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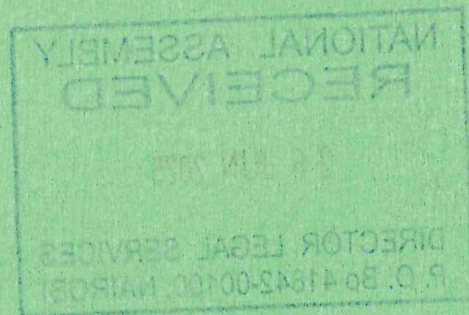
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**THE JUDGES' RETIREMENT BENEFITS BILL,
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THE JUDGES' RETIREMENT BENEFITS BILL, 2025

A Bill for

AN ACT of Parliament to provide for the pension and other retirement benefits to judges of superior courts and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY PROVISIONS

1. This Act may be cited as the Judges' Retirement Benefits Act, 2025. Short title.

2. In this Act, unless the context otherwise requires— Interpretation.
“accrued interest” means the income or capital appreciation or depreciation, less any applicable tax and costs of administration credited to a member's retirement savings account;

“administrator” means a body corporate or a person registered under the Retirement Benefits Act, and appointed by the Board under section 56; Cap. 197.

“annual general meeting” means an annual general meeting convened in accordance with section 64;

“benefit” means a pension, additional benefit under Part II, Part III and Part IV or any other payment made to the dependent of a deceased judge;

“Board” means the Board of Trustees of the Fund established under section 29;

“Cabinet Secretary” means the Cabinet Secretary in the Ministry for the time being responsible for matters relating to finance;

“eligible child” includes a biological child, a stepchild or an adopted child who—

- (a) has not attained the age of eighteen years;
- (b) has attained the age of eighteen years but is under the age of twenty-five years and is undertaking full-time education; or
- (c) was, at the time of death of the judge or retired judge, wholly or mainly dependent on the

deceased judge or retired judge and was, at that time and has at all times since, been either—

- (i) a person falling under paragraph (a) or (b); or
- (ii) is incapable and likely to remain permanently incapable, by reason of bodily or mental infirmity, of earning a living and is not, for the time being, maintained out of money provided by the government in a hospital or a similar institution;

“contribution” means the amount payable by a member or by the Government into the Fund;

“custodian” means a person registered under the Retirement Benefits Act, as such and appointed by the Board under section 58;

“dependant”, in relation to a deceased member, means any relative who survives the deceased member and who, on the date of the deceased’s death, was—

- (a) a spouse of the deceased;
- (b) a child of the deceased; or
- (c) a parent of the deceased who was wholly or substantially dependent on the deceased.

“financial year” means the period of twelve months ending on the 30th June in each year;

“Fund” means the Judges’ Retirement Benefits Fund established under section 25;

“Government” means the National Government;

“judge” means a person appointed as such under the Constitution;

“life insurance company” means any company registered by the Insurance Regulatory Authority under the Insurance Act to carry out the business of providing life insurance; Cap. 487.

“manager” means a person registered as such under the Retirement Benefits Act, and appointed by the Board under section 57;

“parent” means a father or mother, and includes a step parent and a parent by adoption in any manner recognized under the laws of Kenya;

“pensionable emoluments” means the basic salary and house allowance payable to a judge;

“pensionable service” means service in a public office;

“prior public service” means prior service in a public office;

“public office” means an office in the national government, a county government or the public service, if the remuneration and benefits of the office are payable directly from the Consolidated Fund or directly out of the money provided by Parliament;

“retired judge” means a person who has been a judge and is or has been in receipt of a pension under this Act and a judge who retired in terms of Article 167 of the Constitution on or after the 27th August, 2010;

“retirement age” means the retirement age of a judge under the Constitution;

“retirement savings account” means an account set up and maintained by the administrator under section 45;

“spouse” means a husband or a wife of a judge married under a system of law recognised in Kenya; and

“trustee” means a member of the Board of Trustees established under section 29.

3. (1) The provisions of this Act shall apply to—

Application.

- (a) a judge who was in office at the commencement of this Act to the extent specified in Part II;
- (b) a judge who was appointed after the commencement of this Act to the extent specified in Part III; and
- (c) a judge who retired in accordance with Article 167 of the Constitution at any time after the 27th August, 2010, but before the commencement of this Act to the extent specified in Part IV.

(2) Except to the extent specified in section 54, this Act shall not apply to the Chief Justice and Deputy Chief Justice from the date of assuming office as Chief Justice or Deputy Chief Justice.

(3) The provisions of this Act shall prevail in the event of a conflict with other legislation relating to pension to the extent that it does not disadvantage a judge entitled under this Act.

PART II—PENSION AND OTHER BENEFITS FOR JUDGES IN OFFICE AT THE COMMENCEMENT OF THIS ACT

4. (1) In this part, “judge” means a person who was in office at the commencement of this Act.

Application of this part.

(2) This part shall apply to judges who were in office at the commencement of this Act.

Payment of Entitlements

5. (1) A judge has a right to pension or gratuity, as the case may be.

Right to pension.

(2) If a judge has completed ten years of pensionable service, the pension earned shall vest in the judge and shall be payable in such manner and at such times as provided in this Part.

(3) A judge who serves for a period of less than ten years shall be entitled to service gratuity in accordance with section 16.

6. The qualifying service for pension, in relation to a person who has served as judge, shall be ten years.

Qualifying service for a pension.

7. (1) If a judge has previously served as a public officer, the period of that service shall form part of the qualifying service for pension.

Prior public service.

(2) Subsection (1) shall only apply where there is no break in service after appointment to a public office.

