

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – SECOND SESSION, 2018

THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON THE PETITION TO AMEND SECTION 18 OF THE LAW
SOCIETY OF KENYA ACT TO VACATE THE FIFTEEN (15) YEARS'
EXPERIENCE FOR ELIGIBILITY FOR ELECTION AS PRESIDENT OR
VICE PRESIDENT OF THE LAW SOCIETY OF KENYA COUNCIL

DIRECTORATE OF COMMITTEE SERVICES

CLERK'S CHAMBERS

PARLIAMENT BUILDINGS

NAIROBI

DECEMBER, 2018

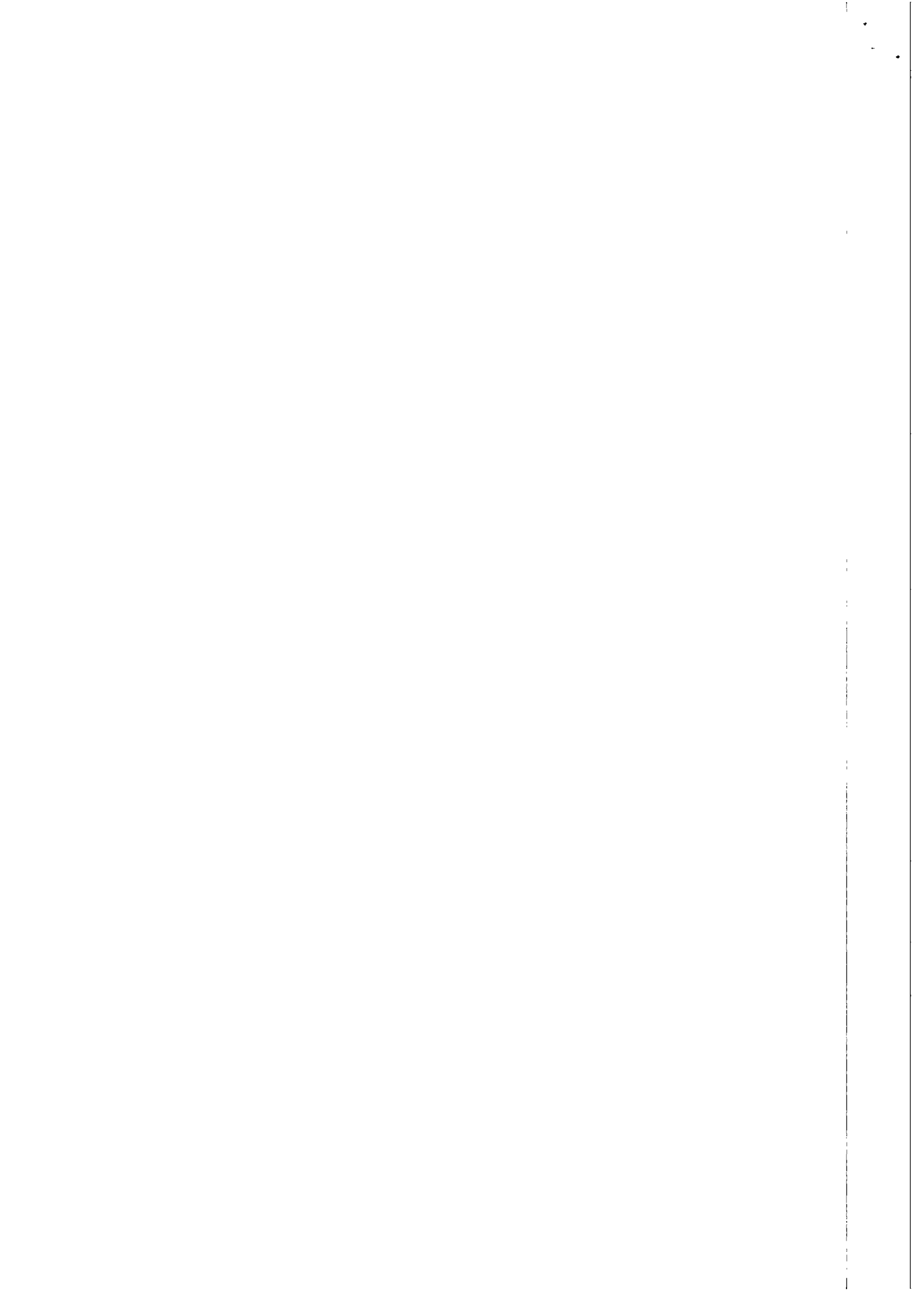


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ANNEXURES

- A. Adoption List**
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ABBREVIATIONS AND ACRONYMS

- Hon - Honourable
- LSK - Law Society of Kenya
- MP - Member of Parliament
- NA - National Assembly
- Ref - Reference

CHAIRMAN'S FOREWORD

This petition was conveyed to the House by the Speaker Hon. Justin Muturi, MP on 3rd July 2018. This is in accordance with the provisions of Standing Order No. 225 (2) (b).

