

Approved for tabling in the House.
BNA
SNA
7/6/2022



REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY	
DATE: 07 JUN 2022	Day: Tuesday
TABLED BY: Hon. Zuleikha Hassan, MP	Member - JLAC
CLERK AT THE TABLE: Maonah M	

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – SIXTH SESSION – 2022

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT

ON THE CONSIDERATION OF SUPREME COURT (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 15 OF 2022)

CLERKS CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

JUNE, 2022

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CHAIRPERSON'S FOREWORD

The Supreme Court (Amendment) Bill (*National Assembly Bill No. 15 of 2022*) was published on 5th April, 2022 and read a first time in the House on Tuesday 10th May, 2022. The Bill is sponsored by the Leader of the Majority Party in the National Assembly and was after first reading committed to the Departmental Committee on Justice and Legal Affairs for consideration and reporting to the House pursuant to the provisions of National Assembly Standing Order 127(1).

The principal object of the Bill is to amend the Supreme Court Act, 2011 in order to align it with the current practices of the Court and to improve the Court's efficiency in the discharge of its duties. A number of sections of the Act have been declared unconstitutional and there is need to amend the Act in compliance with the Courts decisions in *Petition No 284 of 2012 - Commission on Administrative Justice v Attorney-General & Law Society of Kenya (Interested Party)* and *Supreme Court Application No. 1 of 2013 - Malcolm Bell Case*.

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 127 (3), the Committee through advertisement in the local daily newspapers of 14th May, 2022 invited the public to make representations on the Bill. However the Committee did not receive submissions from the public but only one from the Registrar of the Supreme Court of Kenya.

May I take this opportunity to commend the Committee Members for their devotion and commitment to duty which made the consideration of the Bill successful. May I also express gratitude to the Offices of Speaker and Clerk of the National Assembly for providing direction and the Committee secretariat for providing technical and logistical support.

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and duty to present to the House the report of the Committee on the Supreme Court (Amendment) Bill (National Assembly Bill No. 15 of 2022)



HON. CLEMENT MUTURI KIGANO, M.P.

**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL
AFFAIRS**

PART 1

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

- 1) The Departmental Committee on Justice and Legal Affairs derives its mandate from Standing Order No. 216 (5) which provides for the functions of Departmental Committees as follows:-
 - (a) *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
 - (b) *study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;*
 - (c) *study and review all legislation referred to it;*
 - (d) *study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - (e) *investigate and enquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - (f) *vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
 - (g) *examine treaties, agreements and conventions;*
 - (h) *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - (i) *consider reports of Commissions and Independent Offices submitted to the House pursuant to provisions of Article 254 of the Constitution; and*
 - (j) *examine any questions raised by Members on a matter within its mandate.*
- 2) The Second Schedule of the Standing Orders on Departmental Committees further outlines the subjects of the Committee, as follows-
 - (a) Constitutional affairs;
 - (b) The administration of law and Justice;
 - (c) The Judiciary;
 - (d) Public prosecutions;
 - (e) Elections;
 - (f) Ethics, integrity and anti-corruption; and
 - (g) Human rights.

1.2 Committee Membership

3) The Committee was constituted on Thursday, 14th December, 2017. The current membership is as follows-

Chairperson

Hon. Clement Muturi Kigano, M.P.
Kangema Constituency

Jubilee Party

Vice Chairperson

Hon. Francis Tom Kajwang', M.P.
Ruaraka Constituency

Orange Democratic Movement (ODM)

Hon. Emmanuel Wangwe, M.P.

Navakholo Constituency

Jubilee Party

Hon. Junet Sheikh Nuh Mohamed, M.P.

Suna East Constituency

Orange Democratic Movement (ODM)

Hon. John Olago Aluoch, M.P.

Kisumu West Constituency

FORD-Kenya

Hon. George Peter Kaluma, M.P.

Homa Bay Town Constituency

Orange Democratic Movement (ODM)

Hon. Roselinda Soipan Tuya, M.P.

Narok County

Jubilee Party

Hon. Josephine Naisula Lesuuda, M.P.

Samburu West Constituency

KANU-Kenya

.Hon. Zuleikha Hassan, M.P.

Kwale County

Orange Democratic Movement (ODM)

Hon. Jennifer Shamalla, M.P.

Nominated MP

Jubilee Party

Hon. Adan Haji Yussuf, M.P.

Mandera West Constituency

Economic Freedom Party (EFP)

Hon. Daniel Rono Kipkogei, M.P.

Kirinyaga Central

Jubilee Party

Hon. George Gitonga Murugara, M.P.

Tharaka Constituency

Democratic Party (DP)

Hon. Anthony Githiaka Kiai, M.P.

Mukurueni Constituency

Jubilee Party

Hon. Japheth Mutai, M.P.

Bureti Constituency

Jubilee Party

Hon. John Kiarie Waweru, M.P.
Dagoretti South Constituency
Jubilee Party

Hon. Anthony Oluoch, M.P.
Mathare Constituency
Orange Democratic Movement (ODM)

Hon. Robert Gichimu Githinji, M.P.
Gichugu Constituency
Jubilee Party

1.3 Committee Secretariat

4) The Committee secretariat is comprised of:

