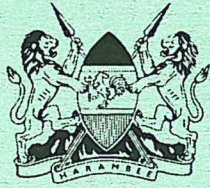


SPECIAL ISSUE

Kenya Gazette Supplement No. 22 (National Assembly Bills No. 10)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2017

NAIROBI, 3rd March, 2017

CONTENT

Bill for Introduction into the National Assembly—

PAGE

The Elections Laws (Amendment) Bill, 2017..... 255

**THE ELECTIONS LAWS (AMENDMENT) BILL,
2017**

A Bill for

AN ACT of Parliament to amend the Elections Act, 2011, the Political Parties Act, 2011 and the National Council for Law Reporting Act, 1994

ENACTED by the Parliament of Kenya, as follows—

- | | |
|---|---|
| <p>1. This Act may be cited as the Elections Laws (Amendment) Act, 2017</p> | <p>Short title</p> |
| <p>2. Section 75 of the Elections Act, No. 24 of 2011, is amended by inserting the following new sub-section immediately after sub-section (4) —</p> <p>(4A) An appeal under this section shall be final.</p> | <p>Amendment of section 75 of No. 24 of 2011.</p> |
| <p>3. Section 76 of the Elections Act, No. 24 of 2011 is amended by inserting the following new sub-sections immediately after sub-section 5—</p> <p>(5A) A petition concerning the allocation of party list seats pursuant to Article 90 of the Constitution shall lie to the High Court but on matters of law only.</p> <p>(5B) An appeal from a decision of the High Court under sub-section (5A) shall lie to the Court of Appeal on points of law only and the decision of the Court of Appeal shall be final.</p> | <p>Amendment of section 76 of No. 24 of 2011.</p> |
| <p>4. Section 85A of the Elections Act, No. 24 of 2011, is amended by inserting the following new sub-section immediately after sub-section (2)—</p> <p>(2A) An appeal under this section shall be final.</p> | <p>Amendment of section 85A of No. 24 of 2011</p> |
| <p>5. Section 96 of the Elections Act, No. 24 of 2011, is amended by inserting the phrase “and Resident Magistrate’s Court” immediately after the words “High Court”.</p> | <p>Amendment of section 96 of No. 24 of 2011</p> |
| <p>6. Section 39 of the Political Parties Act, No. 11 of 2011 is amended in subsection (2) by deleting the words “five years” appearing in paragraph (b) and substituting therefor the words “at least ten years”.</p> | <p>Amendment of section 39 of No. 11 of 2011</p> |

7. The Political Parties Act, No. 11 of 2011, is amended by inserting the following new section immediately after section 39—

Insertion of new section 39A in No. 11 of 2011

Appointment of ad hoc members of the Tribunal

39A. (1) The Judicial Service Commission may, from time to time, appoint not more than twenty five additional ad hoc members of the Tribunal as the volume of work at the time may demand.

(2) Despite section 39(4), the additional ad hoc members of the Tribunal appointed under sub-section (1) shall serve for a period not exceeding three months but are eligible for re-appointment.

(3) The qualifications for appointment as ad hoc members of the Tribunal is the same as the qualifications for appointment under section 39 but the Judicial Service Commission shall ensure that at least half of the members of the Tribunal appointed under this section are advocates of the High Court of at least ten years standing.

(4) For purposes of determining quorum under section 39(7), a sitting of the Tribunal shall have at least one of the members appointed under section 39(2).

8. Section 40 of the Political Parties Act, No. 11 of 2011, is amended in sub-section(2) by deleting the words “paragraphs (a), (b), (c) or (e)” and substituting therefor the words “paragraphs (a), (b), (c), (e) or (fa).”

Amendment of section 40 of No. 11 of 2011

9. Section 41 of the Political Parties Act, No. 11 of 2011, is amended by deleting sub-section (2) and substituting therefor the following new sub-section—

Amendment of section 41 of No. 11 of 2011

(2) An appeal from the decision of the Tribunal shall lie to the High Court and the decision of the High Court shall be final.

10. Section 2 of the National Council for Law Reporting Act, No. 11 of 1994, is amended by inserting the following new sub-section immediately after sub-section (3)—

Amendment of section 2 of No. 11 of 1994.

(4) The Council is a body under the judicial arm of government.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of this Bill is to amend the Elections Act, No. 25 of 2011 to provide for elections petitions appeals generally, including setting timelines for filing and determination of appeals and introducing a new requirement that only one appeal may be allowed in an election petition.

