

THE INDUSTRIAL COURT ACT, 2011

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**SCHEDULE — PROVISIONS RELATING TO THE CONDUCT OF
BUSINESS AND AFFAIRS OF THE
EMPLOYMENT AND LABOUR RELATIONS
RULES COMMITTEE**

**AN ACT of Parliament to establish the Industrial Court
as a superior court of record; to confer
jurisdiction on the Court with respect to
employment and labour relations and for
connected purposes**

ENACTED by the Parliament of Kenya, as follows —

PART I – PRELIMINARY

Short title. **1.** This Act may be cited as the Industrial Court Act, 2011.

Interpretation. **2.(1)** In this Act, unless the context otherwise requires —

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to employment and labour relations;

“Chief Justice” means the Chief Justice appointed under Article 166 of the Constitution;

“Chief Registrar” means the person holding the office of Chief Registrar established under Article 161 of the Constitution;

“collective agreement” means a registered agreement concerning any terms and conditions of employment made in writing between a trade union and an employer, group of

employers or employers' organisation;

“Committee” means the Employment and Labour Relations Rules Committee established under section 23;

“Court” means the Industrial Court established under section 4;

“employee” means a person employed for wages or a salary and includes an apprentice and indentured learner;

“employer” means any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company;

“federation” means a registered federation of trade unions or employers’ organisation;

“Judge” means a person appointed in accordance with the provisions of Article 166(1)(b) of the Constitution;

“Principal Judge” means the Principal Judge of the Court;

“Registrar” means the Registrar of the Court appointed under section 9;

“Rules” means the rules made under section 27;

“trade union” means a registered association of employees whose principal purpose is to regulate relations between employees and employers and includes an employers’ organisation.

(2) Despite subsection (1), until after the first elections under the Constitution, reference in this Act to the expression “Cabinet Secretary” shall be construed to mean Minister.

Principal
Objective.

3.(1) The principal objective of this Act is to enable the Court to facilitate the just, expeditious and proportionate resolution of disputes governed by this Act.

(2) The Court shall in the exercise of its powers under this Act or the interpretation of the rights of individuals and parties, seek to give effect to the principle objective in subsection (1).

(3) The parties and their representatives, as the case may be, shall assist the Court to further the principal objective and, to that effect, to participate in the proceedings of the Court and to comply with directions and orders of the Court.

PART II — ESTABLISHMENT AND CONSTITUTION OF THE COURT

Establishment of
the Court.

4. (1) In pursuance of Article 162(2)(a) of the Constitution, there is established the Industrial Court for the purpose of settling employment and industrial relations disputes and the furtherance, securing and maintenance of good employment and labour relations in Kenya.

(2) The Court shall be a superior court of record with the status of the High Court.

(3) The Court shall have and exercise jurisdiction throughout Kenya.

Composition of the
Court.

5. (1) The Court shall consist of —

- (a) the Principal Judge; and
- (b) such number of Judges as the President may, acting on the recommendations of the Judicial Service Commission, appoint.

(2) The Principal Judge shall be elected in accordance with the procedure prescribed in Article 165(2) of the Constitution.

(3) The Principal Judge shall hold office for a term of not more than five years and shall be eligible for re-election for one further term of five years.

(4) The Principal Judge shall have supervisory powers over the Court and shall be answerable to the Chief Justice.

(5) In the absence of the Principal Judge or in the event of a vacancy in the office of the Principal Judge, the Judges of the Court may elect any other Judge to have and exercise and perform the powers and functions of the Principal Judge, and who shall be deemed to be the Principal Judge.

Qualifications of appointment of judges of the Court.

6. A person shall be qualified for appointment as a Judge of the Court if the person —

- (a) has at least ten years' experience as a superior court judge or a professionally qualified magistrate; or
- (b) has at least ten years, experience as a distinguished academic or legal practitioner with considerable knowledge and experience in the law and practice of employment and labour relations in Kenya; or
- (c) holds the qualifications specified in paragraph (a) and (b) for a period amounting in the aggregate, to ten years.

Tenure of office of judges of the Court.

