



LAWS OF KENYA

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**EMPLOYMENT AND LABOUR RELATIONS COURT ACT**

CHAPTER 234B

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**CHAPTER 234B**

**EMPLOYMENT AND LABOUR RELATIONS COURT ACT**

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PROVISIONS RELATING TO THE CONDUCT  
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**CHAPTER 234B**

**EMPLOYMENT AND LABOUR RELATIONS COURT ACT**

[Date of assent: 27th August, 2011.]

[Date of commencement: 30th August, 2011.]

**An Act of Parliament to establish the Employment and Labour Relations Court to hear and determine disputes relating to employment and labour relations and for connected purposes**

[Act No. 20 of 2011, L.N. 19/2012, Act No. 18 of 2014.]

**PART I – PRELIMINARY**

**1. Short title**

This Act may be cited as the Employment and Labour Relations Court Act, 2011.

[ Act No. 18 of 2014, Sch.]

**2. Interpretation**

(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 Employment and Labour Relations 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.

[ Act No. 18 of 2014, Sch.]

### **3. Principal Objective**

(1) The principal objective of this Act is to enable the Court to facilitate the just, expeditious, efficient 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.

[ Act No. 18 of 2014, Sch.]

## **PART II – ESTABLISHMENT AND CONSTITUTION OF THE COURT**

### **4. Establishment of the Employment and Labour Relations Court**

(1) There is established the Employment and Labour Relations Court pursuant to Article 162(2) of the Constitution.

[ Act No. 18 of 2014, Sch.]

### **5. Composition of the Court**

(1) The Court may consist of—

- (a) the Principal Judge; and
- (b) such number of Judges as may be determined and recruited by the Judicial Service Commission and appointed in accordance with Article 166(1) of the Constitution.

(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.

[ Act No. 18 of 2014, Sch.]

### **6. Qualifications for appointment of Judges of the Court**

A person shall be qualified for appointment as a judge of the court if the person meets the qualifications specified in Article 166 of the Constitution.

[ Act No. 18 of 2014, Sch.]

**7. Tenure of office of Judges of the Court**

(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.

**8. Remuneration etc.**

(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.

**9. Officers of the Court**

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

- (a) the Registrar;
- (b) one or more Deputy 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 direction of the Registrar.

(3) *(Deleted by Act No. 18 of 2014, Sch.)*

(4) *(Deleted by Act No. 18 of 2014, Sch.)*

(5) *(Deleted by Act No. 18 of 2014, Sch.)*

[ Act No. 18 of 2014, Sch.]

**10. 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) 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) has demonstrated competence in the performance of administrative duties for not less than three years.

[ Act No. 18 of 2014, Sch.]

**11. Functions of the Registrar of the Court**

(1) The Registrar shall perform the duties assigned to the Registrar under this Act, and such other duties as the Chief Registrar may direct, and 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.

[ Act No. 18 of 2014, Sch.]

*continued on page E7A-9*



## PART III – JURISDICTION OF THE COURT

**12. Jurisdiction of the Court**

(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 union's organisation;
- (d) disputes between trade unions;
- (e) disputes between employer organisations;
- (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.

(5) The Court shall have jurisdiction to hear and determine appeals arising from—

- (a) decisions of the Registrar of Trade Unions; and
- (b) decisions of any other local tribunal or commission as may be prescribed under any written law.

[ Act No. 18 of 2014, Sch.]

### **13. Enforcement of court orders**

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

[ Act No. 18 of 2014, Sch.]

### **14. The seal of the Court**

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 Chief Registrar.

[ Act No. 18 of 2014, Sch.]

### **15. Alternative dispute resolution**

(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) *(Deleted by Act No. 18 of 2014, Sch.)*

(3) *(Deleted by Act No. 18 of 2014, Sch.)*

(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 may 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.

(6) Nothing in this section shall preclude the Court from making reference to the guidelines as may be published from time to time by the Salaries and Remuneration Commission to the extent to which they may be relevant to the dispute.

[L.N. 19/2012, Act No. 18 of 2014, Sch.]

### **16. Review of orders of the Court**

The Court shall have power to review its judgements, awards, orders or decrees in accordance with the Rules.

### **17. Appeals**

(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) *(Deleted by Act No. 18 of 2014, Sch.)*

[Act No. 18 of 2014, Sch.]

### **18. Deleted by Act No. 18 of 2014, Sch.**

## PART IV – PROCEEDINGS OF THE COURT

**19. Proceedings before the Court**

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

**20. General powers of the Court**

(1) In any proceedings to which this Act applies, the Court shall act without undue regard to technicalities:

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) *(Deleted by Act No. 18 of 2014, Sch).*

(3) *(Deleted by Act No. 18 of 2014, Sch).*

(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 one million shillings or to imprisonment for a term not exceeding two years 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' organisation or federation, every official or officer of the trade union, employers' organisation or federation shall comply with the order.

(9) Where an offence is committed by a firm, body corporate, trade union, employers' organisation 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.

[Act No. 18 of 2014, Sch.]

## **21. Quorum of the Court**

(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.

## **22. Representation before the Court**

In any proceedings before the Court or a subordinate Employment and Labour Relations 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.

[Act No. 18 of 2014, Sch.]

## **PART V – THE EMPLOYMENT AND LABOUR RELATIONS RULES COMMITTEE**

## **23. Establishment of the Committee**

There is established the Employment and Labour Relations Rules Committee.

## **24. Composition of the Committee**

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.

**25. Quorum for the Committee**

(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.

**26. Secretary to the Committee**

The Registrar shall be the Secretary to the Committee.

**27. Rules and Regulations**

(1) The Chief Justice, 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.

[Act No. 18 of 2014, Sch.]

**PART VI – MISCELLANEOUS PROVISIONS**

**28.** Deleted by Act No. 18 of 2014, Sch.

**29. Access to justice**

(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) (*Deleted by Act No. 18 of 2014, Sch.*)

[Act No. 18 of 2014, Sch.]

30. Deleted by Act No. 18 of 2014, Sch.

**31. Repeal of Part III of No. 12 of 2007**

Part III of the Labour Institutions Act, 2007 (No. 12 of 2007) is repealed.

**32. Transitional provisions**

(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) *(Deleted by Act No. 18 of 2014, Sch.)*

(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.

[Act No. 18 of 2014, Sch.]

**33. Proceedings pending in the Industrial Court**

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.

**34. Existing contracts**

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.

**35. Regulations relating to employment and labour relations**

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.

[Act No. 18 of 2014, Sch.]

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## SCHEDULE

[Section 25(2).]

PROVISIONS RELATING TO THE CONDUCT OF  
BUSINESS AND AFFAIRS OF THE EMPLOYMENT  
AND LABOUR RELATIONS RULES COMMITTEE**1. Tenure of office and conduct of business of the Committee**

(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.

**2. Meetings of the Committee**

(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 the 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 organisation 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, 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.

### **3. Committee to regulate own procedure**

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

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