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THE COURT OF APPEAL (ORGANIZATION AND ADMINISTRATION) ACT

CAP. 9A

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Court of Appeal (Organization and Administration) Act Cap. 9A

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COURT OF APPEAL (ORGANIZATION AND ADMINISTRATION) ACT

CAP. 9A

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Assented to on 15 December 2015

Commenced on 2 January 2016

AN ACT of Parliament to give effect to Article 164 (1) (a) and (b) of the Constitution; to provide for the organization and administration of the Court of Appeal and for connected purposes

Part I – PRELIMINARY

1. Short title

This Act may be cited as the Court of Appeal (Organization and Administration) Act, 2015.

2. Interpretation

In this Act, unless the context otherwise requires —

"**Chief Justice**" means the Chief Justice appointed under Article 166 of the Constitution;

"**Chief Registrar**" means the Chief Registrar of the Judiciary referred to in Article 161 of the Constitution;

"**Commission**" means the "Judicial Service Commission established under Article 171 of the Constitution;

"**Court**" means the Court of Appeal, established under Article 164 - of the Constitution;

"**judge**" means a judge of the Court appointed pursuant to Article 164(1)(a) and in accordance with Cap. 9 Article 166 - (1)(b) and (4) of the Constitution

"**President of the Court** " means the President of the Court elected in accordance with Article 164(2) of the Constitution;

" **presiding judge**" means —

- (a) the President of the Court;
- (b) a judge chairing a session of the Court at any sitting of the Court referred to in section 9;
- (c) a presiding judge referred to in section 9(1) (b);

"**Registrar**" means the Registrar of the Court appointed in accordance with section 20;

"**Rules**" means the Court of Appeal Rules made under the Appellate Jurisdiction Act;

"**Station**" means Station of the Court designated as such by the Chief Justice under Section 6 and includes the Secretariat to the Court.

3. Guiding principles

(1) In exercise of its judicial authority, the Court shall —

- (a) be guided by the national values and principles set out in Article 10 of the Constitution;
- (b) be guided by the principles of judicial authority set out in Article 159 of the Constitution;

- (c) be guided by the values and principles of public service set out in Article 232(1)(c), (e) and (f) of the Constitution;
 - (d) be independent and subject only to the Constitution and the law, which it shall apply impartially without fear, favour or prejudice;
 - (e) not be subject to any person or authority; and
 - (f) uphold the Constitution and administer the law without fear, favour or prejudice.
- (2) The Court shall develop jurisprudence that respects the Constitution and responds to Kenya's social, economic and political needs.

Part II – ORGANIZATION OF THE COURT

4. Constitution of the Court

- (1) The Court shall consist of –
- (a) the President of the Court; and
 - (b) not less than twelve judges appointed in accordance with Articles 164 (1)(a), 166(1)(b) and 166 (4) of the Constitution.
- (2) The Court shall be deemed to be duly constituted despite any vacancy in the office of the President of the Court or other judge.
- (3) Despite subsection (1)(b), the Commission may, from time to time, conduct or cause to be conducted a judicial needs assessment and recommend the appropriate number of judges required for appointment to the Court.

5. Jurisdiction of the Court

The Court shall exercise the jurisdiction conferred on it by Article 164(3) of the Constitution.

6. Stations of the Court

- (1) The Chief Justice may, in consultation with the President of the Court, establish such number of stations at such places as may be necessary to ensure equitable access to the judicial services of the Court.
- (2) Every station of the Court shall consist of –
- (a) a presiding judge;
 - (b) such number of judges as the Chief Justice may, in consultation with the President of the Court, determine;
 - (c) a Deputy Registrar who shall be responsible to the presiding judge for the discharge of the administrative functions of the Court; and
 - (d) such number of officers as may be appointed in accordance with section 23.

7. Divisions of the Court

- (1) The President of the Court may, in consultation with the Chief Justice, organize the Court into such divisions as may be necessary for specialized and expeditious disposal of appeals before it.
- (2) Each division of the Court shall, where established, be headed by the senior-most judge in that division.

8. Presiding Judge

In relation to a station of the Court outside Nairobi, the senior-most judge in that station shall be the presiding judge and shall be responsible for –

- (a) overseeing the administration of the Court in that station; and
- (b) supervising the business of the Court in that station.

9. Seniority of Judges

- (1) The judges of the Court shall rank in the following order of seniority –
 - (a) the President of the Court;
 - (b) presiding judges of the Station or Court, all of whom shall rank according to the date upon which they were appointed as judges of appeal; and
 - (c) other judges, according to the date upon which they were appointed.
- (2) Where two judges or presiding judges were appointed on the same day, their seniority shall be determined according to the order in which their names appeared in the instrument of appointment.
- (3) In relation to each session of the Court, the senior-most judge shall be the presiding judge of that session of the Court,

Provided that where the President of the Court is sitting in any session of the Court, the President of the Court shall be the presiding judge at that Station.

