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PUBLIC SERVICE COMMISSION ACT

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NO. 13 OF 2012

PUBLIC SERVICE COMMISSION ACT

[Date of assent: 24th July, 2012.]

[Date of commencement: 1st August, 2012.]

An Act of Parliament to make further provisions as to the functions and powers, and the administration of the Public Service Commission established under Article 233 of the Constitution; the qualifications and procedures for the appointment of the chairperson, members and secretary of the Commission, and for connected purposes

[Act No. 13 of 2012.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Public Service Commission Act, 2012.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“**Cabinet Secretary**” means a Cabinet Secretary responsible for matters relating to the Public Service;

“**chairperson**” means the chairperson of the Commission appointed in accordance with Article 233(2) of the Constitution;

“**Commission**” means the Public Service Commission established under Article 233 of the Constitution;

“**member**” means a member of the Commission appointed in accordance with Article 233(2) and includes the chairperson and vice-chairperson;

“**Secretary**” means the Secretary to the Commission appointed in accordance with Article 233(6) of the Constitution and the procedure set out in section 16 of this Act;

“**vice-chairperson**” means the vice-chairperson of the Commission appointed under Article 233(2) of the Constitution.

(2) Notwithstanding the provisions of subsection (1), until after the first general elections under the Constitution, references in this Act—

(a) to a Cabinet Secretary shall be construed to mean Minister; and

(b) to a Principal Secretary shall be construed to mean Permanent Secretary.

3. Objects and purpose of the Act

The object and purpose of this Act is to—

(a) constitute the Commission in accordance with the Constitution and provide for its structure, operations, functions and powers; and

- (b) provide a legal framework for the identification and appointment of the chairperson, members and secretary of the Commission in accordance with Article 233(6) of the Constitution.

4. Guiding principles

The Commission shall, in fulfilling its mandate be guided by the national values and principles of governance in Article 10 and the values and principles of public service in Article 232 of the Constitution.

PART II – COMPOSITION AND ADMINISTRATION

5. Powers of the Commission as a body corporate

(1) In addition to the powers of the Commission under Article 253 of the Constitution, the Commission shall have the power to—

- (a) acquire, hold, charge and dispose of movable and immovable property; and
- (b) do or perform all such other things or acts for the proper discharge of its functions under the Constitution, this Act and any written law, as may lawfully be done or performed by a body corporate.

(2) The headquarters of the Commission shall be in Nairobi, but the Commission may establish offices at any place in Kenya.

6. Composition and appointment of the Commission

(1) As provided for under Article 233(2) of the Constitution, the Commission shall consist of a chairperson, vice-chairperson and seven other members appointed in accordance with Article 233(2) of the Constitution and the provisions of this Act.

(2) The procedure set out in the First schedule shall apply to the appointment of the Commission and with necessary modifications whenever there is a vacancy in the Commission.

(3) The members of the Commission shall serve on a full-time basis.

(4) The Commission shall be properly constituted notwithstanding a vacancy in its membership.

7. Qualifications for appointment as chairperson or member of the Commission

(1) A person shall be qualified for appointment as the chairperson or vice-chairperson of the Commission if that person—

- (a) a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least fifteen years experience in their respective profession;
- (d) has at least six years experience in top level management in either the public or private sector; and
- (e) meets the requirements of leadership and integrity in Chapter Six of the Constitution.

(2) A person shall be qualified for appointment as a member if such person—

- (a) is a citizen of Kenya;

- (b) holds a degree from a university recognized in Kenya;
- (c) has at least ten years experience in their respective profession; and
- (d) meets the requirements of leadership and integrity in Chapter Six of the Constitution.

8. Oath or affirmation of office

The chairperson, vice-chairperson and members shall, before assuming office, take and subscribe to the oath or affirmation of office prescribed in the Second Schedule.

9. Vacancy

(1) The office of the chairperson, vice-chairperson or member of the Commission shall become vacant if the holder—

- (a) dies;
- (b) by a notice, in writing, addressed to the President resigns from office;
- (c) is removed in accordance with Article 251 of the Constitution.

(2) The President shall as soon as practicable notify every resignation, vacancy or removal as the case may be in the *Gazette*.

10. Filling of vacancy

(1) Where a vacancy occurs in the office of the chairperson, vice-chairperson or member of the Commission in accordance with section 9, the appointment procedure provided for in the Constitution and this Act, shall apply.

(2) The chairperson, vice-chairperson and members of the Commission shall be appointed for a single term of six years and are not eligible for re-appointment.

11. Functions of the Commission

In addition to the functions set out in Article 234 of the Constitution, the Commission shall—

- (a) formulate policies necessary for the achievement of its mandate;
- (b) provide strategic direction, leadership and oversight to the secretariat; and
- (c) do all such other things as may be necessary for the effective, discharge of its functions and the exercise of its powers.

