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**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 54 (National Assembly Bills No. 15)*

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REPUBLIC OF KENYA

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**KENYA GAZETTE SUPPLEMENT**

**NATIONAL ASSEMBLY BILLS, 2022**

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**NAIROBI, 5th April, 2022**

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CONTENT

Bill for Introduction into the National Assembly—	PAGE
The Supreme Court (Amendment) Bill, 2022 .....	443



**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.

16. The principal Act is amended by deleting the heading to Part IV and substituting therefor the following new heading—

Repeal and replacement of the heading to Part IV of No. 7 of 2011.

**“APPELLATE JURISDICTION OF THE SUPREME COURT”.**

17. The principal Act is amended by inserting the following new sections immediately after section 15—

Insertion of new sections in No. 7 of 2011.

Appeal as of right.

**15A.** 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.

Appeal upon certification.

**15B.** (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.

Direct appeals from tribunals.

**15C.** (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.

16. The principal Act is amended by repealing section

Repeal of section 16 of No. 7 of 2011.

17. The principal Act is amended by repealing section

Repeal of section 17 of No. 7 of 2011.

20. The principal Act is amended by repealing section

Repeal and replacement of section 18 of No.

18, and substituting therefor the following new section—

7 of 2011.

Summary dismissal.

**18.** 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.

**21.** The principal Act is amended by repealing section 19.

Repeal of section 19 of No. 7 of 2011.

**22.** The principal Act is amended by repealing section 20, and substituting therefor the following new section —

Repeal and replacement of section 20 of No. 7 of 2011.

Further evidence in appeals.

**20.** (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.

**23.** Section 21 of the principal Act is amended—

Amendment of section 21 of No. 7 of 2011.

- (a) by deleting subsection (1), and substituting therefor the following new subsection—

“(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;”

- (b) in subsection (3), by deleting the words “and may amend any defect or error in the record of appeal” appearing immediately after the words “issue in the appeal”; and
- (c) in subsection (4), by deleting the words “within fourteen days of delivery of its judgment, ruling, or order” appearing at the beginning of the subsection.

**24.** The principal Act is amended by inserting the following new section immediately after section 21—

Insertion of new section 21A in No. 7 of 2011.

Review of own decision.

**21A.** 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 judgment, ruling or order was obtained through fraud, deceit or misrepresentation of facts;
- (b) where the judgment, 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 judgment, ruling or order under the belief that the parties have consented; or
- (d) where the judgment, ruling or order was rendered on the basis of repealed law, or as a result of a deliberate concealment of a statutory provision.

**25.** Section 23 of the principal Act is amended—

Amendment of section 23 of No. 7 of 2011.

(a) by deleting subsection (2) and substituting the following new subsections—

(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.

**26.** The principal Act is amended by inserting the following new section immediately after subsection 23—

Insertion of new section 23A in No. 7 of 2011.

Stay of proceedings.

**23A.** (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.

**27.** The principal Act is amended by repealing section 24 and substituting therefor the following new section—

Repeal and replacement of section 24 of No. 7 of 2011.

Interlocutory directions.

**24.** (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.

**28.** Section 25 of the principal Act is amended by inserting the following new subsections immediately after

Amendment of section 25 of No. 7 of 2011.

subsection (2)—

(3) Where a judge presiding over a matter is not able to deliver a judgment 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 the terms of sub-section (3), shall rely on submissions and proceedings on record, as a basis for delivering judgment.

**29.** Section 26 of the principal Act is amended—

Amendment of  
section 26 of No.  
7 of 2011.

(a) by deleting subsection (1) and substituting therefor the following—

(1) The Supreme Court may deliver a judgment—

(a) in open court; or

(b) by physical or electronic service of the same to the parties.

(b) by deleting subsection (3); and

(c) by deleting subsection (4).

**30.** Section 28 of the principal Act is amended—

Amendment of  
section 28 of No.  
7 of 2011.

(a) by deleting subsection (3) and substituting therefor the following—

(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.

(b) by deleting subsection (4) and substituting therefor the following—

(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.

(c) by deleting subsection (5) and substituting therefor the following—

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

(d) by inserting the following new subsection immediately after subsection (5)—

(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.

31. The principal Act is amended by inserting the following new sections immediately after section 29—

Insertion of new sections in No. 7 of 2011.

Nomination of Court representatives.

29A. 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.

Committees of the Court.

29B. 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.

Alternative Dispute Resolution mechanisms.

29C. (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 maybe initiated by the Court on its own motion, or at the request of the parties.

Court sittings and recess.

29D. (1) The Court shall have three sittings in every year.

(2) The sittings of the Court shall be—

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

Ethics and integrity.