Mr. Samuel Kalama
Principal Clerk Assistant II
Lead Clerk

Mr. Denis Abisai
Deputy-Director, Legal Services

Ms. Halima Hussein
Clerk Assistant II

Ms. Emma Essendi
Legal Counsel I

Mr. Clive Onyancha
Hansard Reporter III

Dr. Donald Manyala
Research Officer II

Mr. Omar Abdirahim
Fiscal Analyst II

Ms. Roselyne Ndegi
Serjeant-at-Arms I

Ms. Noelle Chelangat
Media Liaison Officer

PART 2

2.0 OVERVIEW OF THE BILL

- 5) The principal object of the Bill is to amend the Supreme Court Act, 2011 in order to align it with the current practices of the Court and to improve the Court's efficiency in the discharge of its duties. A number of sections of the Act have been declared unconstitutional and there is need to amend the Act in compliance with the Courts decisions in *Petition No 284 of 2012 - Commission on Administrative Justice v Attorney-General & Law Society of Kenya (Interested Party)* and *Supreme Court Application No. 1 of 2013 - Malcolm Bell Case*.
- 6) **Clause 1** of the Bill provides for the short title.
- 7) **Clause 2** of the Bill amends section 2 of the Act:
 - (a) by deleting the definition of "Chief Registrar";
 - (b) in the definition of "Court" to include the words "of Kenya as established under Article 163 (1) of the Constitution". This is to provide the legal reference for the establishment of the Supreme Court;
 - (c) in the definition of "Registrar" to provide that the reference to the "Registrar" also includes a deputy registrar; and
 - (d) by inserting the following new definitions in the Act:
 - (i) "petition" means a petition filed under Articles 58(5), 163(3)and (4) and 168(8) of the Constitution;
 - (ii) "proceedings" means presentation made before the Court under Article 163(2) of the Constitution for final determination on a matter;
 - (iii)"preliminary procedures" means presentation made before a single judge, a two-judge bench, or the Registrar, on a matter preparatory in nature; and
 - (iv)"president" means the president of the Supreme Court.
- 8) **Clause 3** of the Bill amends section 3(d) of the Act to remove the reference to matters relating to the transition from the former constitution to the current one as these matters will still be catered for even without direct reference.

- 9) **Clause 4** of the Bill introduces a new section 3A clarifying the inherent powers of the Court to make orders or provide directions for administration of justice, where necessary.
- 10) **Clause 5** of the Bill repeals section 4 of the Act and substitutes it with a new section 4 which provides that a vacancy in the Supreme Court shall not affect the jurisdiction of the Court as long the bench has five judges as provided under Article 163 (2) of the Constitution. Section 4 of the Act refers to Article 163 (1) of the Constitution which deals with establishment of the Supreme Court and not quorum.
- 11) **Clause 6** of the Bill amends section 6 (2) of the Act to provide that in the absence of the Chief Justice and Deputy Chief Justice, the most senior available judge shall perform any necessary administrative duty.
- 12) **Clause 7** of the Bill provides for the insertion of a new section 6A in the Act setting out the functions of the President of the Court as follows:
The president of the Court shall—
- (a) be the head of the Court and shall, in that regard, oversee the proper management and administration of the Court;
 - (b) be responsible for the allocation of cases, constitution of benches, and determination of sittings of the Court; and
 - (c) be responsible for giving general directions for the administration of the Court.
- 13) **Clause 8** of the Bill repeals section 8 of the Act which prescribes the manner of arriving at decisions.
- 14) **Clause 9** of the Bill amends section 9 (1) of the Act by rewording the provision to be more concise and remove unnecessary words.
- 15) **Clause 10** of the Bill amends section 10 (1) of the Act by removing the provision that the Registrar shall act in accordance to the directions of the Chief Justice, the Court and the rules. Further, it proposes to delete section 10 (1) (c) which provides that one of the duties of the Registrar is to enforce the decisions of the Court and instead provides that the Registrar shall be responsible for taxing costs of any proceedings before the Court as between the parties.
- 16) **Clause 11** of the Bill proposes to introduce a new section 11A providing for aspects of case management and promotion of the use of information and communication technology.

- 17) **Clause 12** of the Bill amends the heading to Part III of the Act so that it refers to the “Original Jurisdiction of the Supreme Court” as opposed to “Jurisdiction of the Supreme Court”.
- 18) **Clause 13** of the Bill deletes section 13 of the Act on the advisory role of the Supreme Court and replaces it with a new section 13 which outlines when the Court may give an advisory opinion under Article 163(6) of the Constitution.
- 19) **Clause 14** of the Bill proposes to introduce a new section 13A in the Act providing for the procedure of the Court in adjudicating matters relating to state of emergency.
- 20) **Clause 15** of the Bill repeals section 14 of the Act which provides for special jurisdiction of the Court.
- 21) **Clause 16** of the Bill amends the heading to Part IV of the Act so that it refers to the “Appellate jurisdiction of the Supreme Court” as opposed to “Appeals to the Supreme Court”.
- 22) **Clause 17** of the Bill proposes to introduce new sections 15A, 15B and 15C in the Act to provide for the Court’s powers to entertain appeals as of right, appeals upon certification, and direct appeals from Tribunals.
- 23) **Clause 18** of the Bill repeals section 16 of the Act which provides for “criteria for leave to appeal”. This is in line with the High Court’s decision in *Petition No. 284 of 2012 - Commission on Administrative Justice v Attorney-General & Law Society of Kenya (Interested Party)* which declared that *section 16(2) (b) of the Supreme Court Act, 2011 is ultra vires the Constitution, 2010 to the extent that it adds to the jurisdiction of the Supreme Court to determine appeals where the Court is satisfied that a substantial miscarriage of justice may have occurred or may occur unless the Appeal is heard*. Further, in *Supreme Court Application No. 1 of 2013 - Malcolm Bell Case* the Court observed as follows with regard to sections 16 (1) and (2) (a):
- (a) **[82]** *Retaining this provision, especially Section 16(1) and 2(a) will, in my humble opinion, restrict the meaning of “interest of justice”, as well as the discretion of the Court to develop the scope of interest of justice, which inherently is a broad concept.*
- (b) **[83]** *In the premises, I would like to recommend to the Hon Attorney- General that an amendment be effected in the said provision of the Act.*
- 24) **Clause 19** of the Bill repeals section 17 of the Act which provides for “direct appeals only in exceptional circumstances”.

