

④ DLPS

Please process for tabling/reporting.

③

Dc Kioko

Also see ELe recommendation from

DLS 8: 12/03/2021

INTERNAL MEMORANDUM

TO: 16/02/21 THE DEPUTY CLERK OF THE NATIONAL ASSEMBLY

THRO: THE DIRECTOR, LEGAL SERVICES-NA

② Formulated, the petition seeks the repeal of en-legislation; it meets the requirement under the Act and may be tabled for consideration

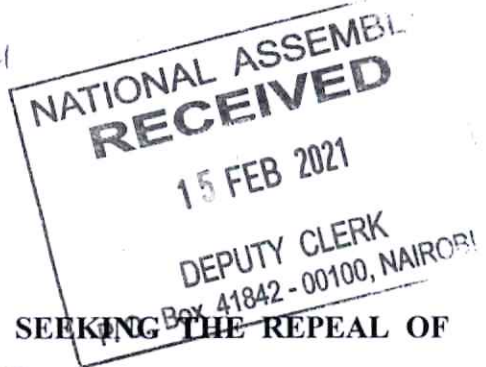
THRO: PRINCIPAL LEGAL COUNSEL-NA

① The petition may be tabled forward to the speaker for tabling. 11/2/2021

FROM: LEGAL COUNSEL I

DATE: 10TH FEBRUARY, 2021

RE: PETITION TO THE NATIONAL ASSEMBLY SEEKING THE REPEAL OF SECTION 22b(i) & (ii) OF THE ELECTIONS ACT



The above matter and the Petition presented by Mr. Anthony Manyara refer.

The Petition seeks the repeal of Section 22(b) (i) and (ii) of the Elections Act which prescribe minimum academic requirements for members of Parliament and members of County Assemblies on the grounds that –

- (a) it is unconstitutional ; and
- (b) COVID 19 pandemic may likely delay the completion of degrees by political aspirants.

D/D - L/P
acknowledge receipt
and process
conveyance by Jan.
16/2/21

Ms. Jennifer Ndetei
please assign and supervise 15/12/2022

PETITION TO THE NATIONAL ASSEMBLY TO REPEAL SECTION 22 b (i) & (ii) OF THE ELECTIONS ACT NO. 24 OF 2011 ; PURSUANT TO ARTICLES 27, 37, 38 & 119 OF THE CONSTITUTION, THE PETITION TO PARLIAMENT (PROCEDURE) ACT AND STANDING ORDER 220 OF THE NATIONAL ASSEMBLY STANDING ORDERS.

**TO THE CLERK OF THE NATIONAL ASSEMBLY,
PARLIAMENT BUILDINGS,
P O BOX 41842 - 00100,
NAIROBI.**

DLS
Wadviser
ANT

We the undersigned petitioners being devoted and patriotic citizens of the great Republic of Kenya , pursuant to Articles 27, 37, 38 and 119 of the Constitution of Kenya, The petition to parliament (procedure) Act and standing order 220 of the National Assembly standing orders-

9/13/20

DRAW the attention of the House of the following-

- 1. THAT** Article 2(4) of the Kenyan constitution stipulates that any law, including customary law that is inconsistent with this constitution is void to the extent of the inconsistency, and any act or omission in contravention of the constitution is invalid, null and void, ab initio.
- 2. THAT** Article 3(1) of the constitution provides that every person has an obligation to respect, uphold and defend this constitution.
- 3. THAT** Article 10 (1b) of the constitution provides that national values and principles of governance in this article binds all state organs , state officers , public officers and all persons whenever any of them enacts , applies or interprets any law.
- 4. THAT** Article 19 provides for rights and fundamental freedoms it outlines that;
 - a) The Bill of Rights is an integral part of Kenya’s democratic state and is the framework for social, economic and cultural policies.
 - b) The purpose of recognising and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and

RECEIVED
P. O. Box 41842 - 00100,
NAIROBI

NATIONAL ASSEMBLY
RECEIVED
09 DEC 2021
CLERK'S OFFICE
P. O. Box 41842, NAIROBI

PETITION TO THE NATIONAL ASSEMBLY TO REPEAL SECTION 22 b (i) & (ii) OF THE ELECTIONS ACT NO. 24 OF 2011 ; PURSUANT TO ARTICLES 27, 37, 38 & 119 OF THE CONSTITUTION, THE PETITION TO PARLIAMENT (PROCEDURE) ACT AND STANDING ORDER 220 OF THE NATIONAL ASSEMBLY STANDING ORDERS.

communities and to promote social justice and the realisation of the potential of all human beings.

