

**THE CONSTITUTION OF KENYA (AMENDMENT)
(No. 3) ACT, 1966**

No. 18 of 1966

Date of Assent: 3rd June 1966

Date of Commencement: 7th June 1966

An Act of Parliament to amend the Constitution and to amend the Preservation of Public Security Act, and for matters incidental thereto and connected therewith

ENACTED by the Parliament of Kenya, as follows:—

1. (1) This Act may be cited as the Constitution of Kenya (Amendment) (No. 3) Act, 1966.

Short title
and
construction.

(2) This Act shall be read and construed as one with the Constitution, in so far as it makes amendments to that Constitution.

2. (1) In this Act "the Constitution" means the Constitution of the Republic of Kenya contained in Schedule 2 of the Kenya Independence Order in Council 1963, as amended by the Constitution of Kenya (Amendment) Act, 1964, the Constitution of Kenya (Amendment) (No. 2) Act, 1964, the Constitution of Kenya (Amendment) Act, 1965, the Constitution of Kenya (Amendment) Act, 1966, and the Constitution of Kenya (Amendment) (No. 2) Act, 1966.

Interpretation.

L.N. 718/1963.
28 of 1964.
38 of 1964.
14 of 1965.
16 of 1966.
17 of 1966.

(2) Save where the context otherwise requires, expressions used in this Act have the same meaning as in the Constitution and the provisions of section 247 of the Constitution shall apply for the purposes of interpreting this Act as they apply for the purposes of interpreting the Constitution.

3. The provisions of the Constitution specified in the first column of the First Schedule to this Act shall be amended in the manner specified in relation thereto in the second column of that Schedule.

Amendment of
Constitution.

4. The provisions of the Preservation of Public Security Act specified in the first column of the Second Schedule to this Act shall be amended in the manner specified in relation thereto in the second column of that Schedule.

Amendment of
Cap. 57.

No. 18 *Constitution of Kenya (Amendment) (No. 3) 1966*

FIRST SCHEDULE (s. 3)

AMENDMENTS TO THE CONSTITUTION

Provision

Amendment

Chapter II
Section 27 (1) Delete whole subsection and substitute a new subsection as follows—

(1) Nothing contained in or done under the authority of an Act of Parliament shall be held to be inconsistent with or in contravention of section 16, section 20, section 23, section 24, section 25 or section 26 of this Constitution when Kenya is at war, and nothing contained in or done under the authority of any provision of Part III of the Preservation of Public Security Act shall be held to be inconsistent with or in contravention of those sections of this Constitution when and in so far as the provision is in operation by virtue of an order made under section 29 of this Constitution.

Section 29. Delete whole section and substitute a new section as follows—

Preservation
of public
security.
Cap. 57. 29. (1) Subject to the provisions of this section, the President may at any time, by order published in the Kenya Gazette, bring into operation, generally or in any part of Kenya, Part III of the Preservation of Public Security Act or any of the provisions of that Part of that Act.

(2) An order made under this section shall cease to have effect on the expiration of the period of twenty-eight days commencing with the day on which the order is made, unless at some time before the expiration of that period it has been approved by a resolution of each House of the National Assembly.

In reckoning any period of twenty-eight days for the purposes of the provisions of this subsection in their application to the House of Representatives no account shall be taken of any time during which Parliament is dissolved.

(3) An order made under this section may at any time be revoked by the President by an order published in the Kenya Gazette.

(4) An order made under this section and approved by resolutions of the Houses of the National Assembly in accordance with subsection (2) of this section may at any time be revoked by a resolution of either House of the National Assembly supported by a majority of all the members of that House, but otherwise shall have effect so long as both resolutions of approval remain in force and **no longer.**

FIRST SCHEDULE—(Contd.)

Provision

Amendment

(5) A resolution of either House of the National Assembly passed for the purposes of this section shall remain in force for eight months or such shorter period as may be specified therein:

Provided that any such resolution may be extended from time to time for a further period by a resolution of that House, each extension not exceeding eight months from the date of the resolution effecting the extension; and any such resolution may be revoked at any time by a resolution supported by the votes of a majority of all the members of that House.

(6) Whenever the election of the President results in a change in the holder of that office any order made under this section and in force immediately before the day on which the President assumes office shall cease to have effect on the expiration of seven days commencing with that day.

(7) Notwithstanding any of the provisions of this Constitution, whenever the functions of the President are being exercised by any person other than the President, that person shall not exercise any of the powers conferred on the President by this section or by Part III of the Preservation of Public Security Act, and no person shall exercise any power conferred by legislation made under that Act, except in accordance with a resolution of the Cabinet, and the provisions of this section and of Part III of the said Act and of any legislation made thereunder shall be construed accordingly.

