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**THE SUPREME COURT ACT**

NO. 7 OF 2011

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**SUPREME COURT ACT**

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**NO. 7 OF 2011**

**SUPREME COURT ACT**

[Date of assent: 22nd June, 2011.]

[Date of commencement: 23rd June, 2011.]

**An Act of Parliament to make further provision with respect to the operation of the Supreme Court pursuant to Article 163 (9) of the Constitution, and for connected purposes**

[Act No. 7 of 2011, Act No. 36 of 2016, Act No. 26 of 2022.]

**PART I – PRELIMINARY**

**1. Short title**

This Act may be cited as the Supreme Court Act, 2011.

**2. Interpretation**

In this Act, unless the context otherwise requires—

**"Chief Justice"** means the Chief Justice appointed under Article 166 of the Constitution;

**"Chief Registrar"** *deleted by Act No. 26 of 2022, s. 2 (a)*;

**"Court"** means the Supreme Court of Kenya as established under Article 163(1) of the Constitution;

**"Deputy Chief Justice"** means the Deputy Chief Justice appointed under Article 166 of the Constitution;

**"petition"** means a petition filed under Articles 58(5), 163(3) and (4) and 168(8) of the Constitution;

**"preliminary procedures"** means presentation made before a single judge, a two-judge bench, or the Registrar, on a matter preparatory in nature;

**"president"** means the president of the Supreme Court;

**"proceedings"** means presentation made before the Court under Article 163(2) of the Constitution for final determination on a matter;

**"Registry"** means the registry where all pleadings and supporting documents and all orders and decisions of the Court are recorded and maintained in accordance with the rules;

**"Registrar"** means the Registrar of the Supreme Court appointed pursuant to section 9 and includes a deputy registrar;

**"rules"** mean the Rules of the Supreme Court made pursuant to Article 163 (8) of the Constitution;

**"Supreme Court"** means the Supreme Court of Kenya established by Article 163 of the Constitution.

[Act No. 26 of 2022, s. 2.]

### 3. Object of the Act

The object of this Act is to make further provision with respect to the operation of the Supreme Court as a court of final judicial authority to, among other things—

- (a) assert the supremacy of the Constitution and the sovereignty of the people of Kenya;
- (b) provide authoritative and impartial interpretation of the Constitution;
- (c) develop rich jurisprudence that respects Kenya's history and traditions and facilitates its social, economic and political growth;
- (d) enable important constitutional and other legal matters to be determined having due regard to the circumstances, history and cultures of the people of Kenya;
- (e) improve access to justice; and
- (f) provide for the administration of the Supreme Court and related matters.

[Act No. 26 of 2022, s. 3.]

### 3A. Inherent powers of the Court

Nothing in this Act shall be construed to impair the powers of the Court to make such orders or provide such directions as may be necessary for the administration of justice.

[Act No. 26 of 2022, s. 4.]

## PART II – ADMINISTRATION OF THE SUPREME COURT

### 4. Vacancy not to affect jurisdiction

Subject to Article 163 (2) of the Constitution, a vacancy in the Supreme Court shall not affect the jurisdiction of the Court.

[Act No. 26 of 2022, s. 5.]

### 5. Order of precedence of judges of the Supreme Court

(1) As the head of the Judiciary, the Chief Justice shall have precedence over the other judges of the Supreme Court.

(2) The Deputy Chief Justice shall take precedence immediately after the Chief Justice.

(3) The other judges of the Supreme Court shall take precedence among themselves, according to the dates on which they respectively took office as judges of the Supreme Court.

(4) Where, under subsection (3), two or more judges of the Supreme Court took office on the same day, precedence among them shall be determined according to professional seniority with the most senior judge taking precedence.

### 6. Presiding judge

(1) The Chief Justice shall preside over the Supreme Court and in the absence of the Chief Justice, the Deputy Chief Justice shall preside.

(2) If the Chief Justice and the Deputy Chief Justice are absent or unable to preside, or the offices of Chief Justice and the Deputy Chief Justice are vacant, the most senior available judge of the Supreme Court shall preside over the Court and perform any administrative duty that may be necessary for the proper conduct of the affairs of the Court.