7.(1) A Judge of the Court shall hold office until the Judge —

- (a) retires from office in accordance with Article 167(1) of the Constitution;
- (b) resigns from office in accordance with Article 167(5) of the Constitution; or
- (c) is removed from office by a tribunal appointed by the President in accordance with Article 168(5) of the Constitution.

(2) Subject to provisions of the Constitution, the Principal Judge may elect either to retire from office or to continue serving as Judge of the Court upon expiry of the Principal Judge's term.

Remuneration etc.

8. (1) The remuneration and benefits payable to or in respect of Judges shall be a charge on the Consolidated Fund.

(2) The administrative expenses of the Court and other expenses of the Court in the discharge of its functions shall be paid from the Judiciary Fund established under Article 173 of the Constitution.

Officers of the Court.

9.(1)The Judicial Service Commission shall appoint the following officers of the Court—

- (a) the Registrar;
- (b) the Senior Deputy Registrar, one or more Deputy Registrars and one or more Assistant Registrars, as the administration of justice requires; and
- (c) such other officers of the Court as may be necessary for the proper functioning of the Court.

(2) The officers of the Court shall perform the

administrative functions of the Court under the supervision and control of the Registrar.

(3) The Senior Deputy Registrar, Deputy Registrar or Assistant Registrar of the Court may perform such other functions of the Registrar as the Registrar may delegate generally or specifically.

(4) The Senior Deputy Registrar, Deputy Registrar of the Court or if there is more than one, the most Senior Deputy Registrar shall act as Registrar of the Court whenever—

- (a) the Registrar is for any reason, temporarily unable to perform the functions of the registrar; or
- (b) the office of the Registrar is vacant.

(5) The Registrar may delegate his or her administrative function to any member of staff of the Court.

Qualifications for appointment of Registrar of the Court.

10. A person shall be qualified for appointment as Registrar if the person —

- (a) is an advocate of the High Court of Kenya and has, since admission to the Roll of Advocates —
 - (i) become eligible for appointment as a Judge of the High Court;
 - (ii) served for at least ten years as a professionally qualified magistrate; or
 - (iii) attained at least ten years' experience as a distinguished academic or legal practitioner or such experience in other relevant legal field; and

- (b) demonstrated competence in the performance of administrative duties for not less than three years.

Functions of the Registrar of the Court.

11.(1) In relation to the proceedings before the Court, the Registrar shall act in accordance with the instructions of the Chief Registrar and shall, in particular, be responsible for —

- (a) the establishment and maintenance of the Register;
- (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, the Chief Justice or a Judge, as the case may be;
- (e) causing to be kept records of the proceedings and minutes of the meetings of the Court and such other records as the Court may direct; and
- (f) undertaking any other duties assigned by the Court for the benefit of the Court.

(2) The Registrar, the Senior Deputy Registrars, the Deputy Registrars, the Assistant Registrars and other officers of the Court shall exercise such powers and perform such duties as may be conferred upon them by this Act, the rule of the Court or any other written law.

PART III — JURISDICTION OF THE COURT

Jurisdiction of the Court.

12.(1) The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes

referred to it in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including —

- (a) disputes relating to or arising out of employment between an employer and an employee;
- (b) disputes between an employer and a trade union;
- (c) disputes between an employers' organisation and a trade unions organisation;
- (d) disputes between trade unions;
- (e) disputes between employer organizations;
- (f) disputes between an employers' organisation and a trade union;
- (g) disputes between a trade union and a member thereof;
- (h) disputes between an employer's organisation or a federation and a member thereof;
- (i) disputes concerning the registration and election of trade union officials; and
- (j) disputes relating to the registration and enforcement of collective agreements.

(2) An application, claim or complaint may be lodged with the Court by or against an employee, an employer, a trade union, an employer's organisation, a federation, the Registrar of Trade Unions, the Cabinet Secretary or any

office established under any written law for such purpose.

(3) In exercise of its jurisdiction under this Act, the Court shall have power to make any of the following orders

- (i) interim preservation orders including injunctions in cases of urgency;
- (ii) a prohibitory order;
- (iii) an order for specific performance;
- (iv) a declaratory order;
- (v) an award of compensation in any circumstances contemplated under this Act or any written law;
- (vi) an award of damages in any circumstances contemplated under this Act or any written law;
- (vii) an order for reinstatement of any employee within three years of dismissal, subject to such conditions as the Court thinks fit to impose under circumstances contemplated under any written law; or
- (viii) any other appropriate relief as the Court may deem fit to grant.