12. Powers of the Commission

The Commission shall have all powers necessary for the execution of its functions under the Constitution and this Act and in the performance of its functions and exercise of its powers, the Commission—

- (a) may require any person or state organ to provide to it any information that may be necessary for the proper performance of its functions;
- (b) is not bound by the strict rules of evidence.

13. Committees of the Commission

(1) The Commission may from time to time establish such committees as may be necessary for the better carrying out of its functions and the exercise of its powers.

(2) In addition to the committees established under subsection (1), the Commission shall, in order to perform the functions conferred on it by Article 234(2)(g) of the Constitution, establish a consultative committee on the conditions of service of officers in the public service.

(3) Without prejudice to the generality of subsection (1) such committees may deal with matters relating to the recruitment, promotion, terms and conditions of service, discipline of public officers and such other matters as the Commission may specify.

(4) The Commission may co-opt into the membership of any of the committees established under subsection (1) any person or persons whose knowledge and skills are necessary for the proper performance of the functions of the Commission.

(5) A person co-opted under subsection (3) shall have no right to vote at any meeting of the committee.

14. Units of the Commission

(1) The Commission may create within itself such directorates, divisions or units and appoint thereto such staff as it may determine.

(2) Every directorate, division or unit created by the Commission shall act in accordance with the mandate approved by the Commission and directives given by the Secretary, in writing.

(3) The Commission may do such other things as may be necessary to give effect to the provisions of Article 234(5) of the Constitution.

15. Conduct of business and affairs of the Commission

(1) The conduct and regulation of the business and affairs of the Commission shall be as provided for in the Third Schedule but subject thereto, the Commission may regulate its own procedure.

(2) The Commission may invite any person to attend any of its meetings and to participate in its deliberations, but such a person shall not have a vote in any decision of the Commission.

16. Secretary to the Commission

(1) The Commission shall, through an open, transparent and competitive recruitment process, appoint a suitably qualified person to be the Secretary to the Commission.

(2) A person shall be qualified for appointment as the Secretary if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least ten years relevant professional experience;

Public Service Commission

- (d) has at least five years experience in a leadership position at senior management level in a Public Service or Private Sector organization; and
 - (e) meets the requirements of leadership and integrity as prescribed in Chapter Six of the Constitution.
- (3) The secretary appointed under subsection (1) shall be a state officer.
- (4) The secretary shall, before assuming office, take and subscribe to the oath or affirmation of office prescribed in the Fourth Schedule.
- (5) The secretary shall hold office for a term of five years but shall be eligible for re-appointment for one further term of five years.
- (6) The secretary shall, in the performance of the functions and duties of office, be accountable to the Commission.
- (7) The secretary shall be—
- (a) the chief executive officer of the Commission;
 - (b) head of the secretariat;
 - (c) the accounting officer of the Commission;
 - (d) custodian of the commission's records;
 - (e) responsible for—
 - (i) the execution of the decisions of the Commission;
 - (ii) assignment of duties and supervision of the staff of the Commission;
 - (iii) facilitating, co-ordinating and ensuring the execution of Commission's mandate;
 - (iv) the preparation and submission of the programmes necessary for the achievement of the Commission's mandate for approval by the Commission;
 - (v) ensuring staff compliance with public service values, principles and ethics; and
 - (vi) the performance of such other duties as may be assigned by the Commission or any other written law.
- (8) The secretary may only be removed from office by the Commission on grounds of—
- (a) inability to perform functions of the office arising out of physical or mental infirmity;
 - (b) incompetence;
 - (c) gross misconduct;
 - (d) bankruptcy;
 - (e) violation of the Constitution; and
 - (f) any other ground that would justify removal from office under the terms and conditions of service.
- (9) Before removal under subsection (8), the Secretary shall be—
- (a) informed in writing of the reasons for the intended removal; and

- (b) given an opportunity to put a defence against any such allegations, either in person or through a representative.

(10) Where the Commission does not intend to reappoint the secretary after the first term, the Commission shall notify the secretary and shall cause the vacancy to be advertised at least three months before the expiry of the incumbent's term.

17. The secretariat and staff of the Commission

(1) There shall be a secretariat of the Commission which shall be headed by the Secretary.

(2) The secretariat shall comprise of—

- (a) such professional, technical and administrative officers and support staff, as may be appointed by the Commission; and
- (b) such public officers as may be seconded to the Commission upon its request.

(3) The staff of the Commission may be appointed, subject to its approved establishment.

(4) The Commission shall ensure that in the appointment of its staff, not more than two thirds shall be of the same gender taking into account—

- (a) persons with disabilities; and
- (b) regional and ethnic diversity of the people of Kenya.