The Petitioner, the Law Society of Kenya, prays that Parliament consider, amend or repeal Section 18 of the Law Society of Kenya Act which requires that a Presidential or vice- presidential candidate be a member or former member of the Council, or be qualified to be a Judge of the Supreme Court. Article 166(3) of the Constitution requires that judges of the Supreme Court have a mandatory minimum of 15 years' experience either as a superior court judge, distinguished academic, judicial officer, legal practitioner, or such other experience as may be in a relevant legal field.

The Petition was thereafter referred to the Departmental Committee on Justice and Legal Affairs for consideration and preparation of a report within sixty days in line with the requirements of Standing Order 227.

In considering the Petition, the Committee, during its sittings met Ms. Mercy Wambua, the Chief Executive officer of the Law Society of Kenya on behalf of the petitioner and deliberated on the written evidence as contained in the Petition. The meeting was aimed at inquiring into the issues raised in the Petition.

The Committee appreciates the assistance provided by the Office of the Speaker and the Clerk of the National Assembly that enabled it to discharge its functions in considering the petition.

On behalf of the Committee, and pursuant to Standing Order, 227 it is my duty to table on the Floor of the House the Report of the Committee on the petition.

Hon. William Cheptumo, MP

Chairperson, Departmental Committee on Justice and Legal Affairs

CHAPTER ONE

1.0 PREFACE

1.1. Mandate of the Committee

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.*

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

The Committee was constituted on Thursday, 14th December, 2017 and comprises the following Honourable Members-

Hon. William Cheptumo, M.P.	-	<i>Chairperson</i>
Hon. Alice Muthoni Wahome, M.P.	-	<i>Vice Chairperson</i>
Hon. John Olago Aluoch, M.P.		
Hon. Roselinda Soipan Tuya, M.P.		
Hon. Charles Gimose, M.P.		
Hon. Johana Ng'eno, M.P.		
Hon. William Kamoti Mwamkale, M.P.		
Hon. Ben Orori Momanyi, M.P.		
Hon. Peter Opondo Kaluma, M.P.		
Hon. Jennifer Shamalla, M.P.		
Hon. Beatrice Adagala, M.P.		
Hon. Gladys Boss Shollei, CBS, M.P.		
Hon. John Munene Wambugu, M.P.		
Hon. George Gitonga Murugara, M.P.		
Hon. Anthony Githiaka Kiai, M.P.		
Hon. John Kiarie Waweru, M.P.		
Hon. Japheth Mutai, M.P.		
Hon. Adan Haji Yussuf, M.P.		
Hon. Zuleikha Hassan, M.P.		

1.3. Committee Secretariat

Mr. George Gazemba	-	Senior Clerk Assistant and Head of Secretariat
Mr. Denis Abisai	-	Principal Legal Counsel I
Ms. Halima Hussein	-	Clerk Assistant III
Ms. Fiona Musili	-	Research Officer III
Mr. Omar Abdirahim	-	Fiscal Analyst III
Mr. Joseph Okongo	-	Media Liaison Officer
Mr. Hakeem Kimiti	-	Audio Officer
Ms. Roselyne Ndegi	-	Serjeant-at-Arms
Mr. Richard Sang	-	Serjeant-at-Arms

CHAPTER TWO

2.0 CONSIDERATION OF THE PETITION

3.0 The Committee commenced its consideration of the Petition by meeting the Petitioner on 23rd October 2018. During the meeting, written and oral evidence was adduced as noted hereunder:-

2.1 Submissions by Ms. Mercy K Wambua, Chief Executive Officer and Secretary of the Law Society of Kenya

Ms. Mercy K Wambua, on behalf of the Law Society of Kenya, sought to draw the attention of the House to the following-