- 25) **Clause 20** of the Bill repeals section 18 of the Act which deals with “reasons for refusal of right to appeal” and substitutes it with provisions on summary dismissal of petitions, references or applications.
- 26) **Clause 21** of the Bill repeals section 19 of the Act which provides for “extent of appellate jurisdiction of the Supreme Court”.
- 27) **Clause 22** of the Bill repeals section 20 of the Act which provides that appeals to the Supreme Court may proceed by fresh hearing and substitutes it with provisions on admission of further evidence in appeals.
- 28) **Clause 23** of the Bill amends section 21 of the Act by removing reference to the appellate jurisdiction of the Court which have been provided for under Part IV. It also removes the limitation of the Court to be able to correct an oversight within fourteen days only.
- 29) **Clause 24** of the Bill provides for the insertion of a new section 21A in the Act setting out the Court’s procedure for reviewing its own decisions.
- 30) **Clause 25** of the Bill prescribes the nature of preliminary procedures that may be handled by a single judge, two or more judges and the Court.
- 31) **Clause 26** of the Bill proposes to introduce a new section 23A in the Act providing for issuance of stay of execution, injunction, a stay of further proceedings or any other conservatory or interim orders on such terms as the Court may deem fit.
- 32) **Clause 27** of the Bill repeals section 24 of the Act and substitutes it with new provisions on interlocutory directions.
- 33) **Clause 28** of the Bill amends section 25 of the Act by inserting new subsections which provides that the Chief Justice may substitute a judge where a judge presiding over a matter is not able to deliver a judgement.
- 34) **Clause 29** of the Bill amends section 26 of the Act to provide that the Supreme Court may deliver a judgement by physical or electronic service to the parties in addition to delivery in open court.
- 35) **Clause 30** of the Bill amends section 28 of the Act by enhancing the penalty for contempt of Court. The clause also provides the Court may make an order denying audience to a contemnor for a period not exceeding eighteen months.

- 36) **Clause 31** of the Bill proposes to insert new sections 29A, 29B, 29C, 29D and 29E in the Act. The proposed new section 29A seeks to provide Rules for nomination of the Court's representatives to the Judicial Service Commission. The proposed new section 29B provides that the Court may establish committees for the efficient management of its operations. The proposed new section 29C provides for Alternative Dispute Resolution mechanisms while the proposed new section 29D provides for the Court's sittings and recess calendar. Lastly the proposed new section 29E provides that every Judge shall sign and ascribe to the Judicial Code of Conduct.

PART 3

3.0 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION

- 37) Pursuant to Standing Order 127(3) of the National Assembly Standing Orders, a Committee is obligated to facilitate public participation on a Bill through an appropriate mechanism including-
- (a) Inviting submission of memoranda;
 - (b) Holding public hearings;
 - (c) Consulting relevant stakeholders in the sector; or
 - (d) Consulting experts on technical subjects.
- 38) Public participation is a constitutional imperative flowing from Article 118 of the Constitution which provides that Parliament shall-
- (a) conduct its business in an open manner, and its sittings and those of its committees shall be open to the public; and
 - (b) Facilitate public participation and involvement in the legislative and other business of Parliament and its committees.
- 39) Pursuant to Article 118(1) (b) of the Constitution and Standing Order 127 (3), which provide that the Parliament shall facilitate public participation, the Committee placed an advert in the local dailies on 14th May, 2022 inviting the public to submit their views on the Bill to the Clerk of the National Assembly. Copy of the newspaper advertisement is attached to the report as **(Annexure 3)**.
- 40) The Registrar of the Supreme Court of Kenya submitted comments on the Bill. Copies of the submissions are attached to the report as **(Annexure 4)**.

3.1 Stakeholders submissions

41. By a letter dated 26th May, 2022 the Committee invited the Chief Registrar of the Judiciary, the Independent Electoral and Boundaries Commission (IEBC), the Solicitor-General, Office of the Attorney-General and Department of Justice, the Registrar of Political Parties, Office of the Registrar of Political Parties . However, the Committee only received submissions from the Registrar of Supreme Court of Kenya. The Registrar of the Supreme Court of Kenya vide a letter dated 31st May, 2022 submitted a memorandum in support of the Bill.

PART 4

4.0 COMMITTEE OBSERVATIONS

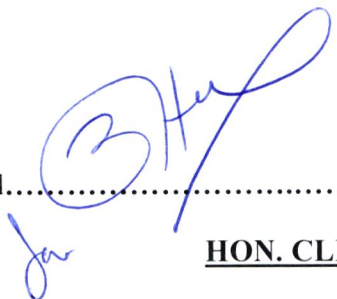

42. The Committee, having considered the Bill clause by clause and submissions by the various stakeholders made the following observations on the Supreme Court (Amendment) Bill (*National Assembly Bill No. 15 of 2022*).

- i. The main object of the Bill is to amend the Supreme Court Act, 2011 in order to align it with the current practices of the Court and to improve the Court's efficiency in the discharge of its duties
- ii. The Bill seeks to provide Rules for nomination of the Court's representatives to the Judicial Service Commission. The proposed new section 29B provides that the Court may establish committees for the efficient management of its operations. The proposed new section 29C provides for Alternative Dispute Resolution mechanisms while the proposed new section 29D provides for the Court's sittings and recess calendar.

PART 5

5.0 RECOMMENDATIONS

43. The Committee recommends that the House passes the Bill in its published form.

Signed..........Date..........

HON. CLEMENT MUTURI KIGANO, M.P.

**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL
AFFAIRS**

ANNEXURE 1

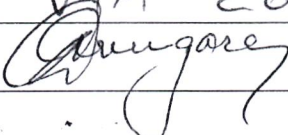
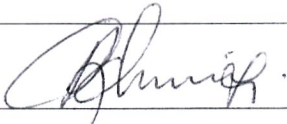
(Adoption list)

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

**ADOPTION LIST FOR THE REPORT ON THE SUPREME COURT (AMENDMENT) BILL, 2020
(NA BILL NO. 15) BY THE LEADER OF MAJORITY PARTY.**

DATE: THURSDAY 2ND JUNE, 2022

VENUE:

NO.	NAME	SIGNATURE
1.	Hon. Clement Muturi Kigano, M.P. - Chairperson	VIA ZOOM
2.	Hon. Francis Tom Kajwang' M.P - Vice-Chairperson	
3.	Hon. Emmanuel Wangwe, M.P.	
	Hon. Junet Sheikh Nuh Mohamed, M.P	
5.	Hon. John Olago Aluoch, MP.	VIA ZOOM
6.	Hon. Peter Opondo Kaluma, MP.	
7.	Hon. Roselinda Soipan Tuyu, MP.	VIA ZOOM
8.	Hon. Zuleikha Hassan, MP.	VIA ZOOM
9.	Hon. Josephine Naisula Lesuuda, M.P.	VIA ZOOM
10.	Hon. George Gitonga Murugara, MP.	
11.	Hon. Adan Haji Yussuf, MP.	
	Hon. Japheth Kiplangat Mutai, MP.	VIA ZOOM
13.	Hon. Anthony Githiaka Kiai, MP.	
14.	Hon. Jennifer Shamalla, MP.	VIA ZOOM
15.	Hon. John Kiarie Waweru, MP.	
16.	Hon. Hon. Dan Rono, MP.	VIA ZOOM
17.	Hon. Anthony Oluoch, M.P.	
18.	Hon. Robert Gichimu Githinji, M.P	

ANNEXURE 2

(Minutes of Committee sittings on
consideration of the Bill)

MINUTES OF THE 15TH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON 2ND JUNE, 2022 AT 10:00 AM AT CONTINENTAL HOUSE 5TH FLOOR, PARLIAMENT BUILDINGS.