(3) The presiding by a judge over the Supreme Court pursuant to subsection (2) shall be conclusive proof of the judge's authority to do so and no action of the Judge, and no judgement or decision of the Court shall be questioned on the ground that the necessity for the judge to preside over the Court had not arisen or had ceased.

[Act No. 26 of 2022, s. 6.]

#### **6A. Functions of the president**

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.

[Act No. 26 of 2022, s. 7.]

#### **7. Procedure if judges absent**

(1) If at the time appointed for a sitting of the Supreme Court one or more judges are absent, the judge or judges present may adjourn the sitting on such terms as the Court thinks fit.

(2) If at the time appointed for a sitting of the Supreme Court all the judges are absent, the Registrar shall adjourn the sitting until such time as the Court shall next convene.

#### **8. Repealed**

*Repealed by Act No. 26 of 2022, s. 8.*

#### **9. Registrar of the Supreme Court**

(1) There shall be a Registrar of the Supreme Court who shall be appointed pursuant to Article 161(3) of the Constitution.

(2) The Registrar and other officers appointed shall exercise such powers and perform such duties as may be conferred upon them upon directions of the Court, the rules of court and the directions of the Chief Justice.

[Act No. 26 of 2022, s. 9.]

#### **10. Functions of the Registrar**

(1) The Registrar shall be responsible for—

- (a) the establishment and maintenance of the Registry;
- (b) the acceptance, transmission, service and custody of documents in accordance with the rules;
- (c) taxing costs of any proceedings before the Court as between the parties;
- (d) certifying that any order, direction or decision is an order, direction or decision of the Court, or of the Chief Justice or other judge, as the case may be;
- (e) causing to be kept records of the proceedings and the minutes of the meetings of the Court and such other records as the Court may direct;
- (f) the management and supervision of the staff of the Court;

- (g) the day to day administration of the Court;
- (h) the management of the library of the Court;
- (i) ensuring the publication of the judgements of the Court; and
- (j) undertaking any duties assigned by the Court.

(2) The Registrar may consider and dispose of procedural or administrative matters in accordance with the rules or on the direction of the Chief Justice.

[Act No. 26 of 2022, s. 10.]

#### **11. Reviews of decisions of the Registrar**

(1) A person aggrieved by a decision of the Registrar made in accordance with the rules may apply to a judge of the Supreme Court for a review of such decision.

(2) The judge may confirm, modify, or reverse the decision in issue.

(3) No fee shall be payable for an application under this section.

#### **11A. Case management**

The Court shall implement and promote measures to maintain the integrity and efficient operation of the registry, including—

- (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.

[Act No. 26 of 2022, s. 11.]

### **PART III – ORIGINAL JURISDICTION OF THE SUPREME COURT**

[Act No. 26 of 2022, s. 12.]

#### **12. Determination of disputes arising out of presidential elections**

(1) An application to the Supreme Court in respect of a dispute to which Article 163 (3) (a) of the Constitution applies shall be submitted by petition and shall further comply with the procedures prescribed by the rules.

(2) The Independent Electoral and Boundaries Commission shall, within a period of forty-eight hours from the date of the 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 election at the polling station and the constituency tallying centre and to declare the result at the national tallying centre.

[Act No. 36 of 2016, s. 39.]

#### **13. Advisory opinion**

(1) The Court may give an advisory opinion under Article 163 (6) of the Constitution at the request of —

- (a) the national government;
- (b) a State organ; or
- (c) a county government with respect to a matter concerning the county government.

(2) A request for an advisory opinion shall clearly state the specific questions on which the opinion of the Court is being sought.



(3) The nature of opinion sought shall not be adversarial, abstract, or hypothetical.

(4) The Court may, on its own motion, invite an expert whose opinion on the subject matter it deems relevant.

(5) The Court may decline to assume jurisdiction on the subject matter in question, and state its reasons.

(6) An advisory opinion has the same binding effect as any other decision of the Court.

[Act No. 26 of 2022, s. 13.]

**13A. Determinations in a state of emergency**

(1) Pursuant to Article 58(5) of the Constitution, a person may petition the Supreme Court for determination of the validity of —

- (a) a declaration of a state of emergency;
- (b) any extension of a declaration of a state of emergency; or
- (c) any legislation enacted or other action taken in consequence of a declaration of a state of emergency.