10. President of the Court

- (1) The President of the Court shall be elected in accordance with Article 164(2) of the Constitution.
- (2) In the absence of the President of the Court or in the event of a vacancy in the office of the President of the Court, the Chief Justice shall appoint one judge from among the presiding judges in Nairobi, to act as the President of the Court for a period not exceeding twenty-one days, with effect from the date of appointment.

11. Election of the President of the Court

- (1) The Chief Justice shall, in consultation with the judges of the Court, make rules for the conduct of the election of the President of the Court.
- (2) Whenever a vacancy occurs in the office of the President of the Court, the Chief Registrar shall, within fourteen days of the occurrence of that vacancy, convene a meeting of all judges of the Court for the purpose of electing the President of the Court.
- (3) The President of the Court shall serve for a non-renewable term of five years.

12. Election of the Court's representative to the Judicial Service Commission

Section 11 shall, with the necessary modifications, apply to –

- (a) the conduct of the election of the representative of the Court to the Judicial Service Commission; and
- (b) the election or nomination of any person that the Court may, under any written law, be required to elect or nominate.

13. Functions of the President of the Court

- (1) The President of the Court shall—
 - (a) be the head of the Court and shall, in that regard, oversee proper management and administration of the Court;
 - (b) be responsible for the allocation of cases and the constitution of benches, including ordinary and extraordinary benches, of the Court; and
 - (c) in consultation with the Chief Registrar, be responsible for giving general directions for the administration of the Court.
- (2) Without prejudice to subsection (1)(b) and (c), the President of the Court shall, in consultation with the Chief Justice, be responsible for —
 - (a) issuing practice directions on conduct of litigation in the Court;
 - (b) developing guidelines that ensure the expeditious disposal of cases;
 - (c) approval of leave and absence from duty of a judge;
 - (d) determination, in consultation with the Chief Justice, of the location of the sittings of the Court; and
 - (e) the maintenance of the honour and dignity of the Court.
- (3) In the absence of the President of the Court, his or her functions shall be exercised by the senior-most judge of the Court for the time being stationed at the Office of the President of the Court.

14. Station of the presidency of the Court

The Office of the President of the Court shall be located in Nairobi.

15. Removal of the President of the Court

- (1) The President of the Court may be removed from office by a vote at which more than half of all the judges of the Court in office at the time of removal are voting.
- (2) The President of the Court may be removed from office on grounds of —
 - (a) generally neglecting his or her duties as the President of the Court; or
 - (b) failure to satisfactorily discharge the responsibilities of that office under section 13.
- (3) A judge who desires the removal of the President of the Court shall give notice, in writing through the Registrar, stating the reasons for the intended removal.
- (4) The notice referred to in subsection (3) shall be signed by at least one third of all the judges of the Court in office.
- (5) The President of the Court facing a vote under this section shall within fourteen days after receipt of the communication under subsection (3) respond, through the Registrar, to the accusations given for his or her intended removal.
- (6) The response under subsection (5) shall be communicated by the Registrar to all judges within seven days.
- (7) The Chief Justice may make rules to set out the procedure for the removal of the President of the Court.

Part III – ADMINISTRATION OF THE COURT

16. Exercise of powers of the President of the Court by a presiding judge in a station outside Nairobi, etc.

- (1) The powers vested in the President of the Court shall, in respect of the court sitting outside Nairobi, and with the necessary modifications, be exercised by the presiding judge responsible for that court.
- (2) In the performance of a function of the President of the Court under subsection (1), the presiding judge shall be responsible to the President of the Court.

17. Committees of the Court

The Court may establish committees for the purposes of efficient management of its affairs, including the welfare of the judges and staff of the Court.

18. Sittings of the Court

- (1) The location of the sittings of the Court shall be determined by President of the Court in consultation with the Chief Justice.
- (2) A notification of the location of the sittings of the Court referred to under subsection (1) shall be made in such manner as the Chief Justice may direct.
- (3) Notwithstanding subsection (2), nothing shall preclude the Court from disposing of any business in respect of which the location of the sitting of the Court has not been so notified.

19. Establishment and organization of court registry

- (1) There is established a registry of the Court which shall be located in Nairobi.
- (2) There shall be a sub-registry for each station of the Court outside Nairobi, and at any other place the Court may determine.
- (3) The Registrar shall put in place reasonable measures to ensure that the registry and every sub-registry of the Court are adequately facilitated to effectively undertake their functions.

