

SPECIAL ISSUE

Kenya Gazette Supplement No. 3 (National Assembly Bills No. 2)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2015

NAIROBI, 9th January, 2015

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PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI

**THE CONSTITUTION OF KENYA (AMENDMENT)
(NO. 2) BILL, 2015**

A Bill for

**AN ACT of Parliament to amend the Constitution
of Kenya**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Constitution of Kenya (Amendment) (No. 2) Act, 2015.

Short title.

2. The Constitution of Kenya is amended in Article 117 by inserting a new clause immediately after clause (1) as follows—

Amendment of Article 117 of the Constitution of Kenya.

(1A) A member of Parliament is not liable in an action or suit in respect of anything done or omitted to be done in good faith in the lawful performance of a function of Parliament.

3. Article 165 of the Constitution of Kenya is amended—

Amendment of Article 165 of the Constitution of Kenya.

(a) in clause (5) by inserting the following new paragraph immediately after paragraph (b)—

(c) falling within the functions of Parliament, either of its Houses or a county assembly as provided for in this Constitution in so far as those matters are pending or undergoing consideration before Parliament, either of its Houses or a county assembly.

(b) in clause (6) by inserting the words “, Parliament, either of its Houses or a county assembly” immediately after the words “superior courts”.

4. Article 196 of the Constitution of Kenya is amended by inserting a new clause immediately after clause (2) as follows—

Amendment of Article 196 of the Constitution of Kenya.

(2A) A member of a county assembly is not liable in an action or suit in respect of anything done or omitted to be done in good faith in the lawful performance of a function of a county assembly.

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to amend the Constitution of Kenya so as to prohibit the Courts from interfering with matters pending consideration or being proceeded with before Parliament, the County Assemblies or any of their Committees in line with international practice where courts only intervene after Parliament has executed its mandate. Indeed, it is only in Kenya where this sorry state of judicial curtailment of parliamentary functions exists thus severely threatening the exercise of the sovereign will of the people through their democratically elected representatives.

These amendments are intended to entrench the governance ideal of separation of powers in the functions and functioning of the arms of government and to limit interference by the respective organs of government in the internal functions of each other as may be mandated by the Constitution. While the amendments preclude the courts from interfering in the proceedings of Parliament and the County Assemblies mandated by the Constitution the amendments by implication recognize the court's jurisdiction to determine constitutionality of legislations made by Parliament and the County Assemblies.

In public law, Parliament and the High Court are equal and co-ordinate organs of government exercising separate constitutional functions. Therefore the High Court enjoys no supervisory powers over Parliament but its powers are limited to determining the constitutionality of laws made by Parliament.

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

Dated the 22nd May, 2014.

GEORGE KALUMA,
Member of Parliament.

Article 117 of the Constitution of Kenya which it is proposed to amend—

117. (1) There shall be freedom of speech and debate in Parliament

(2) Parliament may, for the purpose of the orderly and effective discharge of the business of Parliament, provide for the powers, privileges and immunities of Parliament, its committees, the leader of the majority party, the leader of the minority party, the chairpersons of committees and members.

Article 165 of the Constitution of Kenya it is proposed to amend—

165. (1) There is established the High Court, which—

- (a) shall consist of the number of judges prescribed by an Act of Parliament; and
- (b) shall be organised and administered in the manner prescribed by an Act of Parliament.

(2) There shall be a Principal Judge of the High Court, who shall be elected by the judges of the High Court from among themselves.

(3) Subject to clause (5), the High Court shall have—

- (a) unlimited original jurisdiction in criminal and civil matters;
- (b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
- (c) jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;
- (d) jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of—

- (i) the question whether any law is inconsistent with or in contravention of this Constitution;
- (ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;
- (iii) any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and
- (iv) a question relating to conflict of laws under Article 191; and
- (e) any other jurisdiction, original or appellate, conferred on it by legislation.

(4) Any matter certified by the court as raising a substantial question of law under clause (3) (b) or (d) shall be heard by an uneven number of judges, being not less than three, assigned by the Chief Justice.

(5) The High Court shall not have jurisdiction in respect of matters—

- (a) reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or
- (b) falling within the jurisdiction of the courts contemplated in Article 162 (2).

(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

Article 196 of the Constitution of Kenya which it is proposed to amend—

196. (1) A county assembly shall—

- (a) conduct its business in an open manner, and hold its sittings and those of its committees, in public; and
- (b) facilitate public participation and involvement in the legislative and other business of the assembly and its committees.

(2) A county assembly may not exclude the public, or any media, from any sitting unless in exceptional circumstances the speaker has determined that there are justifiable reasons for doing so.

(3) Parliament shall enact legislation providing for the powers, privileges and immunities of county assemblies, their committees and members.