(8) The expiry or revocation of any order made under this section shall be without prejudice to the validity of anything previously done under the order or to the making of a new order.

(9) The President may summon the Senate for the purposes of this section notwithstanding that Parliament then stands dissolved but, subject to the provisions of section 43 (5) of this Constitution (which relates to the election of a Speaker of the Senate), the Senate shall not, when so summoned, transact any business other than debating and voting upon resolutions for the purposes of this section.

Chapter XII
Section 209.

Insert a new subsection as follows—

(7) Nothing in this Chapter shall prevent the Government from making any regulations for the acquisition, occupation or use of Trust land during any period when Kenya is at war or when an order is in force under section 29 of this Constitution.

SECOND SCHEDULE

(s. 4)

AMENDMENTS TO THE PRESERVATION OF PUBLIC
SECURITY ACT, Cap. 57*Provision**Amendment*

Section 1.

Insert a new heading as follows—

PART I—PRELIMINARY

Sections 2, 3,
4, 5, 6, 7
and 8.Delete sections 2 to 8 (inclusive) and substitute eight new sections
as follows—Inter-pretation. 2. In this Act, "the preservation of public security"
includes—

- (a) the defence of the territory and people of Kenya;
- (b) the securing of the fundamental rights and freedoms of the individual;
- (c) the securing of the safety of persons and property;
- (d) the prevention and suppression of rebellion, mutiny, violence, intimidation, disorder and crime, and unlawful attempts and conspiracies to overthrow the Government or the Constitution;
- (e) the maintenance of the administration of justice;
- (f) the provision of a sufficiency of the supplies and services essential to the life and well-being of the community, their equitable distribution and availability at fair prices; and
- (g) the provision of administrative and remedial measures during periods of actual or apprehensible national danger or calamity, or in consequence of any disaster or destruction arising from natural causes.

PART II—PUBLIC SECURITY MEASURES

Public
security
regulations.

3. (1) If at any time it appears to the President that it is necessary for the preservation of public security to do so, he may by notice published in the Gazette declare that the provisions of this Part of this Act shall come into operation in Kenya or in any part thereof.

(2) Where a notice under subsection (1) of this section has been published, and so long as the notice is in force, it shall be lawful for the President, to the extent to which the provisions of this Act are brought into operation, and subject to the provisions of the Constitution, to make regulations for the preservation of public security.

(3) Subject to the provisions of this section, regulations made under this Part of this Act may make provision for any of the matters specified in section 4 (2) of this Act:

SECOND SCHEDULE—(Contd.)

Provision

Amendment

Provided that, subject to subsection (4) of this section, such regulations shall not make any provision which—

- (a) is inconsistent with or in contravention of section 16 of the Constitution (which protects the right to personal liberty), or section 26 of the Constitution (which provides protection from discrimination), or any other provision of the Constitution; or
- (b) purports to amend, modify, or suspend the operation of, any written law other than regulations made under this Act.

(4) The proviso to subsection (3) of this section shall not apply during any period when Kenya is at war or to any regulations in so far as they apply to the parts of Kenya to which section 19 of the Kenya Independence Order in Council 1963 applies.

L.N.
718/1963.

(5) Subject to subsection (3) of this section, any notice published under this section may limit the power to make regulations to such of the matters specified in section 4 (2) of this Act as the President may specify in the notice.

(6) A notice published under this section may at any time be revoked by the President by a notice published in the Gazette.

PART III—SPECIAL PUBLIC SECURITY MEASURES

Special
public
security
regulations.

4. (1) Where an order under section 29 of the Constitution (which relates to the bringing into operation of this Part of this Act) has been made by the President, and so long as the order is in force, it shall be lawful for the President, to the extent to which the provisions of this Part are brought into operation and subject to the provisions of the Constitution, to make regulations for the preservation of public security.

(2) Regulations for the preservation of public security may make provision for—

- (a) the detention of persons;
- (b) the registration, restriction of movement (into, out of or within Kenya), and compulsory movement of persons, including the imposition of curfews;
- (c) the control of aliens, including the removal of diplomatic privileges;
- (d) the censorship, control or prohibition of the communication of any information, or of any means of communicating or of recording ideas

SECOND SCHEDULE—(Contd.)

