

LEGAL NOTICE NO. 234

THE KENYA DEFENCE FORCES ACT

(No. 25 of 2012)

IN EXERCISE of the powers conferred by section 304 (1) (t) of the Kenya Defence Forces Act, 2012, the Defence Council makes the following Regulations:—

THE KENYA DEFENCE FORCES (GENERAL) REGULATIONS,
2017

1. These Regulations may be cited as the Kenya Defence Forces (General) Regulations, 2017.

Citation.

2. In these Regulations, unless the context otherwise requires—

Interpretation.

“Act” means the Kenya Defence Forces Act;

No. 25 of 2012.

“civilian employee” means a person who is subject to section 5 of the Act; and

“detachment” means a part of a unit which is so separated from the unit to which it belongs, that the commanding officer of that unit cannot effectively exercise his disciplinary powers as commanding officer over it, or a ship.

3. (1) For the purposes of the definition contained in section 2 (1) of the Act, the commanding officer in relation to a member of the Kenya Defence Forces is the officer who has powers of command over that member and who—

Commanding officer.

- (a) is in immediate command of the unit to which that member belongs or is attached; or
- (b) where that member is serving with a detachment which has not been placed for disciplinary purposes under the command of the commanding officer of another unit or detachment, is the commanding officer of that detachment; or
- (c) where that member is serving with a unit or detachment which has been placed for disciplinary purposes under the command of the commanding officer of another unit or detachment, is the commanding officer of that other unit or other detachment; or
- (d) in any other case not falling within paragraph (a) or paragraph (b), is by the custom of the service the officer entitled to exercise the powers of a commanding officer in relation to that member (otherwise than by delegated authority).

(2) In paragraph (1), the reference to a member of the Kenya Defence Forces belonging or being attached to or serving with a unit or detachment, includes a reference to a civilian employee being employed in the service of that unit or detachment or of any part or member thereof or accompanying that unit or any part thereof.

4. (1) An officer appointed to command a unit shall, irrespective of seniority, exercise command over all other officers serving therein.

Powers of an officer appointed to command a unit.

(2) The powers of punishment vested in a commanding officer by virtue of section 155 (2) and (3) and section 156 (2) of the Act shall only be exercised by the commanding officer of an accused or by an officer to whom those powers have been delegated by the commanding officer.

5. An officer holding an authorized appointment of second in command of a unit shall, irrespective of seniority, exercise command over all other officers serving therein except the officer appointed to command the unit.

Powers of an officer holding authorized appointment.

6. In the absence of both the officer in command of a unit and the officer appointed second in command thereof, the senior most officer in that unit shall exercise command over all other officers serving therein.

Absence of appointed officer.

7. The powers of command to be exercised by officers shall be over officers junior to them and over all service members.

The scope of powers of officers.

8. The Defence Council may make standing orders with respect to the effective and efficacious implementation of the Kenya Defence Forces Act, good government, administration, organization, control, guidance and discipline of the Kenya Defence Forces, administration of pay and allowances, the promotion of personnel and the appointments which may be held by personnel.

Standing orders on implementation of Kenya Defence Forces Act, governance, organization, discipline, administration of pay etc.

9. Pursuant to the provisions of section 305A of the Act, the Chief of Kenya Defence Forces or the Service Commander, in respect of his or her Service, may make general, special, routine and standing orders with respect to the following matters —

Role of Chief of Kenya Defence Forces or commander in respect of service.

- (a) discipline, control, good order and guidance;
- (b) organization, administration and duties;
- (c) the distribution, posting, transfer, attachment and inspection of personnel;
- (d) administration, control and command of reserves.

10. Any matter required by the Act to be promulgated shall be promulgated by being published in the orders of the unit to which the person belongs or is attached.

Promulgation and publication of matters under the Act.

11. (1) The certificate required by section 144 (1) of the Act to be handed over with a person delivered into service custody as illegally absent, shall be in the form and shall contain the particulars set out in the First Schedule to these Regulations.

Certificate of arrest or surrender of a deserter or an absentee.

(2) The certificate required by section 144 (2) of the Act to be handed over with a person delivered into service custody, shall be in the form and contain the particulars set out in the Second Schedule to these Regulations.

12. For the purposes of section 206 (5) of the Act, the prescribed documents are those specified in the Third Schedule to these Regulations.

Documents under section 206(5) of the Act.

13. Without prejudice to any proceedings under any other section of the Act, the cause and extent of all damage or loss to which section 219 of the Act relates, and the time at which such damage or loss was occasioned, shall be investigated-

Investigation of damage.

- (a) if personnel belonging to more than one unit are concerned, by a board of inquiry convened under the Act; or
- (b) if personnel belonging only to the one unit are concerned-
 - (i) by a board of inquiry convened as aforesaid; or
 - (ii) by the commanding officer of the unit concerned, or by an officer appointed by him both of whom may consider evidence, either written or oral, relating to such damage or loss as aforesaid:

Provided that in every case where the cost and extent of the damage or loss totals ten thousand shillings or more such investigation shall be by a board of inquiry convened as aforesaid.

14. The amount which a person may be required to contribute under subsection (1) of section 219 of the Act towards compensation for any damage or loss shall be the amount of the damage or loss divided by the number of persons who could under the said subsection be required to contribute towards compensation for the damage or loss:

Compensation for damage or loss.

