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SPECIAL ISSUE

Kenya Gazette Supplement No. 181 (National Assembly Bills No. 33)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2020

NAIROBI, 15th October, 2020

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PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI

**THE JUDICIAL SERVICE (AMENDMENT) BILL,
2020**

A Bill for

**AN ACT of Parliament to amend the Judicial Service
Act, 2011**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Judicial Service (Amendment) Act, 2020. Short title.

2. Section 30 of the Judicial Service Act, 2011, is amended by inserting the following new sub-section immediately after sub-section (5)— Amendment of s.
30 of No. 1 of
2011.

(6) Despite the provisions of paragraph 3 of the First Schedule, the Commission shall commence the process of filling a vacancy in the office of the Chief Justice at least six months before the retirement date or expiry of the term of the Chief Justice under Article 167 of the Constitution.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons for the Bill

The principal purpose of the Bill is to amend section 30 of the Judicial Service Act, No.1 of 2011 in order to insert a provision empowering the Judicial Service Commission to commence the process of recruitment of a new Chief Justice at least six months before the expected retirement date or expiry of the term of the Chief Justice under Article 167 of the Constitution.

It is noted that Article 167(1) of the Constitution provides that a judge shall retire from office on attaining the age of seventy years, but may elect to retire at any time after attaining the age of sixty-five years and Article 167(2) provides that the Chief Justice shall hold office for a maximum period of ten years or until retiring under Article 167(1), whichever is the earlier.

In light of the cited constitutional provisions, it is apparent that the Judicial Service Commission can foresee the arising of a vacancy in the office of the Chief justice and commence the recruitment process before the date of the actual occurrence of the vacancy. In this respect, the Bill seeks to codify the best practice in democratic jurisdictions where there is an understanding that critical constitutional offices like that of the Chief Justice or the Chairperson of the Independent Electoral and Boundaries Commission should not remain vacant for a long period.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill does not delegate legislative powers nor does it limit any fundamental rights and freedoms.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure of public funds.

Statement on whether the Bill concerns county governments

The Bill does not concern county governments as it does not contain provisions affecting the functions and powers of the county governments set out in the Fourth Schedule to the Constitution.

Dated the 12th October, 2020.

CLEMENT MUTURI KIGANO,
Chairperson,
Departmental Committee on Justice and Legal Affairs.