna kosa la jinai ulilofanya.
  - Vipengee vya hatia: tarehe, wakatina mahali unapotuhumiwa kufanya kosa la jinai, na matukio ya kweli ya kosa la jinai lililofanyika.

- Shitaka hukusaidida kufahamu na kuelewa fika kesi dhidi yako ili uweze kujitetea.

## MAWAIDHA IKIWA UNAKAMATWA NA KUPELEKWA KATIKA KITUO CHA POLISI

- Tulia na usijaribu kuzuia kukamatwa
- Toa jina lako, anwani na habari yoyote inayokutambulisha, na fahamisha ikwa una chini ya umri wa miaka 18.
- Kuwa mpole unapowasiliana na afisa wa polisi
- Omba jamaa wako au rafiki afahamishwe kuwa umekamatwa, ili awe katika kituo cha polisi.
- Omba umpigie simu jamaa, rafiki au wakili wako
- Usiandike wala kutia sahihi makubaliano yoyote yaliyoandikwa



- Usiungame kwa jambo lolote ambalo hujatenda
- Nukuu

## UTARATIBU MAHAKAMANI

### Kujibu Mashitaka

- Ukishitakiwa kwa kosa la jinai unaletwa mbele ya mahakama. Utasomewa mashitaka nakina cha kosa. Utajibu kwa kukiri mashitaka au kukataa kwa kusema “ndio” au “la”. – huku ndiko kujibu mashitaka. Ukikiri kwa kusema “ndio” unamaanisha kuwa ulifanya kosa la jinai uliloshitakiwa nalo. Kujibu mashitaka kwa kukana “la” ni unamaanisha kuwa hukufanya kosa la jinai unalotuhumiwa kufanya. Chochote unachonena mahakamani kinanukuliwa.
- Lazima uwe na uwezo wa kufahamu kinachoendelea mahakamani. Mahakama yaweza kuzungumzakwa lugha ya Kingereza au Kiswahili. Ikiwa huelewi lugha hizi, mahakama itakupa mkalimani bila malipo.
- Ikiwa utakana mashitaka kwa kusema “la”, utapewa tarehe ambayo lazima utarudi mahakamanikesi isikizwe. Kusikizwa kwa kesi kutabaini kuwa unahatia au huna hatia ya mashitaka dhidi yako.
  - Ukipewa bondi/dhamana, lazima urudi mahakamani mwenyewe tarehe uliyopewa. Ikiwa hutarudi, mahakama itatoa kibaliukamatwe.
  - Ikiwa hutapewa bondi/dhamana, itabidi uwe kizuizinihadi kesi yako isikizwe
- Ukikiri kosa lako kwa kusema “ndio”, umekubali kuwa ulifanya kosa la jinai. Wakili anayeshitaki atasoma matukio ya kweli ya kosa la jinai.
  - Ikiwa hutakana matukio hayo, mahakama itabaini kuwa una hatiana utaadhibiwa vilivyo. Adhabu itakuwa kifungo.



- Ikiwa si wazi kuwa unakiri au kukataa kwasababu hukubaliani na matukio ya kweliyaliosomwa au kukana kuwa na hatia, basi lazima mahakama ibadili jibu la mashitaka yako na kuwa “la”.

## Barua za mtajo

- Mahakama hutoa baruaza mtajo zinazohakikisha kuwa upo katika mamlaka ya mahakama
- Ikiwa uliachiliwa kwabondi/dhamana, mtajo wa kesi yako utatumwa kila baada ya siku 30 baada ya kuitikia kesi, hadi kusikizwa kwa kesi yako kukamilike.
- Ikiwa uko gerezani, mtajo wa kesi yako utatumwa kila baada ya siku 14 -baada ya kuitikia kesi yako. Unapewa nafasi ya:
  - Kuomba dhamana yako ipunguzwe hivi kwamba uachiliwe kutoka gerezani wakati kesi yako inasikizwa
  - Kuomba wakili wako au wewe mwenyewe upewe taarifa za mashahidi
  - Kuomba uchukuliwe hospitalini ikiwa wewe ni mgonjwa
  - Kabadili ulivyojibu au kuitikia mashitaka
  - Kuomba kesi yako isikizwe

## UPANDE WA MASHITAKA

Ukikana mashitaka kwa kusema “la”, kesi itasikizwa. Katika kusikizwa kwa kesi kuna pande mbili: **a)** upande wa mashitaka **b)** upande wa kupinga mashitaka/ wa kujitetea (wewe, mtuhumiwa). Upande wa mashitaka una jukumu la kuhakikisha kuwa mahakama inafahamu matukio halisi na utajaribu kudhibitisha kuwa ulifanya kosa la jinai. Pande zote mbili zitatoa ushahidi na kuita mashahidi. Baada ya matukio ya kwelikuwasilishwa, hakimu au jaji atatoa uamuzi kutokana na matukio hayo na ufahamu wake wa sheria.