18. Seal of the Commission

(1) The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the secretary.

(2) The affixing of the seal shall be authenticated by the chairperson and the secretary or any other person authorized in that behalf by a resolution of the Commission.

(3) Any document purporting to be under the seal of the Commission or issued on behalf of the Commission shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

19. Legal proceedings against the Commission

(1) Proceedings against the Commission shall be deemed to be proceedings against the Government and shall be subject to the law relating to Government Proceedings.

(2) Any notice or other processes in respect of legal proceedings under subsection (1) shall be served upon the Secretary to the Commission.

20. Protection from personal liability

(1) Nothing done by a member of the Commission or by any officer, member of staff or agent of the Commission shall, if done in good faith for the purpose of executing the powers, functions or duties of the Commission under the Constitution or this Act, render such member, officer, member of staff or agent personally liable for any action, claim or demand.

(2) The provisions of subsection (1) shall not relieve the Commission of the liability to pay Compensation or damages to any person for an injury suffered by them, their property, or any of their interests arising directly or indirectly from the exercise of any power conferred by this Act or by the failure, whether wholly or partially, or from any works.

21. Code of conduct

The members and the employees of the Commission shall subscribe to such code of conduct as the Commission may, by regulations, prescribe.

PART III – FINANCIAL PROVISIONS

22. Funds of the Commission

The funds of the Commission shall, subject to the law relating to Public Finance Management, consist of—

- (a) monies allocated by Parliament for purposes of the Commission;
- (b) any grants, gifts, donations or other endowments given to the Commission;
- (c) such funds as may vest in or accrue to the Commission in the performance of its functions under this Act or under any other written law.

23. Expenses of the Commission to be a charge on the Consolidated Fund

The administrative and other expenses of the Commission, including the salaries, allowances, gratuities and pensions of the members of the Commission shall be a charge on the Consolidated Fund.

24. Remuneration and allowances

(1) The members of the Commission shall be paid such remuneration or allowances as the Salaries and Remuneration Commission shall determine.

(2) The employees of the Commission shall be paid such remuneration and allowances as the Salaries and Remuneration Commission may advise.

25. Annual estimates

(1) Before the commencement of each financial year, the secretary with the approval of the Commission shall cause to be prepared estimates of the revenue and expenditure of the Commission for that year.

(2) The Cabinet Secretary responsible for finance shall present the estimates approved by the Commission for consideration and approval by the National Assembly.

26. Financial year

The financial year of the Commission shall be the period of twelve months ending on the thirtieth June in each year.

27. Accounts and audit

(1) The Commission shall cause to be kept all proper books and records of account of the income, expenditure and assets of the Commission.

(2) Within a period of three months after the end of each financial year, the Commission shall submit to the Auditor-General, the accounts of the Commission together with—

- (a) a statement of the income and expenditure of the Commission during that year; and
- (b) a statement of the assets and liabilities of the Commission on the last day of that year.

(3) All accounts kept under this Act shall be audited by the Auditor-General at least once in every financial year.

(4) The Commission shall be entitled, upon application to the Cabinet Secretary responsible for finance, to exemption from duty chargeable under the Stamp Duty Act (Cap. 480) in respect of any instrument executed by or on behalf of, or in favour of the Commission which, but for this section, the Commission would be liable to pay.

(5) The Commission may establish, control, manage, maintain and contribute to pension and provident funds for the benefit of the members and employees of the Commission and may grant pensions and gratuities from any such fund to the said officers upon their resignation, retirement or separation from the service of the Commission or, as the case may be, to the dependants of any such officer upon such officer's death.

28. Annual report

(1) Every December after the end of each financial year, the Commission shall present its annual report to the President and submit the same to Parliament.

(2) The annual report shall in respect of the year to which it relates, contain—

- (a) the financial statements of the Commission;
- (b) activities the Commission has undertaken;
- (c) an evaluation on the extent to which the values and principles referred to in Articles 10 and 232 of the Constitution are complied with in the public service; and
- (d) any other information that the Commission may consider relevant, including a summary of the nature of appeals dealt with pursuant to Article 234 of the Constitution.

(3) The Commission shall publish the annual report in the *Gazette* and in at least one newspaper of national circulation.

PART IV – MISCELLANEOUS, SAVINGS AND TRANSITIONAL PROVISIONS

29. Management of information

(1) The Commission shall publish and publicize all important information within its mandate affecting the nation.

(2) A request for information by a citizen, in the public interest—

- (a) shall be addressed to the secretary or such other person as the Commission may for that purpose designate and may be subject to

(b) may be subject to confidentiality requirements of the Commission.