(3) A break in service caused by temporary suspension of employment not arising from misconduct or resignation shall be disregarded for purposes of this section.

(4) If a person to whom subsection (1) applies has at any time been paid gratuity or pension, the period of which the gratuity or pension was paid shall not be included in computation of pension under this Part.

(5) Subject to section 7(1), the qualifying service for a person to whom this Part applies and who at any time

before the commencement of this Act was a public appointed a judge, shall be included in the computation of pensionable service.

8. (1) A judge may, within twelve months after commencement of this Act—

Election by an entitled person.

(a) apply to transfer to the Consolidated Fund all the accrued pension benefits under the judicial service pension scheme or any other contributory pension scheme in the public service for the period of service to be considered pensionable service under this Part; or

(b) retain the pension benefits under the scheme in which the pension benefits were accrued.

9. Pension, benefits and gratuity, which are payable under this Part shall be a charge on the Consolidated Fund.

Pension, benefits and gratuity to be a charge on the Consolidated Fund.

10. (1) A judge who elects to retire after attaining the age of sixty-five years or has attained the retirement age prescribed maximum retirement age shall, after serving as a judge for at least ten years, be entitled to an annual pension equal to one-four-hundred-and-eightieth of the judge's pensionable emoluments for each completed month of service.

Judges' pension.

(2) The pension of a judge payable under this Part shall be computed on the basis of the pensionable emoluments of that judge on the date the judge ceased to hold office as a judge.

(3) If a judge leaves office before attaining the age of sixty-five years, the judge shall only access his or her pension after attaining the age of sixty-five years.

11. (1) A retired judge entitled to a pension under this Part may commute up to one-quarter of their annual pension at an equivalent of twenty times the amount so commuted and the balance of three-quarters shall be paid as a monthly pension in accordance with this Part.

Commutation of pension.

(2) The commutation of pension shall be exercised by a retired judge in writing and that option once exercised shall be final and irrevocable.

12. Pension payable under this Part accrue daily but shall be payable monthly in arrears from the Consolidated Fund.

Pensions payable monthly.

13. (1) Subject to the provisions of this Act, pension increase shall be paid on the 1st July of every year on every specified pension.

Pension increase.

(2) The pension increase shall be equivalent to the increase in the Consumer Price Index as reported by the Kenya National Bureau of Statistics for that financial year.

(3) The percentage increase in the pension specified under subsection (1) shall—

- (a) not exceed five per cent or be less than one per cent; and
- (b) not be paid in respect of any specified pension which became payable after the date of the increase where the amount of the pension is calculated by reference to a pensionable emolument received on or after such date.

(4) The Pensions (Increase) Act shall not apply to a pension payable under this Part.

Cap. 190.

14. (1) Pension payable under this Part, including any pension increase thereof, shall not exceed the amount of the pensionable emoluments earned by a sitting judge in the same position as that which the retired judge occupied on retirement.

Maximum pension.

(2) A judge who has been granted pension in respect of prior public service shall not draw an amount of pension that, when added to the amount of any pension in respect of other public service, exceeds the highest pensionable emolument earned by the judge at any time while in public service.

15. (1) Where a judge dies before attaining the qualifying service, the surviving spouse shall be paid a gratuity calculated as one month's pensionable emolument for each year of service.

Death gratuity.

(2) Where a judge dies before attaining the qualifying service and is survived by more than one spouse, the gratuity payable under subsection (1) shall be shared equally among the surviving spouses.

16. Subject to the provisions of this Act, a judge who retires after attaining retirement age but who had served for less than ten years, shall be entitled to service gratuity equal to one-four-hundred-and-eightieth of their pensionable emoluments for each completed month of service multiplied by five.

Retirement before
attaining the
qualifying service.

17. Sections 11 and 13 shall apply, with the necessary modifications, to a judge who is removed from office because of inability to perform the functions of office due to mental or physical incapacity.

Retirement due to
mental or physical
incapacity.

(2) The pension payable to a judge who is removed from office because of inability to perform the functions of office due to mental or physical incapacity shall not be less than fifty per cent of the pension the judge would have been entitled to, had the judge retired on attaining retirement age or being eligible to retire early in accordance with this part.

(3) The pension payable to a judge, who is removed from office because of inability to perform the functions of office due to mental or physical incapacity, shall be computed on the basis of the pensionable emoluments of that judge on the date they were removed from office and shall be payable upon the removal of the judge from office.

18. (1) Where a judge who is entitled to a pension under this Part dies before attaining retirement age and is survived by a spouse, a monthly pension shall be paid to the surviving spouse at a rate equal to fifty per cent of the rate of the pension that the deceased judge was entitled to as provided for in section 10.

Pension to a
spouse on death of
a judge or a
retired judge.

(2) Where a retired judge dies and is survived by a spouse, the pension shall be paid to the spouse at a rate equal to fifty per cent of the monthly pension that was payable to the retired judge as provided for in section 10:

Provided that the pension payable to a spouse under this subsection shall not be paid if the deceased retired judge entered into the marital relationship after retirement.

(3) The pensions payable under subsections (1) and (2) shall continue for five years after the death of the judge or retired judge.

19. (1) If a judge entitled to pension under this Part or a retired judge dies and is survived by more than one spouse, the judge's pension shall be shared equally among the surviving spouses.

Allocation of pension to more than one spouse.

(2) The total amount of the pension payable to the surviving spouses under subsection (1) shall not exceed fifty per cent of the pension that the deceased judge or retired judge would have received.

20. (1) Where a judge entitled to a pension under this Part dies before retirement and is survived by a spouse and a child or children, there shall, in addition to any pension that is payable to the spouse under section 18, be paid to the spouse, in respect of any eligible child or children of the judge, a pension at a rate equal to the applicable percentage of the rate of the judge's pension.