➤ Anagalia “utaratibu wa kusikizwa kwa kesi” katika sehemu iliyopo hapa chini kwa ufahamu zaidi.

Inalazimu upande wa mashitaka kufanya mambo yote kwa haki. Kwa kawaida serikali ndiyo upande wa mashitaka na husimamia maswala ya jinai. Nchini Kenya, hili ni jukumu la Kaimu Mkurugenzi wa mashitaka ya umma (DPP)– kitengo cha afisi ya Mwanasheria Mkuu (AG). Lakini, ikiwa serikali haitilii maanani kesi, watu binafsi wanaweza kushitaki au waombwe na serikali kushitaki kwa niaba ya serikali.

### **Uamuzi wa kushitaki unategemea mambo mengi:**

**1) Lazima kuwepo na ushahidi wa kutosha.** Upande wa mashitaka utaangalia ushahidi wote uliopo na kuamua ikiwa kuna ushahidi wa kutosha utakao dhibitisha mashitaka. Ikiwa hamna ushahidi wa kutosha, mashitaka yatatupiliwa mbali au kutolewa.

**2) Ikiwa kosa la jinai ni zito.** Hii inategemea namatukio yanayozunguka kosa, na hata hali ya kosa la jinai yenyewe. Ikiwa upande wa mashitaka utaonelea kuwa lalamiko ni duni au hafifu au limetokana na uhasama wa kibinafsi, huenda utakataa kushitaki

**3) Ikiwa afya yako imedhoofika au unaugua ugonjwa waakili,** upande wa mashitaka unaweza kuamua kutoendeleza kesi. Ikiwa una akili punguani, upande wa mashitaka unaweza kuendeleza kesi iwapo utadhibitisha kutoka kwa mhudumu wa afya kuwa uko wa hali nzuri ya afya na kuwa mwanasheria mkuu ametoa hakikisho, kisheria,kuwa kesi iendelee.

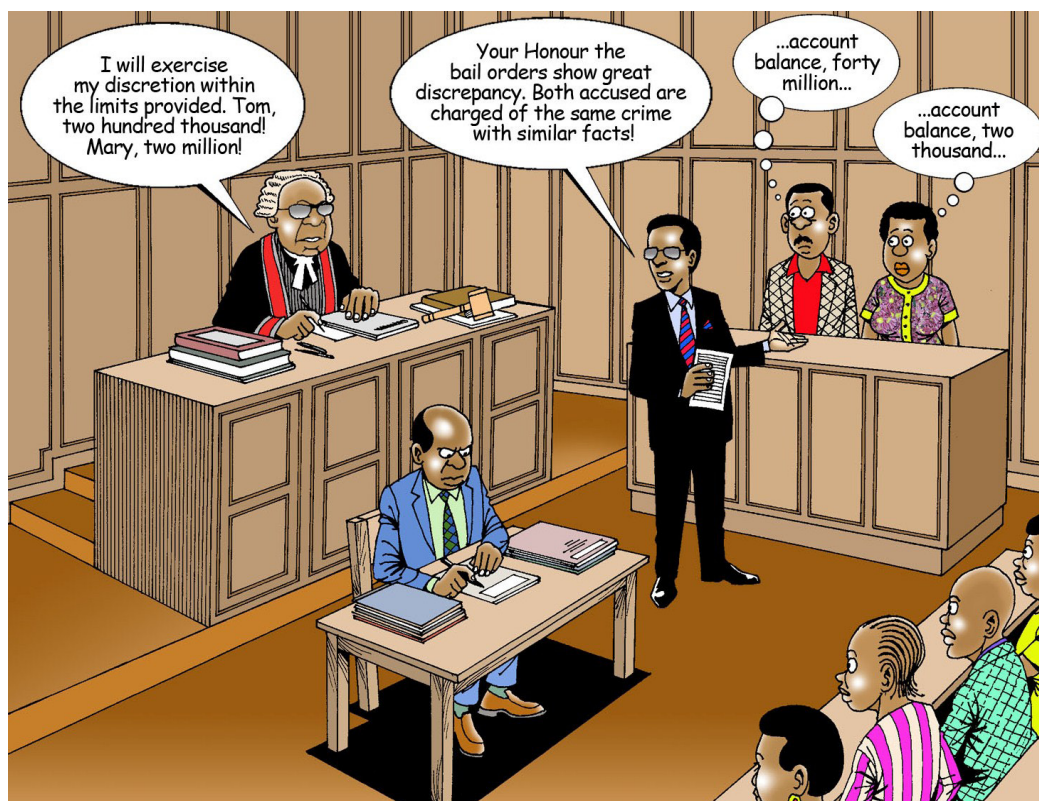
**4) Msukumo/nia ya malalamishipia** huzingatiwa haswa katika kesi za jinai zilizo na uzito. Upande wa mashitaka unahitaji ushahidi wa malalamishi. Ikiwa upande wa mashitaka unahisi kuwa malalamishi hayaambatani na kesi, upande huo hautapendelea kushitaki kesi hiyo.

