



LAWS OF KENYA

THE ELECTION OFFENCES ACT

CHAPTER 66

Revised Edition 2009 (1998)
Published by the National Council for Law Reporting
with the Authority of the Attorney General

CHAPTER 66

THE ELECTION OFFENCES ACT

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CHAPTER 66

THE ELECTION OFFENCES ACT

11 of 1958,

41 of 1960,

48 of 1960,

Commencement: 20th March, 1958

L.N. 256/1963.

L.N. 604/1963,

An Act of Parliament to Prevent election offences and corrupt and illegal practices at elections, and for matters incidental thereto and connected therewith

L.N. 742/1963,

13 of 1969,

14 of 1971,

19 of 1979,

11 of 1992,

10 of 1997.

PART I—PRELIMINARY

1. This Act may be cited as the Election Offences Act.

Short title.

2. (1) In this Act, unless the context otherwise requires—

Interpretation.

48 of 1960, s. 45,

“authorized” means authorized by or under any written law relating to an election;

L.N. 256/1963,

L.N. 604/1963,

L.N. 742/1963,

13 of 1969, s. 35,

14 of 1971, Sch.

“constituency” means any area prescribed by or under the provisions of any written law for the purpose of electing one or more representatives to a council and includes an electoral area or ward;

“corrupt practice” means any offence mentioned in and punishable under the provisions of Part III;

“council” means the City Council of Nairobi and a municipal council, county council, urban council or area council established or deemed to have been established under the Local Government Act;

Cap. 265.

“election” means any election held in accordance with the provisions of any written law relating to the election of the President or of persons to members of National Assembly or a council;

“entitled” means entitled by or under any written law relating to an election;

“illegal practice” means any offence mentioned in and punishable under the provisions of Part IV;

“proper officer” means the officer or person appointed by or under any written law relating to an election to be in charge, or to have the conduct, thereof.

(2) Any word or expression used in this Act, the meaning of which is defined in any written law relating to any election, shall have

the same meaning in this Act, for the purposes of and with reference to such election, as it has in the said written law; and any reference in this Act to any person or official shall be construed, for the purposes of and with reference to any election, as a reference to any equivalent person or official appointed under or by virtue of any written law relating to such election.

PART II—ELECTION OFFENCES

Offences by any person.

L.N. 742/1963,
19 of 1979, s. 8,
11 of 1992, Sch.
10 of 1997, Sch.

3. Any person who—

- (a) knowingly makes any false statement on or in connexion with any application to be placed on any register of electors; or
- (b) forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to a returning officer any nomination paper knowing it to be forged; or
- (c) forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper or the official perforation, stamp or mark on any ballot paper; or
- (d) without due authority supplies any ballot paper to any person; or
- (e) sells or offers to sell any ballot paper to any person or purchases or offers to purchase any ballot paper from any person; or
- (f) not being a person entitled to be in possession of any ballot paper which has been marked with any official perforation, stamp or mark has any such ballot paper in his possession; or
- (g) puts into any ballot box anything other than the ballot paper which he is authorized by law to put in; or
- (h) without due authority takes out of the polling station any ballot paper or is found in possession of any ballot paper outside a polling station; or
- (i) without due authority destroys, takes, opens or otherwise interferes with any ballot box, ballot paper or packet of ballot papers in use or intended to be used for the purposes of an election; or
- (j) without due authority prints any ballot paper or what

purports to be or is capable of being used as a ballot paper at an election; or

(k) for the purposes of an election, manufactures, constructs, imports, has in his possession, supplies or uses, or causes to be manufactured, constructed, imported, supplied or used, any appliance, device or mechanism by which a ballot paper may be extracted, affected or manipulated after having been deposited in a ballot box during the polling at any election; or

(l) not being authorized to do so under the provisions of this Act, makes any mark on any ballot paper issued to any person other than to himself; or

(m) votes at any election when he is not entitled to vote thereat,

shall be guilty of an offence and liable to imprisonment for a term not exceeding five years.

3A. Any person who—

(a) without due authority makes, prepares or prints a document or paper resembling or purporting to be a register of voters; or

(b) without due authority makes, prepares or prints a document or paper resembling or purporting to be an elector's card; or

(c) not being a person authorized to be in possession of any elector's card bearing the name of another person or which has not been written in the name of any person, has such elector's card in his possession; or

(d) without due authority supplies any elector's card to any person; or

(e) without due authority destroys, damages, defaces or makes any alteration on an elector's card; or

(f) sells or offers to sell any elector's card to any person or purchases or offers to purchase any elector's card from any person; or

(g) aids, abets, counsels or procures the commission of or attempts to commit any of the offences referred to in paragraphs (a) to (f), shall be guilty of an offence and liable, in the case of an offence under paragraphs (a) to (f), to imprisonment for a term not exceeding five years, and in

Offences relating to voter register and elector's cards. 10 of 1997, Sch.

the case of an offence under paragraph (g), to imprisonment for a term not exceeding four years.