Section 18 of the Law Society of Kenya Act, 2014 sets out the requirements for eligibility as a candidate in the election of the President and Vice- President of the Law Society of Kenya, to wit:

18. *Eligibility of election as member of the Council*

- (1) A person is eligible for election as the president or vice-president if the person—*
 - (a) is a member or former member of the Council: or*
 - (b) is qualified to be a Judge of the Supreme Court.*
- (2) A person is eligible for election as a member of the Council if the person—*
 - (a) is a member of the Society;*
 - (b) has been practise for at least two years, from the date of admission*
 - (c) has not been found liable for professional misconduct by the Disciplinary Committee established by the Advocates Act (Cap.16), in the three years immediately preceding the election; and*
 - (d) meets the requirements of Chapter Six of the Constitution.*

Article 166(3) of the Constitution requires that judges of the Supreme Court have a mandatory minimum of 15 years' experience either as a superior court judge, distinguished academic, judicial officer, legal practitioner, or such other experience as may be in a relevant legal field. Section 18 of the LSK Act therefore requires that a Presidential or vice- presidential candidate have at least 15 years' experience in a relevant legal field before they are allowed to offer their candidature.

Aggrieved by the statutory provisions, a member of the Society challenged the constitutionality of the said section vide *Constitutional Petition No. 607 of 2017 Nelson Andayi Havi versus Law Society of Kenya & 3 others*. Honourable Justice Mativo dismissed the petition vide a judgment dated and delivered on 5th February 2018, wherein the learned Judge made the following observation and guidance:

"In my view, lowering the bar to make it easy for people to qualify may not necessarily be in the best interests of the Society. But should the majority feel the necessity to effect the changes, then this can be achieved legally by the members voting for the changes in a properly constituted AGM. That way, the majority will have their say as opposed to a court decision which may have the force of law but may go against the preference of the majority. In other words, a court of law should be hesitant to involve itself in internal matters of professional bodies especially where the law provides for clear mechanisms of resolving them."

Aggrieved by the decision, Mr. Nelson Havi preferred an appeal being Civil Appeal No. 28 of 2018 Nelson Andayi versus Law Society of Kenya & 3 others. One of the grounds raised in the memorandum of appeal by the appellant is:

"The Learned Judge of the High Court erred in law holding that the law and practice on age and status limit for eligibility for election for officials of the 1st Respondent was a matter that could and should have been remedied by a resolution of members of the 1st Respondent and not by an order of the High Court."

Consequently , a member of the Society moved a motion premised on the decision by Mativo, J (<http://kenyalaw.org/caselaw/cases/view/149433/>) seeking to authorize the Society through its Council to petition Parliament to consider, amend or repeal Section 18(1)(b) and (2) (b) of the LSK Act, which motion was couched as follows:

“A special resolution to be and is hereby passed by members of the Society to empower and authorize Council pursuant to section 4 of the Law Society of Kenya Act, 2014 to petition Parliament to consider, amend or repeal section 18 of the Law Society Act 2014.”

When the member’s motion aforesaid was tabled before the members at the Society’s Annual General Meeting held on 24th March 2018, the same was passed by the members through the following resolution:

“A special resolution to be and is hereby passed by members of the Society to empower and authorize Council pursuant to section 4 of the Law Society of Kenya Act, 2014 to petition Parliament to consider, amend or repeal section 18 of the Law Society Act 2014.”

The petitioner further submitted that the years of experience requirement for appointment to the said positions was discriminative contrary to Article 27 of the Constitution which provides that every person is equal before the law and has the right to equal protection and equal benefit of the law. Article 27 further states that the State shall not discriminate against any person on any ground including race, sex pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

The petitioner submitted that this being a legislative matter solely within the purview and province of Parliament, the matter is hereby submitted for first consideration to Parliament.

The petitioner therefore prays that Parliament do consider, amend or repeal section 18 of the Law Society Act, 2014.

CHAPTER THREE

3.0 COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

3.1 Committee observations

The Committee made the following observations from the evidence adduced in the meetings-

1. The request to petition Parliament was approved by the members of the Law Society of Kenya pursuant to section 4 of the Law Society of Kenya Act, 2014 vide a special resolution.
2. The petition was as a result of one Advocate who was barred from contesting for a Law Society of Kenya's Chairman position because of not meeting the fifteen (15) years' experience requirement;
3. Experience was a key factor in leadership. For instance, the Chairperson Law Society of Kenya enjoyed certain powers and privileges like the appointment of arbitrators and his/her years of experience would be critical in the execution of such task;
4. Vacating the years of experience requirement for election or appointment to certain positions would amount to lowering the bar for legal practitioners which was not in the best interest of the profession;
5. The Constitution of Kenya in itself permitted age discrimination in certain situations for eligibility to be elected to certain positions. For instance, for one to run for the Presidency he/she must be over thirty-five (35) years of age.