Pension in respect of children on death of a judge or a retired judge.

(2) The Cabinet Secretary may determine the manner in which the pension is payable in respect of a child, if it is in the best interests of the child for the pension to be paid other than to the surviving spouse.

(3) Subject to this section, where a retired judge dies and is survived by a spouse and a child or children, there shall, in addition to any pension that is payable to the surviving spouse under section 18, be paid to the spouse, in respect of any eligible child or children of the retired judge, pension at a rate equal to the applicable percentage of the rate of the pension that would have been payable to the retired judge.

(4) For the purposes of subsections (1) and (3), the applicable percentage shall be—

- (a) twelve point five per cent where there is one eligible child;
- (b) twenty-five per cent where there are two eligible children;
- (c) thirty-seven point five per cent where there are three eligible children; or
- (d) fifty per cent where there are four or more eligible children.

(5) Pension shall not be payable under this section in respect of a child of a marital relationship if the deceased retired judge entered into the relationship after retirement.

21. (1) Subject to this section, where the surviving spouse of a deceased judge or retired judge, who became entitled to a pension under this Part upon the death of the judge or retired judge, dies, there shall be paid, in respect of any eligible child or children of the judge or retired judge—

Pension in respect of children on death of a spouse or when spouse pension is not payable.

- (a) in the case of the spouse of a judge other than a retired judge, a pension at a rate equal to the applicable percentage of the relevant pension in relation to the Judge; or
- (b) in the case of the spouse of a retired judge, a pension at a rate equal to the applicable percentage of the pension that would have been payable to the retired judge if the retired judge had not died.

(2) For the purposes of subsection (1), the applicable percentage shall be—

- (a) twenty-five per cent where there is one eligible child;
- (b) fifty per cent where there are two eligible children;
- (c) seventy-five per cent where there are three eligible children; or
- (d) one hundred per cent where there are four or more eligible children.

(3) Pension shall not be payable under this section in respect of a child of a marital relationship if the deceased retired judge entered into the relationship after retirement.

(4) In this section, “relevant pension” means the pension that would have been payable to the judge had the judge retired on the date of the judge’s death.

22. (1) A judge who is retired upon the re-organisation of the office after serving as a judge for at least ten years but has not attained the mandatory retirement age shall be entitled to an annual pension equal to one-fourth-hundred-and-eighth of their pensionable emoluments for each completed month of service.

Re-organisation of office.

(2) In this section, “re-organisation of office” means that the office has been restructured for the purpose of facilitating improvement in the Judiciary by which greater efficiency or economy may be effected.

23. (1) A judge who qualifies for pension under this Part shall, upon retirement be entitled to—

Non-pension
benefits.

- (a) a monthly transport allowance equivalent to one seventh of the basic salary of the judge at retirement for a period of one hundred and twenty months, which shall be payable once as a lump sum upon retirement;
- (b) a medical cover, during the life of the retired judge, for the retired judge and the spouse on the same terms as that enjoyed by serving judges;
- (c) diplomatic passports, during the life of the retired judge, for the retired judge and the spouse; and
- (d) access to the government lounge at all airports within Kenya, during the life of the retired judge, for the retired judge and the spouse.

PART III—PENSION AND OTHER BENEFITS FOR JUDGES APPOINTED AFTER COMMENCEMENT OF THIS ACT

24. (1) In this Part, “judge” and “member” mean a person who was appointed as a judge after the commencement of this Act.

Application of the
Part.

(2) This Part shall apply to a judge who was appointed into office after the commencement of this Act.

Judges Retirement Benefits Fund

25. (1) There shall be established a fund to be known as the Judges' Retirement Benefits Fund which shall vest in, be managed and operated by a Board of Trustees.

Establishment of
the Judges'
Retirement
Benefits Fund.

(2) There shall be paid—

- (a) into the Fund, all the contributions and any other payments required by this Part to be paid into the Fund; and
- (b) out of the Fund, the pension benefits and any other payments required by this Part to be paid out of the Fund.

26. (1) The Government shall, in respect of every member—

Mandatory
contribution to the
Fund

- (a) deduct from that member's monthly pensionable emoluments and pay into the Fund a sum calculated at the rate of seven point five per cent of the member's monthly pensionable emoluments as the member's monthly contribution; and
- (b) pay into the Fund a sum calculated at the rate of fifteen per cent of the member's monthly pensionable emoluments as the Government's monthly contribution.

(2) The Government's contribution under subsection (1)(b) shall be a direct charge on the Consolidated Fund.

(3) The National Treasury shall, within ten working days after the end of the month in which the contributions are due, remit an amount comprising the member's and the Government's contribution in respect of the member to the custodian.

(4) Where the Government fails to make a payment required to be made under this section, the Government shall be liable to any penalty that may be determined in accordance with the applicable law. .

27. The Government shall meet the cost of a life insurance policy for each member comprising death benefits for the member.

Life insurance for members.

28. Subject to such guidelines as the Board may issue, a member may make additional voluntary contributions to the his or her retirement savings account.

Additional voluntary contributions by a member.

Board of Trustees

29. (1) There is established a board to be known as the Judges' Retirement Benefits Fund Board of Trustees which shall be responsible for operating and managing the Fund.

Establishment of Board of Trustees.

(2) The Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) purchasing, holding, managing and disposing of movable and immovable property; and
- (c) doing or performing all other things or acts for the furtherance of the provisions of this Act which

may be lawfully done or performed by a body corporate.