PRESENT-

1. Hon. Clement Muturi Kigano, M.P. - **Chairperson**
2. Hon. John Olago Aluoch, M.P.
3. Hon. Zuleikha Hassan, M.P.
4. Hon. Roselinda Soipan Tuya, M.P.
5. Hon. George G. Murugara, M.P.
6. Hon. Jennifer Shamalla, M.P.
7. Hon. Robert Gichimu Githinji, M.P.
8. Hon. Josephine Naisula Lesuuda, M.P.
9. Hon. Dan Kipkogei Rono, MP
10. Hon. Japheth Mutai, M.P.

ABSENT WITH APOLOGIES-

1. Hon. Francis Tom Kajwang', MP - **Vice Chairperson**
2. Hon. Anthony Oluoch, M.P.
3. Hon. Junet Sheikh Nuh Mohamed, M.P.
4. Hon. Peter Opondo Kaluma, M.P.
5. Hon. Emmanuel Wangwe, M.P.
6. Hon. John Kiarie Waweru, M.P.
7. Hon. Adan Haji Yussuf, M.P.
8. Hon. Anthony G. Kiai, M.P.

IN ATTENDANCE-

1. Mr. Samuel Kalama
2. Ms. Emma Essendi
3. Mr. Clive Onyancha
4. Ms. Roselyne Njuki

COMMITTEE SECRETARIAT-

- Principal Clerk Assistant II
- Legal Counsel I
- Clerk Assistant III
- Sergeant At Arms

MIN No. JLAC/ 01/2022:-

PRELIMINARIES

The meeting was called to order at 10:40 AM with a word of prayer from Hon. George Murugara, M.P and the agenda was adopted as filed on a proposal from Hon. John Olago Aluoch, M.P. and seconded by Hon. Zuleikha Hassan, M.P.

**MIN No. JLAC/ 02/2022:- CONSIDERATION OF THE SUPREME COURT
(AMENDMENT BILL 2022. (N.A BILL NO.15 OF 2022)**

The committee considered the Supreme Court (Amendment) Bill 2022 as well as Memorandum from the Supreme Court submitted through the Registrar of the Supreme Court, Hon. Letizia Wachira. The Committee noted that the submissions from the Supreme Court were in support of the Bill.

**MIN No. JLAC/ 03/2022:- CONSIDERATION AND ADOPTION OF THE REPORT ON
THE SUPREME COURT (AMENDMENT) BILL 2022. (N.A
BILL NO.15 OF 2022)**

The committee considered the draft report on the Supreme Court (Amendment) Bill 2022 clause by clause.

The committee deliberated and unanimously resolved that the House approves the Supreme Court (Amendment) Bill 2022 without amendments.

The report was adopted upon a proposal by Hon. Zuleikha Hassan & seconded by Hon. Robert Gichimu Githinji.

**MIN No. JLAC/ 03/2022:- CONSIDERATION AND ADOPTION OF THE EXIT
REPORT OF THE DEPARTMENTAL COMMITTEE ON
JUSTICE AND LEGAL AFFAIRS (NOVEMBER 2017 TO
JUNE 200**

The Committee was informed the Exit report is a requirement of Standing Order 200 to document the activities undertaken by the Committee on Justice and Legal Affairs of the 12th Parliament. The report is expected to provide insights to the next Parliament's successor Committee as it considers its Work Programme. The Report contains all the activities undertaken by the Committee during the 12th Parliament and the unfinished business for record purposes. It also includes the challenges experienced during its conduct of business.

The Committee considered and adopted the report upon proposal by Hon. Zuleikha Hassan & seconded by Hon. Robert Gichimu Githinji.

MIN No. JLAC/ 04/2022:
MEETING

ADJOURNMENT& DATE OF NEXT

There being no other business to transact, the meeting was adjourned at 10:55 AM and the next meeting shall be held on notice.

Sign.....


Date..... 7/6/2022

Chairperson

ANNEXURE 3

(Copy of newspaper advertisement
inviting the public to submit memoranda
on the Bill)



REPUBLIC OF KENYA
COUNTY GOVERNMENT OF LAIKIPIA
DEPARTMENT OF INFRASTRUCTURE ROADS
AND PUBLIC WORKS

P. O. BOX 1271 - 10400, NANYUKI



ADVERTISEMENT

No.	Tender No.	Tender Description	NCA Registration Required	Eligibility	Bid Bond	Mandatory Pre-tender Site Visit Date/Venue /Time
1.	LCG/C06/INFRA/01/2021-2022/2023	IMPROVEMENT OF COUNTY ROADS IN TOWNS AND SMALL URBAN CENTRES IN LAIKIPIA COUNTY-PESI CENTRE	5 and above	open	Kshs. 1,451,622.00	18 th March, 2022
2.	LCG/C06/INFRA/02/2021-2022/2023	IMPROVEMENT OF COUNTY ROADS IN TOWNS AND SMALL URBAN CENTRES IN LAIKIPIA COUNTY-NAIBOR CENTRE	5 and above	open	Kshs. 1,792,829.00	17 th March, 2022
3.	LCG/C06/INFRA/03/2021-2022/2023	IMPROVEMENT OF COUNTY ROADS IN TOWNS AND SMALL URBAN CENTRES IN LAIKIPIA COUNTY-WIYUMIRIRIE CENTRE	5 and above	open	Kshs. 2,109,203.00	17 th March, 2022
4.	LCG/C06/INFRA/06/2021-2022	IMPROVEMENT OF COUNTY ROADS IN TOWNS AND SMALL URBAN CENTRES IN LAIKIPIA COUNTY-NYAHURURU JUA KALI ROADS	5 and above	open	Kshs. 2,477,579.00	18 th March, 2022