3.2 Committee Recommendations

In response to the prayers by the Petitioner, the Committee recommends **that the petition be rejected.**

Sign.......... Date..........

Hon. William Cheptumo, MP

Chairman, Departmental Committee on Justice and Legal Affairs

ADOPTION LIST



KENYA NATIONAL ASSEMBLY



DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS


ATTENDANCE REGISTER FOR MEMBERS

DATE... 27/11/2018 ... TIME... 1130

VENUE... CPA ROOM

NO.	NAME	SIGNATURE
1.	Hon. William Cheptumo, M.P. – Chairperson	
2.	Hon. Alice Wahome, MP. - Vice Chairperson	
3.	Hon. John Olago Aluoch, MP.	
4.	Hon. Roselinda Soipan Tuyu, MP.	
5.	Hon. Ben Momanyi, MP.	
6.	Hon. Mwamkale William Kamoti, MP.	
7.	Hon. Peter Opondo Kaluma, MP.	
8.	Hon. Charles Gimose, MP.	
9.	Hon. Johana Ngeno Kipyegon, MP.	
10.	Hon. Zuleikha Hassan, MP.	
11.	Hon. John Kiarie Waweru, MP.	
12.	Hon. George Gitonga Murugara, MP.	

13.	Hon. Adan Haji Yussuf, MP.	
14.	Hon. Japheth Kiplangat Mutai, MP.	
15.	Hon. Anthony Githiaka Kiai, MP.	<i>K. A. Kiai</i>
16.	Hon. Jennifer Shamalla, MP.	<i>Jennifer Shamalla</i>
17.	Hon. Beatrice Adagala, MP.	<i>Beatrice Adagala</i>
18.	Hon. John Munene Wambugu, MP.	
19.	Hon. Boss Shollei, CBS, MP.	<i>Boss Shollei</i>


 GEORGE GAZEMBA, ACI Arb
 For: CLERK OF THE NATIONAL ASSEMBLY

**MINUTES OF THE
COMMITTEE SITTINGS**



MINUTES OF THE NINETY - FOURTH SITTING OF THE DEPARTMENTAL
COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY, 27TH
NOVEMBER, 2018 AT 11.30 A.M. IN CPA ROOM, MAIN PARLIAMENT BUILDINGS

PRESENT-

1. Hon. William Cheptumo, M.P. - Chairperson
2. Hon. Ben Momanyi, MP.
3. Hon. John Olago Aluoch, M.P.
4. Hon. William K. Mwamkale, M.P.
5. Hon. Charles Gimose, M.P.
6. Hon. Jennifer Shamalla, M.P.
7. Hon. Anthony G. Kiai, M.P.
8. Hon. George G. Murugara, M.P
9. Hon. Beatrice Adagala, M.P
10. Hon. Gladys Boss Shollei, CBS, M.P
11. Hon. John Kiarie Waweru, M.P.

ABSENT WITH APOLOGIES

1. Hon. Alice Muthoni Wahome, M.P. - Vice Chairperson
2. Hon. Peter O. Kaluma, M.P.
3. Hon. Roselinda Soipan Tuya, M.P.
4. Hon. Japheth Mutai, M.P.
5. Hon. John M. Wambugu, M.P.
6. Hon. Adan Haji Yussuf, M.P.

ABSENT

1. Hon. Zuleikha Hassan, M.P.
2. Hon. Johana Ng'eno, M.P.

IN ATTENDANCE

1. Ms. Halima Hussein
2. Ms. Fiona Musili

COMMITTEE SECRETARIAT

- Third Clerk Assistant
- Researcher Officer III

MIN No. 349/2018

PRELIMINARIES

The chairperson called the meeting to order at 11.30 A.m. which was followed by a word of prayer from Hon Beatrice Adagala, MP.

