

SPECIAL ISSUE

Kenya Gazette Supplement No. 122 (Senate Bills No. 14)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2015

NAIROBI, 31st July, 2015

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**THE KENYA NATIONAL EXAMINATIONS
COUNCIL (AMENDMENT) (No. 2) BILL, 2015**

A Bill for

**AN ACT of Parliament to amend the Kenya National
Examinations Council Act; and for connected
purposes**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Kenya National Examinations Council (Amendment) Act, 2015.

Short title.

2. The long title to the Kenya National Examinations Council Act, in this Act referred to as the “principal Act”, is amended by inserting the words “to provide for the establishment, powers and functions of the National Examinations Appeals Tribunal” immediately after the words “and the conduct of examinations”.

Amendment to the
Long Title of Cap.
225.

3. Section 2 of the principal Act is amended by inserting the following new definitions in their proper alphabetical sequence-

Amendment of
section 2 of Cap.
225.

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 40A;

4. The principal Act is amended by inserting the following new Part immediately after section 40-

Insertion of new
part in Cap. 225.

**PART IVA – NATIONAL EXAMINATIONS
APPEALS TRIBUNAL**

National
Examinations
Appeals Tribunal.

40A. (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) one person nominated jointly by the associations for the time being representing headteachers and principals in the country;
- (c) one person nominated jointly by the unions for the time being representing teachers;
- (d) one person nominated jointly by the associations representing the interests of parents; and
- (e) one person nominated by the Technical and Vocational Education and Training Authority.

(3) A person shall not be nominated under subsection (2)(c), (d) and (f) unless that person—

- (a) has knowledge and at least ten years' experience in matters relating to education, or a related discipline; and
- (b) holds a degree from a university recognized in Kenya.

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

(5) The persons nominated under subsection (4) shall be appointed by the Cabinet Secretary by notice in the *Gazette*.

(6) In making appointments under subsection (5) 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 principles of gender and regional balance.

Tenure.

40B. A member of the Tribunal shall hold office for a term of four years and shall be eligible for re-appointment for one further term of four years.

Remuneration.

40C. 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.

40D. 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.

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

Quorum.

40F. (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.

40G. 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.

40H. (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 of its functions under this Act.

Appeals from decisions of the council.

40I. (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 against the decision to the Tribunal in the prescribed form.

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

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

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

(4) 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.

40J. (1) The Tribunal shall transmit a copy of the application made under section 40I 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) make a decision on an application made under subsection (1) within thirty days of the filing of the application; and
- (b) communicate the decision of the Tribunal in writing to the parties within seven days from the date of the decision.

Powers of the Tribunal.

40K. 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.

40L. 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.

Enforcement of orders for costs.

40M. (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) Every 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.

40N. 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.

40O. The Cabinet Secretary may make rules for regulating the practice and procedure of the Tribunal.

Amendment of
section 45 of Cap.
225.

5. Section 45 of the principal Act is amended by inserting the following new subsection immediately after subsection (4)—

(5) A person aggrieved by the decision of the Council to withhold, nullify or cancel examination results may appeal the decision to the National Examinations Appeals Tribunal.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

Article 43(1)(f) of the Constitution guarantees every person the right to education. As a necessary part of ensuring quality education, examinations are used to assess whether students have grasped important academic concepts. Examinations are also a means of determining the readiness of a student to move from one level of education to another.

Presently the Kenya National Examinations Council under section 10(2)(e) of the Kenya National Examinations Council Act Cap. 225 is mandated to, among other things, withhold, nullify or cancel the results of candidates involved in irregularities or malpractices. This is an important function of the Council as it ensures that results are a true reflection of each candidate's academic ability. There is need, however, to ensure that this power is not exercised arbitrarily to the detriment of students and their future. Indeed Article 47(1) of the Constitution provides for the right of every person to fair administrative action and further Article 47(3) requires Parliament to enact legislation to provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal.

The Bill therefore seeks to amend the Kenya National Examinations Council Act to provide for the establishment of a National Examinations Appeals Tribunal comprising of legal practitioners, teachers and parents' representatives. The Tribunal's main function would be to consider appeals from aggrieved parties whose examination results have been withheld, nullified or cancelled. This would be in furtherance of the rules of natural justice as it would give an aggrieved party an avenue to challenge the decision of the Council with respect to examination results.

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

The proposed new clause 40M provides for the power of the Tribunal to make Rules for the procedure of hearing appeals. To this extent the Bill delegates legislative powers. The Bill however does not limit any fundamental rights or freedoms.

Statement on how the Bill concerns county governments

The provision of education and the manner in which examinations are administered has a direct impact on the qualifications of public officers available to discharge the functions of the county governments under Part 2 of the Fourth Schedule to the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 15th July, 2015.

CHRISTOPHER OBURE,
Senator.