

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 26 (National Assembly Bills No. 10)*



REPUBLIC OF KENYA

***KENYA GAZETTE SUPPLEMENT***

**NATIONAL ASSEMBLY BILLS, 2015**

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**NAIROBI, 13th March, 2015**

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**THE FAIR ADMINISTRATIVE ACTION BILL, 2015****A Bill for****AN ACT of Parliament to give effect to Article 47 of the Constitution, and for connected purposes****ENACTED** by the Parliament of Kenya, as follows—**PART I—PRELIMINARY**

1. This Act may be cited as the Fair Administrative Action Act, 2015.

Short title.

2. In this Act, unless the context otherwise requires—

Interpretation.

“administrative action” includes the powers, authorities and duties exercised by public authorities or judicial or quasi-judicial tribunals in the course of administration, or any act, omission or decision of an executive authority that affects the legal rights or interests of any person to whom such action relates;

“administrator” means a State organ or any natural or juristic person taking administrative action;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for the administration of justice;

“decision” means any administrative or quasi-judicial decision of an administrative nature made, proposed to be made, or required to be made, as the case may be, under any written law;

“disciplined forces” includes—

- (a) the Kenya Defence Forces;
- (b) the National Intelligence Service;
- (c) the National Police Service;
- (d) the Kenya Prisons Service;
- (e) the Kenya Wildlife Service;
- (f) the Kenya Forest Service;
- (g) the National Youth Service; and
- (h) any other organisation related to security which is established by an Act of Parliament;

“empowering provision” means a law, a rule of common law, customary law, or an agreement, instrument or other document in terms of which an administrative action was purportedly taken;

“failure”, in relation to the taking of a decision, includes a refusal to take the decision;

“state organ” has the meaning assigned to it under Article 260 of the Constitution;

“tribunal” means any independent and impartial tribunal established under any written law for the purpose of reviewing administrative action.

## PART II—FAIR ADMINISTRATIVE ACTION

3. (1) This Act applies to all state and non-state agencies, including any persons exercising administrative authority, judicial or quasi-judicial function under the Constitution or any written law.

Application.

(2) Notwithstanding subsection (1), this Act shall not apply to the disciplined forces.

4. (1) Any administrative action shall be undertaken in an expeditious, efficient, lawful, reasonable and procedurally fair manner.

Administrative action to be expeditious, efficient, lawful, reasonable and procedurally fair.

(2) In any case which adversely affects or is likely to affect the right or fundamental freedom of any person the administrator shall for purposes of subsection (1), give a person affected by a decision—

- (a) adequate notice of the nature and purpose of the proposed administrative action;
  - (b) a reasonable opportunity to make representations in that regard;
  - (c) adequate notice of any right of review or internal appeal, where applicable; and
  - (d) a statement of the right to request reasons pursuant to section 6.
- (3) In order to give effect to the right to fair administrative action, an administrator shall accord the person referred to in subsection (1) an opportunity to—
- (a) appear in person, whether alone or in the company of any person or intermediary of their choice, other than a legal representative.
  - (b) state his or her case in answer to any matter in question.

6. (1) Every person materially or adversely affected by any administrative action may, pursuant to Article 35 of the Constitution, or any written law relating to freedom of information, require the administrator to supply him or her with such information as may be necessary to facilitate his or her application for an appeal or review in accordance with section 5.

Request for reasons for administrative action.

(2) The information referred to in subsection (1), may include—

- (a) the reasons for which the action was taken; and
- (b) any relevant documents relating to the matter.

7. (1) In order to promote an efficient administration, the Cabinet Secretary may, at the request of an administrator, by notice in the Gazette publish a list specifying any administrative action or group or class of administrative actions in respect of which it shall be mandatory to furnish reasons to a person whose rights are adversely affected by such action, whether or not a request is made under section 6.

Mandatory notice of reasons.

(2) The Cabinet Secretary shall, within fourteen days after the receipt of a request referred to in subsection (1) and at the cost of the relevant administrator, publish such list, as provided for in that subsection.

### PART III— JUDICIAL REVIEW

8. (1) Any person may apply for review of any administrative action to the High Court in exercise of the Court's supervisory jurisdiction under Article 165 (7) of the Constitution.

Institution of proceedings.

(2) Notwithstanding sub-section (1), any person aggrieved by a decision of an administrator may apply for review of any administrative action by a competent court or tribunal in exercise of its jurisdiction conferred in that regard under any written law in accordance with article 47 (3) of the Constitution.