MIN No. 350/2018

CONFIRMATION OF PREVIOUS MINUTES

The following Minutes of the previous Sitzings were confirmed as below;

1. Minutes of the 93rd Sitting held on Wednesday 14th November, 2018 at 11.00 am in Committee Room 9 were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. George G. Murugara, M.P and seconded by Hon. Beatrice Adagala, MP.
2. Minutes of the 92nd Sitting held on Tuesday 13th November, 2018 at 10.00 am in Commission Boardroom were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. Anthony Kiai, M.P and seconded by Hon. Charles Gimose, MP.
3. Minutes of the 91st Sitting held on Monday 12th November, 2018 at 3.00 pm in Country Hall, Windsor Gold Hotel were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. Ben Momany, M.P and seconded by Hon. George G. Murugara, MP.
4. Minutes of the 90th Sitting held on Monday 12th November, 2018 at 9:30 am in Country Hall, Windsor Gold Hotel were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. Ben Momany, M.P and seconded by Hon. George G. Murugara, MP.
5. Minutes of the 89th Sitting held on Thursday 8th November, 2018 at 11:55 am in Committee Room 7 were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. Jennifer Shamalla, M.P and seconded by Hon. George G. Murugara, MP.
6. Minutes of the 88th Sitting held on Thursday 1st November, 2018 at 7:30 am in Maria Room, Hotel Intercontinental were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. Jennifer Shamalla, M.P and seconded by Hon. Beatrice Adagala, MP.
7. Minutes of the 87th Sitting held on Saturday 27th October, 2018 at 2:30 pm in Weldon Room, Tamarind Village Hotel were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. John Olago, M.P and seconded by Hon. Willaim Kamoti, MP
8. Minutes of the 86th Sitting held on Saturday 27th October, 2018 at 10:00 am in Weldon Room, Tamarind Village Hotel were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. John Olago, M.P and seconded by Hon. Willaim Kamoti, MP
9. Minutes of the 85th Sitting held on Friday 26th October, 2018 at 2:30 pm in Weldon Room, Tamarind Village Hotel were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. Jennifer Shamalla, M.P and seconded by Hon. Charles Gimose, MP

10. Minutes of the 84th Sitting held on Friday 26th October, 2018 at 9:50 am in Weldon Room, Tamarind Village Hotel were confirmed as true record of the proceedings and signed by the Chairperson after being Hon. George G. Murugara, M.P and seconded by Hon. Beatrice Adagala, MP.

11. Minutes of the 83rd Sitting held on Tuesday 23rd October, 2018 at 10:00 am in Boardroom, second Floor, Protection House were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. John Olago, M.P and seconded by Hon. Willaim Kamoti, MP

MIN No. 351/2018

MATTERS ARISING

Under Min.No.314/2018 – Any Other Business

Hon Jennifer Shamalla's concerns over the difficulties she encountered while surrendering her imprest were not captured.

MIN No. 352/2018

CONSIDERATION AND ADOPTION OF THE
DRAFT REPORTS ON LEGISLATIVE
PROPOSALS AND PETITIONS

The Committee considered and unanimously adopted the following draft reports.

1. Report on the legislative proposal for the Institute of Directors of Kenya Bill, 2018 by Hon. (Dr). Chris Wamalwa, MP that seeks to establish the Institute of Directors to provide for the registration and regulation of the standard and practice of members of Boards
2. Report on the legislative proposal for the Law of Contract (Amendment) Bill, 2018 by Hon. Waititu Francis Munyua, MP that seeks to amend the Law of Contract Act, CAP 23 to require a creditor to first realise the security of a principal debtor in case of default payment of a loan.
3. Report Of the legislative proposal for the Anti-Corruption and Economic Crimes (Amendment) Bill, 2018 that seeks to amend Section 48 of the Anti-Corruption and Economic Crimes Act, 2003 to impose a life sentence on any person convicted of corruption or any other economic crimes.
4. Report on the petition to introduce a new National Peace Day on 9th March by Mr. Petr Mugo Mukua
5. Report on the petition on the compensation of the parents/guardians of victims and survivors of the Kyanguli Secondary School fire tragedy by Hon Robert Mbui, MP

6. Report of the petition to amend Article 171 (2) (f) of the Constitution of Kenya to vacate the fifteen (15) years' experience as a mandatory requirement for eligibility for election as member of the Judicial Service Commission representing the Law Society of Kenya by Law Society of Kenya
7. Report on the petition to amend Section 18 of the La Society of Kenya Act to vacate the fifteen (15) years' experience as a mandatory requirement for eligibility for election as President or Vice President of the Law Society of Kenya Council by Law Society of Kenya
8. Report on the petition for the enactment of the admiralty court act by Mr. Derrick Otieno Okadia.

