

SPECIAL ISSUE

Kenya Gazette Supplement No. 120 (Acts No. 27)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

ACTS, 2017

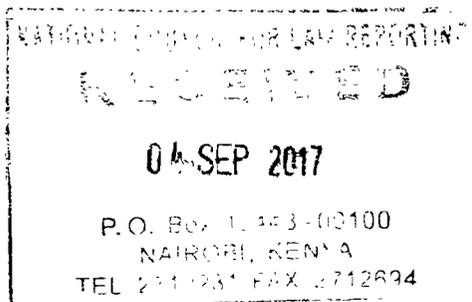
NAIROBI, 3rd August, 2017

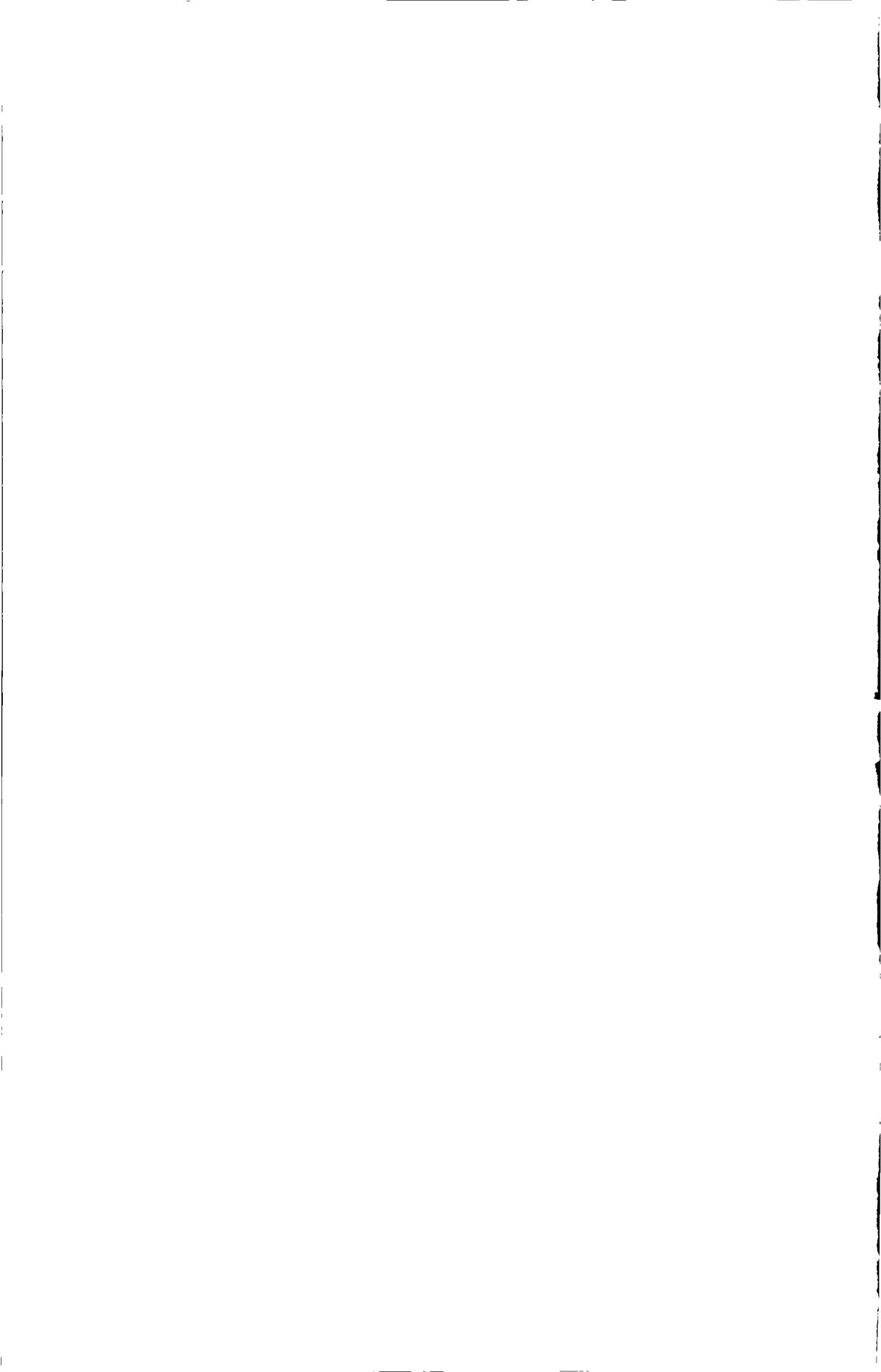
CONTENT

Act—

PAGE

The Kenya National Examination Council (Amendment) Act, 2017 563





**THE KENYA NATIONAL EXAMINATIONS
COUNCIL (AMENDMENT) ACT**

No. 27 of 2017

Date of Assent: 21st July, 2017

Date of Commencement: 16th August, 2017

AN ACT of Parliament to amend the Kenya National Examinations Council Act

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Kenya National Examination Council (Amendment) Act, 2017.

Short title.

2. The Kenya National Examinations Council Act in this Act referred to as the “principal Act” is amended in Section 2 by inserting the following new definitions in their proper alphabetical sequence—

Amendment of section 2 of Cap 225A.

No. 29 of 2013.

“Technical and Vocational Education and Training Authority” means the Technical and Vocational Education and Training Authority established under section 6 of the Technical and Vocational Education and Training Act;

“Tribunal” means the National Examinations

Tribunal established under section 40B;

3. The principal Act is amended by inserting the following new section immediately after section 40—

Insertion of a new section into Cap 255A.

Offences by examination officers.

40A. A member, officer, agent or staff of the Council whose omission or commission leads to an examination irregularity commits an offence and is liable upon conviction, to imprisonment for a term not exceeding five years or a fine not exceeding five million shillings, or both.

4. The principal Act is amended by inserting the following new part immediately after section 40A—

Insertion of a new part into Cap 255A.

PART IVA—THE NATIONAL EXAMINATIONS APPEALS TRIBUNAL

National Examinations
Appeals Tribunal.

40B. (1) There is established a Tribunal to be known as the National Examinations Appeals Tribunal.

(2) The Tribunal shall consist of—

- (a) a chairperson, nominated by the Judicial Service Commission who shall be an advocate of the High Court of Kenya of at least fifteen years standing;
- (b) two persons nominated jointly by the associations for the time being representing head teachers and principals in the country;