Provision

Amendment

- or information, including any publication or document, and the prevention of the dissemination of false reports;
- (e) the control or prohibition of any procession, assembly, meeting, association or society;
 - (f) the control or prohibition of the acquisition, possession, disposition or use of any movable or immovable property or undertaking;
 - (g) the compulsory acquisition, requisitioning, control or disposition of any movable or immovable property or any undertaking;
 - (h) requiring persons to do work or render services, including the direction of labour and supplies, the conscription of persons into any of the disciplined forces (including the National Youth Service) and the billeting of persons;
 - (i) the control and regulation of harbours, ports and the movement of vessels;
 - (j) the control and regulation of transport by land, air or water;
 - (k) the control of trading and of the prices of goods and services, including the regulation of the exportation, importation, production, manufacture or use of any property or thing;
 - (l) amending, applying with or without modification or suspending the operation of any law (including legislation of the East African Common Services Organization) other than this Act or the Constitution;
 - (m) any matter, not being a matter specified in any of the foregoing paragraphs of this subsection, for which provision is necessary or expedient for the preservation of public security.

PART IV—GENERAL PROVISIONS

Interpretation and application of Part IV. 5. In this Part of this Act "subsidiary legislation" means any regulations made under this Act and any rule or order made under any such regulations, and this Part of this Act shall apply to any such subsidiary legislation.

Subsidiary legislation to be laid before Parliament. 6. (1) All subsidiary legislation shall be laid before each House of the National Assembly as soon as may be after it is made, and, if either House of the Assembly within the period of twenty days commencing with the day on which the Assembly first sits after the subsidiary legislation is laid before that House, resolves that it be annulled, it shall cease to have effect.

SECOND SCHEDULE—(Contd.)

Provision

Amendment

(2) Subsection (1) of this section shall not apply to any subsidiary legislation of which a draft has been laid before both Houses of the National Assembly and approved by resolution of both Houses before it was made.

Miscellaneous provisions relating to subsidiary legislation.

7. (1) Subsidiary legislation may—

- (a) be made to apply to Kenya generally or to any part thereof, to any ship or aircraft in or over Kenya, to any Kenyan ship or aircraft wherever it may be, and to any person on board any such ship or aircraft;
- (b) make different provisions with respect to different cases or classes of case and for different purposes of this Act, and, subject to the Constitution, may make different provisions with respect to different classes or descriptions of persons.

(2) Regulations made under this Act may—

- (a) make provision for the apprehension and punishment of persons offending against the regulations, for the imposition of penalties (including the penalty of death and the forfeiture of any property connected in any way with any offence) exceeding those otherwise permitted by law to be imposed by regulations, and for the trial of such offenders by such courts, not being courts martial, and in accordance with such procedure as may be provided for by the regulations, and for the proceedings of such courts to be subject to such review as may be provided for, so, however, that provision shall be made for such proceedings being reviewed by not less than two persons who hold or have held high judicial office, in all cases in which sentence of death is passed, and in such other circumstances as may be provided by the regulations;
- (b) authorize the search of persons and the entering and search of any premises, vessel, vehicle or aircraft;
- (c) provide for the payment of compensation and remuneration to persons affected by the regulations;
- (d) provide for charging in respect of the grant or issue of any licence, permit, certificate or other document for the purposes of the regulations, such fee as may be prescribed by or under the regulations;

SECOND SCHEDULE—(Contd.)

Provision

Amendment

- (e) provide for the formation of tribunals and other bodies for the purpose of deciding such matters as may be specified in the regulations (but having no powers to inflict penalties);
- (f) provide for empowering such authorities or persons as may be specified in the regulations to make orders and rules for any of the purposes for which such regulations are authorized by this Act to be made;
- (g) contain such incidental and supplementary provisions as appear to the President to be necessary or expedient for the purposes of the regulations.

(3) Subsidiary legislation shall have effect notwithstanding anything inconsistent therewith contained in any law (including any law of the East African Common Services Organization) other than this Act or the Constitution, and any provision of any such law which may be inconsistent with any subsidiary legislation shall, whether that provision has or has not been amended, modified or suspended in its operation by any subsidiary legislation, to the extent of the inconsistency have no effect so long as such subsidiary legislation remains in force.

(4) The expiry or revocation of any subsidiary legislation shall be without prejudice to anything previously done thereunder or to the making of new subsidiary legislation.

Proof of instruments.

8. (1) Every document purporting to be an instrument made or issued by the President or by any Minister or other authority or person in pursuance of any provision contained in, or having effect under, this Act, and purporting to be signed by or on behalf of the President, the said Minister, authority or person, shall be received in evidence and shall, until the contrary is proved, be deemed to be an instrument made or issued by the President, or by that Minister, authority or person.

(2) Prima facie evidence of any such instrument as is referred to in subsection (1) of this section may, in any legal proceedings, be given by the production of a document purporting to be certified to be a true copy of the instrument by, or on behalf of, the President, the Minister or other authority or person having power to make or issue the instrument.

Expenses.

9. There shall be defrayed out of moneys provided by Parliament any expenses incurred by the Government in consequence of the passing of this Act, and any increase attributable to the passing of this Act, in any sums authorized or required by any other written law to be paid out of moneys provided by Parliament.