MIN No. 353/2018


ANY OTHER BUSINESS

Members raised concerns over the consistent absence of some Committee Members. The Chairperson undertook to follow up on the matter and update the Committee in its subsequent meeting

MIN No.354/2018:

ADJOURNMENT

There being no other business to transact, the Chairperson adjourned the meeting at 12.50 p.m.

Signed.....

Chairperson

Date.....4/12/18.....

MINUTES OF THE EIGHTY-SECOND SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY, 23RD OCTOBER, 2018 AT 10.00 A.M. IN THE BOARDROOM ON 2ND FLOOR, PROTECTION HOUSE, PARLIAMENT BUILDINGS

PRESENT-

- | | | |
|--|---|-------------------------|
| 1. Hon. William Cheptumo, M.P. | - | Chairperson |
| 2. Hon. Alice Muthoni Wahome, M.P. | - | Vice Chairperson |
| 3. Hon. John Olago Aluocho, M.P. | | |
| 4. Hon. William K. Mwamkale, M.P. | | |
| 5. Hon. Peter O. Kaluma, M.P. | | |
| 6. Hon. Jennifer Shamalla, M.P. | | |
| 7. Hon. Anthony G. Kiai, M.P. | | |
| 8. Hon. Adan Haji Yussuf, M.P. | | |
| 9. Hon. Gladys Boss Shollei, CBS, M.P. | | |
| 10. Hon. John M. Wambugu, M.P. | | |

ABSENT WITH APOLOGIES-

1. Hon. Ben Momanyi, MP.
2. Hon. Roselinda Soipan Tuya, M.P.
3. Hon. George G. Murugara, M.P.
4. Hon. Beatrice Adagala, M.P.

ABSENT-

1. Hon. Charles Gimose, M.P.
2. Hon. Zuleikha Hassan, M.P.
3. Hon. Johana Ng'eno, M.P.
4. Hon. Japheth Mutai, M.P.
5. Hon. John Kiarie Waweru, M.P.

IN ATTENDANCE-

COMMITTEE SECRETARIAT

- | | | |
|-----------------------|---|------------------------------|
| 1. Mr. George Gazemba | - | Principal Clerk Assistant II |
| 2. Mr. Salem Lorot | - | Legal Counsel II |
| 3. Ms. Halima Hussein | - | Third Clerk Assistant |

LAW SOCIETY OF KENYA (LSK)

- | | | |
|-----------------|---|-------------------------|
| 1. Mercy Wambua | - | Chief Executive Officer |
| 2. Esther Njeri | - | Advocate |

MIN No.305/2018-

PRELIMINARIES

The chairperson called the meeting to order at 10.20 a.m. which was followed by a word of prayer from himself.

MIN No.306/2018-

PETITIONS BY THE LAW SOCIETY OF KENYA

Ms. Mercy Wambua, the Law Society of Kenya Chief Executive Officer prosecuted the Society's two Petitions on amendment of Articles 171(1) 2 of the constitution and amendment to section 18 of the Law Society of Kenya's Act. The Petitions principally sought Parliament's amendment of the law to vacate years of experience as mandatory requirement for Advocates to be elected as members of the Judicial Service Commission as well as President and Vice President of the Law Society of Kenya.

She submitted that the years of experience requirement for appointment to the said positions was discriminative contrary to Article 27 of the constitution which provides that every person is equal before the law and has right to equal protection and equal benefit of the law. Article 27 further states that the State shall not discriminate against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

She further submitted that the petitions were as a result of Law Society of Kenya members' resolutions at a Special General meeting and that a case had been filed on the same by Advocate Nelson Havi in which the High Court ruled that only the Society could determine the applicability of years of experience as a requirement in election of members to positions. She tabled before the Committee a copy of the ruling on the case.

MIN 307/2018:

ANY OTHER BUSINESS

The Committee resolved to host the Chief Justice for a breakfast meeting on Thursday, 1st November, 2018 at a hotel to be identified. The agenda for the meeting would be the swearing in of members of the Judicial Service Commission to fill vacancies left and budgetary allocation.