(3) The members of the Board shall be appointed by the Cabinet Secretary and shall comprise—

(a) a chairperson who—

- (i) has at least twenty years' experience in a senior management position;
- (ii) is not in the service of any Government's or worker's representative organization; and
- (iii) is not affiliated to any of the institutions represented on the Board;

(b) one judge of the Supreme Court;

(c) one judge of the Court of Appeal;

(d) two judges, one male and one female, nominated from among the judges of the High Court and of the courts with the status of the High Court;

(e) a retired Judge who is a member of the Fund;

(f) a member of the Judicial Service Commission nominated by the Commission;

(g) the Principal Secretary to the National Treasury or a representative of the Principal Secretary nominated in writing; and

(h) the Chief Registrar of the Judiciary.

(4) The members appointed under subsection (3)(b), (c), (d) and I shall be nominated by the Chief Justice.

(5) An appointment under sub-section (3)(a), (b), (c), (d), (e) or (f) shall be by name and by notice in the Gazette.

(6) The Board shall competitively recruit and appoint a Secretary.

(7) The Board may co-opt any person to assist it for such purposes and for such periods as the Board may determine, but a person so co-opted may not vote on any matter before the Board.

(8) A member of the Board appointed under this section shall have, in relation to the Fund, the duties and

obligations of a trustee, and shall be accountable in accordance with the provisions of the Trustee Act and any other written law.

Cap. 167.

30. A person shall not be appointed as a trustee under section 30 if that person—

Qualification for appointment as a trustee.

- (a) has been sentenced to imprisonment for a period of six months or more;
- (b) is adjudged bankrupt;
- (c) was previously involved in the management or administration of a scheme which was deregistered for any failure on the part of the management or the administration thereof;
- (d) is disqualified under any other written law, or his or her holding office as such is deemed by the Retirement Benefits Authority as being, in any way, detrimental to the Fund; or
- (e) does not comply with the directions, guidelines or practice notes issued by the Retirement Benefits Authority.

31. (1) The trustees appointed under section 29(3)(a), (b), (c), (d), (e) and (f) shall hold office for a term of three years and may be eligible for re-appointment for only one further term of three years.

Tenure of trustees.

(2) Notwithstanding the provisions of subsection (1), a trustee may be removed from office by a resolution of the Board if the trustee—

- (a) has been absent from three consecutive meetings of the Board without justifiable cause;
- (b) has been adjudged bankrupt or has entered into a composition or scheme of arrangement with creditors;
- (c) has been convicted of a felony or of any offence involving dishonesty or corruption; or
- (d) has become incapable of carrying out the functions of office, either arising from an infirmity of body or mind.

(3) A trustee shall cease to be a member of the Board if the trustee resigns from office by a notice in writing to the Cabinet Secretary.

32. Whenever the office of a trustee appointed under sections 29(3)(a), (b), (c), (d), (e) or (f) becomes vacant, the Cabinet Secretary shall, on the recommendation of the nominating body, appoint a similarly qualified person to fill the vacancy for the remainder of the term.

Filling of
vacancies.

33. The functions of the Board shall be to—

Functions of the
Board.

- (a) collect contributions payable to the Fund under this Part;
- (b) develop a prudent investment policy of the Fund in accordance with the provisions of the Retirement Benefits Act;
- (c) invest any funds of the Fund not immediately required for its purposes in the manner allowed by this Act;
- (d) protect members' contributions and the assets of the Fund;
- (e) negotiate competitive annuity rates with insurance companies;
- (f) pay out pensions and other benefits to the members of the Fund and their dependants;
- (g) advise the Cabinet Secretary on any necessary adjustments in the Fund in order to realize its objects under paragraphs (a), (b), (c) and (d); and
- (h) perform any other functions that may be conferred on it by this Act or under any other written law.

Cap. 197.

34. (1) The Board shall meet at least four times in every financial year.

Meetings of the
Board

(2) Not more than three months shall elapse between the date of one meeting of the Board and the date of the next meeting.

(3) The chairperson shall preside at every meeting of the Board but the members present shall elect one of their members to preside whenever the chairperson is absent or otherwise unable to preside and the person so elected shall have all the powers of the chairperson with respect to the conduct of that meeting and the business transacted thereat.

(4) The quorum for the conduct of the meetings of the Board shall be five trustees.

(5) The decisions of the Board shall be unanimous:

Provided that where a decision is not unanimous, it shall be made by a majority vote of the trustees present and voting and in case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

(6) The Board may invite any person who is not a member of the Board to participate in the deliberations of the Board, but such person shall not be entitled to vote.

(7) Subject to this Act, the Board may regulate its own procedure.

35. (1) The Board may establish committees of trustees to deal with such matters as the Board may specify. Committees of the Board.

(2) The Board may co-opt persons who are not trustees to committees established under subsection (1) for a particular purpose and such persons shall hold office for such periods as the Board may determine.

(3) Subject to any specific or general direction of the Board, a committee established under subsection (1) may regulate its own procedure.

36. (1) If a trustee is present at a meeting of the Board or any committee of the Board at which any matter is the subject of consideration and in which matter the trustee, the trustee's spouse or the trustee's immediate relative or associate is directly or indirectly interested in a private capacity, the trustee shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not take part in any consideration or discussion, or vote on any question touching on such matter unless the Board determines otherwise. Disclosure of interest.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

(3) A trustee who fails to disclose an interest as required under this section shall be disqualified from holding office as a member of the Board.

37. The chairperson and trustees shall be paid such allowances or other remuneration as the Cabinet Secretary may determine. Remuneration of trustees.

38. (1) In the exercise of its functions, the Board shall be accountable to the Government and to the members of the Fund.

Powers of the Board.