Bidding documents with details can be obtained from Laikipia County Website www.laikipia.go.ke free of charge. Only bidders meeting criteria indicated in the bid document shall be considered for further evaluation. Duly completed tenders should be submitted to the tender box located at Laikipia County Headquarters in Nanyuki town on or before **27th May, 2022 on or before 3:00 pm, in envelopes clearly marked;**

The Head of Supply Chain Management
County Government of Laikipia
P. O. Box 1271 - 10400,
Nanyuki

Bidders attending site meetings scheduled for **17th May, 2022** shall assemble at Laikipia County Infrastructure Department Board Room in Nanyuki at **9:00am**, while bidders attending site meetings scheduled for **18th May, 2022** shall assemble at Laikipia County Infrastructure offices in Nyahururu at **9:00am**.

2. Every Bidder attending site visit, shall be represented by at-least one technical Person with a minimum qualification of a Diploma in Civil/Highway Engineering. The Individual MUST Bring along the following:
- Original ID/Passport and a Copy
 - Original Diploma/H. Dip./Degree Certificate and a Copy
 - Copy of Registration Certificate/ or proof of current subscription by EBK/KETR
 - Original Introductory letter bearing the Company letterhead and an Official Stamp authorizing them to represent the company in the pre-tender site visit/Pre Tender Conference. The letter shall be duly signed. Photocopies or any other media shall not be accepted.

The copies of ID/Passport, Academic Certificate, Professional Registration certificate, and introductory letters shall be retained by the Procuring Entity's Team and may be verified later for authenticity.

- Only one (1) person shall only represent one (1) company per tender.
- Bidders shall **sequentially serialize all pages** of each tender submitted.

ADVERTISEMENT

No.	Tender no.	Description	Eligibility	Bid Bond	Closing Date
1.	LCG/B33/INFRA/01/2021/2022/2023	CONSULTANCY SERVICES FOR IMPROVEMENT OF COUNTY ROADS IN TOWNS AND SMALL URBAN CENTRES IN LAIKIPIA COUNTY-PESI CENTRE	open	Ksh. 100,000	20 th May, 2022
2.	LCG/B33/INFRA/03/2021/2022/2023	CONSULTANCY SERVICES FOR IMPROVEMENT OF COUNTY ROADS IN TOWNS AND SMALL URBAN CENTRES IN LAIKIPIA COUNTY-WIYUMIRIRIE CENTRE	open	Ksh. 100,000	20 th May, 2022
3.	LCG/B33/INFRA/2021/2022/2023	CONSULTANCY SERVICES FOR IMPROVEMENT OF COUNTY ROADS IN TOWNS AND SMALL URBAN CENTRES IN LAIKIPIA COUNTY-NYAHURURU JUA KALI ROADS	open	Ksh. 100,000	20 th May, 2022

Bidding document with details can be obtained from Laikipia county website www.laikipia.go.ke free of charge. Bid Bonds should be submitted to the Head of Supply Management 2 days before the tender closing date. Please obtain the **negotiation numbers** from the county website and manually submit the bids by **5:00pm** through;

The Head of Supply Chain Management
County Government of Laikipia
P. O. Box 1271 - 10400,
Nanyuki

RE-ADVERTISEMENT

The County Government of Laikipia invites interested and eligible tenderers for the tender as indicated below:

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The Head of Supply Chain Management
County Government of Laikipia
P. O. Box 1271 - 10400,
Nanyuki



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT – SIXTH SESSION

In the Matter of Article 118(1) (b) of the Constitution
and

In the Matter of Consideration by the National Assembly of -

- The Kenya Roads Board (Amendment) Bill (National Assembly Bill No. 13 of 2022)
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- The Public Finance Management (Amendment) Bill (National Assembly Bill No. 16 of 2022)
- The Public Finance Management (Amendment) Bill (National Assembly Bill No. 21 of 2022)

PUBLIC PARTICIPATION (SUBMISSION OF MEMORANDA)

Article 118(1) (b) of the Constitution of Kenya and National Assembly Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.

- The Kenya Roads Board (Amendment) Bill (National Assembly Bill No. 13 of 2022) sponsored by Hon. David Plosing, M.P. seeks to amend Section 6 of the Kenya Roads Board Act, 2009 to enable the Board to manage the Kenya Roads Fund in a manner that allows it to better finance the construction and maintenance of roads.
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- The National Rating Bill, (National Assembly Bill No. 10 of 2022) sponsored by the Leader of Majority Party, Hon. Amos Kimunya, M.P. seeks to provide for enhancement, certainty, uniformity and fairness in levying of property rates in the Counties. The Bill further seeks to provide a buoyant source of revenue for County Governments.
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The Bills were Read a First Time on Tuesday, 10th and Wednesday 11th May 2022 and pursuant to National Assembly Standing Order 127(1) committed to various House Departmental Committees as set out in the schedule hereunder:

SCHEDULE

No.	Bill	Committee
1.	The Kenya Roads Board (Amendment) Bill (National Assembly Bill No. 13 of 2022)	Transport, Public Works and Housing
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Now Therefore in compliance with Article 118 (1) (b) of the Constitution of Kenya and National Assembly Standing Order 127 (3) the Committees hereby invite members of the public and relevant stakeholders to submit memoranda on the Bills. Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings or on www.parliament.go.ke/the-national-assembly/house-business/bills

The memoranda should be addressed to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Tuesday, 31st May, 2022 at 5:00 p.m.