(2) A petition under subsection (1) shall be made in accordance with the Rules made under this Act.

[Act No. 26 of 2022, s. 14.]

**14. Repealed**

*Repealed by Act No. 26 of 2022, s. 15.*

**PART IV – APPELLATE JURISDICTION OF THE SUPREME COURT**

[Act No. 26 of 2022, s. 16.]

**15. Appeals to be by leave**

(1) Appeals to the Supreme Court shall be heard only with the leave of the Court.

(2) Subsection (1) shall not apply to appeals from the Court of Appeal in respect of matters relating to the interpretation or application of the Constitution.

(3) References in any written law, other than this Act, to the leave of the Supreme Court shall be construed subject to the provisions of sections 17 and 18 of this Act.

**15A. Appeal as of right**

Pursuant to Article 163 (4)(a) of the Constitution, appeals shall lie from the Court of Appeal to the Supreme Court as of right in any case involving the interpretation of the Constitution.

[Act No. 26 of 2022, s. 17.]

**15B. Appeal upon certification**

(1) Any appeal to the Supreme Court involving a matter of general public importance shall only be made—

- (a) upon certification by the Court of Appeal; or
- (b) upon certification by the Supreme Court in accordance with Article 163 (4)(b) of the Constitution.

(2) An application for certification shall be filed before, and determined by the Court of Appeal at the first instance.

[Act No. 26 of 2022, s. 17.]

### **15C. Direct appeals from tribunals**

(1) A judge of a superior court aggrieved by the decision of a tribunal made under Article 168 of the Constitution may appeal directly to the Supreme Court, within ten days after the tribunal makes its recommendations.

(2) The appeal shall be heard and determined in accordance with the procedure set out under the Rules.

[Act No. 26 of 2022, s. 17.]

### **16. Repealed**

*Repealed by Act No. 26 of 2022, s. 18.*

### **17. Repealed**

*Repealed by Act No. 26 of 2022, s. 19.*

### **18. Summary dismissal**

The Court may make an order for summary dismissal of a petition, a reference or an application, where it is apparent on the face of it that it is wholly defective.

[Act No. 26 of 2022, s. 20.]

### **19. Repealed**

*Repealed by Act No. 26 of 2022, s. 21.*

## **PART V – GENERAL**

### **20. Further evidence in appeals**

(1) The Court may admit further evidence in determining an appeal, where the Court considers it necessary and appropriate in the circumstances.

(2) The Court, in admitting additional evidence, shall consider whether the additional evidence —

- (a) is directly relevant to the matter before the Court;
- (b) is capable of influencing or impacting on the decision of the Court;
- (c) could not have been obtained with reasonable diligence for use at the trial;
- (d) was not within the knowledge of the party seeking to adduce the additional evidence;
- (e) removes any vagueness or doubt over the case;
- (f) is credible and bears merit;
- (g) would not make it difficult or impossible for the other party to respond effectively; and
- (h) discloses a case of wilful deception to the Court.

[Act No. 26 of 2022, s. 22.]

### **21. General powers**

(1) On an appeal in proceedings heard in any court or tribunal, the Supreme Court may make any order, or grant any relief, that could have been made or granted by that court or tribunal.

(2) In any proceedings, the Supreme Court may make any ancillary or interlocutory orders, including any orders as to costs that it thinks fit to award.

(3) The Supreme Court may make any order necessary for determining the real question in issue in the appeal, and may direct the court below to inquire into and certify its findings on any question which the Supreme Court thinks fit to determine before final judgement in the appeal.

(4) The Court may, on its own motion or on application by any party with notice to the other or others, correct any oversight or clerical error of computation or other error apparent on such judgement, ruling or order and such correction shall constitute part of the judgement, ruling or order of the Court.

[Act No. 26 of 2022, s. 23.]

#### **21A. Review of own decision**

The Supreme Court may review its own decision, either on its own motion, or upon application by a party in any of the following circumstances—

- (a) where the judgement, ruling or order was obtained through fraud, deceit or misrepresentation of facts;
- (b) where the judgement, ruling or order is a nullity by virtue of being made by a court which was not competent;
- (c) where the court was misled into giving a judgement, ruling or order under the belief that the parties have consented; or
- (d) where the judgement, ruling or order was rendered on the basis of repealed law, or as a result of a deliberate concealment of a statutory provision.

