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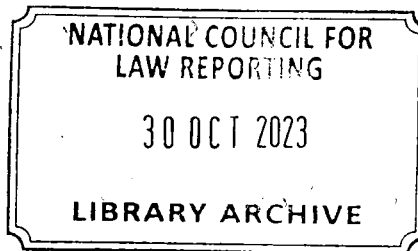
SENATE BILLS, 2023

NAIROBI, 1st September, 2023

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**THE PARLIAMENTARY POWERS AND
PRIVILEGES (AMENDMENT) BILL, 2023**

A Bill for

AN ACT of Parliament to amend the Parliamentary Powers and Privileges Act to give effect to Article 125 of the Constitution by operationalizing the powers of arrest by Parliament and Article 50 of the Constitution on the right to a fair hearing and connected purposes.

ENACTED by the Parliament of Kenya, as follows —

1. This Act may be cited as the Parliamentary Powers and Privileges (Amendment) Act, 2023.

Short title.

2. Section 2 of the Parliamentary Powers and Privileges Act, in this Act referred to as the “principal Act”, is amended by inserting the following new definitions in their proper alphabetical order —

Amendment of section 2 of No.29 of 2017.

Act No. 11 of 2011.

“Inspector-General” means the holder of the office of the Inspector-General appointed in accordance with Article 245(2)(a) of the Constitution and the National Police Service Act;

“police officer” has the same meaning assigned to it under section 2 of the National Police Service Act.

3. Section 18 of the principal Act is amended by—

Amendment of section 18 of No.29 of 2017.

(a) inserting the following new subsections immediately after subsection (2) —

(2A) The Clerk shall cause the summons to be served within seven days of receipt of a directive under subsection (2).

(b) inserting the following new subsections immediately after subsection (5) —

(5A) The person summoned shall be required to appear on the date specified in the summons, but not earlier than seven days from the date of receipt of summons.

(5B) Despite subsection (5A) the relevant House or its committee may require a person to appear before it within a shorter period of time as it may determine taking into account the urgency of the matter before the House or Committee.

4. Section 19 of the principal Act is amended —

Amendment of
section 19 of
No.29 of 2017.

(a) in subsection (1) by deleting the words "five hundred thousand" appearing immediately after the words "fine not exceeding" and substituting therefore the words "two million";

(b) by inserting the following new subsection immediately after subsection (1) —

(1A) A witness shall be given an opportunity to be heard prior to imposition of the fine.

(c) by inserting the following new subsection immediately after subsection (2) —

(2A) The fine imposed in subsection (1) shall be a civil debt recoverable summarily in accordance with the Debts (Summary Recovery) Act.

(d) deleting subsection (3) and substituting therefor the following new subsection —

(3) Parliament or its committee may order the arrest of a person who fails to honour a summons for purposes of —

(a) enforcing appearance before the House or relevant committee; or

(b) prosecution.

(e) by inserting the following new subsections immediately after subsection (3) —

(4) An order of arrest may be effected by a police officer or an authorised officer of a House of Parliament.

(5) Where an order of arrest is to be effected by a police officer, the Clerk shall transmit the order to the Inspector-General for execution.

(6) Where an order of arrest is to be effected by an officer of a House of Parliament, the Inspector-General shall facilitate the arrest as may be requested by the Clerk.

(7) A person arrested under subsection (3) shall —

- (a) be held at such a place as specified in the National Police Service Act or as shall be designated by the Clerk for purposes of holding such persons; and
- (b) be produced before court, or the House or committee that summoned that person on the next working day.

5. Section 27 of the principal Act is amended in subsection (2) by deleting the words “two hundred thousand” appearing immediately after the words “fine not exceeding” and substituting therefor the words “two million”.

Amendment of section 27 of No.29 of 2017.

6. Section 33 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection —

Amendment of section 33 of No.29 of 2017.

(2) In this section, “officer of a House of Parliament” means any officer acting under the orders of the respective Speaker or duly authorized by the respective Clerk.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The Bill seeks to amend the Parliamentary Powers and Privileges Act to ensure that the process of summoning persons to appear before Parliament is in accordance with Article 50 of the Constitution on the right to a fair hearing.