The Bill proposes a new section 39A to be inserted in the Political Parties Act, No. 11 of 2011 in order to provide for appointment of additional *ad hoc* members of the Political Parties Disputes Tribunal to enable the Tribunal to effectively and expeditiously deal with the many disputes which may arise during the party primaries and nomination of candidates for the 2017 general elections. The quorum of the Tribunal is deliberately retained at three members as it currently obtains to enable the Tribunal sit in panels each of which shall the power to make valid decisions.

The Bill also proposes to amend the National Council for Law Reporting Act, No. No. 11 of 1994 to clarify that the Council is established to operate and be administered under the judicial arm of government.

Clause 2 of the Bill proposes to insert a new sub-section (4A) in section 75 of the Elections Act, No. 24 of 2011 providing that election petitions appeals filed in the High Court under the section shall be final and no further appeals shall be allowed.

Clause 3 of the Bill proposes to insert new sub-sections (5A) and (5B) in section 76 of the Elections Act, No. 24 of 2011 providing, respectively, that-

- (a) a petition concerning the allocation of party list seats pursuant to Article 90 of the Constitution shall lie to the High Court but on matters of law only;
- (b) an appeal from a decision of the High Court under sub-section (5A) shall lie to the Court of Appeal on points of law only and the decision of the Court of Appeal shall be final.

Clause 4 of the Bill seeks to amend section 85A of the Elections Act, No 24 of 2011, to provide that appeals to the Court of Appeal under that section shall be final.

Clause 5 of the Bill seeks to amend section 96 of the Elections Act, No 24 of 2011, to empower the Rules Committee to make rules generally

to regulate the practise and procedure in the Resident Magistrate's Courts, in addition to the High Court.

Clause 6 of the Bill seeks to amend section 39 of the Political Parties Act, No. 11 of 2011 in order to increase the minimum years an advocate should have practised before qualifying to be a member of the Tribunal from five to ten years.

Clause 7 of the Bill seeks to insert a new section 39A in the Political Parties Act, No. 11 of 2011 to provide for the appointment of not more than twenty five *ad hoc* additional members of the Political Parties Disputes Tribunal by the Judicial Service Commission.

Clause 8 of the Bill seeks to amend section 40(2) of the Political Parties Act, No. 11 of 2011 to empower the Political Parties Disputes Tribunal to determine disputes emanating from party primaries.

Clause 9 of the Bill seeks to amend section 41(2) of the Political Parties Act, No. 11 of 2011 to provide that an appeal from the decision of the Tribunal shall lie to the High Court and the decision of the High Court shall be final.

Clause 10 of the Bill seeks to amend section 2 of the National Council for Law Reporting Act, No. 11 of 1994 to clarify that the National Council for Law Reporting is established to operate and be administered under the judicial arm of government.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers or limit fundamental rights and freedoms.

Statement on whether the Bill concerns county governments

The Bill contains provisions relating to the election of members of a county assembly and as such it is a Bill concerning county governments as contemplated in Article 110 of the Constitution.

Statement on the financial implications of the Bill

The enactment of this Bill may occasion additional expenditure of public funds.

Dated the 21st February, 2017.

SAMUEL CHEPKONGA,
Chairperson,
Committee on Justice and Legal Affairs.

Section 75 of No. 24 of 2011 which it is proposed to amend—

75. (1) A question as to validity of a election of a county governor shall be determined by High Court within the county or nearest to the county.

County election
petition

(1A) A question as to the validity of the election of a member of a county assembly shall be heard and determined by the Resident Magistrate's Court designated by the Chief Justice.

(2) A question under subsection (1) shall be heard and determined within six months of the date of lodging the petition.

(3) In any proceeding brought under this section, a court may grant appropriate relief, including—

- (a) a declaration of whether or not the candidate whose election is questioned was validly elected;
- (b) a declaration of which candidate was validly elected; or
- (c) an order as to whether a fresh election will be held or not.

(4) An appeal under subsection (1A) shall lie to the High Court on matters of law only and shall be—

- (a) filed within thirty days of the decision of the Magistrate's Court; and
- (b) heard and determined within six months from the date of filing of the appeal.

Section 76 of No. 24 of 2011 which it is proposed to amend—

(1) A petition—

Presentation of
petitions

- (a) to question the validity of an election shall be filed within twenty eight days after the date of declaration of the results of the election and served within fifteen days of presentation;
- (b) to seek a declaration that a seat in Parliament or a county assembly has not become vacant shall be presented within twenty-eight days after the date of publication of the notification of the vacancy by the relevant Speaker; or

(c) to seek a declaration that a seat in Parliament or a county assembly has become vacant may be presented at any time.