SERAH M. KIOKO, MBS
DEPUTY CLERK, NATIONAL ASSEMBLY
Friday, 13th May 2022

"For the Welfare of Society and the just Government of the People"



REPUBLIC OF KENYA
COUNTY GOVERNMENT OF LAIKIPIA
DEPARTMENT OF INFRASTRUCTURE ROADS
AND PUBLIC WORKS
P. O. BOX 1271 - 10400, NANYUKI



ADVERTISEMENT

No.	Tender No.	Tender Description	NCA Registration Required	Eligibility	Bid Bond	Mandatory Pre-tender Site Visit Date/Venue /Time
1.	LCG/C06/INFRA/01/2021-2022	IMPROVEMENT OF COUNTY ROADS IN TOWNS AND SMALL URBAN CENTRES IN LAIKIPIA COUNTY- PESI CENTRE	5 and above	open	Kshs. 1,451,622.00	18 th May, 2022
2.	LCG/C06/INFRA/02/2021-2022	IMPROVEMENT OF COUNTY ROADS IN TOWNS AND SMALL URBAN CENTRES IN LAIKIPIA COUNTY- NAIBOR CENTRE	5 and above	open	Kshs. 1,792,829.00	17 th May, 2022
3.	LCG/C06/INFRA/03/2021-2022	IMPROVEMENT OF COUNTY ROADS IN TOWNS AND SMALL URBAN CENTRES IN LAIKIPIA COUNTY- WIYUMIRIRIE CENTRE	5 and above	open	Kshs. 2,109,203.00	17 th May, 2022
4.	LCG/C06/INFRA/06/2021-2022	IMPROVEMENT OF COUNTY ROADS IN TOWNS AND SMALL URBAN CENTRES IN LAIKIPIA COUNTY- NYAHURURU JUA KALI ROADS	5 and above	open	Kshs. 2,477,579.00	18 th May, 2022

Bidding documents with details can be obtained from Laikipia County Website www.laikipia.go.ke free of charge. Only bidders meeting criteria indicated in the bid document shall be considered for further evaluation. Duly completed tenders should be submitted to the tender box located at Laikipia County Headquarters in Nanyuki Town on or before **May, 2022 on or before 3:00 pm, in envelopes clearly marked;**

The Head of Supply Chain Management
County Government of Laikipia
P. O. Box 1271 - 10400,
Nanyuki

- N.B.**
- Bidders attending site meetings scheduled for **17th May, 2022** shall assemble at Laikipia County Infrastructure Department Board Room in Nanyuki at **9:00am**, while bidders attending site meetings scheduled for **18th May, 2022** shall assemble at Laikipia County Infrastructure offices in Nyahururu at **9:00am**.
 - Every Bidder attending site visit, shall be represented by at-least one technical Person with a minimum qualification of a Diploma in Civil/Highway Engineering. The Individual MUST bring along the following:
 - Original ID/Passport and a Copy
 - Original Diploma/H. Dip./Degree Certificate and a Copy
 - Copy of Registration Certificate/ or proof of current subscription by EBK/KETRIB
 - Original Introductory letter bearing the Company letterhead and an Official Stamp authorizing them to represent the company in the pre-tender site visit/Pre Tender Conference. The letter shall be duly signed. Photocopies or any other media shall not be accepted.
 - The copies of ID/Passport, Academic Certificate, Professional Registration certificate, and introductory letters shall be retained by the Procuring Entity's Team and may be verified later for authenticity.
 - Only one (1) person shall only represent one (1) company per tender.
 - Bidders shall **sequentially serialize all pages** of each tender submitted.

ADVERTISEMENT

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P. O. Box 1271 - 10400,
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REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT - SIXTH SESSION

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SERAH M. KIOKO, MBS
DEPUTY CLERK, NATIONAL ASSEMBLY
Friday, 13th May 2022

ANNEXURE 4

(Stakeholder submissions)

Telephone: Nairobi 0730181600/700/800
Email: supremecourt@court.go.ke
www.judiciary.go.ke/sc



SUPREME COURT OF KENYA
TAIFA ROAD, OFF CITY HALL WAY
P.O. Box 30041-00100
NAIROBI

When replying please quote
Ref
and date

REPUBLIC OF KENYA
THE JUDICIARY

31st May 2022

The Clerk of the National Assembly
Parliament Buildings
NAIROBI.

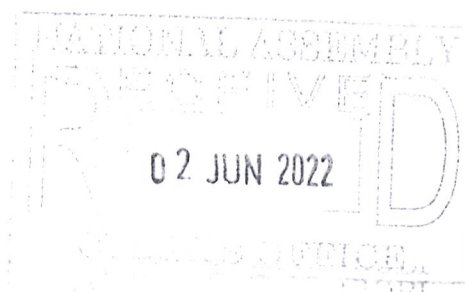
Nw. Kalumba
① DIDC 2/6/22 ✓

**MEMORANDUM ON THE SUPREME COURT (AMENDMENT) BILL,
2022**

I am writing in response to your letter dated 26th May, 2022 inviting the Chief Registrar of the Judiciary to make representations with regard to the Supreme Court (Amendment) Bill No. 15 of 2022 for consideration and reporting to the House.

Kindly note that the Constitution of Kenya, 2010 establishes the Supreme Court as the apex court in Kenya's judicial system. The Court was operationalized by the Supreme Court Act No. 7 of 2011 which was assented to on 22nd June 2011 and came into force on 23rd June 2011 pursuant to Article 163(9) of the Constitution. The Court is also grounded on the Supreme Court Rules as provided for under Article 163(8) of the Constitution.

For over 11 years the Supreme Court has been in office, the Court has identified gaps that need to be addressed for its effective operation. Some of the identified gaps were not foreseen by the initial drafters of the Statute. Several sections of the Act have already been nullified and need to be replaced. Besides, the Court has through its decisions recommended amendments to the Act. These are some of the factors that inform the need for the present proposed amendments to the Act.

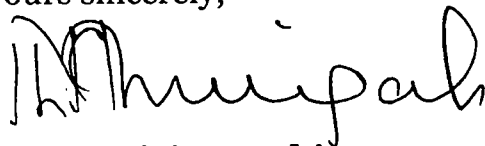


We enclose herewith the following documents to justify the proposed amendments:

1. Memorandum justifying the proposed amendments in the Supreme Court(Amendment) Bill, 2022
2. The Supreme Court (Amendment) Bill, 2022
3. The Supreme Court Act No. 7 of 2011
4. The Supreme Court Rules, 2020
5. The Presidential Election Petition Rules, 2017(Revised 2020)

In case you require additional information, please feel free to reach me on **0722 134 745**.