(3) Subject to the provision of Article 35 of the Constitution and to the law relating to Data Protection and Freedom of Information, the Commission may decline to give information to an applicant where—

- (a) the request is unreasonable in the circumstances;
- (b) the information requested is at a deliberative stage by the Commission;
- (c) failure of payment of the prescribed fee; or
- (d) the applicant fails to satisfy any confidentiality requirements by the Commission.

(4) The right of access to information under Article 35 of the Constitution shall be limited to the nature and extent specified under this section.

(5) Every member and employee of the Commission shall sign a confidentiality agreement.

30. Offences

(1) Without prejudice to any other law, no member or officer of the Commission nor any other person shall publish or disclose to any unauthorized person or otherwise than in the course of duty the contents or any part of the contents of any document, communication or information whatsoever which has come to his or her knowledge in the course of his or her duties under this Act or under any regulation made there under.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both such fine and such imprisonment.

(3) Without prejudice to any other law, any person who discloses or publishes any information other than in accordance with Article 35 of the Constitution and the law relating to data protection and freedom of information commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand or imprisonment for a term not exceeding two years:

Provided that no person shall be guilty of an offence if the disclosure relates to acts or conduct of any person that constitute a crime under any law.

(4) Without prejudice to any other law, any person who, in connection with an application by himself or any other person for employment or appointment, promotion or transfer in the service of the Government, or in connection with any matter upon which it is the duty of a Commission to require information or evidence, or into which it is the duty of the Commission to inquire, willfully gives to a Commission or to any member thereof any information which is false or misleading in any particular material commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand or to imprisonment for a term not exceeding two years, or to both such fine and such imprisonment.

31. Regulations

(1) The Commission may make regulations for the better carrying out of its functions under the Constitution, this Act and any other national legislation.

(2) Without prejudice to the generality of subsection (1), such regulations may provide for—

- (a) the establishment and abolition of offices in the public service;
- (b) the appointment, including the power to confirm appointments of persons, promotions, and deployment to any office in respect of which the Commission is responsible under this Act;
- (c) the disciplinary control of persons holding or acting in any office in respect of which the Commission is responsible under this Act;
- (d) promotion of values and principles of governance in the public service;
- (e) the investigation, monitoring and evaluation of the organization, administration and personnel practices of the public service;
- (f) promotion of efficiency and effectiveness in the public service;
- (g) the review of conditions of service, code of conduct and qualifications of officers in the public service;
- (h) the hearing and determination of appeals in respect of county governments' public service;
- (i) the termination of appointments and the removal of persons from any office, in respect of which the Commission is responsible under this Act;
- (j) the practice and procedure of the Commission in the exercise of its functions under this Act;
- (k) the delegation of the Commission's functions or powers; and
- (l) any other matter required under the Constitution, this Act or any other written law.

(3) The power to make regulations conferred to the Commission under this Act shall be—

- (a) for the objective and purpose of giving effect to the Constitution and this Act;
- (b) to the nature and scope specifically stipulated in the Constitution and this Act; and
- (c) based on the general principles and standards contained in the Constitution and this Act.

32. Transition

(1) The members of the Public Service Commission existing immediately before the commencement of this Act shall continue in office for the unexpired period of the term of the member.

(2) A person who immediately before the commencement of this Act was an officer of the Public Service Commission existing immediately before the

commencement of this Act, may, subject to the provisions of the Constitution, this Act and any other relevant law, be an officer of the Commission.

(3) Any disciplinary proceedings that are pending before the Public Service Commission before the commencement of this Act shall be continued as if the Commission was the Commission existing before the effective date of the Constitution.

33. Transfer of assets, etc.

(1) All property, assets, rights, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Public Service Commission existing immediately before the commencement of this Act, shall upon the commencement of this Act subject to the law relating to Transition to Devolved government, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Commission to the same extent as they were enforceable by or against either of the former Commissions before the commencement of the Act.

(2) Where the transfer of any property transferred to or vested in the Commission under subsection (1) is required by any written law to be registered, the Commission shall, within three months from the commencement of this Act or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Commission or any person by way of registration fees, stamp or other duties—

- (a) make such entries in the appropriate register as shall give effect to the transfer;
- (b) where appropriate, issue to the Commission a certificate of title or other statutory evidence of ownership of the property or make such amendments on such certificates or in the appropriate register as may be necessary; and
- (c) make any necessary endorsements on such deeds or other documents as may be presented to such registering authority relating to the title, right or obligation concerned.

34. Repeal of Cap. 185

The Service Commissions Act (Cap.185) is repealed.

FIRST SCHEDULE

[Section 6(2).]

PROCEDURE FOR APPOINTMENT OF CHAIRPERSON, AND MEMBERS OF THE COMMISSION

1. Selection Panel

(1) Within fourteen days of the commencement of this Act, and whenever a vacancy arises, the President shall by notice in the *Gazette* declare vacancies in

the Commission and constitute a selection panel comprising seven professionals drawn, through an open and competitive process, from the public and private sector.

