



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

BILLS, 2012

NAIROBI, 28th September, 2012

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**THE VETTING OF JUDGES AND MAGISTRATES
(AMENDMENT) BILL, 2012**

A Bill for

**AN ACT of Parliament to amend the Vetting of Judges
and Magistrates Act, 2011**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Vetting of Judges and Magistrates (Amendment) Act, 2012.

Short title.

2. Section 2 of the Vetting of Judges and Magistrates Act (in this Act referred to as “the principal Act”) is amended by renumbering the existing provision as subsection (1) and inserting a new subsection as follows—

Amendment of section 2 of No.2 of 2011.

(2) Despite subsection (1), after the first elections under the Constitution, references in this Act to the expression “Minister” shall be construed to mean “Cabinet Secretary”.

3. Section 12 of the principal Act is amended by inserting the following new subsection immediately after subsection (6)—

Amendment of section 12 of No.2 of 2011.

(7) No act or proceedings of the Board shall be invalid by reason only of a vacancy or defect in the composition of the Board.

4. Section 18(1) of the principal Act is amended in paragraph (e)—

Amendment of section 18 of No.2 of 2011.

(a) by deleting subparagraph (ii) and substituting therefor the following new subparagraph—

(ii) Ethics and Anti-Corruption Commission;

(b) by deleting subparagraph (iii) and substituting therefor the following new subparagraph-

(iii) Advocates Disciplinary Tribunal;

(c) by deleting subparagraph (vi) and substituting therefor the following new subparagraph-

(vi) Commission on Administrative Justice; and

(d) by deleting subparagraph (ix) and substituting therefor the following new subparagraph-

(ix) National Police Service Commission.

Amendment of section 22 of No.2 of 2011.

5. Section 22 of the principal Act is amended by inserting the following new subsection immediately after subsection (2)-

(3) A judge or a magistrate, who requests for review shall, pending the decision of the Board under this section, be suspended from office.

Amendment of section 23 of No.2 of 2011.

6. Section 23 of the principal Act is amended-

(a) by repealing subsection (2);and

(b) in subsection (3), by deleting the

words "or of the Judicial Service Commission"

MEMORANDUM OF OBJECTS AND REASONS

The Principal object of the Bill is to amend the Vetting of Judges and Magistrates Act, No.2 of 2011 to provide for a judge or magistrate against whom a negative decision has been made by the Vetting Board to be suspended from office until the application for review is determined by the Board.

The Bill further provides for the decision of the Vetting Board not to be challenged solely on the basis of a vacancy or defect in the composition of the Board. The Bill aims to transfer the obligation of vetting magistrates to the Judges and Magistrates Vetting Board as required by Section 23(1) of the Sixth Schedule of the Constitution. The Bill also provides for the Vetting Board to regulate its procedure and determine how best to constitute itself to undertake the vetting exercise.

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

Dated 18th September, 2012.

EUGENE WAMALWA,
*Minister for Justice, National Cohesion
and Constitutional Affairs.*

Section 2 of No.2 of 2011 which it is proposed to amend—

Interpretation.

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

“Board” means the Judges and Magistrates Vetting Board established by section 6;

“chairperson” means the chairperson of the Board appointed under section 9;

“deputy chairperson” means the deputy chairperson of the Board elected under section 10;

“effective date” means the 27th August, 2010;

“judge or magistrate” means a judge or magistrate to whom this Act applies in accordance with section 3, and includes the Registrar of the High Court and the Chief Court Administrator and their deputies, and persons seconded to administrative tribunals, in their capacity as judges or magistrates;

“member” means a member of the Board appointed under section 9, and includes the chairperson and the deputy chairperson;

“Minister” means the Minister for the time being responsible for matters relating to the Judiciary;

“pending complaint” means a complaint filed or registered with any person or body mentioned in section 18(e) at least fourteen days before the judge or magistrate is vetted;

“secretary” means the secretary of the Board appointed under section 15;

“vetting” means the process by which the suitability of a serving judge or magistrate to continue serving in the Judiciary is determined in accordance with this Act.

Section 12 of No.2 of 2011 which it is proposed to amend—

Tenure and
vacancy of office
of chairperson
and members.

12.(1) The term of office of the chairperson or a member shall be from the date of appointment and shall, unless the office falls vacant earlier owing to any reason specified in the Constitution or in subsection(2), terminate on the dissolution of the Board.

(2) The office of the chairperson or a member shall become vacant if the holder—

- (a) dies;
- (b) by a notice in writing addressed to the President, resigns from office;
- (c) is removed from office under subsection(3);
- (d) is convicted of an offence and sentenced to imprisonment for a term of six months or more, without the option of a fine;
- (e) is unable to discharge the functions of his office by reason of physical or mental infirmity;
- (f) is absent from three consecutive meetings of the Board without good cause; or
- (g) is adjudged bankrupt.

(3) The chairperson or a member may be removed from office for misbehaviour or misconduct incompatible with the functions of the Board.

(4) The President shall notify every resignation, vacancy or removal from office in the Gazette within seven days thereof.

(5) Where a vacancy occurs in the membership of the

Board, the President shall, in consultation with the Prime Minister, nominate a candidate from the list of candidates forwarded by the Public Service Commission under section 9(6), for approval by the National Assembly.

(6) A member appointed to fill a vacancy under this section shall serve for the unexpired term of the member in respect of whom the vacancy arose.

Section 18(1) of No.2 of 2011 which it is proposed to amend-

Relevant
Considerations.

18.(1) The Board shall, in determining the suitability of a judge or magistrate, consider—

- (a) whether the judge or magistrate meets the constitutional criteria for appointment as a judge of the superior courts or as a magistrate;
- (b) the past work record of the judge or magistrate, including prior judicial pronouncements, competence and diligence;
- (c) any pending or concluded criminal cases before a court of law against the judge or magistrate;
- (d) any recommendations for prosecution of the judge or magistrate by the Attorney-General or the Kenya Anti-Corruption Commission; and
- (e) pending complaints or other relevant information received from any person or body, including the—
 - (i) Law Society of Kenya;
 - (ii) Kenya Anti-Corruption Commission;

- (iii) Advocates Disciplinary Committee;
- (iv) Advocates Complaints Commission;
- (v) Attorney-General;
- (vi) Public Complaints Standing Committee;
- (vii) Kenya National Human Rights and Equality Commission;
- (vii) National Intelligence Service;
- (viii) Police; or
- (ix) Judicial Service Commission.

Section 23(2) and (3) of No.2 of 2011 which it is proposed to amend—

(2) The Board shall be divided into three panels for purposes of vetting, and the three panels shall vet the judges simultaneously while the Judicial Service Commission shall vet the Magistrates.

(3) The vetting process once commenced shall be concluded not later than the 28th February, 2013, and any review of the decision of the Board or of the Judicial Service Commission shall be heard and concluded within the above specified period.