Yours sincerely,



Hon. Letizia Wachira
Registrar, Supreme Court of Kenya

- Cc: 1. Samuel Kalama
Departmental Committee on Justice and Legal Affairs
National Assembly of the Republic of Kenya
Parliament Building
NAIROBI
2. Chief Registrar of the Judiciary
Supreme Court Building
NAIROBI
3. Chairperson, Supreme Court Technical Rules Committee
Supreme Court Building
NAIROBI.

**SUPREME COURT MEMO TO THE NATIONAL
ASSEMBLY OF KENYA ON THE SUPREME COURT
(AMENDMENT) BILL, 2022**

1. PURPOSE OF THE MEMORANDUM

The purpose of this Cabinet Memorandum is to:

- a. Appraise the Committee and the National Assembly on the proposed Supreme Court (Amendment) Bill, 2022; and
- b. Seek approval for the processing of the Supreme Court (Amendment) Bill, 2022.

2. BACKGROUND

The Constitution of Kenya, 2010 establishes the Supreme Court as the apex court in Kenya's judicial system. Under Article 163(1), the Court comprises the Chief Justice, who is the President of the Court, the Deputy Chief Justice, who deputizes the Chief Justice and is the Vice-President of the Court and five other Judges of the Court. Further, Article 163(2) sets out the Court's quorum for purposes of its proceedings. The Court was operationalized by the Supreme Court Act Number 7 of 2011 and inaugurated on 26th October 2011. Its seat is in Nairobi, at the Supreme Court Building.

3. THE MANDATE OF THE COURT

The Court derives its mandate from the Constitution of Kenya, 2010. The Constitution confers upon the Court powers to exercises diverse jurisdictions as follows:

1. *Exclusive original jurisdiction.* Under Article 163(3)(a), the Court has exclusive original jurisdiction to hear and determine disputes relating to the elections to the office of the President. In exercise of this jurisdiction, under Article 140(2), the Court must hear and determine such petitions within 14 days after the filing.

2. *Appellate jurisdiction.* Under Article 163(3) (b), the Court has appellate jurisdiction to hear and determine appeals from the Court of Appeal and any other court or tribunal as prescribed by national legislation. Appeals from the Court of Appeal lie to the Court in two ways: firstly, as of right in any case involving the interpretation or application of the Constitution per Article 163(4) (a); and secondly, under Article 163(4)(b), upon certification by either the Court of Appeal or the Court, that a matter of general public importance is involved in the intended appeal.
3. *Jurisdiction to offer Advisory Opinion.* Article 163(6) of the Constitution vests the Court with the power to give an advisory opinion at the request of the national government, any State organ, or any county government concerning any matter concerning county government.
4. *Appeals from tribunals constituted under Article 168(8) of the Constitution.* The Supreme Court may hear and determine an appeal by a judge aggrieved by a decision of a tribunal formed under Article 168 of the Constitution to consider the Judge's removal.
5. *Applications upon declaration of a State of Emergency.* The Court, according to Article 58(5), has jurisdiction to consider applications emanating from a declaration of a State of Emergency.

4. OBJECTIVES OF THE COURT

The Court, in the execution of its mandate, is guided by the objectives outlined in Section 3 of the Supreme Court Act, 2011 as follows:

- i. Assert the supremacy of the Constitution and the sovereignty of the people of Kenya;
- ii. Provide authoritative and impartial interpretation of the Constitution;
- iii. Develop rich jurisprudence that respects Kenya's history and traditions and facilitates its social, economic and political growth;

iv. Enable important constitutional and other legal matters, including matters relating to the transition from the former to the present constitutional dispensation to be determined, with due regard to the circumstances, history and cultures of the people of Kenya; and

v. Improve access to justice

The Bill is a culmination of a long and widely engaging process involving the Kenya Law Reform Commission, the Law Society of Kenya, the State Law Office and stakeholders.

The Supreme Court Act was amended by Act No. 36 of 2016. The effect of that amendment was to insert a new subsection 2 under Section 12 and renumbering the existing provision as subsection (1). Sub-section 2 directs the Independent Electoral and Boundaries Commission to, within a period of forty-eight hours from the date of service of a presidential election petition, submit to the Supreme Court certified copies of the documents used to declare the results of the presidential election, including the forms used to announce the results of the vote at the polling station and the constituency tallying Centre and to declare the result at the national tallying Centre.

Notwithstanding the above, several sections of the Act have already been nullified and need to be replaced. Besides, the Court has recommended amendments to the Act in some instances, such as the *Commission on Administrative Justice v Attorney-General & Law Society of Kenya (Interested Party)*, *Petition No 284 of 2012*; and *Malcolm Bell Case, Supreme Court Application No. 1 of 2013*. These are some of the factors that inform the need for the present proposed amendments to the Act.

5. RATIONALE/JUSTIFICATION

The purpose of the Bill is to amend the Supreme Court Act to align it with current Rules, Practice Directions of the Court, and to improve the Court's efficiency in the discharge of its duties.

6. OBJECT OF THE BILL

The object of the Bill is to align the provisions of the Act with the Constitution and other legislation. This will ensure that the operations of the Court are within the constitutional bounds and are in line with current practices of the Court.

7. STRUCTURE OF THE BILL

The following are the salient features of the Bill:

Clause 2A of the Bill proposes:

- to delete the definition of “**Chief Registrar**” because other than in the interpretation Section, the term is not used elsewhere in the Act.
- to insert the word “**Kenya**” at the end of the word Court. This is to define the Court as is defined in the Constitution.
- to add the words “and includes a **deputy registrar**” at the end of the definition of “Registrar”; The Office of the Deputy Registrar is part of the Office of the Registrar but is not defined in the current Act.
- to define “**petition**” to mean a petition filed under Articles 58(5), 163(3), (4) and 168(8) of the Constitution. The term is not defined in the current Act.
- to define the term “**proceedings**” to mean presentation made before the Court under Article 163(2) of the Constitution for final determination on a matter. The definition is proposed to show how the same relates to the quorum of the Court.
- Define the term “**preliminary procedures**” to mean presentation made before a single judge, a two-judge bench, or the Registrar, on a matter preparatory in nature; and
- To define the term “**President**” to mean the President of the Supreme Court of Kenya. The same is not defined in the current Act.