**5) Lazima ushitakiwe katika eneo la tukio la kosa.** Hili linafaamika kamaeneo la mamlaka ya mahakama. Tendo lazima lifanyike nchini Kenya au liwe na uhusiano na Kenya ili lishitakiwe au kuchunguzwa na mahakama za Kenya. Hivi ni vizuizi vya mahakama za mahakimu

kulingana na aina za hukumu na faini zinazoweza kutoa au kuweka. Mahakama za juu hazina vizuizi hivi katika mamlaka yao.

## Uwezekano wa Kuachiliwa kwa Mshukiwa Kesi inaposikizwa: Bondi/Dhamana

**Dhamanani** amri ya mahakama uachiliwe kwa muda kesi inaposikilizwa. Hii niwa maelewano kuwa lazima urudi mahakamani kesi yako inaposikizwa au kutajwa. Ikiwa utapewa dhamana ya pesa taslimu, utahitajika kuweka amana ya kiwango fulani cha pesa katika ofisi ya usajili ya mahakama. Ikiwa utarudi mahakamani siku zote unazohitajika, utarudishiwa pesa hizi hata kama utapatikana na hatia ya kosa uliloshitakiwa.



**Bondi** ni sawia na amri lakini inahusu kesi ndogo za jinai na haihusu pesa kwa mara hiyo. Bondi inakuhitaji kuahidi kwa maandishi kuwa iwapo hutarudi mahakamani, utalipa kiwango fulani cha pesa. Lazima uonyeshe nakudhibitishia mahakama kuwa una uwezo wa kulipa pesa ulizoahidi au kitu kilicho na kiwango sawia (kwa mfano: hati miliki ya shamba, na thibitisho za malipo ya mshahara wako, nakadhalika)

Unaweza kuomba uachiliwekwa dhamana unapozuliwa katika kituo cha polisi au mara unapofika mahakamani. Kijumla, una haki ya kikatiba kuachiliwa kwa dhamana hadi kesi yako iamuliwe na mahakama. Lakini, maombi ya kuachiliwa kwa dhamana yanaweza kukatiliwa iwapo:

- Kosa la jinai ni la uzito au sugu (kama mauaji, kuasi au wizi wa kimabavu)
- Huna anuani ya kudumu – mahali unapokaa
- Mahakama ua polisi wanaamini kuwa kuna uwezekano mkubwa kuwa utatoroka
- Umekosa kurudi mahakamani hapo awali
- Inaaminika kuwa wewe ni tishio kwa usalama wa taifa au kwa mashahidi

Ikiwa umewahi kuachiliwa kwa dhamana na haukuzingatia masharti yaliyowekwa na mahakama, dhamana yako yaweza kufutiliwa mbali na uamrishwe kulipa pesa au ufungwe gerezani.

## **KUSIKIZWA KWA KESI**

Unachukuliwa kuwa asiye na hatia hadi ukubali Mashitaka au mahakama iliyo na mamlaka ya kusikiza kesi didhi yako ikupate na hatia.

- Katika mwanzo wa kusikizwa kwa kesi didhi yako, utasomewa mashitaka. Mashitaka yapo katika notisi rasmi kuhusu kosa la jinai unalotuhumiwa kufanya.
- Kwa wakati huu, unaweza kubadili mwendaji wako wa kukiri kulifanya kosa au kukataa. Ikiwa mwendaji wako haubadili, kesi

yaweza anza kusikizwa.

- **Kabla ya kesi kuanza kusikizwa, yafaa ujitayarishe na yafuatayo:**
  1. Vitu vyote utakavyovitumia katika kujitetea
  2. Ikiwa huelewi Kingereza au Kiswahili, unaitaji kuomba upewe mkalimani kwa mapema. Wakalimani hutolewa na mahakama bila malipo.
  3. Ni haki yako kuwa na taarifa za upande wa mashitaka na maswali utakayouliza mashahidi wa upande wa mashitaka, ili ujitayarishe kwa kesi. Unafaa kuitisha vitu hivi haraka iwezekanavyo.
- Ni muhimu wazazi au wanaowatunza watoto walioshitakiwa wawe mahakani kila wakati kesi inaposikizwa



## Muda wa Kesi Kusikizwa

Mtu yeyote aliyeshitakiwa kwa kosa la jinai sharti kesi didhi yake isikizwe inavyostahili na kwa muda unaofaa. Haya huwa hayafanyiki sababu ya uchunguzi duni, kukosa kwa mashahidi wa upande wa mashitaka, na kuwepo na upungufu wa wafanyakazi katika idara ya mahakama, nakadhalika.