MIN No.308/2018:

ADJOURNMENT

There being no other business to transact, the Chairperson adjourned the meeting at 12.15 p.m.

Signed.....
Chairperson

Date.....4/12/18.....

**COPY OF THE
PETITION**



DLS
no note and advise



The Clerk
Kenya National Assembly
Parliament Buildings
P.O Box 41842 - 00100,
NAIROBI

OK
7/6

Lavington, opp Valley Arcade, Gitanga Road
P.O Box 72219-00200 Nairobi, Kenya
Dropping Zone 149 – Revlon Plaza
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020-2625391, 0208155295
Cell: +254 720 904983
Fax: +254 20 387 5534
Website: www.lsk.or.ke
Our Ref: S/20
Your Ref: TBA
Date: 18th May 2018

Dear Sir,

RE: PETITION TO PARLIAMENT ON SECTION 18 OF THE LAW SOCIETY OF KENYA ACT 2014

I refer to the above and petition to parliament on Section 18 of the Law Society of Kenya Act 2014 dated 11th May 2018.

We hereby seek to withdraw the said petition dated 11th May 2018 and substitute the same with the attached petition dated 18th May 2018.

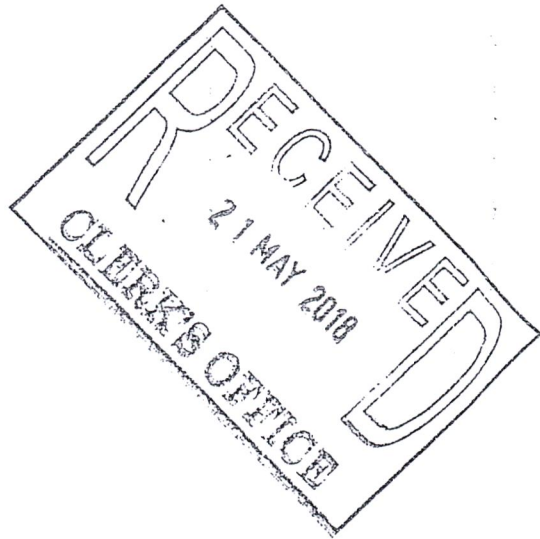
Yours faithfully,

MERCY WAMBUA
SECRETARY/ CEO

Mr. Waigwa, LC

*You are dealing with
Kindly note and review the new
petition and brief the CNA
accordingly.*

Danne 07/08/18



- Allen Waiyaki Gichuhi (President), Harriette Chiggai (Vice-President)
- Herine Kabita, Maria Mbeneka, Roseline Odede (General Membership Representatives)
- Borniface Akusala, Carolyne Kamende, Aluso Ingati (Nairobi Representatives)
- Ndinda Kinyili, Bernhard Ngetich, David Njoroge, Jane Masai (Upcountry Representatives)
- Eric Nyongesa (Coast Representative)

The Clerk
Kenya National Assembly
Parliament Buildings
P.O Box 41842 - 00100,
NAIROBI

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Dropping Zone 149 – Revlon Plaza
Tel:+254-20-3874664,3865013/4,
020-2625391, 0208155295
Cell: +254 720 904983
Fax: +254 20 387 5534
Website: www.lsk.or.ke

Our Ref: S/20
Your Ref: TBA

Date: 18th May 2018

PETITION

(Under Article 119(1) of the Constitution, 2010 and Section 3 of the Petition to Parliament (Procedure) Act No. 22 of 2012, Laws of Kenya)

I, MERCY K. WAMBUA, the undersigned, the Chief Executive Officer and Secretary of the Law Society of Kenya DRAW the attention of the House to the following:

Section 18 of the Law Society of Kenya Act, 2014 sets out the requirements for eligibility as a candidate in the election of the President and Vice-President of the Law Society of Kenya, to wit:

*18. (1) A person is eligible for election as the President or Vice-president if the person-
is a member or former member of the Council: or
is qualified to be a Judge of the Supreme Court.*

(2) A person is eligible for election as a member of the Council if the person-

(a) is a member of the Society;

(b) has been practise for at least two years, from the date of admission;

(c) has not been found liable for professional misconduct by the Disciplinary

Allen Waiyaki Gichuhi (President), Harriette Chiggai (Vice-President)
Herine Kabita, Maria Mbeneka, Roseline Odede (General Membership Representatives)
Borniface Akusala, Carolyne Kamende, Aluso Ingati (Nairobi Representatives)
Ndinda Kinyili, Bernhard Ngetich, David Njoroge, Jane Masai (Upcountry Representatives)
Eric Nyongesa (Coast Representative)

Petition to Parliament | Section 18 of the Law Society of Kenya Act | 18.05.18



Committee established by the Advocates Act, in the three years immediately preceding the election; and

(d) meets the requirements of Chapter Six of the Constitution.

