

SPECIAL ISSUE

Kenya Gazette Supplement No. 94 (National Assembly Bills No. 24)



REPUBLIC OF KENYA

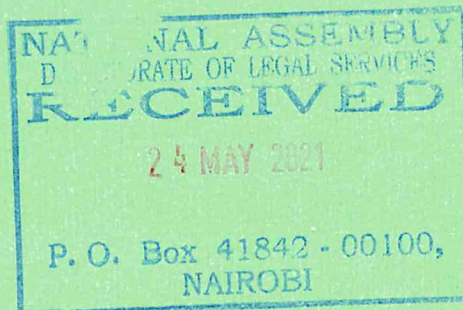
KENYA GAZETTE SUPPLEMENT

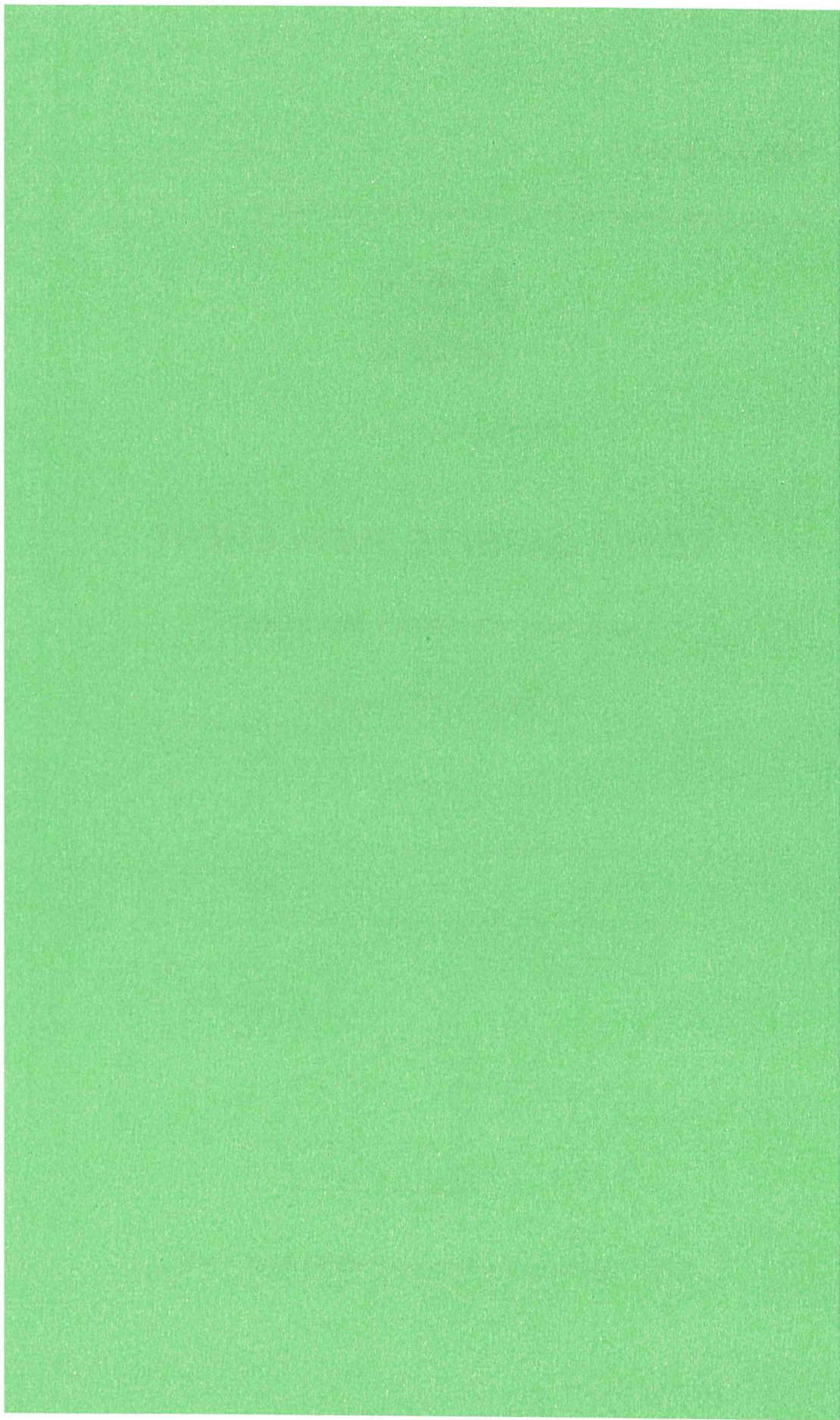
NATIONAL ASSEMBLY BILLS, 2021

NAIROBI, 12th May, 2021

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**THE PERPETUITIES AND ACCUMULATIONS
(AMENDMENT) BILL, 2021**

A BILL for

**AN ACT of Parliament to amend the Perpetuities and
Accumulations Act and for connected purposes**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Perpetuities and Accumulations (Amendment) Act, 2021.