Oversight is an important pillar for democratic governance, the proper exercise of which underscores Parliament's role as representatives of the people in the exercise of their sovereignty. Article 125 of the Constitution gives Parliament the powers to summon any person in the exercise of its oversight role. In the exercise of these powers, it is imperative that due process be followed and that persons summoned are accorded a fair hearing which is guaranteed by Article 50 of the Constitution. Article 25 of the Constitution provides that the right to a fair trial may not be limited. This Bill therefore introduces specific provisions into the Parliamentary Powers and Privileges Act to safeguard this right to a fair hearing by ensuring that due process is followed when summoning persons before a Parliament or any of its committees.

The Bill further amends sections 19 and 33 of the Parliamentary Powers and Privileges Act to provide a mechanism by which an order of arrest may be executed. Such an order may be executed by the Inspector-General of the National Police Service or a member of staff duly authorized by the Speaker or Clerk.

The Bill also enhances the fine that is payable to the House or House Committee by a person who fails to appear upon being summoned to KSh. 2,000,000.00 from KSh. 500,000.

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

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

Statement as to whether the Bill does concerns county governments

This Bill provides a mechanism through which Parliament is able to summon and impose sanctions on witnesses within the confines of the constitutional safeguards of Articles 47 and 50 of the Constitution. Such witnesses may be officers of county governments who will be summoned for accountability purposes. These summonses enable Parliament to hold the relevant officers accountable on various matters, including matters touching on the functions and powers of county governments.

The Bill is in line with Articles 153(4) (b) and 254(2) of the Constitution which requires the Executive, constitutional commissions and independent offices to report to both Houses of Parliament on matters falling within their respective jurisdictions. This is necessary for the Senate in the exercise of its mandate under Articles 94 and 96 of the Constitution. The Bill therefore concerns county governments in terms of Article 110(1) (a) of the Constitution as it affects the functions and powers of county governments set out in the Fourth Schedule.

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

The Bill is not a money Bill for the purposes of Article 114 of the Constitution as the enactment of this Bill will not occasion additional expenditure of public funds.

Dated the 21st August, 2023.

GODFREY OSOTSI,
Senator.

Section 2 of No. 29 of 2017, which it is proposed to amend –

2. Interpretation

In this Act, unless the context otherwise requires—

“Clerk” means the Clerk of the National Assembly or the Clerk of the Senate;

“committee” means a committee of the National Assembly, a committee of the Senate or a joint committee of the Houses of Parliament;

“Committee of Powers and Privileges” means a Committee established under section 15;

“Houses of Parliament” means the National Assembly and the Senate;

“journal” means the minutes and the official records of the Houses of Parliament whether audio, electronic or any other form including all papers and accounts howsoever presented to or belonging to the Houses of Parliament, or any other records of the proceedings of Parliament;

“Member” means a member of the National Assembly or of the Senate;

“member of staff” means an officer of the Parliamentary Service Commission, any person acting under the orders of the Speaker or any police officer on duty within the precincts of Parliament;

“national security organ” means a national security organ specified under Article 239(1) of the Constitution;

“Parliament” means the Parliament of Kenya established under Article 93 of the Constitution;

“Parliamentary Service Commission” means the Parliamentary Service Commission established under Article 127 of the Constitution;

“proceedings” means—

- (a) all things said, done or written by a Member or by any officer of either House of Parliament or by any person ordered or authorized to attend before such House or its committees, in or in the presence of such House or its committees and in the course of a sitting for the purpose of transacting the business of the House or its committees; and
- (b) all things said, done or written between Members or between Members and officers of either House of Parliament for the

- (c) purpose of enabling any Member or any such officer to carry out his or her functions.

“Speaker” means the Speaker of the National Assembly or of the Senate, and includes the Deputy Speaker, or a member presiding at a sitting of a House of Parliament under Article 107(1)(c) of the Constitution; and

“Standing Orders” means the Standing Orders of a House of Parliament for the time being in force.

Section 18 of No. 29 of 2017, which it is proposed to amend —

18. Invitation and summoning of witnesses

(1) Parliament or its committees may invite or summon any person to appear before it for the purpose of giving evidence or providing any information, paper, book, record or document in the possession or under the control of that person and, in this respect, Parliament and its committees shall have the same powers as the High Court as specified under Article 125 of the Constitution.

(2) A summons issued under subsection (1) shall be issued by the Clerk on the direction of—

- (a) the Speaker; or
- (b) the chairperson of a committee acting in accordance with a resolution of the committee.

(3) The general form of a summons shall be as set out in the First Schedule.