- (c) one person having at least ten years' experience in marking examinations; and
- (d) one person nominated by the Technical and Vocational Education and Training Authority

(3) The nominating bodies under subsection (2) shall nominate and submit the names of at least two nominees, being one man and one woman, to the Cabinet Secretary for appointment.

(4) The Cabinet Secretary shall appoint the members of the tribunal by notice in the *Gazette*.

(5) A person shall not be eligible for appointment under subsection (4) if at the time of appointment the person is an employee of the Council or was an employee of the Council five years before the date of appointment.

(6) In making appointments under subsection (4) the Cabinet Secretary shall—

- (a) ensure that not more than two-thirds of the appointees are of the same gender; and

- (b) have regard to the principle of regional balance.

Tenure.

40C. (1) The chairperson of the Tribunal shall serve for a term of four years and shall be eligible for reappointment for one further term.

(2) A Member of the Tribunal shall serve for a term of three years and shall be eligible for reappointment for one further term of three years.

Remuneration.

40D. The members of the Tribunal shall be paid such allowances as the Cabinet Secretary may, in consultation with the Salaries and Remuneration Commission, determine.

Vacancy in office of member.

40E. The office of a member of the Tribunal shall become vacant if the member—

- (a) resigns by notice in writing addressed to the Cabinet Secretary;
- (b) is convicted of an offence and sentenced to imprisonment for a term of at least six months without the option of a fine;
- (c) is absent from three consecutive meetings of the Tribunal without the permission of the Chairperson;
- (d) is adjudged bankrupt;
- (e) is convicted of an offence involving fraud, dishonesty or moral turpitude;
- (f) is unable, by reason of mental or physical infirmity, to discharge the functions as a member of the Tribunal;
- (g) is otherwise unfit or unable to discharge the functions of the office; or
- (h) dies.

Sittings of the
Tribunal.

40F. The Tribunal shall be ad hoc and shall sit at such times and in such places as the Tribunal may appoint.