**29E.** Every judge of the Court shall sign and ascribe to the Judicial Code of Conduct.

## MEMORANDUM OF OBJECTS AND REASONS

The purpose of this Bill is to amend the Supreme Court Act, 2011 in order to align it with the current practices of the Court and to improve the Court's efficiency in the discharge of its duties. A number of sections of the Act have been declared unconstitutional, and there is need to have the same reflected in the Act. Furthermore, the Court has recommended amendment to the Act in various cases, such as the *Commission on Administrative Justice v Attorney-General & Law Society of Kenya (Interested Party)*, *Petition No 284 of 2012*; *Malcolm Bell Case, Supreme Court Application No. 1 of 2013*. It is therefore necessary in these circumstances, to update the Supreme Court's governing statute.

**Clause 1** of the Bill provides for the short title.

**Clause 2** of the Bill amends section 2 of the Act by deleting the definition of "Chief Registrar", amending the definition of "Court" and "Registrar" and inserting new definitions in the Act with respect to "petition", "proceedings", "preliminary procedures" and "president".

**Clause 3** of the Bill amends section 3(d) of the Act to remove the reference to matters relating to the transition from the former constitution to the current one as these matters will still be catered for even without direct reference.

**Clause 4** of the Bill introduces a new section 3A clarifying the inherent powers of the Court to make orders or provide directions for administration of justice, where necessary.

**Clause 5** of the Bill repeals section 4 of the Act and substitutes it with a new section 4 which provides that a vacancy in the Supreme Court shall not affect the jurisdiction of the Court as long the bench has five judges.

**Clause 6** of the Bill amends section 6 (2) of the Act to provide that in the absence of the Chief Justice and Deputy Chief Justice, the most senior available judge shall perform any necessary administrative duty.

**Clause 7** of the Bill provides for a new section 6A setting out the functions of the President of the Court.

**Clause 8** of the Bill repeals section 8 of the Act which prescribes the manner of arriving at decisions.

**Clause 9** of the Bill amends section 9 (1) of the Act by rewording the provision to be more concise and remove unnecessary words.

**Clause 10** of the Bill amends section 10 (1) of the Act by deleting the duty of the Registrar to enforce decisions of the Court and instead providing

that the Registrar shall be responsible for taxing costs of any proceedings before the Court as between the parties.

**Clause 11** of the Bill proposes to introduce a new section 11A providing for aspects of case management and promotion of the use of information, and communication technology.

**Clause 12** of the Bill amends the heading to Part III of the Act so that it refers to the “Original jurisdiction of the Supreme Court”.

**Clause 13** of the Bill deletes section 13 of the Act and replaces it with a new section 13 which outlines when the Court may give an advisory opinion.

**Clause 14** of the Bill proposes to introduce a new section 13A in the Act providing for the procedure of the Court in adjudicating matters relating to state of emergency.

**Clause 15** of the Bill repeals section 14 of the Act which provides for special jurisdiction of the Court.

**Clause 16** of the Bill amends the heading to Part IV of the Act so that it refers to the “Appellate jurisdiction of the Supreme Court”.

**Clause 17** of the Bill proposes to introduce a new section 15A to provide for the Court’s powers to entertain appeals as of right, and upon due certification.

**Clause 18** of the Bill repeals section 16 of the Act which provides for “criteria for leave to appeal”.

**Clause 19** of the Bill repeals section 17 of the Act which provides for “direct appeals only in exceptional circumstances”.

**Clause 20** of the Bill repeals section 18 of the Act and substitutes it with provisions on summary dismissal.

**Clause 21** of the Bill repeals section 19 of the Act which provides for “extent of appellate jurisdiction of the Supreme Court”.

**Clause 22** of the Bill repeals section 20 of the Act and substitutes it with provisions on further evidence in appeals.

**Clause 23** of the Bill amends section 21 of the Act by removing reference to the appellate jurisdiction of the Court which have been provided for under Part IV. It also removes the limitation of the Court to be able to correct an oversight within fourteen days only.

**Clause 24** of the Bill provides for a new section 21A setting out the Court’s procedure for reviewing its own decisions.

**Clause 25** of the Bill prescribes the preliminary procedures that may be handled by one judge, two or more judges and the Court.

**Clause 26** of the Bill proposes to introduce a new section 23A providing for the stay of execution, injunction, a stay of further proceedings or any other conservatory or interim orders on such terms as the Court may deem fit.

**Clause 27** of the Bill repeals section 24 of the Act and substitutes it with new provisions on interlocutory directions.

**Clause 28** of the Bill amends section 25 of the Act by inserting new subsections which provides that the Chief Justice may substitute a judge where a judge presiding over a matter is not able to deliver a judgement.