(2) A petition questioning a return or an election upon the ground of a corrupt practice, and specifically alleging a payment of money or other act to have been made or done since the date aforesaid by the person whose election is questioned or by an agent of that person or with the privity of that person or his agent may, so far as respects the corrupt practice, be filed at any time within twenty-eight days after the publication of the election results in the *Gazette*.

(3) A petition questioning a return or an election upon an allegation of an illegal practice and alleging a payment of money or other act to have been made or done since the date aforesaid by the person whose election is questioned, or by an agent of that person, or with the privity of that person or his election agent in pursuance or in furtherance of the illegal practice alleged in the petition, may, so far as respects the illegal practice, be filed at any time within twenty-eight days after the publication of the election results in the *Gazette*.

(4) A petition filed in time may, for the purpose of questioning a return or an election upon an allegation of an election offence, be amended with the leave of the election court within the time within which the petition questioning the return or the election upon that ground may be presented.

(5) A petition filed in respect of the matters set out in subsections (2) and (3) may, where a petition has already been presented on other grounds, be presented as a supplemental petition.

Section 85A of No. 24 of 2011 which it is proposed to amend—

85A. (1) An appeal from the High Court in an election petition concerning membership of the National Assembly, Senate or the office of county governor shall lie to the Court of Appeal on matters of law only and shall be—

Appeals to the
Court of Appeal

- (a) filed within thirty days of the decisions of the High Court; and
- (b) heard and determined within six months of the filing of the appeal.

(2) An appeal under subsection (1) shall act as a stay of the certificate of the election court certifying the results of an election until the appeal is heard and determined.

Section 96 (1) of No. 24 of 2011 which it is proposed to amend—

96. (1) Subject to the provisions of section 98, the Rules Committee as constituted under the Civil Procedure Act (Cap. 21), may make rules generally to regulate the practice and procedure of the High Court with respect to the filing and trial of election and referendum petitions, including rules—

Practice
procedure and
security for costs

(a) specifying—

(i) the time within which any requirement of the rules is to be complied with;

(ii) the costs of and incidental to the filing and the trial of an election and referendum petition; and

(iii) the fees to be charged in respect of proceedings of an election and referendum petition; and

(b) generally with regard to any other matter relating to an election and referendum petition as the Chief Justice may deem necessary.

Section 39 of No. 11 of 2011 which it is proposed to amend—

(1) There is established a Tribunal to be known as the Political Parties Disputes Tribunal.

Establishment of
Tribunal

(2) The Tribunal shall consist of the following members, appointed by the Judicial Service Commission—

(a) a Chairperson who shall be a person qualified to be appointed a judge of the High Court; and

(b) four other members one of whom shall be an advocate of the High Court of five years standing.

(3) The Chairperson and members of the Tribunal shall serve on part-time basis.

(4) The Chairperson and the members shall hold office for a non-renewable term of six years.

(5) A person shall not be qualified to be appointed as a member of the Tribunal if that person is a member of the

public service or takes an active part in the activities of a political party.

(6) A person shall not qualify for appointment under this section unless the person has met the requirement of Chapter Six of the Constitution.

(7) The quorum of the Tribunal shall be three members one of whom shall be an advocate.

Section 40 of No. 11 of 2011 which it is proposed to amend—

40. (1) The Tribunal shall determine—

Jurisdiction of
Tribunal

- (a) disputes between the members of a political party;
 - (b) disputes between a member of a political party and a political party;
 - (c) disputes between political parties;
 - (d) disputes between an independent candidate and a political party;
 - (e) disputes between coalition partners; and
 - (f) appeals from decisions of the Registrar under this Act.
- (fa) disputes arising out of party primaries

(2) Notwithstanding subsection (1), the Tribunal shall not hear or determine a dispute under paragraphs (a), (b), (c) or (e) unless the dispute has been heard and determined by the internal political party dispute resolution mechanisms.

Section 41 of No. 11 of 2011 which it is proposed to amend—

(1) The Tribunal shall determine any dispute before it expeditiously, but in any case shall determine a dispute within a period of three months from the date the dispute is lodged.

Determination of
disputes

(2) An Appeal shall lie from the decision of the Tribunal to the High Court on points of law and facts and on points of law to both the Court of Appeal and the Supreme Court.

(3) A decision of the Tribunal shall be enforced in the same manner as a decision of a Magistrates Court.