- Kwa jumla, muda uliowekwa haufuatiwi kwa makini na mahakama hutoa sababu nyingi za kuhairisha kusikizwa kwa kesi.
- Wewe (mshatikwa) au upande wa mashitaka unaweza kuomba mahakama ihairishe kesi wakati wowote inaposikizwa. Kwa mfano, kesi inaweza kuhairishwa ikiwa wewe ni mgonjwa.
- Ni muhimu kuwa kuhairishwa kwa kesi hakutumiwi vibaya ama kama mbinu ya kuchelewesha kesi kwa lengo la kukuadhibu. Ukishuku hili linafanyika, unaweza kuomba mahakama isikubali ombi la kuhairisha kesi na uombe kesi itupiliwe mbali. Ni sharti mahakama iamue mwelekeo wa kesi baada ya haya.
  - Ikiwa ungali unangoja kukamilika kwa kusikizwa kwa kesi didhi yako, na umekuwa kizuizini kwa muda mrefu zaidi ya hukumu inayokubalika kisheria, wafaa kufahamisha mahakama kuhusu hili jambo. Kwa mfano, ikiwa umekuwa kizuizini zaidi ya mwaka mmoja, lakini kosa la jinai unalotuhumiwa kulifanya huwa na adhabu ya kifungo cha miezi sita, inafaa ufahamishe mahakama kuhusu jambo hili.

## Muda uliowekwa kwa Kesi didhi ya Watoto

- Kulingana na sheria ya bunge kuhusu watoto ya mwaka wa 2001, kesi dhidi ya watoto inafaa kuchukua muda usiozidi miezi 3 kutoka wakati mwikio wa kukiri au kukataa kesi unapofanywa hadi kukamilishwa na kama sivyo kesi itupiliwe mbali.
- Kwa kesi zilizo katika mahakama ya juu au ile ya rufaa, kesi hizi zafaa kusikizwa kwa muda usiozidi miezi 12 na kwa wakati huo mtoto hafai kuwa kizuizini kwa zaidi ya miezi 6 bila kuachiliwa kwa dhamana.

## **Kesi ya Upande wa Mashitaka**

Ni jukumu la upande wa mashitaka kudhathimini bila tashwishi yoyote kuwa ulifanya kosa la jinai unalotuhumiwa kulifanya. Upande wa mashitaka utatoa ushahidi kudhathimini kesi kwa kuita mashahidi. Huu ndio mpangilio wa kesi ya upande wa mashitaka:

### **1. Upande wa mashitaka kutoa ushahidi didhi yako.**

Upande wa mashitaka unaweza kuita mashahidi kueleza matukio ya kesi mahakamani

### **2. Uchunguzi**

Shahidi ataitwa kizimbani na atatakiwa ahaidi kueleza kwa ukweli. Atafanya hili kwa kuhapa. Upande wa mashitaka utaendelea kwa kuuliza maswali ili kupata ujumbe kutoka kwa shahidi kuhusu matukio ya kosa la jinai unalotuhumiwa kufanywa.

### **3. Kuhojiwa**

Huu ndio wakati wa kuuliza shahidi wa upande wa mashitaka maswali kama haki yako. Maswali yako yanafaaya jaribu kuonyesha/kufahamisha mahakama kuwa shahidi hawezi kuaminika au kuwa shahidi hana ufahamu wa matukio. Maswali haya sharti yahusu maswala yaliyozungumziwa wakati wa uchunguzi

### **4. Kuchunguza tena**

Upande wa mashitaka unakubaliwa kuuliza maswali zaidi yanayolenga kufafanua au kutilia mkazo maswala yaliyoleta utata wakati wa uchunguzi.

### **5. Uamuzi wa Mahakama**

Mwishoni mwa kesi ya upande wa mashitaka, na ikiwa ushahidi uliotolewa na upande wa mashitaka dhidi yako unatosha, hakimu au jaji ataamua kuwa una kesi ya kujibu. Utahitajika kujibu (angalia sehemu ya kujitetea iliyopo hapa chini kwa ufahamu zaidi). Ikiwa hamna ushahidi wa kutosha, mahakama itaamua kuwa hamna kesi ya kujibu na utaachiliwa huru kuusu mashitaka dhidi yako bila masharti yoyote.