[Act No. 26 of 2022, s. 24.]

#### **22. Power to remit proceedings**

The Supreme Court may remit proceedings that began in a court or tribunal to any court that has jurisdiction to deal with the matter.

#### **23. Exercise of powers of the Court**

(1) For the purposes of the hearing and determination of any proceedings, the Supreme Court shall comprise five Judges.

(2) A single judge may hear and determine an application for the following preliminary procedures—

- (a) change of representation;
- (b) admission of consent;
- (c) consolidation of matters;
- (d) correction of errors on the face of the record;
- (e) review of a decision of the Registrar;
- (f) substitution of service;
- (g) withdrawal of an advocate to cease acting for a party;
- (h) withdrawal of a document; or
- (i) certification of a matter as urgent.

(2A) Any two or more judges may conduct preliminary procedures to determine

- 
- (a) the manner of hearing an application;

- (b) extension of time; or
- (c) leave to file additional documents.

(2B) The following preliminary procedures shall only be heard and determined by the Court—

- (a) admission of parties, friend of the Court, and any interested party;
- (b) substitution of parties;
- (c) dismissal of a matter for want of prosecution;
- (d) summary dismissal of proceedings; or
- (e) application for certification

(2C) A party aggrieved by the decision of a single judge or two judges may apply for review of the decision by five or more judges of the Court.

[Act No. 26 of 2022, s. 25.]

### **23A. Stay of proceedings**

(1) The Court may issue an order for stay of execution, an injunction, a stay of further proceedings or any other conservatory or interim orders, on such terms as the Court may deem fit where a party has—

- (a) instituted a petition of appeal as of right under Article 163 (4) (a) of the Constitution; or
- (b) obtained a certification under Article 163 (4)(b) of the Constitution and instituted a petition.

(2) An application under subsection (1) shall only be made after filing the petition before the Court.

[Act No. 26 of 2022, s. 26.]

### **24. Interlocutory directions**

(1) Subject to this Act, in conducting any preliminary procedures, a single judge may issue interlocutory orders or directions as the judge deems fit, but such orders or directions shall not dispose of issues reserved for determination in proceedings.

(2) An interlocutory order or direction issued by a single judge shall lapse after fourteen days, unless confirmed by the Court.

[Act No. 26 of 2022, s. 27.]

### **25. Judgement of the Court**

(1) The judgement of the Supreme Court shall be in accordance with the opinion of a majority of the Judges hearing the proceeding concerned.

(2) If the judges are equally divided in opinion, the decision appealed from or under review shall be considered as having been affirmed.

(3) Where a judge presiding over a matter is not able to deliver a judgement on account of death, suspension, removal from office, retirement or infirmity, which occasions a lack of prescribed quorum in the Court, the Chief Justice may substitute such judge.

(4) The incoming judge, in terms of subsection (3), shall rely on submissions and proceedings on record, as a basis for delivering judgement.

[Act No. 26 of 2022, s. 28.]

### **26. Delivery of judgement**

(1) The Supreme Court may deliver a judgement —

- (a) in open court; or
- (b) by physical or electronic service of the same to the parties.

(2) Where a matter is heard before the Supreme Court and judgement reserved for delivery on another day, it shall not be necessary for all the judges before whom the matter was heard to be present in court on the day appointed for the delivery of judgement.

(3) *Deleted by Act No. 26 of 2022, s. 29.*

(4) *Deleted by Act No. 26 of 2022, s. 29.*

[Act No. 26 of 2022, s. 29.]

## **27. Decisions of the Court may be enforced by the High Court**

A judgement, decree, or order of the Supreme Court may be enforced by the High Court as if it had been given or made by the High Court.

## **28. Contempt of Court**

(1) A person who—

- (a) assaults, threatens, intimidates, or wilfully insults a judge of the Supreme Court, the Registrar of the Court, a Deputy Registrar or officer of the Court, or a witness, during a sitting or attendance in Court, or in going to or returning from the Court; or
- (b) willfully interrupts or obstructs the proceedings of the Supreme Court, in the Court; or
- (c) willfully and without lawful excuse disobeys an order or direction of the Supreme Court in the course of the hearing of a proceeding,

commits an offence.