**Clause 29** of the Bill amends section 26 of the Act to provide that the Supreme Court may deliver a judgement by physical or electronic service to the parties in addition to in open court.

**Clause 30** of the Bill amends section 28 of the Act by enhancing the penalty for contempt of Court. The clause also provides the Court may make an order denying audience to a contemnor for a period not exceeding eighteen months.

**Clause 31** of the Bill contains a new section 29A providing guidelines for nomination of the Court's representatives to service organs. Further to this, the clause proposes the introduction of new sections which provide that the Court may establish committees for the efficient management of its operations. Lastly, the clause provides for the Court's calendar.

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

The Bill confers on the Court the powers to make Regulations. It does not limit any fundamental rights or freedoms.

**Statement on how the Bill concerns county governments**

The Bill does not concern county governments in terms of Article 110 (1) (a) of the Constitution.

**Statement of the Bill as a money Bill within the meaning of Article 114 of the Constitution**

The Bill is not a Money Bill within Article 114 of the Constitution.

Dated the 23rd March, 2022.

AMOS KIMUNYA,  
*Leader of the Majority Party.*

**Section 2 of the principal Act which it is proposed to amend—**

“Chief Registrar” means the Chief Registrar of the Judiciary referred to in Article 161 of the Constitution;

“Court” means the Supreme Court;

“Registrar” means the Registrar of the Supreme Court appointed pursuant to section 9;

**Section 3 of the principal Act which it is proposed to amend—**

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, including matters relating to the transition from the former to the present constitutional dispensation, 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.

**Section 4 of the principal Act which it is proposed to amend—**

A vacancy in the Supreme Court as constituted under Article 163(1) of the Constitution shall not affect the jurisdiction of the Court.

**Section 6 of the principal Act which it is proposed to amend—**

(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.

(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 judgment 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.

***Section 8 of the principal Act which it is proposed to repeal—***

8. (1) The judgment of the majority of the judges of the Supreme Court shall be the judgment of the Court.

(2) A judge of the Supreme Court shall not sit at a hearing of an appeal against a judgment or order given in a case previously heard before the judge.

***Section 9 of which it is proposed to amend—***

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

(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.

***Section 10 of the principal Act which it is proposed to amend—***

(1) In relation to proceedings before the Supreme Court, the Registrar shall act in accordance with the directions of the Chief Justice, the Court and the rules and shall, in particular, 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) the enforcement of decisions of the Court;
- (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 judgments 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.

***The heading to part III of the principal Act which it is proposed to amend—***

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

***Section 13 of the principal Act which it is proposed to amend—***

An advisory opinion by the Supreme Court under Article 163(6) of the Constitution shall contain the reasons for the opinion and any judges who differ with the opinion of the majority shall give their opinions and their respective reasons.

***Section 14 of the principal Act which it is proposed to repeal—***

(1) To ensure that the ends of justice are met, the Supreme Court shall, within twelve months of the commencement of this Act, either on its own motion or on the application of any person, review the judgments and decisions of any judge—

- (a) removed from office on account of a recommendation by a tribunal appointed by the President, whether before or after the commencement of this Act; or
- (b) removed from office pursuant to the Vetting of Judges and Magistrates Act, 2011 (Act No. 2 of 2011); or
- (c) who resigns or opts to retire, whether before or after the commencement of this Act, in consequence of a complaint of misconduct or misbehaviour.

(2) To qualify for review under subsection (1), the judgment or decision shall have been the basis of the removal, resignation or retirement of, or complaint against, the judge.

(3) The Court shall, in exercise of its powers under this section—

- (a) conduct a preliminary enquiry to determine the admissibility of the matter; and
- (b) have all the necessary powers to determine the review under this section, including calling for evidence.

(4) An application for review in respect of a judgment or decision made before the commencement of this Act shall not be entertained two years after the commencement of this Act.

(5) Nothing in this section shall be construed as limiting or otherwise affecting the inherent power of the Court, either on its own motion or on the application of a party, to make such orders as may be necessary for the ends of justice to be met or to prevent abuse of the due process of the Court.

***The heading to part IV of the principal Act which it is proposed to amend—***

**PART IV – APPEALS TO THE SUPREME COURT**

***Section 16 of the principal Act, which it is proposed to repeal—***

- (1) The Supreme Court shall not grant leave to appeal to the Court unless it is satisfied that it is in the interests of justice for the Court to hear and determine the proposed appeal.
- (2) It shall be in the interests of justice for the Supreme Court to hear and determine a proposed appeal if—
  - (a) the appeal involves a matter of general public importance; or
  - (b) a substantial miscarriage of justice may have occurred or may occur unless the appeal is heard.