Clause 3A of the Bill deletes the words “including matters relating to the transition from the former to the present constitutional dispensation.” This is because, the Court no longer deals with transitional clauses. The Constitution is past the transitional period and the objective serves no purpose.

Clause 4 makes provision for the Inherent powers of the Court which is currently not provided for in the Act.

Clause 5 The Section as is currently provides that a vacancy in the Supreme Court as constituted under Article 163(1) of the Constitution shall not affect the jurisdiction of the Court. Contrary to what is provided for in the Act, the coram of the Court is provided for under Article 163(2) of the Constitution and not 163(1) as is currently.

Clause 6A of the Bill provides for the functions of the Presiding Judge of the Court. The Clause clarifies the functions of the presiding Judge to include administrative duties.

Clause 7A provides for the functions of the President of the Court to include:

- being the head of the Court and shall, in that regard, oversee the proper management and administration of the Court;
- being responsible for the allocation of cases, constitution of benches, and determination of sittings of the Court; and
- being responsible for giving general directions for the administration of the Court.

These functions are currently missing in the present Act but are performed by the President of the Court.

Clause 8 proposes to repeal Section 8 of the Act which provides for the manner of reaching at a decision. In case of conflict of interest, the respective counsel can raise an objection during hearing or mention, hence it is not a matter requiring legislation. The amendment is to embrace the doctrine of necessity as outlined in the case of *Jasbir Singh Rai and Others v The Estate of Tarlochan Singh Rai and Others Sup. Ct. Petition No. 4 of 2012*.

Clause 9 of the Bill clarifies on the appointment of the Registrar as are provided for in the Constitution.

Clause 10 of the Bill proposes to amend Section 10 of the Act to provide for the taxation duties of the Registrar. The proposed amendment adds the taxation role of the Registrar which is currently not provided for under the Section.

The amendment also seeks to delete S.10 (1) (c) on the registrar's role of enforcing decisions of the Court. This role is done by the High Court and is not performed by the Registrar.

Clause 11A of the Bill makes provision for (a) case management; (b) automation of records and business processes of the Court; (c) protection and management of information; and (d) promotion of the use of information, and communication technology. These provisions are currently not provided for in the Act.

Clause 12 of the Bill clarifies on the Court's original jurisdiction in presidential election petition.

Clause 13 clarifies on the Court's jurisdiction in giving advisory opinion as provided for in Article 163(6) of the Constitution.

Clause 14 clarifies on the Court's jurisdiction as provided for under Article 58(5) of the Constitution.

Clause 15 proposes to delete Section 14 of the Act which was declared unconstitutional by the Supreme Court in the case of *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others, Application No. 2 of 2011*: [2012] eKLR. Clause 16 clarifies on the Court's appellate jurisdiction.

Clause 17 , 18 and 19 of the Bill proposes amendments to Sections 15-19 of the Act to clarify the Court's powers to entertain appeals as of right, and upon due certification as provided for under Article 163(4) of the Constitution., and direct appeals from tribunals under Article 168 of the Constitution.

Clause 20 of the Bill proposes to delete Section 18 of the Act and substituting it with a provision that clarifies the Court's powers to summarily dismiss a petition, reference, or an application, where it is apparent on the face of the record that it is wholly defective. This provision will save the Court's time.

Clause 21 proposes to delete Section 19 of the Act which is provided for in Clause 17 on the Court's appellate jurisdiction.

Clause 22 makes provisions for the admission of further evidence as per the principles set by the Supreme Court in the Case of *Mohamed Abdi Mahamud v Ahmed Abdullahi Mohamad & 3 others*, SC Petition No. 7 of 2018 as consolidated with Petition No. 9 of 2018; [2018] eKLR.

Clause 23A of the Bill relates to staying proceedings pending in courts below so as to respect the normal hierarchy of courts.

Clause 24 makes provision for the Court to review its own decision. The provision is missing in the Act.

Clause 25 makes provision for the powers of a single-judge and a two-judge bench. This will enhance expeditious disposal of simple applications hence

paving way for the Court to determine the main issues. This is also because, the Court as is currently constituted has a limited number of Judges, and sometimes has coram challenges as two of its Judges sit in Judicial Service Commission. An aggrieved party may appeal to a five bench.

Clause 26 makes provision for stay of execution, issuance of injunctions, or stay of further proceedings, and issuance of any relief pending determination of a matter. There are no provisions in the Act as it is.

Clause 27 makes provision for a single judge to issue interlocutory orders or directions as the judge deems fit. These orders are interlocutory in nature and last for 14 days. These provisions are not there in the present Act.

Clause 28 allows for the substitution of a Judge who heard a matter but is not able to deliver judgement on account of death, suspension, removal from office, retirement or infirmity which occasion lack of prescribed quorum. The incoming Judge may rely on submissions and proceedings on record. This will ensure continuity of matters.

Clause 29A provides for modes of delivery of judgements and rulings to include electronic service.

Clause 30 expounds on the Court's jurisdiction in contempt of court proceedings including laid down procedures to be followed which are not provided for in the Act.

Clause 31 of the Bill contains a new section 29A providing guidelines for nomination of the Court's representatives at service organs. Further to this, the Clause proposes the introduction of two new sections 29B, 29C, 29D, and 29E making provisions for the Committees of the Court for the purpose of efficient management of its affairs, alternative dispute resolution, court sittings and recess, and ethics and integrity of the Court.

8. FINANCIAL CONSIDERATIONS


The enactment of the proposed Supreme Court (Amendment) Bill, 2022, will not occasion additional expenditure of public funds through the estimates.

9. RECOMMENDATIONS

The National Assembly is therefore invited to note the contents of this memorandum and to—

- (a) approve the publication and introduction of the Supreme Court (Amendment) Bill, 2022 to the National Assembly; and

Dated at Nairobi the 31st Day of May 2022


REGISTRAR SUPREME COURT OF KENYA
THE SUPREME COURT
OF KENYA
NAIROBI

31 MAY 2022