(2) A police officer, with or without the assistance of any other person, may, by order of a judge of the Supreme Court, take into custody and detain a person who commits an offence under subsection (1) until the rising of the Court.

(3) The Supreme Court may sentence a person who commits an offence under subsection (1) to imprisonment for a period not exceeding six months, or to pay a fine not exceeding one million shillings, or to both, for every offence.

(4) For avoidance of doubt, the Court has inherent powers to punish any person for contempt, in any other case to which this section does not apply.

(5) The Court shall not initiate any contempt of court proceedings on its own motion after expiry of twelve months from the date on which the contempt is alleged to have been committed.

(6) The Court may make an order denying audience to the contemnor for any period, as the Court may deem fit, but not exceeding eighteen months.

[Act No. 26 of 2022, s. 30.]

## **29. Seal of the Supreme Court**

The seal of the Supreme Court shall be such device as may be determined by the Supreme Court and shall be kept in the custody of the Registrar.

### **29A. Nomination of Court representatives**

The Court may make Rules in respect of the—

- (a) conduct of the election of the representative of the Court to the Judicial Service Commission; and

- (b) conduct of the election or nomination of any person that the Court may, under any written law, be required to elect or nominate.

[Act No. 26 of 2022, s. 31.]

### **29B. Committees of the Court**

The Court may establish committees for the purpose of efficient management of its affairs, including the welfare of the judges and staff of the Court.

[Act 26 of 2022, s. 31.]

### **29C. Alternative Dispute Resolution mechanisms**

(1) In the conduct of proceedings, the Court shall promote and encourage alternative dispute resolution mechanisms, in accordance with Article 159 (2) (c) of the Constitution.

(2) Reference of a matter to alternative dispute resolution may be initiated by the Court on its own motion, or at the request of the parties.

[Act No. 26 of 2022, s. 31.]

### **29D. Court sittings and recess**

(1) The Court shall have three sittings in every year.

(2) The sittings of the Court shall be —

- (a) from the 14<sup>th</sup> January to the second Wednesday before Good Friday;
- (b) from the first Wednesday after Easter Week to the 31<sup>st</sup> July; and
- (c) from the 16<sup>th</sup> September to the 20<sup>th</sup> December.

[Act No. 26 of 2022, s. 31.]

### **29E. Ethics and integrity**

Every judge of the Court shall sign and ascribe to the Judicial Code of Conduct.

[Act No. 26 of 2022, s. 31.]

## **30. Representation before the Supreme Court**

Parties may appear in person or be represented by an advocate in all proceedings before the Supreme Court.

## **31. Rules**

Without limiting the generality of Article 163(8) of the Constitution, the rules made by the Supreme Court under that Article may make provision for—

- (a) regulating the sittings of the Supreme Court and the selection of judges for any particular purpose;
- (b) regulating the right of any person other than an advocate of the High Court of Kenya to practise before the Supreme Court and the representation of persons concerned in any proceedings in the Supreme Court;
- (c) prescribing forms and fees in respect of proceedings in the Supreme Court and regulating the costs of and incidental to any such proceedings;
- (d) prescribing the time within which any requirement of the rules shall be complied with;

- (e) empowering the Registrar, in order to promote access to justice, to waive, reduce, or postpone the payment of a fee required in connection with a proceeding or intended proceeding, or to refund, in whole or in part, such a fee that has already been paid, if satisfied on the basis of criteria prescribed under paragraph (f) that—
    - (i) the person otherwise responsible for payment of the fee is unable to pay or absorb the fee in whole or in part; or
    - (ii) unless one or more of those powers are exercised in respect of a proceeding that concerns a matter of genuine public interest, the proceeding is unlikely to be commenced or continued;
  - (f) prescribing, for the purposes of the exercise of a power under paragraph (e), the criteria—
    - (i) for assessing a person's ability to pay a fee; and
    - (ii) for identifying proceedings that concern matters of genuine public interest; and
  - (g) any other matter required under the Constitution, this Act or any other written law.
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