(3) The Supreme Court shall not grant leave to appeal against an order made by the Court of Appeal or any other court or tribunal on an interlocutory application unless satisfied that it is necessary, in the interests of justice, for the Supreme Court to hear and determine the proposed appeal before the proceedings concerned is concluded.

(4) The Supreme Court may grant leave to appeal subject to such conditions as it may determine.

(5) The Supreme Court may, on application, vary any conditions imposed under subsection (4) if it considers it fit.

***Section 17 of the principal Act which it is proposed to repeal—***

The Supreme Court shall not grant leave to appeal directly to it against a decision made, a conviction entered, or a sentence imposed in proceedings in any court or tribunal, other than the Court of Appeal, unless in addition to being satisfied that it is necessary, in the interests of justice, for the Supreme Court to hear and determine the proposed appeal, it is also satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court.

***Section 18 of the principal Act which it is proposed to amend—***

(1) The Supreme Court shall state its reasons for refusing to grant leave to appeal to the Court.

(2) The reasons under subsection (1) may be stated briefly and in general terms.

***Section 19 of the principal Act which it is proposed to repeal—***

The Supreme Court shall hear and determine appeals from the Court of Appeal or any other court or tribunal against any decision made in proceedings, only to the extent that—

- (a) a written law, other than this Act, provides for the bringing of an appeal to the Supreme Court against such decision; or
- (b) the decision is not a refusal to grant leave to appeal to the Court of Appeal.

***Section 20 of the principal Act which it is proposed to repeal—***

Appeals to the Supreme Court may, where the Court considers it necessary, proceed by way of a fresh hearing.

***Section 21 of the principal Act which it is proposed to amend—***

(1) On an appeal in proceedings heard in any court or tribunal, the Supreme Court—

- (a) may make any order, or grant any relief, that could have been made or granted by that court or tribunal; and
- (b) may exercise the appellate jurisdiction of the Court of Appeal according to Article 163(4)(b) of the Constitution.

(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 amend any defect or error in the record of 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 judgment in the appeal.

(4) Within fourteen days of delivery of its judgment, ruling or order, 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 judgment, ruling or order and such correction shall constitute part of the judgment, ruling or order of the Court.

***Section 23 of the principal Act which it is proposed to amend—***

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

(2) Any two or more judges of the Supreme Court may act as the Court—

(a) to decide if an oral hearing of an application for leave to appeal to the Court should be held, or whether the application should be determined solely on the basis of written submissions; or

(b) to determine an application for leave to appeal to the Court.

***Section 24 of the principal Act which it is proposed to amend—***

(1) In any proceeding before the Supreme Court, any judge of the Court may make any interlocutory orders and give any interlocutory directions as the judge thinks fit, other than an order or direction that determines the proceeding or disposes of a question or issue before the Court in the proceeding.

(2) Any person dissatisfied with the decision of one judge in the exercise of a power under subsection (1) is entitled to have the matter determined by a bench of five judges.

(3) Any judge of the Supreme Court may review a decision of the Registrar made within the civil jurisdiction of the Court under a power conferred on the Registrar by the rules, and may confirm, modify, or revoke that decision as the judge thinks fit.

(4) The judges of the Supreme Court who together have jurisdiction to hear and determine a proceeding may—

(a) discharge or vary an order or direction made or given under subsection (1); or

(b) confirm, modify, or revoke a decision confirmed or modified under subsection (2).

***Section 25 of the principal Act which it is proposed to amend—***

(1) The judgment 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.

***Section 26 of the principal Act which it is proposed to amend—***

(1) A judgment of the Supreme Court shall be delivered in open court.

(2) Where a matter is heard before the Supreme Court and judgment 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 judgment.

(3) A judge who has heard a case and who is absent from the delivery of judgment may sign a copy of the judgment with which the judge concurs or, where the judge has written an opinion, give the opinion to a judge present at the delivery of judgment to announce or read the concurrence or opinion in open court.

(4) Where a judgment is delivered pursuant to subsection (3), a majority of the judges who have heard the case shall be present.

***Section 28 of the principal Act which it is proposed to amend—***

(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) wilfully interrupts or obstructs the proceedings of the Supreme Court, in the Court; or
- (c) wilfully 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 five days, or to pay a fine not exceeding five hundred thousand shillings, or both, for every offence.

(4) The Supreme Court shall have the same power and authority as the High Court to punish any person for contempt of Court in any case to which subsection (1) does not apply.

(5) Nothing in subsections (1) to (3) shall limit or affect the power and authority referred to in subsection (4).