(2) The Board shall have all powers necessary for the proper performance of its functions under this Act and, in particular, the Board shall have the power to—

- (a) control, supervise and administer the assets of the Fund in such manner and for such purposes as shall best promote the purpose of the Fund;
- (b) determine the provisions to be made for capital and recurrent expenditure and for reserves of the Fund;
- (c) receive contributions from members and the Government;
- (d) appoint a custodian, investment manager and administrator to carry out the functions specified under this Act or any other relevant written law; and
- (e) do such other things as are necessary to give effect to the provisions of this Act.

39. The Board may, by resolution generally or in any particular case, delegate to an officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of the functions of the Board.

Delegation of powers.

40. The Board may appoint such officers or members of staff as may be necessary for the proper discharge of the functions of the Board on such terms and conditions of service as the Cabinet Secretary may, in consultation with the Salaries and Remuneration Commission, determine.

Staff of the Board.

41. (1) The common seal of the Board shall be kept in the manner that the Board may direct and shall not be used except by the order of the Board.

The common seal.

(2) The common seal, when affixed to a document and having been duly authenticated, shall be judicially and officially noticed and, unless the contrary is proved, any necessary order or authorisation by the Board under this section shall be presumed to have been duly given.

Payment of benefits

42. (1) The administrator appointed under section 56 shall establish and maintain a retirement savings account for each member in the member's name.

Retirement savings accounts.

(2) A member shall not have access to the funds held in the member's retirement savings account or have any dealing with the custodian with respect to the retirement savings account except through the administrator.

(3) Upon receiving the contributions in respect of a member remitted under sections 26 and 28, the custodian shall notify the administrator who shall cause the contributions to be credited in the retirement savings account of the member.

(4) The administrator shall issue to each member a statement in respect of that member's retirement savings account once in every year.

43. (1) The benefits derived from the contributions made by a member together with the accrued interest thereon shall immediately vest in the member.

Vesting of
benefits.

(2) Notwithstanding the provisions of any other written law, the benefits derived from the Government's contribution to a member's retirement savings account shall vest in the member after a period of one year.

(3) Subject to subsection (1), if a member dies while in service, the Government's contribution to the member's retirement savings account shall immediately vest in the dependants of the member.

44. (1) A member shall not be entitled to withdraw the balance in the member's retirement savings account except as provided in section 45.

Withdrawal from
the retirement
savings account.

(2) Subject to subsection (1), a member may withdraw—

- (a) his or her contribution and investment return in full on leaving employment for any reason;
- (b) the Government's contribution upon attainment of the retirement age; and
- (c) the aggregate in full of any additional voluntary contributions made into the Fund under section 31 together with the accrued interest thereon leaving employment for any reason.

45. (1) Any member who retires from service—

Entitlement to
make

withdrawals.

- (a) on attaining the mandatory retirement age;
- (b) on opting for early retirement; or
- (c) on medical grounds,

shall be entitled to make withdrawals in accordance with section 46.

(2) The proof of age of a member who retires from service for the purposes of subsection (1) shall be the date of birth provided by the member on the date of appointment.

46. (1) A member who retires from service may, in writing, request the Board to withdraw a lump sum from the balance in the member's retirement savings account which shall not exceed the equivalent of one third of the balance.

Payment of
retirement
benefits.

(2) Despite subsection (1), a member who retires from service may withdraw all of the member's voluntary contributions plus the accrued interest from the balance of the member's retirement savings account.

(3) The retirement benefits may be paid to a member who retires from service—

- (a) as an income drawdown in the form of monthly or quarterly withdrawals calculated on the basis of the expected life span of the member and payable out of the Fund or external income drawdown provider; or
- (b) in a monthly or quarterly annuity for life purchased from a life insurance company of a member's choice.

(4) The payment of a pension to a member shall commence at the end of the month immediately following the month of the member's retirement from service.

(5) For the purposes of this section, "quarterly" means a period of three months.

47. (1) Every member shall furnish the Board, in the prescribed manner, with the particulars of the member and the dependants of the member.

Particulars and
dependants of a
member.

(2) A member may update the particulars furnished under subsection (1) at any time before retirement.

(3) The information furnished under this section shall be used for the purposes of processing and payment of benefits to a member or a member's dependants.

(4) For the purposes of this Part, the furnishing of the Board with the particulars of the dependants of the member shall be deemed as the nomination of those dependants.

48. (1) On the death of a member, the benefits shall be paid to a person whose particulars have been furnished by the member in accordance with this Part:

Benefits to be paid to nominated persons.

Provided that where no particulars are provided by the member under section 47, the Board shall have discretion to determine the member's dependants.

(2) The Board shall hear and determine any dispute regarding the nomination of dependants under this Part.

49. The Board shall have the discretion to elect the most suitable mode of payment of the dependants' benefits.

Mode of payment of dependants' pensions.

50. (1) If a member dies while in service, the balance in the member's retirement savings account shall be paid —

Payment of benefits of a member who dies in service.

(a) in favour of the dependants of that member; or

(b) in the absence of any dependants, to the executor or the administrator of the estate of that member.

(2) Notwithstanding subsection (1), the Board shall have the discretion to elect the most suitable mode of payment of the dependants' pensions.

51. (1) If a member who had opted for an income drawdown under section 46(3)(a) dies while in retirement, a pension that is equivalent to the unutilised balance of that member's retirement savings account shall be paid to the member's dependants under this Part.

Payment of benefits of a member who dies in retirement.

(2) The payment under subsection (1) shall commence on the day following the member's death.

(3) If a member who had opted for an annuity payment under section 46(3)(b) dies while in retirement, the payments to the dependants shall be subject to the terms of the annuity.