**Wakati wowote na kabla ya uamuzi wa mahakama, upande wa mashitaka unaweza kusimamisha kesi na uachiliwe huru.** Hili haliwezi kuzuia kutoshitakiwa tena ikiwa maafisa wa polisi watapata ushahidi mpya na wenye nguvu dhidi yako. Lakini, ikiwa umeachilwa huru, hauwezi kushitakiwa tena kwa kosa na matukio yale yale hata kwa ushahidi huo mpya. Kesi itakuwa imekamili. Sharti rufaa ikatwe kupinga kuachiliwa huru. (Tazama upande wa Kukata Rufaa hapa chini kwa ufahamu zaidi)

### **Kesi ya Upande wa Kupinga Mashitaka/Kujitetea**

Mahakama ikiamua kuwa una kesi ya kujibu, una haki ya kujitetea na kuita mashahidi. Mpangilio ni sawia na ule wa upande wa mashitaka (tazama “Kesi ya Upande wa Mashitaka” hapa juu). Utauliza maswali wakati wa uchunguzi na baada ya hayo upande wa mashitaka una nafasi ya kukuhoji. Pia utakuwa na nafasi ya kuchunguza tena. Hata ikiwa hautaita mashahidi, mahakama itataka kusikiza matukio ya kosa unalotuhumiwa kufanya kutoka kwako.

### **Kulingana na hali ya Kesi, unaweza kuamua:**

- 1) **Kukimya:** Wakati mwingine, unaweza kukosa la ziada kueleza mahakama. Katika baadhi ya kesi, kueleza mahakama zaidi kwaweza kufanya kujiteteakwako kuwe hafifu. Ikiwa huelezei zaidi, haimaanishi kuwa unakubaliana na upande wa mashitaka. Lakini, mahakama inakusudia uongee.
- 2) **Kutoa ushahidi bila kula kihapo.** Ukitoa ushahidi bila kula kihapo, hauahidi kusema ukweli. Hili laweza kuwafanya watu wachukulie unayoyasema kama yasiyo ya ukweli.
- 3) **Kutoa ushahidi chini ya kihapo:** Ukitoa ushahidi baada ya kula kihapo, hii inamaanisha kuwa unahaidi kuwa mkweli unapoarifu mahakama na hata unapojibu maswali mahakamani. Lakini, iwapo utahaidi kuwa mkweli na ugunduliwe kuwa mdanganyifu, utapatikana na hatia ya kusema uwongo, kosa ambalo unaweza kuhukumiwa kifungo cha miezi sita gerezeni.



## Kusujudia

Baada ya upande wa mashitaka na ule wa kujitetea kutoa ushahidi wao na kukamilisha kesi zao, kila upande, kuanzia na ule wa mashitaka, una nafasi ya kutoa ushahidi wao kwa ufupi kwa maandishi au kwa kunena. Huku ndiko kusujudia. Upande wa mashitaka utajaribu kufahamisha mahakama kuwa umebaini bila tashwishi yeyote kuwa mshitakiwa amefanya kosa. Wewe, kama upande wa kujitetea, utajaribu kuonyesha kuwa ushahidi uliotolewa dhidi yako hauna nguvu kudhibitisha kuwa una hatia. **Kesi za kihistoria** ambazo zimeamuliwa na mahakama kwa maswala sawia au hatia sawa hutumika kama mifano wakati wa kusujudu ili kushawishi hakimu au jaji kuegemea upande wako.



## HUKUMU

Hukumu ni uamuzi wa mwisho wa hakimu au jaji kuhusu kesi kulingana na maelezo halisi yaliyotolewa mahakamani na sheria inayoambatana.

- Utaambiwa ikiwa umepatikana na hatia au la kwa kosa la jinai ulilotuhumiwa kufanya
- Ikiwa hutapatikana na hatia, utaachiliwa huru.

## MAOMBI YA KUPUNGUZIWA ADHABU

Huku ni kumpa fursa mtu aliyepatwa na hatia kuelezea hali yake na kuomba hakimu au jaji kumpunguzia adhabu.

- Maombi haya hufanyika kabla ya jaji au hakimu hajatoa hukumu
- Kama mtu aliyepatwa na hatia, sharti upewe fursa ya kuomba kupunguziwa adhabu
- Maombi haya hufanyika mara tu unapopatwa na hatia
- Hufai kupinga kuwa huna hatia bali uombe kuhurumiwa
- Hutalazimishwa kunena lolote ikiwa utaamua kutotoa ombi hili.
- Kwa kesi zinazohusu watoto, kwa mujibu wa sheria watoto hawa wanapo fungwa, mahakama lazima izingatie yale yaliyo bora kwa mtoto husika.