20. Registrar and Deputy Registrars

- (1) There shall be a Registrar of the Court and such number of Deputy Registrars of the Court as may be appointed under the Judicial Service Act, 2011 (No. 1 of 2011.).
- (2) The Registrar shall be stationed in Nairobi and shall be assisted by a Deputy Registrar.
- (3) In the absence of the Registrar, the Deputy Registrar shall undertake the function of the Registrar.
- (4) There shall be deployed a Deputy Registrar at every station of the Court.
- (5) Each Deputy Registrar shall perform such functions as the registrar of the Court may assign to them.
- (6) Each deputy registrar shall be responsible for the management of the respective sub-registries of the Court.

21. Qualifications for appointment of the Registrar of the Court

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) served for at least eight years as a professionally qualified magistrate; or
 - (ii) attained at least eight years' experience as a distinguished academic or legal practitioner or in any other relevant legal field.
- (b) demonstrated competence in the performance of administrative duties for not less than three years; and
- (c) meets the requirements of Chapter Six of the Constitution.

22. Functions of the Registrar

- (1) The Registrar shall perform such duties as the Chief Registrar or the President of the Court may direct, and in particular be responsible for —
 - (a) the day-to-day administration of the Court;
 - (b) the management of the Registry of the Court and ensuring the management of the sub-registries of the stations of the Court;
 - (c) the acceptance, transmission, service and custody of documents in accordance with the Rules;
 - (d) preparation of the cause list;
 - (e) facilitating the enforcement of the decisions of the Court;
 - (f) certifying that any order, direction or decision is an order, direction or decision of the Court, the President of the Court or of a judge, as the case may be;
 - (g) the maintenance of the registers of the Court;
 - (h) 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;
 - (i) managing and supervising the staff of the Court;
 - (j) managing the library of the Court;
 - (k) facilitating access to judgments and records of the Court;
 - (l) undertaking maintenance of the equipment of the Court;
 - (m) in liaison with the relevant agencies, ensuring adequate security within the Court premises;
 - (n) undertaking taxation of bills of costs; and
 - (o) undertaking any other duties assigned by the President of the Court or by the Chief Registrar.
- (2) In relation to the proceedings before the Court, the Registrar may consider and dispose of procedural or administrative matters in accordance with the Rules or on the direction of the President of the Court.

23. Staff of the Court

The Commission shall appoint such number of staff as may be necessary for the effective discharge of the functions of the Court.

24. Supporting resource structures

- (1) At least three months before the commencement of each financial year, the Registrar shall prepare estimates of all expenditure required for purposes of this Act or other law for the following year, and submit them to the Chief Registrar for inclusion in the annual estimates of the Judiciary.
- (2) The Chief Registrar shall take reasonable measures to ensure that the Court is facilitated to effectively discharge its functions.

25. Seal of the Court

- (1) The seal of the Court shall be such device as may be approved by the Chief Justice and shall bear the inscription "The Court of Appeal of Kenya".
- (2) The seal shall be kept in the custody of the Registrar and the duplicate thereof shall be kept by each of the Deputy Registrars or other officers of the Court as the Registrar may in writing determine.
- (3) The seal of the Court shall be used in accordance with the provisions of any law or the Rules.

26. Court recess

- (1) The Court shall go on recess annually as follows –
 - (a) from the Thursday before Good Friday to the Wednesday after Easter Monday, inclusive;
 - (b) from 1st August to 15th August, inclusive; and
 - (c) from 21st December to 7th January, inclusive.
- (2) The President of the Court shall, in consultation with the Chief Justice, determine the conduct of the business of the Court during the Court recess.

27. Transfer of judges

The transfer of judges from one station to another shall be in accordance with an administrative policy determined by the Commission.

28. Practice and procedure of the Court

The Court shall exercise its jurisdiction in accordance with the rules of practice and procedure prescribed by written law.

Part IV – MISCELLANEOUS**29. Case Management**

- (1) The presiding judge shall implement and promote measures to ensure integrity of the registry and the work of each court station or division including –
 - (a) case management;
 - (b) automation of records and business processes of the Court;
 - (c) protection and sharing of information; and
 - (d) the promotion of the use of information communication technology.
- (2) The Chief Justice may make rules to give effect to this section including the role of the Deputy Registrars and registries in the management of caseloads.

30. Records of the court

- (1) The Registrar shall maintain a uniform record keeping system in the Court specifying the form, style, storage, maintenance and retrieval of records.
- (2) The Chief Justice may make Rules and issue directions to give effect to this section.