(3) A court or tribunal or competent authority may review an administrative action if—

- (a) the administrator who made the decision—
  - (i) was not authorised to do so by the empowering provision;

- (ii) acted in excess of jurisdiction or power conferred under any written law;
  - (iii) acted pursuant to power delegated to it in contravention of any law prohibiting such delegation; or
  - (iv) was biased or may reasonably be suspected of bias;
- (b) a mandatory and material procedure or condition prescribed by an empowering provision was not complied with;
  - (c) the action was procedurally unfair;
  - (d) the action was materially influenced by an error of law;
  - (e) the administrative action in issue was taken with an ulterior motive or purpose calculated to prejudice the legal rights of the applicant;
  - (f) the action was taken—
    - (i) for reasons not authorised by the empowering provision; or
    - (ii) for an ulterior purpose or motive;
  - (g) the administrative authority either failed to take into account relevant considerations or took into account irrelevant considerations to the prejudice of the applicant's rights;
  - (h) the administrative authority acted on the direction of a person or body not authorised or empowered by any written law to give such directions;
  - (i) the administrative action was made in bad faith;
  - (j) the administrative action was made without any lawful or reasonable cause;
  - (k) the action itself contravenes a law or is not authorised by the empowering provision;
  - (l) the action is not rationally connected to—
    - (i) the purpose for which it was taken;
    - (ii) the purpose of the empowering provision;

- (iii) the information before the administrator; or
- (iv) the reasons given for it by the administrator;
- (m) there was abdication of duty of discretion, unreasonable delay or failure to act in discharge of a duty imposed under any written law.

(3) The Court or tribunal may entertain an application for judicial review made on the ground of unreasonable delay on the part of the administrative authority to act where it is shown to the satisfaction of the Court that—

- (a) the administrator is under duty to act in relation to the matter in issue;
- (b) the action is required to be undertaken within a period specified under such law;
- (c) the administrative authority has refused, failed or neglected to take action within the prescribed period.

**9.** (1) Any proceedings for judicial review pursuant to section 8 shall be instituted without unreasonable delay and not later than six months after the date of the making of the decision.

Procedure for  
judicial review.

(2) In the interest of justice, the Court or tribunal may for any reasonable cause, extend the time within which an application may be made under this Act.

(3) No court shall review an administrative action under this Act unless the internal mechanisms for appeal or review and all internal remedies available under any written law are first exhausted.

**10.** (1) The procedure specified in section (8) is in addition to and not in derogation from the rules of procedure prescribed under Order 53 of the Civil Procedure Rules.

Rules.

(2) Notwithstanding subsection (1), the Chief Justice may make rules of practice for regulating the procedure and practice of courts and tribunals in matters relating to judicial review of administrative action.

(3) The rules specified in subsection (2) may include rules of procedure and practice in subordinate courts to regulate proceedings to fair administration of justice.



**11. (1)** In proceedings for judicial review pursuant to 8 (1), the court may grant any order that is just and equitable, including an order—

- (a) declaring the rights of the parties in respect of any matter to which the administrative action relates;
- (b) restraining the administrative authority from acting or continuing to act in breach of duty imposed upon it under any written law or from acting or continuing to act in any manner prejudicial to the legal rights of an applicant;
- (c) compelling the administrative authority to refrain from acting in excess of its jurisdiction or from engaging in an activity beyond the scope of its powers;
- (d) to quash an administrative action or decision taken by an administrative authority;
- (e) compelling the performance by an administrative authority of a public duty owed at law and in respect of which the applicant has a legally enforceable right;
- (f) directing the administrator to give reasons or to act in the manner the court directs;
- (g) prohibiting the administrator from acting in a particular manner;
- (h) setting aside the administrative action and remitting the matter for reconsideration by the administrator, with or without directions;
- (i) granting a temporary interdict or other temporary relief; or
- (j) for an award of costs or other pecuniary compensation in appropriate cases.

**(2)** In proceedings for judicial review relating to failure to take an administrative action, the court may grant any order that is just and equitable, including an order—

- (a) directing the taking of the decision;
- (b) declaring the rights of the parties in relation to the taking of the decision;

- (c) directing any of the parties to do, or to refrain from doing , any act or thing the doing, or the refraining from the doing, of which the court or tribunal considers necessary to do justice between the parties ; or
- (d) as to costs.

**PART IV—MISCELLENEOUS**

**12.** The Cabinet Secretary may make regulations for the better carrying out of the provisions of this Act.

Regulations.

**13.** No person shall liable in criminal or civil proceedings for anything done in good faith in the exercise or performance of any power or duty under this Act.

Immunity from liability.

**14.** This Act is in addition to and not in derogation from the general principles of common law and the rules of natural justice.

Principles of common law and rules of natural justice.

**MEMORANDUM OF OBJECTS AND REASONS**

The objective of this Bill is to give effect to the provisions of Article 47 of the Constitution on the right to fair administrative action and the review of such action by a court or an independent tribunal.

**Part II** of the Bill applies its provisions to all persons exercising administrative authority, or a judicial or quasi-judicial function, and requires that all such action be carried out in a procedural and efficient manner. It also provides for the giving of notice to the person likely to be affected by the action and for involvement of the public where the action is likely to affect the public.

The Bill however excludes the disciplined forces, which have their own administrative procedures, from the provisions of the Act.

**Part III** of the Bill provides for judicial review of administrative action by the High Court or by a tribunal, and gives instances in which such action may be reviewed.

**Part IV** of the Bill clarifies that the provisions of the Bill are in addition to the general principles of common law and the rules of natural justice.

This Bill is a Bill concerning county governments for the purposes of Article 110 of the Constitution.

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 12th March, 2015.

ADEN DUALE,  
*Leader of the Majority Party.*