Offences by election officers.

L.N. 742/1963,
19 of 1979, s. 8,
11 of 1992, Sch.

4. Any officer, clerk, interpreter or other person having any duty to perform pursuant to any written law relating to any election who—

- (a) makes, in any record, return or other document which he is required to keep or make under such written law, any entry which he knows or has reasonable cause to believe to be false, or does not believe to be true; or
- (b) permits any person whom he knows or has reasonable cause to believe not to be a blind person or an incapacitated person to vote in the manner provided for blind persons or incapacitated persons, as the case may be; or
- (c) refuses to permit any person whom he knows or has reasonable cause to believe to be a blind person or an incapacitated person to vote in the manner provided for blind persons or incapacitated persons, as the case may be; or
- (d) willfully prevents any person from voting at the polling station at which he knows or has reasonable cause to believe such person is entitled to vote; or
- (e) willfully rejects or refuses to count any ballot paper which he knows or has reasonable cause to believe is validly cast for any candidate in accordance with the provisions of such written law; or
- (f) willfully counts any ballot paper as being cast for any candidate, which he knows or has reasonable cause to believe was not validly cast for such candidate; or
- (g) is without reasonable cause guilty of any act or omission in breach of his official duty,

shall be guilty of an offence and liable to imprisonment for a term not exceeding five years.

Maintenance of secrecy at elections.
19 of 1979, s. 8,
11 of 1992, Sch.

5. (1) Every officer, clerk, interpreter, candidate and agent authorized to take part in any proceedings connected with the issue or receipt of postal ballot papers or to attend at a polling station, or at the counting of the votes, shall before so attending make an oath of secrecy, substantially in the form contained in the Schedule.

(2) Every officer, clerk, interpreter, candidate and agent in attendance at a polling station shall maintain, and aid in maintaining,

the secrecy of the voting in such station, and shall not communicate, except for some purpose authorized by law, before the poll is closed, to any person any information as to the name or number on the register of electors of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark, but the total number of voters who have voted at any station at any time before the poll is closed may in the discretion of the presiding officer be divulged to a candidate or his agent authorized to attend at the polling station.

(3) No such officer, clerk, interpreter, candidate or agent and no other person shall attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number of the ballot paper given to any voter at such station.

(4) Every officer, clerk, interpreter, candidate and agent in attendance at the counting of the votes shall maintain, and aid in maintaining, the secrecy of the voting, and shall not attempt to ascertain at such counting the number of any ballot paper or communicate any information obtained at such counting as to the candidate for whom any vote is given by any particular ballot paper.

(5) No person, except a presiding officer acting for a purpose authorized by any written law relating to any election or a person authorized by the presiding officer and acting for such purpose as aforesaid, shall communicate or attempt to communicate with any voter after such voter has received a ballot paper and before he has placed the same in a ballot box.

(6) Every person attending any proceedings in connection with the issue or the receipt of ballot papers for persons voting by post shall maintain and aid in maintaining the secrecy of the voting and shall not without lawful excuse—

- (a) communicate, before the poll is closed, to any person any information obtained at those proceedings as to any official perforation, stamp or mark to be used in connection with any ballot paper; or
- (b) communicate to any person at any time any information obtained at those proceedings as to the number of the ballot paper sent to any person; or
- (c) attempt to ascertain at the proceedings in connection with the receipt of ballot papers the number on any ballot paper; or

(d) attempt to ascertain at the proceedings in connection with the receipt of the ballot papers the candidate for whom any vote is given in any particular ballot paper or communicate any information with respect thereto obtained at those proceedings.

(7) Every person who acts in contravention of the provisions of this section shall be guilty of an offence and liable to imprisonment for a term not exceeding five years.

Offences under this Part.

6. (1) Every person who aids, abets, counsels or procures the commission of or attempts to commit an offence specified in this Part shall be liable to the punishment and disqualifications prescribed for that offence.

(2) Every offence under this Part shall be cognizable.

(3) In a prosecution for an offence in relation to a nomination paper, ballot box, ballot paper or marking instrument at an election, the property in such nomination paper, ballot box, ballot paper or marking instrument, as well as the property in the counterfoil of any ballot paper, may be stated to be in the returning officer at that election.

(4) A prosecution for an offence under this Part shall not be instituted without the sanction of the Attorney-General.

PART III—CORRUPT PRACTICES

Personation.
41 of 1960, s. 2.

7. (1) Every person who at an election applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person or who, having voted once at any such election, applies at the same election for a ballot paper in his own name, shall be guilty of the offence of personation, which shall be cognizable.