Article 166(3) of the Constitution requires that judges of the Supreme Court have a mandatory minimum of 15 years' experience either as a superior court judge, distinguished academic, judicial officer, legal practitioner, or such other experience as may be in a relevant legal field.

Section 18 of the LSK Act therefore requires that a Presidential or Vice-Presidential candidate have at least 15 years' experience in a relevant legal field before they are allowed to offer their candidature.

Aggrieved by the statutory provisions, a member of the Society challenged the constitutionality of the said section vide Constitutional Petition No. 607 of 2017 Nelson Andayi Havi versus Law Society of Kenya & 3 Others. Honourable Justice Mativo dismissed the petition vide a judgment dated and delivered 5th February 2018, wherein the Learned Judge made the following observation and guidance:

“In my view, lowering the bar to make it easy for people to qualify may not necessarily be in the best interests of the Society. But should the majority feel the necessity to effect the changes, then this can be achieved legally by members voting for the changes in a properly constituted AGM. That way, the majority will have their say as opposed to a court decision which may have the force of law but may go against the preference of the majority. In other words, a court of law should be hesitant to involve itself in internal matters of professional bodies especially where the law provides for clear mechanisms of resolving them.”

Civil Appeal No. 28 of 2018 Nelson Andayi Havi versus Law Society of Kenya & 3 others is scheduled to be mentioned on 4th July 2018 for confirmation of filing of submissions and hearing.

Aggrieved by the aforesaid decision, the Petitioner preferred an appeal being Civil Appeal No. 28 of 2018 Nelson Andayi Havi versus Law Society of Kenya & 3 others. One of the ground raised in the Memorandum of appeal by the appellant is: *“The Learned Judge of the High Court erred in law in holding that the law and practice on age and status limit for eligibility for election for officials of the 1st Respondent was a matter that could and should have been remedied by a resolution of members of the 1st Respondent and not by an order of the High Court.”*

Allen Waiyaki Gichuhi (President), Harriette Chiggai (Vice-President)

Herine Kabita, Maria Mbeneka, Roseline Odede (General Membership Representatives)

Borniface Akusala, Carolyne Kamende, Aluso Ingati (Nairobi Representatives)

Ndinda Kinyili, Bernhard Ngetich, David Njoroge, Jane Masai (Upcountry Representatives)

Eric Nyongesa (Coast Representative)

Petition to Parliament | Section 18 of the Law Society of Kenya Act | 18.05.18

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Consequently, a member of the Society moved a motion premised on the decision by Mativo, J (<http://kenyalaw.org/caselaw/cases/view/149433/>) seeking to authorize the Society through its Council to petition Parliament to consider, amend or repeal Section 18(1)(b) and (2)(b) of the LSK Act, which motion was couched as follows:

“A special resolution be and is hereby passed by members of the Society to empower and authorize Council pursuant to Section 4 of the Law Society of Kenya Act, 2014 to petition Parliament to consider, amend or repeal Section 18 of the Law Society Act, 2014.”

When the member’s motion aforesaid was tabled before the members at the Society’s Annual General Meeting held on 24th March 2018, the same was passed by the members through the following resolution:

“A special resolution be and is hereby passed by members of the Society to empower and authorize Council pursuant to Section 4 of the Law Society of Kenya Act, 2014 to petition Parliament to consider, amend or repeal Section 18 of the Law Society Act, 2014.”

THAT this being a legislative matter solely within the purview and province of Parliament, the matter is hereby submitted for first consideration to Parliament.

HEREFORE your humble Petitioner prays that Parliament:

A) Do consider, amend or repeal Section 18 of the Law Society Act, 2014.

And your Petitioner will ever pray.

Yours faithfully,



MERCY WAMBUA
SECRETARY/ CEO

Allen Waiyaki Gichuhi (President), Harriette Chiggai (Vice-President)
Herine Kabita, Maria Mbeneka, Roseline Odede (General Membership Representatives)
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