Quorum.

40G. (1) The Tribunal shall be properly constituted if at least three of the members of the Tribunal are present.

(2) The chairperson shall preside over all the meetings of the Tribunal and in the absence of the chairperson the members shall elect one member from amongst themselves to chair the Tribunal.

Jurisdiction to hear
appeals.

40H. The Tribunal shall consider all appeals made against a decision of the Council to withhold, nullify or cancel examinations prepared and administered by the Council.

Secretariat of the
Tribunal.

40I. (1) The Cabinet Secretary shall designate a public officer serving in the Ministry responsible for matters relating to education to be the secretary to the Tribunal.

(2) The Cabinet Secretary may, in consultation with the secretary, designate such other public officers as may be necessary to assist the Tribunal in the discharge its functions under this Act.

Appeals from
decisions of the
Council.

40J. (1) A person who is aggrieved by a decision of the Council to withhold or cancel the results of a candidate may lodge an appeal to the Tribunal in the prescribed form.

(2) An institution that is aggrieved by the decision of the Council to withhold or cancel the results of the candidates in that institution may lodge an appeal to the tribunal in the prescribed form.

(3) Notwithstanding the provisions of subsection (1), a person aggrieved by a decision of the Council may appeal to the Tribunal through the County Director of Education in the County in which the applicant is resident.

(4) The County Director of Education shall transmit to the Tribunal any applications received under subsection (3) within five days of receipt.

(5) Where the person aggrieved by the decision of the Council is a minor, the application under subsection (1) shall be made by the parent or guardian of the minor.

(6) An appeal under subsection (1) shall be—

- (a) in writing; and
- (b) lodged with the Tribunal within a period of fourteen days from the date of the decision of the Council.

(7) The parties to an appeal lodged under subsection (1) may appear before the Tribunal in person or be represented by an advocate or any other person whom the Tribunal may permit to be heard on behalf of such party.

Procedure of the
Tribunal.

40K. (1) The Tribunal shall transmit a copy of the application made under section 40J and any other supporting documents to the Council within seven days of receipt of the application.

(2) In any proceedings under this Part, the Tribunal shall act without undue regard to technicalities and shall not be strictly bound by the rules of evidence.

(3) The Tribunal shall—

- (a) within thirty days from the date of receipt of the application determine an appeal relating to examination results in respect of national examinations conducted at primary school level; and
- (b) within sixty days from the date of receipt of the application

determine an appeal relating to examination results in respect of national examinations conducted at secondary school level.

Powers of the Tribunal.

40L. The Tribunal shall have the power to summon witnesses, take evidence on oath or affirmation and order the production of documents.

Decision of the tribunal on appeal.

40M. (1) Upon the hearing of an appeal the Tribunal may—

- (a) confirm, set aside or vary a decision of the Council; or
- (b) make such other order that it may consider appropriate.

(2) The Tribunal shall communicate its decision to the parties in writing within seven days from the date of the decision.

Enforcement of orders for costs.

40N. (1) Where the Tribunal awards damages or costs in any matter before it, it shall, on application by the person in whose favour the damage or costs are awarded, issue to him a certificate stating the amount of the damages or costs.

(2) A certificate issued under subsection (1) may be filed in the High Court by the person in whose favour the damages or costs have been awarded and upon being so filed, shall be deemed to be a decree of the High Court and may be executed as such.

Appeals to the High Court.

40O. A party to an application to the Tribunal who is dissatisfied with the decision of the Tribunal may appeal to the High Court on any of the following grounds—

- (a) the decision of the Tribunal was contrary to law or to some usage having the force of law;
- (b) the decision failed to determine some material issue of law or usage having the force of law; or

- (c) a substantial error or defect in the procedure provided by or under this Act has produced an error or defect in the decision of the appeal.

Rules and procedures
of the Tribunal.

40P. (1) The Tribunal shall make rules, within ninety days of the coming into effect of this Act, for regulating the practice and procedure for the Tribunal.

(2) Notwithstanding the provisions of subsection (1), the Rules regulating the practice and procedure of the Tribunal shall not provide for the payment of any fees by any of the parties to an appeal and shall prescribe forms and anything required to be prescribed under this Part.