(2) The panel shall elect a chairperson from amongst its number.

(3) Subject to the provisions of this Schedule, the panel shall determine its own procedure.

(4) The Office of the Secretary to the Cabinet shall provide facilities and any support required by the panel in the performance of its functions.

2. Oath or affirmation of office

The chairperson and members of the panel shall, before assuming office, take and subscribe the oath or affirmation of office prescribed in the Third Schedule.

3. Selection of nominees

(1) The panel shall, within fourteen days of appointment, invite applications from qualified persons and publish the names of all applicants and their qualifications in the *Gazette*, at least two newspapers with nationwide circulation and on the Commission's website.

(2) The panel shall consider the applications, shortlist and interview the applicants.

(3) After carrying out the interviews, the panel shall—

- (a) select three persons qualified to be appointed as chairperson;
- (b) select three persons qualified to be appointed as vice-chairperson; and
- (c) at least three persons qualified to be appointed as members of the Commission for each vacancy; and
- (d) forward the names of the persons selected under paragraphs (a), (b) and (c) to the President for nomination as the chairperson, vice-chairperson or member respectively or as the case may be.

(4) The President shall within fourteen days forward the names of nominees to the National Assembly for vetting and approval.

(5) In nominating or appointing persons as members of the Commission, the panel and the President shall—

- (a) observe the principle of gender equity, ethnic and other diversities of the people of Kenya, and shall ensure equality of opportunity for persons with disabilities; and
- (b) take into account the national values and principles set out in Articles 10 and 232 of the Constitution.

4. Approval by the National Assembly

(1) The National Assembly shall within fourteen days of its sitting, consider all nominations received and approve or reject any of them.

(2) Upon approval by the National Assembly, the Speaker shall within seven days of the approval, forward the names of the approved persons to the President for appointment.

5. Rejection by National Assembly

(1) Where the National Assembly rejects any nomination pursuant to paragraph 4(1), the Speaker shall, as soon as practically possible, notify the President of the rejection.

(2) The President shall within fourteen days of the rejection, submit to the National Assembly a fresh nomination from amongst the list of nominees received from the panel under paragraph 3(3).

(3) If the National Assembly rejects all or any subsequent nominee submitted under sub-paragraph (2), the panel shall forward to the President fresh names from the persons shortlisted and interviewed under paragraph 3(2) and the provisions of paragraphs 3(4), 4 and 5 shall with necessary modifications, apply.

6. Appointment of chairperson, vice-chairperson and members

(1) The President shall by notice in the *Gazette*, appoint the chairperson, vice-chairperson and the members approved and forwarded by the National Assembly within seven days upon receipt of the approved names.

(2) Until after the first general election under the Constitution, the President shall in appointing the panel and nominating persons for appointment as chairperson, vice-chairperson or member of the Commission, act in consultation with the Prime Minister.

7. Dissolution of panel

(1) The panel shall stand dissolved upon the appointments under paragraph 6.

(2) Where the provisions of paragraph 5 apply, the panel shall continue to exist but shall stand dissolved upon the requisite appointments being made under paragraph 6.

8. Despite the foregoing provisions of this Schedule, the President may, by notice in the *Gazette*, extend the period specified in respect of any matter under this section by a period not exceeding twenty-one days.

SECOND SCHEDULE

[Section 8.]

OATH OR SOLEMN AFFIRMATION OF CHAIRPERSON/
VICE-CHAIRPERSON/ MEMBER OF THE COMMISSION

I having been appointed as (Chairperson/Vice-Chairperson/Member) of the Public Service Commission, do swear/solemnly affirm that I will without fear or favour, affection or ill-will, discharge the functions of the office of (Chairperson/Vice-Chairperson/Member) of the Commission, and that I will not, directly or indirectly, reveal any matter relating to such functions to unauthorized persons or otherwise than in the course of duty.

Public Service Commission

SECOND SCHEDULE—*continued*

So help me God.

.....

Signed

Sworn/Declared before me this day of 20

.....

Chief Justice

THIRD SCHEDULE

[Section 15.]

