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**NATIONAL ASSEMBLY BILLS, 2022**

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# THE SUPREME COURT (AMENDMENT) BILL, 2022

## A Bill for

### AN ACT of Parliament to amend the Supreme Court Act and for connected purposes

ENACTED by Parliament of Kenya, as follows—

1. This Act may be cited as the Supreme Court (Amendment) Act, 2022. Short title.

2. The Supreme Court Act (hereinafter referred to as the “principal Act”) is amended in section 2— Amendment of section 2 of No. 7 of 2011

- (a) by deleting the definition of “Chief Registrar”;
- (b) by inserting the words “of Kenya as established under Article 163 (1) of the Constitution” at the end of the definition of “Court”;
- (c) by inserting the words “and includes a deputy registrar” at the end of the definition of “Registrar”; and
- (d) by inserting the following new definitions in their proper alphabetical sequence—

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

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

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

“president” means the president of the Supreme Court.

3. Section 3 of the principal Act is amended in paragraph (d) by deleting the words “including matters relating to the transition from the former to the present constitutional dispensation” appearing immediately after the words “legal matters”. Amendment of section 3 of No. 7 of 2011.

**4.** The principal Act is amended by inserting the following new section immediately after section 3—

Insertion of new section 3A in No. 7 of 2011.

Inherent powers of the Court.

**3A.** 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.

**5.** The principal Act is amended by repealing section 4 and substituting therefor the following new section—

Repeal and replacement of section 4 of No. 7 of 2011.

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

**6.** Section 6 of the principal Act is amended in subsection (2) by inserting the following words at the end of the sentence—

Amendment of section 6 of No. 7 of 2011.

“and perform any administrative duty that may be necessary for the proper conduct of the affairs of the Court.”

**7.** The principal Act is amended by inserting the following new section immediately after section 6—

Insertion of new section 6A in No. 7 of 2011.

Functions of the president

**6A.** 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.

**8.** The principal Act is amended by repealing section 8.

Repeal of section 8 of No. 7 of 2011.

**9.** Section 9 of the principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection —

Amendment of section 9 of No. 7 of 2011.

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

**10.** Section 10 of the principal Act is amended in subsection (1) —

Amendment of section 10 of No. 7 of 2011.

(a) by deleting the opening statement and substituting therefor the following new opening statement—

“(1) The Registrar shall be responsible for”

(b) by deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) taxing costs of any proceedings before the Court as between the parties;”

**11.** The principal Act is amended by inserting the following new section immediately after section 11—

Insertion of new section 11A in No. 7 of 2011.

Case management.

**11A.** 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.

**12.** The principal Act is amended in the heading to Part III by inserting the word “ORIGINAL” immediately before the word “JURISDICTION”.

Amendment of the heading to Part III of No. 7 of 2011.

**13.** The principal Act is amended by repealing section 13 and substituting therefor the following new section—

Repeal and replacement of section 13 of No. 7 of 2011

Advisory opinion

**13. (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.

**14.** The principal Act is amended by inserting the following new section immediately after section 13—

Insertion of new section 13A in No. 7 of 2011.

Determinations in a state of emergency.

**13A.** (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.

**15.** The principal Act is amended by repealing section 14.

Repeal of section 14 of No. 7 of 2011.