52. Despite the provisions of any other written law, a benefit payable upon the death of a member shall not form part of the assets of the estate of that member.

Benefits not to form part of estate of member.

53. Subject to section 46, no payment shall be made out of the Fund—

Prohibited payments.

(a) to the Government without the prior written consent of the Retirement Benefits Authority;

(b) to a member while still in service; or

(c) to any person as a loan, advance or other similar benefit or payment except as provided under this Act or the Retirement Benefits Act.

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54. (1) A member and the Government shall cease to make contributions into the Fund when that member is appointed under Article 166 as the Chief Justice or the Deputy Chief Justice.

Payment of benefits of a member who is appointed as Chief Justice or Deputy Chief Justice.

(2) The Board shall pay to the member the balance remaining in the member's retirement savings account upon the member's appointment as the Chief Justice or Deputy Chief Justice.

(3) Despite subsections (1) and (2), a member who is appointed as the Chief Justice or Deputy Chief Justice may opt to retain the balance of his or her retirement savings account in the Fund in accordance with this Act or any other written law.

Additional benefits

55. In addition to a pension payable under this Part, a retired judge to whom this Part applies shall be entitled, during the life of the retired judge, to—

Additional benefits.

(a) a medical cover for the retired judge and the retired judge's spouse on the same terms as that enjoyed by serving judges;

(b) a diplomatic passport for the retired judge and the retired judge's spouse; and

(c) access to the Government VIP lounges at all airports within Kenya for the retired judge and the retired judge's spouse.

Appointment of independent service providers

56. (1) The Board shall appoint an administrator of the Fund who shall, in accordance with this Act and any other relevant written law, carry out the following functions—

Appointment and functions of the administrator.

- (a) open a retirement savings account for each member and assign a personal pension number to each member;
- (b) credit each member's retirement savings account with the contributions made to the account;
- (c) inform the Board if a member's actual contribution details differ from the expected contribution details;
- (d) provide customer support services to the members including access to members' account balances and statements on demand;
- (e) cause the payment of retirement benefits to members who have retired or, where a member has died, to the member's beneficiaries;
- (f) be responsible for all calculations relating to the retirement benefits of a member; and
- (g) carry out any other functions as may be directed by the Board.

(2) The administrator shall ensure that all income earned from the investment of the Fund is distributed to the credit of the members' retirement savings accounts:

Provided that clearly defined and reasonable fees, charges, costs and expenses of transactions approved by the Board shall be paid out of the income earned from the investment of the Fund.

57. The Board shall appoint a manager of the Fund who shall, in accordance with this Act and any other relevant written law—

Appointment and functions of the manager.

- (a) invest and manage the funds and assets of the Fund in accordance with the provisions of this Act and any other relevant written law;
- (b) provide quarterly reports of all transactions relating to the Fund;

- (c) provide regular information on investment strategy, market returns and other performance indicators to the Board for the benefit of members;
- (d) undertake statistical analysis on the investments and returns on investments with respect to the funds under management and provide data and information to the administrator and the Board; and
- (e) carry out any other functions as may be directed by the Board.

58. (1) The Board shall appoint a custodian of the Fund who shall, in accordance with this Act and any other relevant written law —

Appointment and functions of the custodian.

- (a) receive the contributions remitted in respect of each member on behalf of the Board;
- (b) within one day of receiving the contributions, notify the Administrator of such receipt;
- (c) hold pension funds and assets in safe custody in trust for the members and their beneficiaries;
- (d) on behalf of the Board, settle transactions and undertake activities relating to the administration of the Fund including the collection of dividends and related activities;
- (e) report to the Board on any matter relating to the assets of the Fund being held by the custodian at such intervals as may be determined by the Board;
- (f) execute, in favour of the Board, the relevant proxy for the purpose of voting in relation to the investments of the Fund; and
- (g) carry out any other functions as may be directed by the Board.

(2) The custodian shall maintain all pension funds and assets in its custody in accordance with the directions of the Board and shall not utilize any pension fund or assets in its custody to meet the custodian's own financial obligations to any person.

59. The administrator, manager and custodian shall —

Duty of care.

- (a) ensure that the Fund and its assets are managed or held in accordance with the provisions of this Act, any regulations or guidelines made under this Act and any directions that may be issued by the Retirement Benefits Authority;
- (b) take reasonable care to ensure that the management of the Fund or safe keeping of the Fund's assets are carried out in the best interests of the members;
- (c) report to the Board, as soon as is reasonably practicable, any unusual occurrence with respect to the Fund or its assets which in the administrator's, manager's or custodian's view could adversely affect the rights of a member or the member's retirement savings account; and
- (d) report to the Board, as soon as is reasonably practicable, if the Government has failed to remit any contributions and where the Government's contribution remains due for more than ten days.

Financial provisions

60. (1) The Fund shall comprise of—

Proceeds of the Fund and investments.

- (a) monies received as contributions under this Part;
- (b) fees, charges, monies or assets that may accrue to or vest in the Fund under this Act or under any written law; and
- (c) all monies from any other lawful sources provided, donated or loaned to the Fund.

(2) The Board shall invest any funds which are not for the time being required to be applied for the purposes of the Fund in accordance with the provisions of the Retirement Benefits Act.

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61. (1) The Government shall meet the cost of the administration of the Fund for a period of five years from the date of first contributions into the Fund.

Expenses of administering the Fund.

(2) Upon the lapse of the period specified in subsection (1), there shall be paid out of the Fund monies for the administration of the Fund which shall not exceed

such percentage of the value of the assets of the Fund as may be prescribed in Regulations made under this Act.