PROVISIONS AS TO THE CONDUCT OF THE BUSINESS AND AFFAIRS OF THE COMMISSION

1. The Commission shall meet in plenary as often as may be necessary for the carrying but of its business but it shall meet at least once every calendar month.
2. A meeting of the Commission shall be held on such date and at such time as the chairperson shall decide.
3. The chairperson shall, on the written application of one-third of the members, convene a special meeting of the Commission.
4. Unless the majority of the total membership of the Commission otherwise agree, at least fourteen days' written notice of every meeting of the Commission shall be given to every member of the Commission.
5. The quorum for the conduct of business at a meeting of the Commission shall be at least five members of the Commission.
6. The chairperson shall preside at every meeting of the Commission and in the absence of the chairperson at a meeting, the vice-chairperson shall preside and in the absence of both the chairperson and the vice-chairperson, the members present shall elect one of their number to preside and who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.
7. Unless a unanimous decision is reached, a decision on any matter before the Commission shall be by concurrence of a majority of all the members.
8. Subject to paragraph 5, no proceedings of the Commission shall be invalid by reason only of a vacancy among the members thereof.
9. The secretary shall be the secretary at all meetings of the Commission.
10. The Commission shall cause minutes of all proceedings of meetings of the Commission to be entered in books for that purpose.

11. Except as provided by this Schedule, the Commission may regulate its own procedure.

(1) If any person is present at a meeting of the Commission or any committee at which any matter is the subject of consideration and in which matter that person or that directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Commission or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment.

(4) A member or employee of the Commission shall not transact any business or trade with the Commission.

FOURTH SCHEDULE

[Section 16(3).]

OATH OR SOLEMN AFFIRMATION OF A SECRETARY OF THE COMMISSION

I being called upon to exercise the functions of Secretary of the Public Service Commission, do swear/solemnly affirm that I will not, directly or indirectly, reveal to any unauthorized person or otherwise than in the course of duty the contents or any part of the contents of any document, communication or information whatsoever which may come to my knowledge in the course of my duties as an officer of the Commission.

So help me God.

.....
Signed

Sworn/Declared before me this day of 20

.....
Chief Justice

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PUBLIC SERVICE COMMISSION ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

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PUBLIC SERVICE COMMISSION (COUNTY GOVERNMENT PUBLIC SERVICES APPEALS PROCEDURES) REGULATIONS, 2016

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PUBLIC SERVICE COMMISSION (COUNTY GOVERNMENT PUBLIC SERVICES APPEALS PROCEDURES) REGULATIONS, 2016

[L.N. 70/2016.]

1. Citation

These Regulations may be cited as the Public Service Commission (County Government Public Services Appeals Procedures) Regulations, 2016.

2. Purpose

The purpose of these Regulations is to regulate the hearing of appeals by the Commission that have been filed by public officers or any other person against the decisions of county governments public service.

3. Interpretation

In these Regulations, unless the context otherwise requires—

“**appeal**” means to apply for the re-examination of a decision or process of a county government public service;

“**appellant**” means an individual or an organisation appealing against a county government public service decision or process;

“**applicant**” means an individual or organisation that has applied to the Commission to review the Commission's decision;

“**application**” means an application for review;

“**Chairperson**” means the Chairperson of the Public Service Commission;

“**Committee**” means the County Appeals Committee of the Commission;

“**County Appeals Unit**” means the Appeals Unit within the Commission;

“**county government public service**” includes a county assembly service; and

“**respondent**” means a county government public service whose decision or process has been appealed against.

4. Principles

The Commission shall be guided by the following principles Principles. when hearing and determining an appeal or when considering an application for a review of its determination in relation to an appeal—

- (a) the promotion of the purposes, values and principles of the Constitution;
- (b) justice and fairness for all parties appearing before the Commission;
- (c) the application of the rules of natural justice; (d) the application of substantive justice that does not rely on undue regard to technicalities of procedure; and
- (d) the avoidance of undue delay.

5. Inherent powers of the Commission

Notwithstanding any other provision in these Regulations, the Commission may, on its own motion or the application of a person, make such orders as are necessary for—

- (a) the fair and expeditious determination of an appeal or application under these Regulations;
- (b) the just conclusion of an appeal or application; or
- (c) the prevention of the abuse of the processes of the Commission.

6. Co-ordination of appeal process

An appeal shall be heard by a Committee and the Chairperson shall be responsible for—

- (a) constituting each Committee;
- (b) assigning appeals and applications for review to Committees; and
- (c) such other functions as are necessary for the hearing and determination of appeals or applications for review.

7. Jurisdiction

(1) A person who is dissatisfied with a decision of the county government public service in its discharge of a human resource function may appeal to the Commission against that decision.

(2) A public officer who makes an appeal in accordance with these Regulations shall appeal after all the appeals and processes of the county government public service have been exhausted.

(3) A State officer in a county government public service shall not appeal against a decision of a county government public service under these Regulations.

8. Appealable matters

The Commission may hear and determine an appeal from a public officer in a county government public service regarding any decision relating to the engagement of the person in the county government, including an appeal in respect of—

- (a) the recruitment, selection, appointment, promotion, re-designation, deployment and qualifications attached to any office;
- (b) the remuneration, and terms and conditions of service;
- (c) disciplinary control including imposition of any punishment including dismissal;
- (d) the national values and principles of governance and the values and principles of public service as provided for in the Constitution;
- (e) retirement;
- (f) other forms of removal from service except on account of dismissal;
- (g) pension benefits, gratuity and other terminal benefits; and
- (h) any other decision that the Commission considers to fall within its constitutional jurisdiction to hear and determine an appeal in that regard.

