Kenya Gazette Supplement No. 190 (National Assembly Bills No. 79)

REPUBLIC OF KENYA

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KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2019
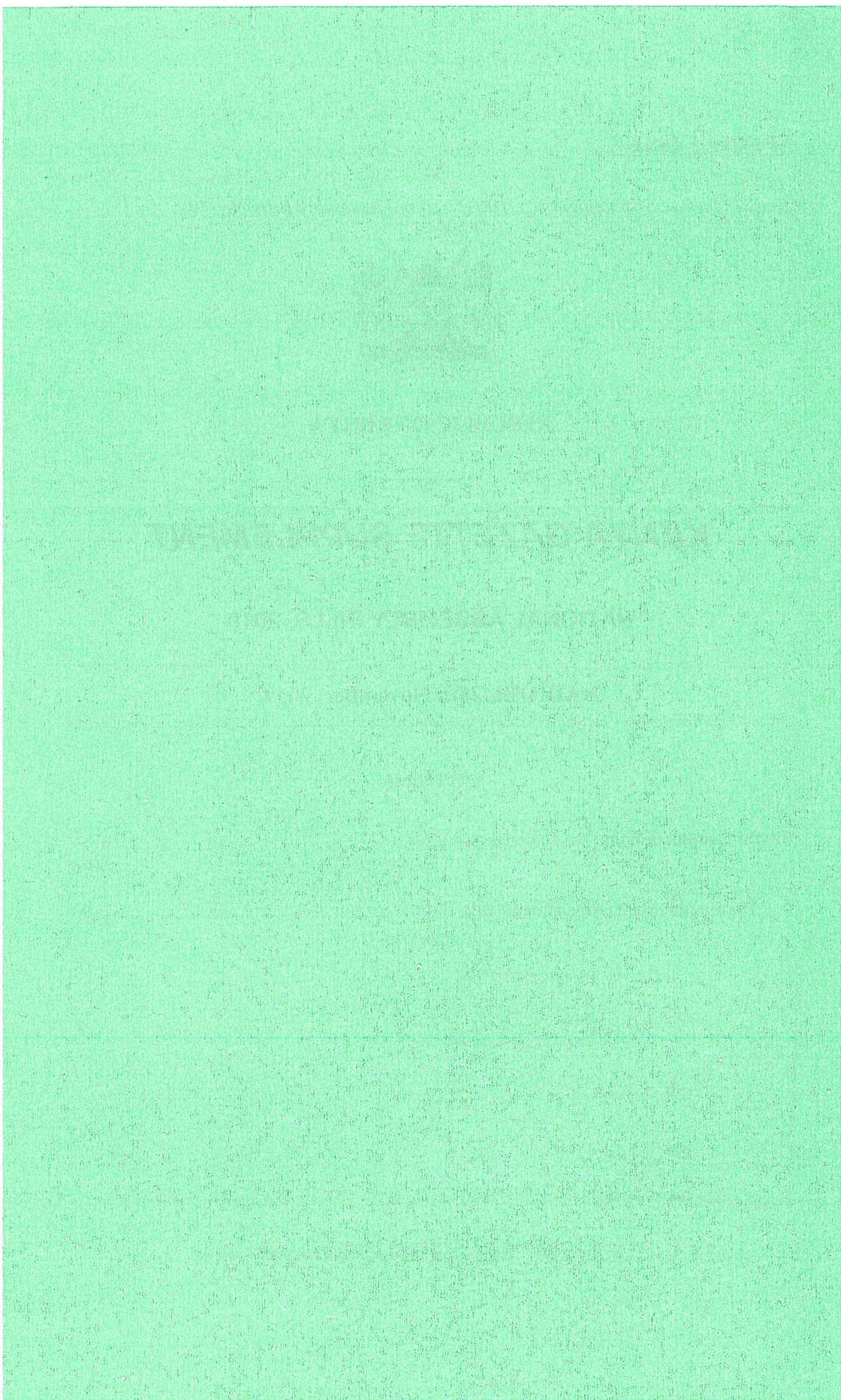
NAIROBI, 25th November, 2019

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THE EMPLOYMENT (AMENDMENT) BILL, 2019

A Bill for

AN ACT of Parliament to amend the Employment Act

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Employment (Amendment) Act, 2019. *Short title.*

2. Section 9 of the Employment Act is amended by inserting the following new subsections immediately after subsection (4)— *Amendment of Section 9 of No. 11 of 2007.*

"(5) In respect to recruitment, an employer shall not require an employee for a contract of service to submit any clearance certificates for which payment is required unless such employer intends to enter into a written contract of service with the employee.

(6) An employer who intends to enter into a written contract of service may, in compliance with chapter Six of the Constitution, request an employee to submit mandatory clearance certificates from the relevant entities.

(7) Notwithstanding subsection (6), an employer may, where an employee does not satisfy the requirements under subsection (6), withdraw an offer of contract of service.

(8) For the purposes of this section—

(a) "employee" includes an applicant for employment;

(b) "employer" includes an employment agency;

(c) "relevant entity" includes any public or private entity that issues clearance certificates for purposes of satisfying requirements under Chapter six of the Constitution."

MEMORANDUM OF OBJECTS AND REASONS

Statement of the objects and reasons of the Bill

The objective of this Bill is to amend Section 9 of the Employment Act in order to mandate an employer to carry out background checks on prospective employees upon granting an offer of employment. Many of the unemployed consist of persons below the age of thirty five (35) years and as a result, are unable to afford clearance certificates required by employers for purposes of employment. It is therefore necessary to for an employer to require an applicant to submit the mandatory requirements as a condition for confirmation of employment.

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

The Bill does not affect the functions of County governments as set out in the Fourth Schedule to the Constitution and is therefore not a Bill concerning counties.

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

Dated the 22nd October, 2019.

GIDEON KETER,
Member of Parliament.

Section 9 of the Employment Act that the Bill proposes to amend

9. General provision of contract of service

(1) A contract of service—

(a) for a period or a number of working days which amount in the aggregate to the equivalent, of three months or more; or

(b) which provides for the performance of any specified work which could not reasonably be expected to be completed within a period or a number of working days amounting in the aggregate to the equivalent of three months, shall be in writing.

(2) An employer who is a party to a written contract of service shall be responsible for causing the contract to be drawn up stating particulars of employment and that the contract is consented to by the employee in accordance with subsection (3).

(3) For the purpose of signifying his consent to a written contract of service an employee may—

(a) sign his name thereon; or

(b) imprint thereon an impression of his thumb or one of his fingers in the presence of a person other than his employer.

(4) Where an employee is illiterate or cannot understand the language in which the contract is written, or the provisions of the contract of service, the employer shall have the contract explained to the employee in a language that the employee understands.