(2) For the purposes of this section, a person who has applied for a ballot paper for the purpose of voting in person shall be deemed to have voted.

8. (*Repealed by 10 of 1997, Sch.*).

Undue influence.

9. Every person shall be guilty of the offence of undue influence who directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens any force, violence or restraint, or any temporal or spiritual injury, damage or loss, or any fraudulent device, trick or deception, for the purpose of or on account of—

- (a) inducing or compelling a person to give or refrain from giving his vote, whether to a particular candidate or not, at an election; or
- (b) otherwise impeding or preventing the free exercise of the franchise of an elector or voter; or
- (c) inducing or compelling a person to refrain from becoming a candidate or to withdraw if he has become a candidate; or
- (d) impeding or preventing a person from being nominated as a candidate for an election or from being registered as a voter.

10. Every person shall be guilty of the offence of bribery who— Bribery.

- (a) directly or indirectly, by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavour to procure, any money or valuable consideration to or for any elector or voter, or to or for any person on behalf of any elector or voter or to or for any other person, in order to induce any elector or voter to give or refrain from giving his vote, whether to a particular candidate or not, or corruptly does any such act as aforesaid on account of such elector or voter having given or refrained from giving his vote at any election, whether to a particular candidate or not; or
- (b) directly or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers, promises, or promises to procure or to endeavour to procure, any office, place or employment to or for any elector or voter, or to or for any person on behalf of any elector or voter, or to or for any other person, in order to induce such elector or voter to give or refrain from giving his vote, whether to a particular candidate or not, or corruptly does any such act as aforesaid on account of any elector or voter having so given or refrained from giving his vote at any election; or
- (c) directly or indirectly by himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement, or agreement as aforesaid to or for any person in order to induce such person to procure or endeavour to procure the election of any person, or the vote of any elector or voter at any election; or
- (d) upon or in consequence of any such gift, loan, offer, promise,

procurement or agreement, procures or engages, promises or endeavours to procure, the election of any person, or the vote of any elector or voter at an election; or

- (e) advances or pays or causes to be paid any money to, or to the use of, any other person with the intent that such money or any part thereof shall be expended in bribery at any election or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any such election; or
- (f) being an elector or voter, before or during any election directly or indirectly, by himself or by any other person on his behalf, receives, agrees, or contracts for any money, gift, loan, or valuable consideration, office, place or employment, for himself or for any other person, for giving or agreeing to give or for refraining or agreeing to refrain from giving his vote, whether to a particular candidate or not, at any such election; or
- (g) after any election, directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having given or refrained from giving or having induced any other person to give or to refrain from giving, his vote, whether to a particular candidate or not, at any such election; or
- (h) directly or indirectly, by himself or by any other person on his behalf, on account of and as payment for voting or for having voted or for agreeing or having agreed to vote for any candidate at an election, or on account of and as payment for his having assisted or agreed to assist any candidate at an election, applies to such candidate, or to his agent or agents, for the gift or loan of any money or valuable consideration, or for the promise of the gift or loan of any money or valuable consideration or for any office, place or employment or for the promise of any office, place or employment; or
- (i) directly or indirectly, by himself or by any person on his behalf, in order to induce any other person to agree to be nominated as a candidate or to refrain from becoming a candidate or to withdraw if he has become a candidate, gives or procures any office, place or employment, or agrees to give or procure or offers or promises to procure or to endeavour to procure any office, place or employment, to or for such other person, or gives or lends, or agrees to give or lend, or offers, or promises to procure or to endeavour to procure any

money or valuable consideration to or for any person or to or for such other person, or to or for any person on behalf of such other person.

11. (1) Every person who—

- (a) commits the offence of personation, treating, undue influence or bribery; or
- (b) prints, publishes, distributes or posts up, or causes to be printed, published, distributed or posted up, any advertisement, handbill, placard or poster which refers to any election and which does not bear upon its face the names and addresses of its printer and publisher; or
- (c) makes or publishes, before or during any election, for the purpose of affecting the return of any candidate, any false statement of fact in relation to the personal character or conduct of such candidate; or
- (d) makes or publishes, before or during any election, for the purpose of promoting or procuring the election of any candidate, any false statement of the withdrawal of any other candidate at such election,

Punishment and incapacities for corrupt practice. 19 of 1979, s. 8, 11 of 1992, Sch.

or aids, abets, counsels or procures the commission of or attempts to commit any such offence shall be liable, in the cases referred to in paragraph (a), to imprisonment for a term not exceeding five years, and in any other case, to imprisonment for a term not exceeding four years.

(2) (*Deleted by L.N. 742/1963*).

(3) A prosecution for an offence under this Part, except in the cases referred to in paragraphs (c) and (d) of subsection (1), shall not be instituted without the sanction of the Attorney-General.