(4) In proceedings under this Act, the Court may, subject to the rules, make such orders as to costs as the Court considers just.

Enforcement of court orders.

13. A judgement, award, order or decree of the Court shall be enforceable in accordance with the rules made under this Act.

The seal of the Court.

14. The seal of the Court shall be such device as may be determined by the Court and shall be kept in the custody of the Registrar.

Alternative dispute resolution.

15. (1) Nothing in this Act may be construed as precluding the Court from adopting and implementing, on its own motion or at the request of the parties, any other appropriate means of dispute resolution, including internal methods, conciliation, mediation and traditional dispute resolution mechanisms in accordance with Article 159(2)(c) of the Constitution.

(2) The Court may refuse to determine any dispute, other than an appeal or review before the Court, if the Court is satisfied that there has been no attempt to effect a settlement pursuant to subsection (1).

(3) Subject to any other written law, a certificate issued by a conciliator accompanied by the record or evidence of the minutes of the conciliation meetings giving reasons for the decisions as arrived at by the conciliator, shall be sufficient proof that an attempt has been made to resolve the dispute through conciliation, but the dispute remains unresolved.

(4) If at any stage of the proceedings it becomes apparent that the dispute ought to have been referred for conciliation or mediation, the Court may stay the proceedings and refer the dispute for conciliation, mediation or arbitration.

(5) In the exercise of its powers under this Act, the Court shall be bound by the national wage guidelines on minimum wages and standards of employment, and other terms and conditions of employment that may be issued, from time to time, by the Cabinet Secretary for the time being responsible for finance.

Review of orders

16. The Court shall have power to review its

of the Court. judgements, awards, orders or decrees in accordance with the Rules.

Appeals. **17.** (1) Appeals from the Court shall lie to the Court of Appeal against any judgement, award, order or decree issued by the Court in accordance with Article 164(3) of the Constitution.

(2) An appeal from a judgement, award, decision, decree or order of the Court shall lie only on matters of law.

Appellate jurisdiction. **18.** The Court shall have appellate jurisdiction to hear and determine appeals from —

(a) decisions of the Registrar of Trade Unions; and

(b) any other court, local tribunal or commission as prescribed under any written law.

PART IV — PROCEEDINGS OF THE COURT

Proceedings before the Court. **19.** Except as otherwise provided in Article 50(8) of the Constitution, the proceedings of the Court shall be in public.

General powers of the Court. **20.**(1) In any proceedings to which this Act applies, the Court shall act without undue regard to technicalities and shall not be strictly bound by rules of evidence except in criminal matters:

Provided that the Court may inform itself on any matter as it considers just and may take into account opinion evidence and such facts as it considers relevant and material to the proceedings.

(2) The Court shall have power to summon witnesses, to

administer oaths and affirmations and to require any person who appears to it to have special knowledge of any relevant matter, or of any of the matters to which this Act applies or any written law to which it relates to furnish, in writing or otherwise, and to confirm on oath, such expert opinion as may be relevant to any of the issues in the proceedings.

(3) The experts referred to in subsection (2) shall be paid in accordance with the Rules.

(4) For the purpose of dealing with any matter before it, the Court may by order in writing signed by or on behalf of the Court require any person to—

- (a) furnish in writing or otherwise, such particulars in relation to such matters as it may require;
- (b) attend before it;
- (c) give evidence on oath or otherwise; and
- (d) produce any relevant documents.

(5) An order made under subsection (4) may include a requirement as to the date on which or the time within which the order is to be complied with.

(6) An order purporting to be signed by or under the authority of the Judge conducting the proceedings of the Court shall be presumed, until the contrary is proved, to have been given by the Court.

(7) A person who—

- (a) without reasonable cause fails to comply with an order duly given under subsection (4); or
- (b) is required by an order made under subsection (4) to furnish information, and who makes any statement or furnishes any information which the

person knows, or has reasonable cause to believe, to be false or misleading in material particular,

commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

(8) If an order made under subsection (4) is directed to a-

- (a) firm or to a body corporate, every partner of the firm, and every director and officer of the body corporate shall comply with the order; or
- (b) trade union, employers' organization or federation, every official or officer of the trade union, employers' organization or federation shall comply with the order.

