

SPECIAL ISSUE

Kenya Gazette Supplement No. 92 (National Assembly Bills No. 17)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2020

NAIROBI, 15th June, 2020

CONTENT

Bill for Introduction into the National Assembly—

PAGE

The Mediation Bill, 2020601

THE MEDIATION BILL, 2020
ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Object of the Act.
- 4—Application of the Act.
- 5—Principles of mediation.

**PART II—ESTABLISHMENT OF THE MEDIATION
COMMITTEE**

- 6—The mediation committee.
- 7—Functions of the mediation committee.
- 8—The registrar and staff.
- 9—Functions of the registrar.
- 10—Conduct of business and affairs of the mediation committee.
- 11—Sub-committee of the mediation committee.
- 12—Vacation of office.

**PART III—ACCREDITATION AND
REGISTRATION OF MEDIATORS**

- 13—Accreditation and registration of mediators.
- 14—Revocation of a registration.
- 15—Right to appeal against the decision of the mediation committee.
- 16—Code of conduct for mediators.

PART IV — MEDIATION PROCESS

- 17—Submission to mediation.
- 18—Commencement of mediation process.
- 19—the mediation agreement.
- 20—Role of the parties.
- 21—Appointment of a mediator.
- 22—Role of a mediator.

- 23—Disclosure by the mediator.
- 24—Revocation of appointment of a mediator.
- 25—Attendance and representation in mediation process.
- 26—Date, time and place of mediation.
- 27—Identification of issues in dispute.
- 28—Confidentiality of mediation process.
- 29—Settlement agreement.
- 30—End of mediation process.
- 31—Role of a mediator in other proceedings.
- 32—Exclusion of liability.

PART V — RECOURSE TO THE HIGH COURT AND RECOGNITION AND ENFORCEMENT OF A SETTLEMENT AGREEMENT

- 33—Duty of an advocate to advise on mediation.
- 34—Confirmation that mediation has been considered.
- 35—Referral of disputes to mediation by a court.
- 36—Recourse to judicial proceedings.
- 37—Stay of proceedings.
- 38—Recognition and enforcement of a settlement agreement.
- 39—Grounds for refusal of recognition or enforcement of a settlement agreement.

PART VI—PROVISIONS ON DELEGATED POWERS

- 40—Rules and regulations.

PART VII—GENERAL PROVISIONS

- 41—Limitation periods.
- 42—Mediation expenses.
- 43—Offences.
- 44—Consequential amendments.
- 45—Transitional provisions.

SCHEDULE – CONDUCT OF BUSINESS AND AFFAIRS OF THE MEDIATION COMMITTEE

THE MEDIATION BILL, 2020

A Bill for

AN ACT of Parliament to provide for the settlement of all civil disputes by mediation; to set out the principles applicable to mediation; to provide for the establishment of the Mediation Committee; to provide for the accreditation and registration of mediators; recognition and enforcement of settlement agreements; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Mediation Act, 2020.

Short title.

2. (1) In this Act—

Interpretation.

“advocate” has the meaning assigned to it under section 2 of the Advocates Act;

Cap. 16.

“Committee” means the Mediation Committee established under section 6 of this Act;

“mediation” means a facilitative and confidential structured process in which parties attempt by themselves, on a voluntary basis, to reach a mutually acceptable settlement agreement to resolve their dispute with the assistance of an independent third party called a mediator;

“mediation agreement” means a contract clause within a written contract or a separate written agreement entered into by the parties agreeing to submit to mediation a dispute which has arisen or which may arise between them in respect of a defined legal relationship;

“mediation process” means all the steps taken in an attempt to resolve a dispute by mediation from the time a dispute is referred to mediation or a party sends an invitation to submit a dispute to mediation to the other party up to the time the mediation report is drawn up;

“party” means a person who is party to a dispute, and includes a legal person, a national government, a county government or a state organ;

“mediator” means an impartial person accredited and registered to facilitate mediation process and includes a - employees and persons employed by that person;

“Mediation Accreditation Committee” means the Committee established under section 59A of the Civil Procedure Act; Cap. 21.

“Registrar” means the person appointed under section 8 of this Act;

“report” means the mediation report prepared by a mediator at the time of termination of appointment of the mediator or at the end of the mediation process setting out the nature of the dispute, the stage the matter had reached and the outcome, and any relevant matter subject to section 28 of this Act;

“settlement agreement” means a written agreement between the parties to the mediation process and entered into at the end of the mediation process setting out the terms of agreement regarding the disputed issues; and

3. The object of this Act is to – Object of the Act.

- (a) provide an effective mechanism for amicable dispute resolution;
- (b) promote a conciliatory approach to dispute resolution;
- (c) facilitate timely resolution of disputes at a relatively affordable cost;
- (d) facilitate access to justice; and
- (e) enhance community and individual involvement in dispute resolution.

4. (1) This Act shall apply to all civil disputes. Application of the Act.

5. The following principles shall apply to mediation under this Act – Principles of mediation.

- (a) participation in mediation process is voluntary and a party may withdraw from mediation process at any time;
- (b) a party to mediation process has the right to resolve a dispute and be informed of this right before mediation process commences;