(4) The offences mentioned in paragraph (a) of subsection (1) shall be cognizable.

PART IV—ILLEGAL PRACTICES

12. (1) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at any election, be made—

Certain expenditure to be illegal practice.

- (a) on account of the conveyance of electors or voters to or from the poll, whether for the hiring of vehicles, vessels or

animals of transport of any kind whatsoever, or for railway fares, or otherwise; or

- (b) to or with an elector or voter on account of the use of any house, land, building, or premises for the exhibition of any address, bill, or notice, or account of the exhibition of any address, bill or notice.

(2) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is knowingly made in contravention of this section either before, during, or after an election, the person making such payment or contract shall be guilty of an illegal practice, and any person receiving such payment or being a party to any such contract, knowing it to be in contravention of this section, shall also be guilty of an illegal practice.

(3) A person shall not let, lend, or employ for the purpose of conveyance of electors or voters to and from the poll any vehicle, vessel or animal of transport of any kind whatsoever which he keeps or uses for the purpose of letting out for hire, and if he lets, lends, or employs such vehicle, vessel or animal of transport knowing that it is intended to be used for the conveyance of electors or voters to and from the poll he shall be guilty of an illegal practice.

(4) A person shall not hire, borrow, or use for the purpose of conveyance of electors or voters to and from the poll any vehicle, vessel or animal of transport of any kind whatsoever which he knows the owner thereof is prohibited by subsection (3) to let, lend, or employ for that purpose, and if he does so he shall be guilty of an illegal practice.

(5) Nothing in subsection (3) or subsection (4) shall prevent a vehicle, vessel or animal of transport of any kind being let to, or hired, employed, or used by a voter or several voters at their joint cost for the purpose of being conveyed to or from the poll.

(6) Notwithstanding anything in the preceding provisions of this section—

- (a) where it is the ordinary business of a voter as an advertising agent to exhibit for payment bills and advertisements, a payment to or contract with such voter, if made in the ordinary course of business, shall not be deemed to be an illegal practice within the meaning of this section;
- (b) where voters are unable at an election to reach their polling stations from their place of residence without crossing the sea or a branch or arm thereof or a river, means may be provided

for conveying such voters to their polling stations, or to enable them to cross in order to reach their polling stations:

Provided always that such means of conveyance shall be made available equally to all such voters who wish to avail themselves thereof.

13. (1) Every employer shall, on polling day, allow to every elector in his employ a reasonable period for voting, and no employer shall make any deduction from the pay or other remuneration of any such elector or impose upon or exact from him any penalty by reason of his absence during such period.

Employers to allow employees reasonable period for voting.

L.N. 604/1963,

L.N. 742/1963,

19 of 1979, s. 8,

11 of 1992, Sch.

(2) Any employer who, directly or indirectly, refuses or by intimidation, undue influence, or in any other manner, interferes with the granting to any elector in his employ, of a reasonable period for voting, as in this section provided, shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding three years or to both.

(3) This section shall not extend to such categories of employees as the Minister may from time to time by notification in the Gazette designate nor to any employee who at the election in question is acting as an election officer within the meaning of the National Assembly and Presidential Elections Act.

Cap. 7.

(4) The provisions of this section shall be binding on the Government.

14. (1) No person shall furnish or supply any musical instrument or loud speaker to any person with intent that it shall be used by any person in any way or used in or upon vessels, animals, motor cars, trucks, or other vehicles as or for the purpose of political propaganda on polling day and no person shall with any such intent use himself or use in or upon any vessel, animal, motor car, truck, or other vehicle any such musical instrument or loud speaker on polling day.

Limitation of political propaganda on polling day.

19 of 1979, s. 8.

(2) Any person who contravenes any of the provisions of this section shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

(3) An offence under this section shall be cognizable.

15. (*Repealed by 10 of 1997, Sch.*)

SCHEDULE

(s. 5 (1))

FORM OF OATH OF SECRECY

I swear that I will not at this election for the

..... constituency/electoral ward/
electoral district do anything forbidden by section 5* of the Election
Offences Act, which has been read to me.

.....
Signature of person taking the oath.

Before me

.....
(Signature)

Magistrate.
Commissioner for Oaths.

* The section must be read to the declarant by the person taking the declaration.

[Subsidiary]

SUBSIDIARY LEGISLATION**Categories of employees to which section 13 shall not extend—**

L.N. 158/1968.

- (a) members of the Armed Forces, the Kenya Police Force or the Kenya Prisons Service;
- (b) other persons in the employment of the Government, or of Kenya Railways, Kenya Ports Authority or the Kenya Posts And Telecommunications Corporation, whose place of work and place of residence are more than ten miles from his polling station.