(9) Where an offence is committed by a firm, body corporate, trade union, employers' organization or federation in respect of any order made under subsection (4), every partner, director, officer or official concerned shall be guilty of the offence unless they prove that-

- (a) the offence was committed without their consent or connivance; and
- (b) they exercised all due diligence to prevent the commission of the offence.

Quorum of the Court.

21.(1) The Court shall be properly constituted for the purposes of its proceedings by a single judge.

(2) Notwithstanding subsection (1), any matter certified by the Court as raising a substantial question of law

under Article 165(3)(b) or (d) of the Constitution shall be heard by an uneven number of judges, being not less than three, assigned by the Chief Justice.

Representation
before the Court.

22. In any proceedings before the Court or a subordinate industrial court, a party to the proceedings may act in person or be represented by an advocate, an office bearer or official of the party's trade union or employers' organisation and, if the party is a juristic person, by a director or an employee specially authorised for that purpose.

PART V — THE EMPLOYMENT AND LABOUR RELATIONS RULES COMMITTEE

Establishment of
the Committee.

23. There is established the Employment and Labour Relations Rules Committee.

Composition of the
Committee.

24. The Committee shall consist of —

- (a) the Principal Judge who shall be the chairperson;
- (b) the following persons who shall be appointed by the Chief Justice for a term of five years —
 - (i) one Judge of the Court;
 - (ii) one practising advocate appointed from two nominees, one woman and one man, with knowledge, experience and expertise in labour law nominated by a statutory body responsible for the professional regulation of advocates;
 - (iii) one person, not being a lawyer, appointed from two nominees, one woman and one man, with experience in employment and labour relations in

Kenya;

- (iv) two persons appointed from two nominees, one woman and one man, representing the interest of employers, nominated by the most representative employers' organisation;
- (v) two persons appointed from two nominees, one woman and one man, representing the workers, nominated by the most representative workers' organisation;
- (vi) one person appointed from two nominees, one woman and one man, representing the office of the Attorney General;
- (vii) two persons, one woman and one man, appointed by the Chief Justice one of whom shall be a member of the Rules Committee of the Judiciary.

Quorum for the Committee.

25.(1) Seven members of the Committee shall form a quorum at any meeting of the Committee.

(2) The conduct and regulation of the business and affairs of the Committee shall be as provided in the Schedule.

Secretary to the Committee.

26. The Registrar shall be the Secretary to the Committee.

Powers of the Chief Justice.

27. (1) The Chief Justice, may in consultation with the Committee, make rules for regulating the practice and procedure of the Court.

(2) Without prejudice to the generality of subsection (1), such rules may provide for—

- (a) regulating the sittings of the Court and the selection of Judges for any purpose;
- (b) prescribing forms and fees in respect of proceedings in the Court and regulating the costs of and incidental to any such proceedings;
- (c) prescribing the time within which any requirement of the rules is to be complied with; and
- (d) any other matter required under this Act or any other written law.

PART VI — MISCELLANEOUS PROVISIONS

Gender equity and equal opportunities.

28. All appointments under this Act shall be in accordance with Article 232(1)(i) of the Constitution and the appointees shall be required to meet the requirements of Chapter Six of the Constitution.

Access to justice.

29.(1) The Court shall ensure reasonable, equitable and progressive access to the judicial services in all counties.

(2) For purposes of subsection (1), the Chief Justice may designate a Judge in a county as a Judge for the purposes of this Act.

(3) The Chief Justice may, by notice in the Gazette, appoint certain magistrates to preside over cases involving employment and labour relations in respect of any area of the country.

(4) Subject to Article 169(2)(a) of the Constitution, the magistrates appointed under subsection (3) shall have jurisdiction and powers to handle—

- (a) disputes relating to offences defined in any Act of Parliament dealing with employment and labour relations;

(b) any other dispute as may be designated in a Gazette notice by the Chief Justice on the advice of the Principal Judge.

(5) Appeals on matters relating to employment and labour relations from the designated magistrate's courts shall lie with the Court.