(3) In estimating expenses for the purposes of this section, the trustees may include—

- (a) an amount representing the accruing liability of the Fund in respect of any emoluments, pensions, staff medical insurance or other benefits to which any persons employed for the purposes of this Act may become entitled in respect of that employment;
- (b) an amount in respect of the purchase of office stationery, equipment and machines, motor vehicles and insurance;
- (c) an amount in respect of maintenance and repairs of any buildings, grounds and facilities, and the rental value of any premises used for the purposes of this Act; and
- (d) an amount in respect of management fees including the custodial, actuarial and audit activities of the Board.

62. (1) The Board shall cause to be kept proper books of account and records in relation to the Fund, its undertakings, investment activities and properties.

Accounts and
audit.

(2) The Board shall, within a period of three months after the end of each financial year, prepare, sign and transmit to the Retirement Benefits Authority—

- (a) a balance sheet showing in detail the assets and liabilities of the Fund;
- (b) a statement of income and expenditure of the Fund; and
- (c) such other statements of account as required by law.

(3) The Board shall cause an audit of the books of account of the Fund to be conducted by a certified auditor in accordance with the provisions of the Public Audit Act not more than three months after the end of the financial year.

Cap. 412B.

63. During the period specified under section 61(1), the Board shall, at least three months before the end of each financial year, cause to be prepared and submit to the Cabinet Secretary for approval, estimates of the Fund's revenue and expenditure for the following financial year.

Annual estimates.

64. (1) The Board shall convene an annual general meeting of the members of the Fund within six months of the end of the financial year.

Annual general meeting.

(2) The Annual general meeting shall be conducted in accordance with the provisions of the Retirement Benefits Act.

Cap. 197.

PART IV—BENEFITS FOR JUDGES WHO RETIRED BEFORE COMMENCEMENT OF THIS ACT

65. (1) In this Part, "judge" means a judge who retired in accordance with Article 167 of the Constitution at any time after the 27th August, 2010, but before the commencement of this Act.

Application of the Part

(2) This Part shall apply to judges who retired in accordance with Article 167 of the Constitution at any time after the 27th August, 2010, but before the commencement of this Act.

66. A judge to whom this Part applies shall be entitled, during the life of the retired judge, to—

Benefits for judges who retired before commencement.

- (a) a medical cover for the retired judge and spouse on the same terms as that enjoyed by serving judges;
- (b) diplomatic passports for the retired judge and spouse; and
- (c) access to the Government lounge at all airports within Kenya for the retired judge and spouse.

PART V—MISCELLANEOUS PROVISIONS

67. (1) The Cabinet Secretary shall be responsible for the payment of pensions, gratuities and provision of non-pension benefits to judges under this Act.

Functions of the Cabinet Secretary.

(2) The Cabinet Secretary shall establish a liaison office to facilitate the timely payment of pensions, gratuities and provision of non-pension benefits under this Act.

68. Pension or gratuity granted under this Act shall not be assignable or transferable and shall not be liable to be attached, levied upon or sequestered except for the purpose of satisfying a debt due to the government.

Benefits not to be assigned or attached.

69. A judge entitled to pension under this Act shall be exempt from the National Social Security Fund Act.

Exemption.
Cap. 258.

70. Any person who is dissatisfied with any decision regarding the payment of a retirement or other benefit under this Act may appeal against the decision to the Appeals Tribunal established in accordance with section 47(1) of the Retirement Benefits Act.

Appeals.

Cap. 197.

PART VI—PROVISIONS ON DELEGATED LEGISLATION

71. (1) The Cabinet Secretary may make Regulations generally for giving effect to this Act and for prescribing anything required or necessary to be prescribed by or under this Act.

Regulations.

(2) Without prejudice to the generality of subsection (1), regulations may provide for—

- (a) matters of procedure in relation to any application under this Act;
- (b) the procedure and considerations for pension claims due to physical or mental incapacity;
- (c) the porting of contributions from other retirement benefits schemes by a judge; and
- (d) the management and administration of the Fund during the period of five years after first contributions are made under this Act.

(3) For the purposes of Article 94(6) of the Constitution—

- (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations for better carrying into effect the provisions of this Act; and
- (b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section.

(4) The principles and standards applicable to the delegated power referred to under this Act are those those found in —

(a) the Statutory Instruments Act; and

Cap. 2.

(b) the Interpretation and General Provisions Act.

Cap. 2A.

PART VII—SAVINGS AND TRANSITION PROVISIONS

72. (1) Upon commencement of this Act, the pension benefits of a judge to whom Part II applies shall, upon retirement, be computed on the basis of the formula provided under section 10.

Saving and
transition.

(2) The pension benefits payable to a judge to whom Part IV applies shall continue to be paid under the Pension Act or where applicable, under the Widows' and Children Pensions Act.

Cap. 189.
Cap. 195.

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons of the Bill

The principal object of this Bill is to provide for the pension and other retirement benefits to judges of superior courts and for connected purposes.

The Bill has been in development since the late 1990s and marks a significant step towards realizing the principles of the Constitution in respect of the Judiciary, its independence and the remuneration and benefits of judges of superior courts.

The Bill is divided into five parts.

Part I of the Bill (Clauses 1 - 3) deals with preliminary matters.

Clause 1 of the Bill provides for the short title of the Act.

Clause 2 of the Bill provides for the definition of key terms that have been employed throughout the Bill.

Clause 3 of the Bill provides for the persons to whom the Act shall apply. The Act shall apply to judges who are in office on the date of the commencement of the Act, judges who will be appointed after commencement of the Act and judges who retired after the 27th August, 2010, but before the commencement of the Act in accordance with Article 167(1) of the Constitution. It also provides that where there is a conflict of laws, the provisions of this Act shall prevail.