**Kuna sababu kadha ambazo mahakama yaweza kuzingatia kufanya uamuzi wa kuhurumia nakutoa kifungo chepesi:**

- Ikiwa hiyo ndiyo mara yako ya kwanza kufanya kosa la jinai
- Ikiwa wewe ndiwe wa pekee unayetegemegwa/uliyeajiriwa nyumbani
- Ikiwa umejutia kosa lako
- Ikiwa hukuifaamu sheria kuhusu kosa lako

- Kosa lilikuwa la kiufundi
- Kuna mambo kando na uwezo wako kama, kulazimishwa, kutishwa, ama ulevi wakati ulipokuwa ukifanya kosa la jinai ambayo yalikusukuma hivi kwamba hungeweza kuyazuia

## KIFUNGO

Kifungo ni adhabu inayotolewa kwa kosa la jinai lililofanywa. Kwa mujibu wa sheria, kuna aina za vifungo kwa makosa tofauti na jaji au hakimumu sharti azingatie masharti haya.

### Aina za vifungo:

1. Mahakama inakupa fursa ya kwenda nyumbani ikiwa utahaidi kuzingatia masharti na ikiwa hutafanya kosa lolote la jinai au ikiwa hutaroka mahali hapo. Utapatiwa afisa wamajaribio na ni sharti ushirikiane na afisa huyo na kuzingatia mwelekeo atakaokupa la sivyo utapewa kifungo kikali.
2. **Amri ya Kufanya kazi kwa jamii** yaweza kutolewa dhidi yako ili ufanye kazi kama za usafi, kuokota takataka katika jamii kwa muda fulani. Kifungo hiki kinastahili waliopatwa na hatia ya makosa madogo madogo ya jinai
3. **Faini** ni amri ya mahakama inayokuitaji kulipa kiwango fulani cha pesa kama adhabu. Mahakama yaweza kuamuru faini hiyo iwe fidia kwa mhadhiriwa wa kesi. Usipolipa, utatiwa gerezeni hadi ufanye malipo.

Katika kesi za wizi au unyanganyi naikiwa ulichukua mali ya mhadhiriwa, utaamrisha kurudisha mali hayo kwa serikali ambayo itampa mhadhiriwa.

4. **Kifungo gerezeni** dhidi yako chaweza kuwa cha muda fulani au cha maisha. Kwa mujibu wa sheria, kuna muda usiozidi wa kufungwa gerezeni kwa makosa ya jinai fulani. Ni uamuzi wa hakimumu au jaji ikiwa utapewa kifungo hicho kisichozidi au la. Kifungo gerezeni chaweza amriwa kikiambatana na faini au faini badala ya kifungo gerezeni.

Kulingana na sheria ya bunge kuhusu watoto ya mwaka wa 2001, watoto waliopatwa na hatia na wenye umri chini ya miaka 16 hupelekwa katika shule ya urekebishaji ambayo hutoa mafunzo ya kielimu, kiufundi na ukulima. Kulingana na hali ya kesi, mahakama sharti iamue ikiwa ni chaguo bora kwa mtoto huyo.

## Vifungo Gerezani

### Kutumikia vifungo tofauti kwa wakati mmoja na vifungo mtawalia

Unaposhitakiwa na zaidi ya kosa moja katika kesi moja au unapopatikana na hatia na kuhukumiwa kwa makosa tofauti, vifungo tofauti kwa wakati mmoja au vifungo mtawalia hutolewa.

- **Vifungo tofauti kwa wakati mmoja.** Kwa mfano, ikiwa kifungo cha kwanza ni cha miaka 5 na cha pili ni cha miaka 7, kwa jumla vifungo hivi vyote ni vya miaka 7.
- **Kifungo mtawalia** ni kile ambacho unatumikiakifungo kimoja baada ya kingine, na kwa jumla utakuwa umetumikia vifungo vyote. Kwa mfano, ukihukumiwa kifungo cha miaka 7 kwa shitaka moja na kifungo cha miaka 10 kwa shitaka la pili, utatumikia kifungo cha jumla ya miaka 17 gerezani.

## Msamaha

Msamaha hutolewa kufupisha muda wa kifungo kutokana na maadhilifu mema.

- Kwa mujibu wa sheria ya bunge ya magereza, yeyote aliyehukumiwa ana haki ya msamaha kwa kiwango cha thuluthi ya kifungo chake gerezani. Kwa mfano, yeyote aliyehukumiwa kwa miaka 9 anaweza kutumikia miaka 6 pekee gerezani.
- Ili uwe na haki ya msamaha, sharti uwe unatumikia kifungo zaidi ya mwezi 1 na sharti uwe tayari umetumikia zaidi ya mwezi mmoja.
- Ikiwa utakosa ukiwa gerezani, unaweza kupoteza haki yako ya msamaha. Ingawa, utapewa haki ya kusikizwa kabla ya kupoteza haki hii.