Provided that where any part of the amount of the damage or loss has been written off, or is the subject of an application for write-off, as a charge against the public under any regulations for the time being in force relating to write-off, the amount of the damage or loss for the purposes of these Regulations shall be the total amount of the damage or loss less the part which has been so written off or is the subject of such application.

15. (1) Subject to paragraph (2) of this regulation, an investigation for the purpose of section 218 (1) of the Act into the cause of any loss or damage to public property shall be by—

Authorization of investigation.

- (a) a board of inquiry convened under section 301 of the Act; or
- (b) an examination by the Service Commander, or by an officer authorized by him, of evidence, whether oral or written relating to any matter.

(2) Where during the course of an examination of evidence under paragraph (1) (b) it appears to the Service Commander or authorized officer that a person may have been responsible for such loss or damage as aforesaid, that person shall be given an opportunity of making a statement, if he or she so desires, for the consideration of the Service Commander or authorized officer:

Provided that, where in any proceedings before a court martial or an appropriate superior authority a person has been convicted in circumstances involving a finding that he or she was guilty of a wrongful act or negligence which occasioned such loss or damage as aforesaid, it shall not be necessary to give him or her an opportunity of making any such statement as aforesaid.

16. The military police shall be responsible for the transfer of accused persons or prisoners as may be authorized by a commanding officer.

Role of military police.

17. (1) The pay of an officer or service member shall be available to meet any restitution order or deductions which may be awarded or ordered and any forfeiture or fine which may be awarded under service law.

Deduction of pay.

(2) For the purposes of section 215 of the Act, the minimum monthly rate of pay which an officer or service member shall be allowed to remain in receipt of shall be not less than one-half of the net salary payable in any month after all deductions from his or her gross salary have been made in respect of governmental imposts and the recovery of advances.

(3) Notwithstanding paragraph (2), when an officer or service member proceeds on terminal leave any amount authorized to be deducted from the pay will be deducted from any balance (whether or not representing pay) which may be due to him or her.

(4) Without prejudice to the power of remission of forfeitures and deductions by the Service Commander under section 220 of the Act, any deduction of pay imposed under section 218 of the Act may be remitted by any officer superior in command to the officer imposing the deduction.

18. For the purposes of section 216 (3) of the Act, the number of days a person is absent or is in hospital shall be computed as follows—

Computation of days absent.

- (a) the number of days shall be reckoned from the time that the absence, or as the case may be, the time spent in hospital, commences;
- (b) every period of twenty-four hours shall be reckoned as one day and save as hereinafter provided a part of a day shall be reckoned as one day; and
- (c) when the total period of absence or the time spent in hospital is less than six hours no account shall be taken thereof unless the person was, by reason of his or her being absent or in hospital, prevented from performing a service duty which thereby devolved on some other person.

FIRST SCHEDULE

(r. 11 (1))

CERTIFICATE UNDER SECTION 144 (1) OF THE KENYA DEFENCE FORCES ACT

I certify that (full name) whose service particulars are given below appeared before the Magistrate's Court in accordance with section 142 of this Act aton the, 20.... alleged to have deserted/to be absent without leave* having surrendered to /been arrested by* at (place) on (date) and was committed to civil custody/delivered into service custody*. The officer/serviceman* admitted/did not admit* that he had illegally absented himself without leave from his unit at..... (place) on (date).

Service particulars of the officer or service member referred to above

No. Rank..... Name..... Unit.....

Dated this day of,20.....

Magistrate

*Delete as appropriate.

SECOND SCHEDULE

(r. 11 (2))

CERTIFICATE UNDER SECTION 144 (2) OF THE KENYA DEFENCE FORCES ACT

I certify that (full name) surrendered himself at (place) on the day of 20...., as being illegally absent from his unit at (place) on the day of 20...., and gave the following particulars- No.

Rank.....

Name.....

Unit.....

Dated this..... day of20.....

Police officer who caused the above-named person to be delivered into service custody

THIRD SCHEDULE

(r. 12)

1. Unit orders book.
2. Unit orders books, box file.
3. Register of deserters.
4. Registers of public animals—horses and mules, camels.
5. Register of guard dogs.
6. Register of recruits.
7. Unit ammunition state.
8. Ledger for clothing and equipment.
9. Equipment ledger (mechanical transport).
10. Account of rations.
11. Account of forage/guard dogs rations.
12. Postage book.
13. Guard report.
14. Minor offence report.
15. Record of service (officers).
16. Record of service (service members/constabulary)
17. Historical records.
18. Conduct sheets.
19. Educational record.
20. Record of the report of a board of inquiry into the illegal absence of an officer, serviceman or member of the constabulary.
21. Record of leave.
22. Official service accounting documents.
23. Flying log book-pilots.
24. Aircraft and aircraft material servicing forms.
25. Air traffic controller's watch log.
26. Runway controller's log book.
27. Authorization for movement of mechanical transport.
28. Mechanical transport vehicle log book.
29. Ship's log book.
30. Ship's Machinery running hours log.
31. Ship's Navigating Officers handbook.

Made on the 17th July, 2017.

SAITOTI TOROME,
*Principal Secretary and
Secretary to the Defence Council.*

RAYCHELLE OMAMO,
*Cabinet Secretary for Defence and
Chairperson to the Defence Council.*