Part II of the Bill (Clauses 4 -23) provides for the payment of pensions and other benefits in respect of judges who are in office on the date of commencement of the Act.

Clause 4 of the Bill provides that Part II of the Act applies to judges who are in office on the commencement date and defines the word "judge" as used in this Part as such.

Clause 5 of the Bill provides for the right of a judge to retirement benefits under the Act.

Clause 6 of the Bill provides that the qualifying service for a pension under the Act.

Clause 7 of the Bill provides that prior service as public officer shall form part of qualifying service for pension.

Clause 8 of the Bill provided that a judge, who is entitled to pension under the judicial service pension scheme or any other contributory pension scheme in the public service, may apply to transfer the accrued pension to the Consolidated Fund for the period of service to the

considered pensionable service or maintain the administration of the pension benefits under the scheme in which they were accrued.

Clause 9 of the Bill provides that pensions, benefits and gratuities shall be a charge on the Consolidated Fund.

Clause 10 of the Bill provides for the computation and payment of pension to a judge who elects to retire early after attaining the age of sixty-five years or has attained the prescribed maximum retirement age.

Clause 11 of the Bill provides for the commutation of the pension by a judge upon retirement.

Clause 12 of the Bill provides that pension shall accrue daily but payable monthly in arrears.

Clause 13 of the Bill provides for the date of pension increase and percentage increase of pension.

Clause 14 of the Bill provides for the maximum pension payable to a retired judge.

Clause 15 of the Bill provides that gratuity shall be paid to the spouse of a judge who dies before attaining qualifying service.

Clause 16 of the Bill provides that a judge who retires after attaining retirement age but who had served for less than ten years, shall be entitled to service gratuity.

Clause 17 of the Bill deals with retirement of a judge due to mental or physical incapacity.

Clause 18 of the Bill provides for pension to spouse on death of a judge or a retired judge.

Clause 19 of the Bill provides for allocation of pension to more than one spouses upon the death of a judge or a retired judge.

Clause 20 of the Bill provides for pension in respect of a child or children on death of a judge or retired judge.

Clause 21 of the Bill provides for payment of pension to a child or children where the judge or retired judge is deceased as well as the spouse.

Clause 22 of the Bill provides for computation of pension where a judge retires upon re-organisation of office.

Clause 23 of the Bill provides for the non-pension benefits.

Part III of the Bill (Clause 24 - 64) deals the payment of pensions and other benefits in respect of judges who are appointed after the commencement of the Act.

Clause 24 of the Bill provides that Part III of the Act applies to judges who are appointed after the commencement date and defines the word "judge" as used in this Part accordingly.

Clause 25 to 41 of the Bill provide for the establishment of the Judges' Retirement Benefits Fund; the payment of contributions into the Fund; the appointment of members of the Judges' Retirement Benefits Fund Board of Trustees; their functions and powers; the filling of vacancies in the Board; the delegations of the powers of the Board; the obligation of Trustees to declare conflicts of interest; the meetings of Trustees and the appointment of Committees of Trustees; the appointment of the staff of the Board; and the common seal of the Board.

Clauses 42 to 55 provide for the creation of retirement savings accounts for members; the vesting of benefits to members or their dependants; the withdrawals from the retirement savings accounts by member or their dependants; the nomination of dependants by members; the procedure for making withdrawals from the Fund by members; the payments of pensions to retired members and their dependants; the payment of benefits to dependants when a member dies while in service or after retirement; payments that cannot be paid out of the Fund; the payment of benefits in respect of judges who are appointed as the Chief Justice and the Deputy Chief Justice; and additional non-pension benefits in respect of judges appointed after commencement of the Act.

Clauses 56 to 59 of the Bill provide for the appointment of independent service providers, that is, the Administrator, the Manager and the Custodian and provides for their powers and functions, and their duty of care to the members in the performance of their functions.

Clauses 60 to 64 of the Bill provide for the financial matters in respect of the Judges Retirement Benefits Fund, including how to treat the proceeds of the Fund and the investments by the Fund, the expenses for administering the Fund, accounting and auditing of the Fund; the making and approval of the annual estimates of the Fund; and the annual general meeting of the Fund.

Part IV of the Bill (Clause 65 - 66) deals with the non-pension benefits in respect of judges who retired in accordance with Article 167 of the Constitution after 27th August 2010 but before the commencement of the Act.

Part V of the Bill (clauses 67-72) provides for miscellaneous matters.

Clause 67 of the Bill provides for that the Cabinet Secretary shall be responsible for the payment of pensions.

Clause 68 of the Bill provides that pensions granted under this Act are not assignable nor attachable except for the purposes of satisfying a debt due to the government.

Clause 69 of the Bill provides for the provides for the exemption from the National Social Security Fund Act.

Clause 70 of the Bill provides for the right to appeal against decisions regarding the payment of pension and other benefits under the Act.

Part VI of the Bill, consisting of clause 71 of the Bill provides that the Cabinet Secretary responsible for pensions may make Regulations.

Part VII of the Bill, consisting of clause 72 of the Bill provides for saving and transition for the payment of pension payable to a judge serving upon commencement of this Act and a judge who retired after the 27th August, 2010.

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

The Bill delegates legislative powers to the Cabinet Secretary to make regulations under section 71 for the better carrying into effect of the provisions of the Bill. The Bill does not limit any of the rights and fundamental freedoms contained in the Bill of Rights in the Constitution.

Statement on how the Bill concerns county governments

The Bill is not a Bill concerning county governments in terms of Article 110(1)(a) of the Constitution.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution.

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

Dated the 19th June, 2025

KIMANI ICHUNG'WAH,
Leader of the Majority Party.