- Ukipatikana na hatia kwa makosa fulani ambayo yana hukumu ya kifungo cha maisha gerezani (mauaji, wizi wa kimabavu nakadhalika) au ukifungwa gerezani kwa hiari ya Rais, hutakuwa na haki ya msamaha.

## **Kutangua Kifungo**

Hii ni ile hali ambayo mahakama inachelewesha kutoa hukumu ya kifungo. Hili hufanyika ikiwa mahakama inangoja uamuzi kutoka kwa mahakama nyingine kuhusu rufaa iliyokatwa (tazama sehemu ya rufaa hapa chini). Ikiwa rufaa itatupiliwa mbali, hukumu ya kifungo halisia itanza na utatumikia kifungo chote. Mahakama haitajumlisha muda ambao kifungo kilikuwa kimetanguliwa kama muda wa kifungo ulichotumikia.

## **Hukumu ya Kifungo cha Mashaushi (Corporal)**

Hukumu ya kifungo hichi ni ya kuchapwa kwenye sehemu za makalio. Hukumu ya kifungo cha mashaushi kimefutuliwa mbali na sheria za Kenya za hivi punde.

## **Kazi Ngumu**

Kuna baadhi ya hali, mahakama yaweza kuamuru kuwa - mbali na muda wa kutumikia kifungo gerezani, lazima ufanye kazi ngumu. Hili kwa kawaida hufanyika mahakama inapohisi kuwa kifungo chako chafaa kuwa zaidi ya hukumu iliyotolewa na sheria, haswa ikiwa kitendo chako kilikuwa cha kinyama au cha machukizo.

## **Hukumu ya Kifo**

Unaposhitakiwa na kupatikana na hatia ya mauaji, kuasi nchi, wizi wa kimabavu au kujaribu kuiba kimabavu, mahakama yaweza kuamuru uhukumiwe kifo.

- Kwa mujibu wa sheria za Kenya, jinsi ya kuwezesha hukumu hii ni kunyongwa shingoni hadi kufa
- Hukumu ya kifo haiwezi kuamrisha dhidi ya mtu aliye na umri chini ya miaka 18 wakati wa tendo la kosa la jinai.
- Hukumu ya kifo haiwezi kutolewa kwa mama mja mzito



- Tangu mwaka wa 1987, serikali ya Kenya haijawahi kutekeleza hukumu ya kifo kupitia kwa mahakama. Kenya imetia sahihi makubaliano ya kusitisha kwa muda kifungo cha hukumu ya kifo, ingawa idadi ya wanaohukumiwa kifo inazidi kuongezeka.
- Sharti Rais atie sahihi kibali cha kutekeleza hukumu ya kifo ndiposa hukumu hiyo itekelezwe.
- Rais ana mamlaka ya kukusamehe au kukupunguzia hukumu ya kifo na anaweza kuamuru uachiliwe au abadilishe hukumu ya kifo hadi ile ya maisha.

## RUFAA

Ukipatikana na hatia ya kosa la jinai, una haki ya kukata rufaa dhidi ya uamuzi kuwa una hatia au dhidi ya hukumu iliyotolewa. Ukikubali mashitaka, unaweza kukata rufaa kuhusu hukumu iliyotolewa, bali sio uamuzi kuwa una hatia.

- **Jinsi ya Kukata Rufaa**

- Una muda wa **usiku 14 baada ya uamuzi kutolewa kuwa una hatia** wa kukata rufaa. Usipokata rufaa kwa muda huu, itakulazimu kuipa mahakama sababu zitakazoshawishi ukieleza ni kwa nini hukukata rufaa. La sivyo rufaa yako haitakubaliwa mahakamani.
- Ikiwa utakosa feda za kukata rufaa, uneweza kukata rufaa kama **Kibapara**.
- Sharti utayarishe **Uombi wa Kukata Rufaa**. Stakabadhi hizi hutaja sababu za kukata rufaa. Hakikisha kuwa sababu zote umeziweka mle ndani, kwa kuwa zile zilizotajwa pekee ndizo zitakazozungumziwa wakati rufaa itakaposikizwa.
- Hakikisha kuwa uombi huo unajumlisha mashitaka dhidi yako, hatua za kesi mahakamani na uamuzi wa mahakama.
- Ikiwa upo gerezani, afisa wa zamu katika gereza hilo anaweza kukusaidia kukata rufaa kupitia kwa afisi ya usajili wa mahakama.

- **Mahakama za rufaa**

- Ikiwa umepatwa na hatia na hakimu katika mahakama za chini, utakata rufaa kwa mahakama kuu
- Ikiwa umepatwa na hatia na mahakama kuu, utakata rufaa kwa mahakama ya rufaa
- Kwa mujibu wa Katiba ya Kenya, unaweza kukata rufaa

kwa mahakama ya juu zaidi ikiwa ni jambo lenye umuhimu na linalohusu umma kwa jumla.

