

(Legislative Supplement No. 5)

LEGAL NOTICE NO. 6

THE CONSTITUTION OF KENYA

IN EXERCISE of the powers conferred by section 65(3) and section 84 (6) of the Constitution of Kenya, the Chief Justice makes the following Rules:-

THE CONSTITUTION OF KENYA (SUPERVISORY JURISDICTION AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL) HIGH COURT PRACTICE AND PROCEDURE RULES, 2006.

1. These Rules may be cited as the Constitution of Kenya (Supervisory Jurisdiction and Protection of Fundamental Rights and Freedoms of The Individual) High Court Practice and Procedure Rules, 2006.

Citation.

PART I - SUPERVISORY JURISDICTION

2. Unless a matter is specifically provided for under section 67 or section 84 of the Constitution or any other law, a party who wishes to invoke the jurisdiction of the High Court under section 65 of the Constitution, shall do so by way of Originating Notice of Motion (hereinafter referred to as "the Motion")

Originating notice of motion.

3. The Motion shall be as set out in **Form A** in the Schedule to these Rules.

Form of Motion.

4. The Motion shall state the concise grounds for the application, and shall be supported by the applicant's affidavit.

Content of Motion.

5. Upon the filing of the Motion, the Registrar shall place the motion before a judge for directions within seven days from the date of filing.

Motion to be placed before judge.

6. The High Court may in exercise of the powers conferred by Section 65(2) of the Constitution move on its own motion.

Court may move on its own motion

PART II: INTERPRETATIVE JURISDICTION

Reference to the High Court by subordinate court on its own motion.

7. Where a question as to the interpretation of the Constitution arises in proceedings in a subordinate court and the court is of the opinion that the question involves a substantial question of law, the court may refer the question to the High Court in **Form B** set out in the Schedule to these rules.

Reference to the High Court by subordinate court upon request by parties.

8. Where a party to proceedings in a subordinate court alleges that there is a question as to the interpretation of the Constitution and the court is of the opinion that it involves a substantial question of law, the party shall informally request the presiding officer of that court to refer the question to the High Court and the court shall do so in **Form C** in the Schedule to these rules.

Subordinate court to state issues and its opinion.

9. The court shall in either case state concisely the issues and its opinion in **Form B** and **Form C** and shall within fourteen days refer the question to the High Court.

Registrar to place reference before Chief Justice or judge.

10. Upon receipt of the reference, the Registrar shall within seven days place the matter before the Chief Justice to constitute a bench in accordance with the provisions of section 67(3) of the Constitution, unless there is an interlocutory matter in the reference, in which case the Registrar shall place the matter before a judge for determination.

PART III - ENFORCEMENT JURISDICTION

Contravention of fundamental rights and freedoms.

11. Where contravention of any fundamental rights and freedoms of an individual under sections 70 to 83 (inclusive) of the Constitution is alleged or is apprehended an application shall be made directly to the High Court.

Form of petition.

12. An application under rule 11 shall be made by way of a petition as set out in **Form D** in the Schedule to these Rules.

Petition to be supported by affidavit.

13. The petition under rule 12 shall be supported by an affidavit.

- 14.** If a party wishes to rely on any document, the document shall be annexed to the supporting affidavit. Documents to be annexed to affidavit.
- 15.** The petition shall, in a criminal case, be served on the Attorney-General and in a civil case, on the respondent, within seven days of filing. Petition to be served.
- 16.** The Attorney-General or the respondent, as the case may be, shall within fourteen days of service of the petition, respond by way of a replying affidavit and if any document is relied upon, it shall be annexed to the replying affidavit. Replying affidavit.
- 17.** A petitioner who wishes to file a further affidavit shall do so within seven days of service of the replying affidavit. Further affidavit.
- 18.** (1) Within seven days from the date of service of the response or further affidavit, whichever is the later, the Registrar shall place the matter before a judge for fixing a hearing date or directions. Fixing Petition for hearing by the court.
- (2) The Judge may in giving directions require that parties file and serve written submissions. Written submissions.
- 19.** Where the Attorney-General or the respondent, as the case may be, fails to respond within the time stipulated in rule 16, the petitioner may set down the matter for hearing and determination. Fixing Petition for hearing by petitioner.
- 20.** Notwithstanding anything contained in these Rules, a judge before whom a petition under rule 12 is presented may hear and determine an application for conservatory or interim orders. Conservatory or interim Orders.
- 21.** An application under rule 20 shall be by chamber summons supported by an affidavit and may be heard *ex parte*. Application to be by chamber summons.
- 22.** A person affected by an order under rule 20 may apply to set aside such order. Setting aside.
- 23.** Where a constitutional issue arises in a matter before the High Court, the court seized of the matter may treat such issue as a preliminary point and shall hear and determine the same. Constitutional issues in a matter before the High Court