31. Performance management inspections and monitoring

The presiding judge shall upon consultation with the Commission oversee the implementation of a performance management system comprising of performance contracting, appraisal and evaluation of the judges of the Court in the discharge of their mandate, in accordance with the provisions of the Constitution, this Act and of other law.

32. Ethics and integrity

- (1) Every judge of the Court shall sign and ascribe to the Judicial Code of Conduct.
- (2) The presiding judge shall monitor the compliance with the Judicial Code of Conduct by judges and judicial officers.

33. Languages of the Court

- (1) The official languages of the Court shall be English and Kiswahili.
- (2) The Court shall, in appropriate cases, facilitate the use of other languages, by parties, including the Kenyan Sign language, Braille and other communication formats and technologies accessible to persons with disabilities.
- (3) Where it is expedient and appropriate to do so, the Court may direct that proceedings be conducted and appearances be made through electronic means of communication, including tele-conferencing, video-conferencing or other modes of electronic or digital communication.

34. Judgements of the court

- (1) A judgment of the Court shall be prepared, signed, dated and delivered in the manner prescribed by written law.
- (2) A minority opinion of a judge shall be signed and dated but need not be pronounced in open court unless one or more parties so demand.

35. Contempt of Court

- (1) Subject to the provisions of any other law, the Court shall have power to punish for contempt.
- (2) A person who, in the face of the Court —
 - (a) assaults, threatens, intimidates, or insults a judge of the Court, the Registrar of the Court, a Deputy Registrar or officer of the Court, or a witness, during a sitting or attendance in Court, or in going to or returning from the Court;
 - (b) interrupts or obstructs the proceedings of the Court; or
 - (c) without lawful excuse disobeys an order or direction of the Court in the course of the hearing of a proceeding, commits an offence.
- (3) In the case of civil proceedings, the willful disobedience of any judgment, decree, direction, order, or other process of a court or willful breach of an undertaking given to a court constitutes contempt of court.

- (4) In the case of criminal proceedings, the publication, whether by words, spoken or written, by signs, visible representation, or otherwise, of any matters or the doing of any other act which –
- (a) scandalizes or tends to scandalize, or lowers or tends to lower the judicial authority or dignity of the court;
 - (b) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
 - (c) interferes or tends to interfere with, or obstructs or tends to obstruct the administration of justice,
- constitutes contempt of court.
- (5) A police officer, with or without the assistance of any other person, may, by order of a judge of the Court, take into custody and detain a person who commits an offence under subsection (2) until the rising of the Court.
- (6) The Court may sentence a person who commits an offence under subsection (1) to imprisonment for a period not exceeding six months, or a fine not exceeding five hundred thousand shillings, or both.
- (7) A person may appeal against an order of the Court made by way of punishment for contempt of court as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the Court.
- (8) The Chief Justice may make Rules to regulate procedures relating to contempt of court.

36. Access to justice

- (1) The Court shall ensure reasonable access to its services in all parts of the Republic.

37. Protection of judges and judicial officers from personal liability

- (1) Subject to the Constitution, no judge or other judicial officer acting judicially shall be liable to be sued in a civil court for an act done or ordered by the judge or person in the discharge of judicial duty, provided that it is done in good faith.
- (2) No officer of a court or other person bound to execute the lawful warrants, orders or other process of a judge shall be liable to be sued in any court for the execution of such warrant, order or process which such officer or person would have been bound to execute if within the jurisdiction of the judge issuing it.

38. Rules

- (1) The Chief Justice may, in consultation with the President of the Court, make rules generally for the better administration and organization of the Court.
- (2) Without prejudice to the generality of subsection (1), such Rules may provide for the –
- (a) conduct of the election of the President of the Court;
 - (b) procedure of removal of the President of the Court;
 - (c) form of notification of the sittings of the Court;
 - (d) disposal of urgent and priority matters during Court recess;
 - (e) automation of Court records, case management, protection and sharing of Court information and the use of information communication technology;
 - (f) form, style, storage, maintenance and retrieval of Court records; and

- (g) the procedure relating to contempt of court.
- (3) For the purposes of Article 94 (6) of the Constitution –
- (a) the purpose and objective of the delegation under this section is to enable the Chief Justice to make rules to provide for the better administration and organisation of the Court;
 - (b) the authority of the Chief Justice to make rules under this Act will be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section;
 - (c) the principles and standards applicable to the rules made under this section are those set out in the Interpretations and General Provisions Act, (Cap 2.) and the Statutory Instruments Act, 2013, (No. 23 of 2013.).

39. Code of Conduct for judges of the Court

The Chief Justice shall, within six months of the commencement of this Act, prescribe the code of conduct applicable to a judge of the Court.