- c) The rights and fundamental freedoms in the Bill of Rights -
- (i) belong to each individual and are not granted by the State;
 - (ii) do not exclude other rights and fundamental freedoms not in the Bill of Rights, but recognised or conferred by law, except to the extent that they are inconsistent with this Chapter; and
 - (iii) Are subject only to the limitations contemplated in this Constitution.

5. **THAT** Article 20 (1) and (2) provides that the bill of rights applies to all law and binds all state organs and all persons and that every person shall enjoy the rights and fundamental freedoms in the bill of rights to the greatest extent consistent with the nature of the right or fundamental freedom.
6. **THAT** Article 21 (1) enshrines that it is a fundamental duty of the state and every state organ to observe, respect , protect, promote and fulfil the rights and fundamental freedoms in the bill of rights.
7. **THAT** Article 24 (1) stipulates that a right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including-
- (a) The nature of the right or fundamental freedom;
 - (b) The importance of the purpose of the limitation;
 - (c) The nature and extent of the limitation;
 - (d) The need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and

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(e) The relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.

8. THAT Article 27 stipulates that;

(1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.

(3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

(4)The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

9. THAT Article 38 (2) states that every citizen is free to make political choices, which includes the right to free, fair and regular elections based on universal suffrage and the free expression of the will of the electors for –

(a) any elective public body or office established under this Constitution; or

(b) any office of any political party of which the citizen is a member.

THE FACTS constituting the same include;

10.THAT the elections act which require contestants for MP and MCA seats to have a university degree qualification is set to take effect in the

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2022 general election, locking out hundreds of potential aspirants whose plans to acquire the academic papers have been derailed by Covid-19.

- 11.THAT** the law, whose implementation date has been postponed several times, is set to take effect in 2022. Members of the National Assembly in 2017 amended section 22 of the Election Act that prescribes minimum academic qualifications for lawmakers at both levels of government.
- 12.THAT** the amendment requires Members of Parliament (MPs) and Members of County Assembly (MCAs) to have a minimum bachelor's degree before they are cleared to contest.
- 13.THAT** and even though the law was enacted just before the 2017 election, the National Assembly successfully pushed for the suspension of its implementation after the election, in the hope that they would have obtained the documents by 2022.
- 14.THAT** with less than two years to go before the next election, and with Covid-19 having disrupted the entire academic calendar, the window for acquiring a degree has been effectively shut. It means politicians planning to vie for seats and do not have the papers will not be cleared to contest.
- 15.THAT** the law is unconstitutional. It's against the will and the sovereignty of the people who, constitutionally, are the ones who elect leaders.
- 16.THAT** a group of governors and former Machakos senator Johnson Muthama went to court to stop the law from taking effect in 2011,

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criticised section 22 of the Elections Act that prescribes minimum academic qualifications for lawmakers and the court suspended the law from taking effect terming it unconstitutional and inconsistent with the constitution which is the grund norm and the supreme law of the land.

17.THAT the university degree requirement will make political leadership a preserve of the elite and will hence disenfranchise very many good leaders.

THEREFORE your humble petitioners pray that the National Assembly;

18.THAT pursuant to Article 94(1) of the Constitution which provides that the legislative authority of the Republic is derived from the people and, at the national level, is vested in and exercised by parliament, the Honourable National Assembly considers this petition.

19.THAT the Honourable National Assembly to expeditiously repeal section 22 b (i) and (ii) pursuant to Article 119 of the constitution of Kenya which gives parliament the power to either repeal, amend or enact any legislation.

NAME OF THE 1ST PETITIONER : *HON. ANTONY MAMUYARA*

ADDRESS: *P.O Box 17586 - 00200, NAIROBI*

ID NUMBER: *30244250*

SIGNATURE: *A.M*

PETITION TO THE NATIONAL ASSEMBLY TO REPEAL SECTION 22 b (i) & (ii) OF THE ELECTIONS ACT NO. 24 OF 2011 ; PURSUANT TO ARTICLES 27, 37, 38 & 119 OF THE CONSTITUTION, THE PETITION TO PARLIAMENT (PROCEDURE) ACT AND STANDING ORDER 220 OF THE NATIONAL ASSEMBLY STANDING ORDERS.

DATE: 09/12/20

NAME OF THE 2ND PETITIONER :

ADDRESS: Nyahururu 20300

ID NUMBER: 35697157

SIGNATURE: 

DATE: 9/Dec/2020

NAME OF THE 3RD PETITIONER : JOHN WANG'AI

ADDRESS: 57354 - 00200, NAIROBI

ID NUMBER: 33547010

SIGNATURE: 

DATE: 9/12/2020