Regulations.

30. The Cabinet Secretary may make regulations for the better carrying out of the provisions of this Act.

Repeal of Part III of No.12 of 2007.

31. Part III of the Labour Institutions Act, 2007 is repealed.

Transitional provisions.

32. (1) Any regulation or other instrument made or issued under the Labour Institutions Act, 2007, shall continue to have effect as if such regulation or other instrument were made or issued under this Act.

(2) A person who at the commencement of this Act is a Judge of the Industrial Court shall be deemed to have been appointed under this Act for the remainder of that person's term.

(3) The persons who at the commencement of this Act are members of the Industrial Court shall be deemed to have been appointed under this Act.

(4) Every person who at the commencement of this Act is an employee of the Industrial Court not being under notice of dismissal or resignation shall, on that day and subject to this Act, be deemed to be an employee of the Court.

Proceedings pending in the Industrial Court.

33. All proceedings pending before the Industrial Court shall continue to be heard and shall be determined by that court until the Court established under this Act comes into operation or as may be directed by the Chief Justice or the Chief Registrar of the Judiciary.

Existing contracts.

34. The Court shall be bound in all contracts, including contracts of service, if any, subsisting at the commencement of this Act and to which the Industrial Court was party.

Regulations relating to employment and labour relations.

35. Any other written law relating to the regulation of employment and labour relations shall have effect subject to such modification as may be necessary to give effect to this Act, and where the provisions of any law conflict with the provisions of this Act, the provisions of this Act shall prevail.

SCHEDULE

(s.25(2))

PROVISIONS RELATING TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE EMPLOYMENT AND LABOUR RELATIONS RULES COMMITTEE

Tenure of office and conduct of business of the Committee.

1.(1) Other than the chairperson, a member of the Committee shall, subject to the provisions of this Act hold office for a period not exceeding five years on such terms and conditions as may be specified in the instrument of appointment, and shall not be eligible for re-appointment.

(2) A member other than the chairperson may—

- (a) at any time resign from office by notice, in writing, to the Chief Justice;
- (b) be removed from office by the Chief Justice if the member —
 - (i) has been absent from three consecutive meetings of the Committee without the leave of the Chairperson;

- (ii) is adjudged bankrupt or enters into a composition agreement or scheme of arrangement with creditors;
- (iii) is convicted of criminal offence; or
- (iv) is otherwise unable or unfit to discharge their functions as a member of the Committee.

(3) The Chief Justice may remove, for sufficient reason, any member of the respective nominating organisations for reasons given in paragraph (2)(b).

(4) If a member of the Committee is removed under subsection (3), the Chief Justice shall fill the vacancy from nominations submitted by the organisation that made the initial nominations

Meetings of the Committee.

2.(1) The Committee shall meet not less than four times in every financial year, and not more than three months shall elapse between the date of one meeting and the date of the next meeting:

Provided that the chairperson may call a special meeting of the Committee at any time where the chairperson deems it expedient for the transaction of the business of the Committee.

(2) Other than a special meeting, or unless three quarters of members agree, at least fourteen days' written notice of every meeting of Committee shall be given to members of the Committee by the Secretary.

(3) The quorum for the conduct of business of the Committee shall be seven members present and voting and unless a unanimous decision is reached, decisions shall be by a majority vote of the members present, and in the case of equality of votes, the chairperson or in his absence, the

vice-chairperson shall have a casting vote:

Provided that one member from the most representative employers organization and one representative of the most representative employees organisation is present to form the quorum.

(4) The chairperson shall preside over all meetings of the Committee.

(5) In the absence of the chairperson, the vice-chairperson shall preside.

(6) The chairperson and vice-chairperson shall not be of the same gender.

(7) In the absence of both the chairperson and vice-chairperson, absence, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.

(8) At the first meeting of the Committee, the members shall elect a vice- chairperson, not being a public servant, from among its members.

Committee to regulate own procedure.

3. Save as provided in this Schedule, the Committee may regulate its own procedure.

I certify that this printed impression is a true copy of the Bill passed by the National Assembly on the 25th August, 2011.

Clerk of the National Assembly.

Presented for assent in accordance with the provisions of the Constitution on the, at the hour of

Attorney-General.