- Reference to the High Court by subordinate court on its own motion
- 24.** Where in proceedings in a subordinate court a question arises as to the contravention of any of the provisions of sections 70 to 83 (inclusive) of the Constitution, and the presiding officer is of the opinion that the question raised is not frivolous or vexatious, he may refer the question to the High Court in **Form E** set out in the Schedule to these Rules.
- Informal application to the presiding officer.
- 25.** Where a party to proceedings in a subordinate court alleges contravention of his fundamental rights or freedoms under sections 70 to 83 (inclusive) of the Constitution in relation to himself, he shall apply informally to the presiding officer during the pendency of the proceedings that a reference be made to the High Court to determine the question of the alleged violation.
- Court to frame question.
- 26.** If the presiding officer is satisfied that there is merit in the allegation made under rule 24, and that it has not been made frivolously or vexatiously, he shall grant the application where upon the court shall frame the question to be determined by the High Court in **Form F** set out in the Schedule to these Rules.
- Subordinate court to refer matter to High Court.
- 27.** As soon as is practicable, and in any case not later than twenty one days from the date of framing the question, the subordinate court shall refer the matter to the High Court.
- Registrar to place matter before judge.
- 28.** The Registrar shall within seven days of receipt of the reference under rule 25 place the matter before a judge to fix a hearing date or give further directions.
- Stay of proceedings.
- 29.** The High Court may on an application by a party order that all further proceedings before the subordinate court shall be stayed pending the hearing and determination of the reference.
- Question for determination.
- 30.** At the hearing of a reference only the questions framed in **Form F** shall be raised.
- Authorities for the hearing
- 31.** Where a party intends to rely on any reported or unreported case, or to quote from any book, he shall lodge with the court, and serve copies of the reported or unreported case or the quotation, as the case may be, two days before the hearing.

- 32.** The hearing of all applications and references to the High Court shall be given priority over all other cases and shall be heard and determined expeditiously. Applications and references to be given priority.
- 33.** The High Court may upon an informal application immediately following the delivery of judgment or ruling grant a stay for fourteen days pending appeal. Stay pending appeal.
- 34.** An appeal from the decision of the High Court to the Court of Appeal under section 84(7) of the Constitution shall be governed by the Court of Appeal Rules. Court of Appeal Rules to apply.
- 35.** The Constitution of Kenya (Protection of Fundamental Rights and Freedoms of the Individual) Practice and Procedure Rules, 2001 are revoked. Revocation of L.N 133 of 2001.
- 36. (1)** Any matter currently pending in court under Legal Notice No. 133 of 2001 shall be continued under these rules. Transitional Provisions.
- (2)** Any party affected by the operation of Legal Notice No. 133 of 2001 shall be at liberty to apply to the High Court.

Made on the 16th February, 2006.

J. E. GICHERU,
Chief Justice.

The Kenya Constitution is the supreme law of Kenya. It establishes the structure of the Kenyan government, and also defines the relationship between the government and the citizens of Kenya. Composition of the Kenya Constitution. The new constitution of Kenya comprises of a preamble, 18 chapters, and six schedules. The preamble affirms the acceptance by all Kenyans to adopt the constitution for themselves and for all future generations. Among other functions, the six schedules describe the national symbols of Kenya and also prescribe the oaths of office for holders of different constitutional offices. The Constitution of Kenya. Part 2â€”Independent electoral and Boundaries commission and delimitation of electoral units. 88â€”Independent Electoral and Boundaries Commission. 89â€”Delimitation of electoral units. 90â€”Allocation of party list seats. Part 3â€”Political Parties 91â€”Basic requirements for political parties. 92â€”Legislation on political parties.â” The Constitution of Kenya. Chapter fifteenâ€”commissions and independent offices. 248â€”Application of Chapter. 249â€”Objects, authority and funding of commissions and. independent offices. 250â€”Composition, appointment and terms of office. 251â€”Removal from office. The Constitution of Kenya is the supreme law of the Republic of Kenya. There have been three significant versions of the constitution, with the most recent redraft being enabled in 2010. The 2010 edition replaced the 1963 independence constitution. The constitution was presented to the Attorney General of Kenya on 7 April 2010, officially published on 6 May 2010, and was subjected to a referendum on 4 August 2010. The new Constitution was approved by 67% of Kenyan voters. The constitution was