9. Lodging an appeal

(1) A public officer shall lodge an appeal against a decision of a county government public service with the Commission within ninety days of the making of the decision by the county government public service.

(2) Notwithstanding the requirements of sub-regulation (1), the Commission may allow a public officer to lodge an appeal after the expiry of ninety days, if the Commission is persuaded that the circumstances warrant it.

(3) A person who lodges an appeal under these Regulations shall provide the relevant documents or information to support the appeal, including the documents and information provided by the public officer during the processes undertaken by the county government public service.

10. Commission to notify county government public service of appeal

The Commission shall notify a county government public service, within seven days of the lodging of an appeal, that the appeal has been lodged by a public officer against a decision of that county government public service in accordance with these Regulations and

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shall require that county government public service to submit all records in relation to the appeal, including proceedings that led to the decision being appealed against.

11. Processing an appeal

(1) A county government public service that has been notified of an appeal under regulation 10 shall forward to the Commission the relevant records in relation to the appeal, including proceedings, within fourteen days of receiving the notice.

(2) The notice shall be in Form CA1 as set out in the Schedule.

(3) An appeal under these Regulations shall be processed by the County Appeals Unit.

(4) The Committee shall hold a preliminary meeting to review the appeal file within twenty one days of the reply being filed.

(5) At a preliminary meeting, the Committee may—

(a) require the appellant or the respondent to provide additional information or documents in relation to the appeal;

(b) re-examine the process or proceedings that led to the appeal and whether or not there is sufficient information in relation to the appeal to make a determination; or

(c) set down a date when the appellant and the respondent shall appear before the Committee and be examined in relation to the appeal.

(6) Where there is insufficient information to make a determination in relation to an appeal, the Commission may investigate the matter further in order to obtain the required information necessary to make a determination.

(7) The Committee may hold a hearing at which the appellant and the respondent shall be examined by the Committee and given an opportunity to make further submissions in relation to the appeal.

(8) The appellant and the respondent shall be notified of the hearing date by the Committee in the prescribed Form CA2 set out in the Schedule.

(9) The preliminary meeting shall commence despite the absence of one of the parties.

(10) Within twenty one days of the preliminary meeting or within fourteen days of obtaining findings under sub-regulation (6), the Committee shall convene a final meeting to consider all the information and documents in relation to the appeal and shall then make a final determination.

12. Service of notices

(1) Any notice issued under these Regulations may be served through—

(a) personal service;

(b) registered mail to the last known postal address of the party;

(c) the Public Service Commission website; or

(d) advertisement in at least two daily newspapers with a nationwide circulation.

(2) Where a notice is served by way of the last known postal address of the person being served, the notice shall be deemed to have been received seven days after the notice is dispatched.

(3) The County Appeals Unit shall place a copy of the newspaper advertisement in the appeal file where a notice is served through an advertisement.

(4) Where a notice is served personally, the County Appeals Unit shall make a record in the appeal file stating the time and manner in which the notice was served.

(5) The Commission shall take the necessary steps to ensure that the most cost-effective method of service is employed.

13. Hearings

(1) The Commission shall at least seven days prior to the hearing date, notify in writing the parties to an appeal of the date and place where the hearing shall be held.

(2) An appeal may be heard orally or through written representation.

(3) In exercising the power to hear an appeal through written representation, the Commission shall require the appellant and the respondent to make written submission as follows—

- (a) the appellant shall first lodge written submissions which shall be forwarded to the respondent within seven days of receipt thereof;
- (b) the respondent shall lodge written submissions in response to the appellant's submissions within fourteen days of receipt thereof.

(4) The Committee may hold an oral hearing—

- (a) where the it determines that it is necessary to hear the appellant in the matter; or
- (b) where the appellant makes a written request to the Commission, to be heard orally that request shall be considered and allowed at the discretion of the Committee.

(5) Where the appeal is heard orally, both parties shall be given an opportunity to address the Committee and shall, where the Committee finds it necessary, present any witnesses before the Committee.

(6) If the appellant or respondent is absent during the hearing, after having been served with a hearing notice, the Committee may—

- (a) adjourn the hearing to a specific date; or
- (b) hear and determine the appeal.

14. Vacancy in the appeals committee before appeal is determined

Where, before an appeal is fully heard and determined, and a member of the Committee is unable to discharge his or her functions under the Act or these Regulations, the Chairperson shall—

- (a) appoint another member to that Committee; and
- (b) direct that—
 - (i) the appeal be heard afresh; or
 - (ii) the appeal be heard from the point at which the member was unable to discharge his or her duties.