- Huwezi kukata rufaa zaidi ya hapa.

- **Kusikizwa kwa Rufaa**

- Mashahidi hawahusiki katika kusikizwa kwa rufaa. Ushahidi wa awali unapitiwa na hoja zako na za upande wa mashitaka zinasikizwa. Ushahidi mpya unaweza kubalika ikiwa mahakama itaonelea kuwa ni wa muhimu.
- Mahakama itatoa uamuzi kuwa;
  - Inakubaliana kuwa una hatia na itekeleze uamuzi huo, au
  - Huna hatia na ivutilie mbali uamuzi wa kupatikana na hatia
  - Inapunguza, kuongeza au kubadili hukumu dhidi yako
  - Inaamuru kesi yako isikizwe upya

- **Rufaa za waliopatwa na hatia lakini wasio na akili timamu**

- Ukipatikana na hatia lakini huna akili timamu, unaweza kuzuiliwa bila kupewa tarehe ya kuachiliwa. Hii ni kumaanisha kuwa unaweza kuzuiliwa kwa muda mrefu, au milele. Huwezi kuachiliwa hadi dakitari atangaze kuwa hali yako ni njema.
- Unaweza kukata rufaa dhidi ya uamuzi kuwa huna akili timamu, hivi kwamba upewe tarehe ya hakika ya kuachiliwa.

- **Dhamana unaposubiri Rufaa**

- Iwapo umepatikana na hatia na unakata rufaa, unaweza kuomba uachiliwe kwa dhamana ukingoja kusikizwa kwa rufaa



- Ikiwa mahakama za chini hazitakuachilia kwa dhamana, unaweza kupeleka ombi lako kwa mahakama ya juu.
- Kuachiliwa kwa dhamana kunategemea ikiwa kuna uwezekano kuwa utapatikana kuwa hauna hatia rufaa itakaposikizwa. Ikiwa kuna uwezekano kuwa utapatikana na hatia, au mahakama imewahi kukataa kukuachilia kwa dhamana hapo awali, utanyimwa dhamana kwa woga kuwa utatoroka.

## MAWAIDHAYAKUJIWAKILISHAMAHAKAMANI

- **Onyesha hisia nzuri.** Kuwa ndani ya mavazi safina yaliyo nadhifu. Hii itaonyesha mahakama kuwa unahieshimu na unajali kuhusu kesi yako
- **Kuwa mwenye heshima.** Heshimu kila mmoja aliye mahakamani. Usikatize hakimu/jaji anapozungumza. Unachokifanya ni muhimu sawia na unavyoonekana
- **Fika mahakamani mapema.** Ikiwa kesi yako inasikizwa wakati wa asubuhi, fika mahakamani kabla ya saa mbili za asubuhi. Ikiwa kesi yako inasikizwa wakati wa alasiri, fika mahakamani kabla ya saa nane za alasiri. Fahamisha Karani wa mahakama kuwa umewasili. Ukichelewa, kesi yako itahairishwa au itupiliwe mbali. Ukikosa kufika mahakani, unaweza kupigwa faini au ufungwe gereza.
- **Fahamu unalotaka kuuliza.** Uliza wafanyakazi wa mahakama kuhusu utaratibu na aina ya ujumbe wa kujaza katika fomu. Hawatakuambia unachotakikana kuandika katika fomu wala utakachosema kesi itakaposikizwa. Usaidizi huu unaweza kuupata kwawakili au mwanasheria.
- **Jiandae kabla ya kuja mahakamani.** Hakikisha kuwa una stakabadhi zote kesi inaposikizwana uje na nakala zinazohitajika. Wakumbushe mashahidi wako waje mahakamani kwa wakati unaostahili. Hakikisha kuwa umekuja mahakamani namashahidi wako na wawe tayari kutoa ashahidi wao. Nukuu maswali unayokusudia kuuliza na uyapitie na mashahidi wako kabla ya kesi kusikizwa.
- **Usiwaleta watoto wako mahakamani.** Mahakama

hazina vituo vya kulelea watoto. Watoto hawastahili kuachwa bila kushughulikiwa. Watoto hawatakubaliwa kuwa mahakamani isipokuwa wakati wanahitajika kutoa ushahidi.

- **Subiri hadi hakim/jaji amenena nawe ndiposa uongee.**

Hutubia watu mahakamani ukitumia majina yao ya mwisho na vyeo vyao (kwa mfano, Bwana Kamau, Bi Wanjiku). Katika mahakama za chini, mwite hakim “Mheshimiwa”. Katika mahakama za juu, tumia “Bwana” au “Bi”.

- **Nena ukweli.**