(4) The summons shall be served by a member of staff or a police officer who is duly authorized by the Clerk by delivering a copy of the summons—

- (a) to the person mentioned in the summons; or
- (b) at that person’s usual or last known place of residence, employment or business or left with a person who is over the age of eighteen years and who resides or is employed at that place.

(5) Where the summons is to be served on a corporation, the summons may be served—

- (a) on the secretary, director or other officer authorised by the corporation; or
- (b) if the officer serving the summons is unable to find any of the officers of the corporation mentioned in paragraph (a)—

- (i) by leaving it at the registered office of the corporation;
- (ii) by sending it by prepaid registered post or by a licensed courier service provider approved by the court to the registered postal address of the corporation;
- (iii) if there is no registered office and no registered postal address of the corporation, by leaving it at the place where the corporation carries on business; or
- (iv) by sending it by registered post to the last known postal address of the corporation.

(6) The serving officer in all cases in which summons has been served under this section shall swear and annex or cause to be annexed to the original summons an affidavit of service stating the time when and the manner in which summons was served and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of summons.

(7) The affidavit of service shall be in the form set out in the Second Schedule with such variations as circumstances may require.

(8) Any person who knowingly swears a false affidavit of service commits the offence of perjury and may in addition be subject to such disciplinary action as the Parliamentary Service Commission may determine.

(9) A return by a person who serves a summons under this section shall be prima facie proof of the service of the summons.

(10) A person requested or summoned in terms of this section by Parliament or a committee to attend a sitting of Parliament or committee shall be paid such amount of money as shall be approved by the Clerk as reimbursement for the expenses incurred.

Section 19 of No. 29 of 2017, which it is proposed to amend –

19. Procedure if witness fails to appear

(1) Where a witness summoned does not appear, or appears but fails to satisfy the relevant House of Parliament or committee, the relevant House or Committee may impose upon the witness such fine, not exceeding five hundred thousand shillings, having regard to the witness' condition in life and all the circumstances of the case.

(2) A person may pay the fine under subsection (1) to the Clerk of the relevant House.

(3) Parliament or its committee may order the arrest of a person who fails to honour a summons.

Section 27 of No. 29 of 2017, which it is proposed to amend –

27. Offences relating to witnesses

(1) A person commits an offence where the person—

- (a) having been duly summoned in terms of section 18 fails, without sufficient cause to—
 - (i) attend at the time and place specified in the summons; or
 - (ii) remain in attendance until excused from further attendance by the person presiding at the inquiry;
- (b) when called upon under section 20, refuses to be sworn in or to make an affirmation as a witness; or
- (c) fails or disobeys without sufficient cause to—
 - (i) answer fully and satisfactorily all questions lawfully put to the person under section 20;
 - (ii) produce any document, paper, book or record in the person's possession, custody or control which the person has been required to produce under section 20.

(2) A person who commits an offence under subsection (1) is liable, on conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

(3) A person commits an offence where the person—

- (a) threatens, obstructs, assaults or insults a member of staff or police officer carrying out service of summons issued under this Act;
- (b) uses abusive language directed at a member, a committee or a House of Parliament;
- (c) threatens or obstructs another person in respect of evidence to be given before Parliament or a committee;
- (d) induces another person to—
 - (i) refrain from giving evidence to or to produce a document before Parliament or a committee; or
 - (ii) give false evidence before Parliament or a committee;

- (e) assaults or penalizes or threatens another person or deprives that person of any benefit on account of the giving or proposed giving of evidence before Parliament or a committee;
- (f) with intent to deceive or mislead Parliament or a committee, produces a false, untrue, fabricated or falsified document; or
- (g) wilfully furnishes Parliament or a committee with information which is false or misleading or makes a statement before Parliament or committee that is false or misleading.

(4) A person who commits an offence under subsection (3) is liable, on conviction, to a fine not exceeding five hundred thousand or a term of imprisonment not exceeding one year or to both such fine and imprisonment.

Section 33 of No. 29 of 2017, which it is proposed to amend –

33. Officers of a House of Parliament to have powers of police officer

(1) Every officer of a House of Parliament shall, for the purposes of this Act and of the application of the provisions of the criminal law, have all the powers and enjoy all the privileges of a police officer.

(2) In this section, “officer of a House of Parliament” means any officer acting within the precincts of Parliament under the orders of the Speaker.