Short title.

2. The Perpetuities and Accumulations Act (herein referred to as the “principal Act”) is amended in section 2 by inserting the following new subsections immediately after subsection (7)—

Amendment of section 2 of Cap. 161.

(8) For the purposes of this Act, any reference with regards dispositions of property shall be in reference to immovable property.

(9) For the purpose of this Act, any reference to the perpetuity period shall not apply to family trusts.

3. The principal Act is amended by repealing section 19 and replacing therefor the following new section—

Repeal and replacement of section 19 of Cap. 161.

Accumulation of income.

19. (1) Subject to section 16 of this Act, the terms of any instrument or a trust may direct or authorize the accumulation of all or part of the income of such property for a period not exceeding the intended duration of the trust.

(2) Subject to any power of maintenance or advancement or other terms of the trust, income which is not accumulated shall be distributed.

MEMORANDUM OF OBJECTS AND REASONS

The object of the Bill is to limit the application of the Act to dispositions relating to immovable property and allow for the accumulation of the income of a trust so that it can benefit multiple generations of beneficiaries, particularly in a family trust. The intention is to create an enabling legal framework for preservation of generational wealth.

Statement of delegation of legislative powers and limiting fundamental rights and freedoms

The Bill does not contain any provision limiting any fundamental rights or freedoms or delegating legislative powers.

Statement on the Bill concerning county governments

The Bill does not concern county governments in terms of Article 110(1) (a) as it does not affect the functions and power of county governments as set out in the Fourth Schedule.

Statement that the Bill is a money bill, within the meaning of Article 114 of the Constitution.

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 22nd April, 2021.

GLADYS WANGA,
Member of Parliament.

Section 2 of Cap. 161 which it is proposed to amend—

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

“charitable disposition” means a disposition in favour of a charity;

“charity” means an institution or body of persons established for the purpose of benefiting the public or a section thereof whether by way of the relief of poverty or distress or in the advancement of religion, knowledge, commerce, health, safety or other objects beneficial to mankind.

“in being” means living or en ventre sa mère;

“power of appointment” includes a discretionary power to transfer a beneficial interest in property without the furnishing of valuable consideration.

(2) For the purposes of this Act a disposition contained in a will shall be deemed to be made at the death of the testator and a disposition contained in any other instrument shall be deemed to be made at the date of the instrument.

(3) Property or any interest in property vests—

- (a) when the person to whom it is given is ascertained and in existence; and
- (b) when the property or the amount of the interest is ascertained; and
- (c) when all other events have happened to enable the interest to come into possession at once subject to the determination at any time of any prior interests.

(4) For the purposes of this Act a person shall be treated as a member of a class if in his case all the conditions identifying a member of the class are satisfied, and shall be treated as a potential member if in his case some only of those conditions are satisfied but there is a possibility that the remainder will in time be satisfied.

(5) Nothing in this Act shall affect the operation of the rule of law rendering void for remoteness certain dispositions under which property is limited to be applied for purposes other than the benefit of a person or class of persons in cases where the property may be so applied after the end of the perpetuity period.

(6) The provisions of this Act shall apply (except as provided in section 15 (2)) only in relation to wills taking effect after 30th June, 1981, and other instruments taking effect after the commencement of this Act, and, in the case of an instrument made in the exercise of a special power of appointment, only where this Act applies in relation to the instrument

creating that power; and section 13 shall apply in all cases for construing the reference to a special power of appointment.

(7) This Act shall apply in relation to a disposition made otherwise than by an instrument as if the disposition had been contained in an instrument taking effect when the disposition was made.

Section 19 of Cap. 161 which it is proposed to amend—

General restriction on accumulation of income

(1) No person may, by instrument or otherwise, settle or dispose of property so that the income thereof shall, save as hereinafter mentioned, be wholly or partially accumulated for a longer period than one of the following—

- (a) the life of the person making the disposition; or
- (b) a term of eighteen years from the date of the making of the disposition; or
- (c) the duration of the minority or respective minorities only of any person or persons who, under the limitations of the instrument directing the accumulations, would for the time being, if of age, be entitled to the income directly to be accumulated; or
- (d) the duration of the minority or respective minorities of any persons in being at the date of the making of the disposition.

(2) Where an accumulation is directed otherwise than in accordance with the provisions of subsection (1), the direction shall (save as hereinafter mentioned) be void, and the income of the property directed to be accumulated shall, so long as it is directed to be accumulated contrary to those provisions, go to and be received by the person or persons who would have been entitled thereto if the accumulation had not been directed.

(3) This section shall not apply to a provision—

- (a) for payment of the debts of a grantor, settler, testator or other person;
- (b) for raising portions for—
 - (i) any child, children or remoter issue of the grantor, settler or testator, or
 - (ii) any child, children or remoter issue of person taking an interest under the instrument directing the accumulations or to whom an interest is thereby limited, and accordingly such provisions may be made as if no statutory restrictions on accumulations of income had been imposed.