15. Proceedings to be recorded

The proceedings of an appeal where the Committee receives written testimony shall be recorded in the minutes of the meeting of the Committee.

16. Findings and recommendations

The Committee shall deliberate and make its findings and recommendations to the Commission within fourteen days of the final hearing or the final written submissions made in relation to an appeal.

17. Determination of the appeal

The Commission shall consider the recommendations of the Committee and shall make a final decision on the appeal within fourteen days of receiving the recommendations of the Committee.

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18. Powers of the Commission on appeal

The Commission may, in relation to an appeal—

- (a) uphold the decision of the county government public service;
- (b) set aside the decision of the county government public service;
- (c) vary the decision of the county government public service as the Commission considers just; or
- (d) give such directions as the Commission may consider appropriate.

19. Communication of the determination

The decision of the Commission shall be communicated to the appellant and the respondent in writing within seven days from the date the Commission makes the decision.

20. Time

The Commission shall receive, hear and determine an appeal within four months of receiving the appeal.

21. Review

(1) Any person who is dissatisfied or affected by the decision made by the Commission in relation to an appeal may apply for a review of the decision and the Commission may admit and consider the review if—

- (a) the person presents new information that could not be presented at the time the decision was made by the Commission; or
- (b) the Commission has made an apparent error in its decision in relation to the appeal.

(2) An application for review shall be in writing and shall be made within three months from the date of the decision of the Commission.

(3) The Commission may consider an application for review out of time if, in the opinion of the Commission, the circumstance warrants the consideration.

22. Powers of the Commission on review

The Commission may, after considering an application for a review of its decision—

- (a) uphold the decision;
- (b) set aside the decision;
- (c) vary the decision as it considers just; or
- (d) give such directions as it may consider appropriate.

23. Communication of the decision on review

The Commission shall inform in writing a person who has applied for a review of a decision of the Commission within fourteen days of the making of the decision.

24. Delivery of documents to the Commission

(1) A document may be lodged at the Secretariat by—

- (a) delivering it to the Commission registry;
- (b) sending it to the Commission by registered post or by courier service subject to providing proof of delivery; or
- (c) by fax or e-mail.

(2) A document is deemed lodged on the date it is received and stamped by the Commission.

(3) The sender of a document by fax shall produce the original document or the transmission report if directed by the Commission.

25. Powers of the Commission in relation to service of documents

Nothing in these Regulations affects the power of the Commission, if the circumstances so permit and in the interests of justice, to—

- (a) authorise service of a document in a manner that is not expressly provided for in these Regulations; or
- (b) find that a document served in a manner not expressly provided for in these regulations has been properly served.

26. Rights of appellants and applicants

Every appellant, applicant or respondent shall have the right to—

- (a) be heard in person;
- (b) be represented by an advocate of his or her own choice and at their own expense;
- (c) be accompanied by a representative of the relevant trade union or any person of his or her choice;
- (d) be assisted by an Interpreter if he or she does not understand the language being used during the proceedings;
- (e) access information relevant to the appeal; and
- (f) have adequate time to prepare evidence.

27. Commission to keep full records of proceedings

The Commission shall maintain and preserve an accurate record of all its proceedings including handwritten or typed transcripts and, where applicable, audio and video recordings.

SCHEDULE

[Rule 11(2).]

FORM CA 1

PUBLIC SERVICE COMMISSION

COUNTY APPEAL NO. OF 20

BETWEEN

..... APPELLANT

AND

..... RESPONDENT

NOTICE TO SUBMIT DOCUMENTS

To:

.....
.....

WHEREAS the Commission has received an appeal against your decision made on the of 20 against on the issue of

(Copy attached)

Public Service Commission Act

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NOW THIS NOTICE IS TO REQUIRE YOU—

- (a) to file a response to the appeal; and
 - (ii) to forward all relevant documents within your possession including the record of the proceedings, minutes and decisions made on the matter.

TAKE NOTICE that you are required to respond to this notice within fourteen days from the date of receipt of this notice.

Dated at on this day of 20

.....
for the Commission.

FORM CA 2

PUBLIC SERVICE COMMISSION

COUNTY APPEAL NO. OF 20

BETWEEN

..... APPELLANT

AND

..... RESPONDENT

HEARING NOTICE

TAKE NOTICE that you are required to appear before the Commission for the hearing of the appeal on the day of 20 at o'clock in the noon.

the hearing shall be held at—

.....

TAKE NOTICE that the Commission may proceed to make such determination or action as it deems just and prudent, your absence notwithstanding.

Dated at on this day of 20

.....
for the Commission.

Made on the 2016.
