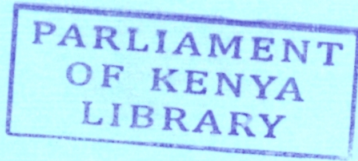


**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 226 (Senate Bills No. 52)*



REPUBLIC OF KENYA

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***KENYA GAZETTE SUPPLEMENT***

**SENATE BILLS, 2023**

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**NAIROBI, 24th November, 2023**

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**THE CONSTITUTION OF KENYA (AMENDMENT)  
(NO. 2) BILL, 2023**

**A Bill for**

**AN ACT of Parliament to amend the Constitution of  
Kenya**

**ENACTED** by the Parliament of Kenya, as follows —

**1.** This Act may be cited as the Constitution of Kenya (Amendment) (No. 2) Act, 2023.

Short title.

**2.** Article 99 of the Constitution is amended in clause (2) by inserting the following new paragraph immediately after paragraph (b)—

Amendment of Article 99 of the Constitution.

(ba) in the case of election to the Senate—

- (i) is a county governor; or
- (ii) has, at any time within the five years immediately preceding the date of election, held office as a county governor.

**3.** Article 193 of the Constitution is amended in clause (2) by inserting the following new paragraph immediately after paragraph (b)—

Amendment of Article 193 of the Constitution.

(ba) has, at any time within the five years immediately preceding the date of election, held office as a county governor.

**4.** Section 24 of the Elections Act is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (b)—

Amendment of section 24 of No. 24 of 2011.

(ba) in the case of election to the Senate—

- (i) is a county governor; or
- (ii) has, at any time within the five years immediately preceding the date of election, held office as a county governor.

**5.** Section 25 of the Elections Act is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (b) —

Amendment of  
section 25 of No.  
24 of 2011.

(ba) has, at any time within the five years immediately preceding the date of election, held office as a county governor.

## **MEMORANDUM OF OBJECTS AND REASONS**

The object of the legislative proposal is to amend Articles 99 (2) and 193 (2) of the Constitution of Kenya to bar persons who have served as county governors from vying for election as Members of Parliament or members of county assembly for the first five years immediately after serving as county governors. The Bill also amends section 24 (2) and 25 (2) of the Elections Act, No. 24 of 2011 which replicate the above provisions of the Constitution.

County governors, in the course of their duties, have to account to the county assemblies and the Senate for any financial and administrative decisions made. Annual audits reports prepared by the Office of the Auditor General are submitted to the Senate and the relevant county assembly pursuant to section 32 of the Public Audit Act, no. 34 of 2015 for scrutiny.

Barring former county governors from vying for elections will allow for any ongoing accountability processes related to administration and financial management affairs of the county to be completed, as these would have a bearing on the suitability of the former county governor to hold any other elective position.

Additionally, since the Senate and the county assemblies directly exercise oversight over county governments, through examining their audit reports and holding governors accountable for their decisions, having former governors sit in the two legislatures would lead to conflict of interest and interfere in their decision-making process.

The effect of this would be —

- (a) oversight bodies would have adequate time to inquire into any matters arising from the tenure of a previous holder of the office of county governor without interference by the former county governor, which is highly likely particularly if the person is elected as member of county assembly or to the Senate; and
- (b) voters would have a reference point in making an informed choice on the candidate's suitability for another elective office since all accountability processes would have been completed.

Article 256 (1) (b) provides that a Bill may not address any other matter apart from consequential amendments to legislation arising from the Bill. This Bill contains amendments to section 24 (2) and 25 (2) of the Elections Act, No. 24 of 2011. The two sections replicate the provisions of

Article 99 (2) and 193 (2) of the Constitutions, hence the necessity of amending them.

Dated the 9th November, 2023.

RAPHAEL CHIMERA,  
*Senator.*

*Article 99 of the Constitution that the Bill proposes to amend—*

**99. Qualifications and disqualifications for election as member of Parliament**

(1) Unless disqualified under clause (2), a person is eligible for election as a member of Parliament if the person—

- (a) is registered as a voter;
- (b) satisfies any educational, moral and ethical requirements prescribed by this Constitution or by an Act of Parliament; and
- (c) is nominated by a political party, or is an independent candidate who is supported—
  - (i) in the case of election to the National Assembly, by at least one thousand registered voters in the constituency; or
  - (ii) in the case of election to the Senate, by at least two thousand registered voters in the county.

(2) A person is disqualified from being elected a member of Parliament if the person—

- (a) is a State officer or other public officer, other than a member of Parliament;
- (b) has, at any time within the five years immediately preceding the date of election, held office as a member of the Independent Electoral and Boundaries Commission;
- (c) has not been a citizen of Kenya for at least the ten years immediately preceding the date of election;
- (d) is a member of a county assembly;
- (e) is of unsound mind;
- (f) is an undischarged bankrupt;
- (g) is subject to a sentence of imprisonment of at least six months, as at the date of registration as a candidate, or at the date of election; or
- (h) is found, in accordance with any law, to have misused or abused a State office or public office or in any way to have contravened Chapter Six.

(3) A person is not disqualified under clause (2) unless all possibility of appeal or review of the relevant sentence or decision has been exhausted.

*Article 193 of the Constitution that the Bill proposes to amend—*

**193. Qualifications for election as member of county assembly**

(1) Unless disqualified under clause (2), a person is eligible for election as a member of a county assembly if the person—

- (a) is registered as a voter;
- (b) satisfies any educational, moral and ethical requirements prescribed by this Constitution or an Act of Parliament; and
- (c) is either—
  - (i) nominated by a political party; or
  - (ii) an independent candidate supported by at least five hundred registered voters in the ward concerned.

(2) A person is disqualified from being elected a member of a county assembly if the person—

- (a) is a State officer or other public officer, other than a member of the county assembly;
- (b) has, at any time within the five years immediately before the date of election, held office as a member of the Independent Electoral and Boundaries Commission;
- (c) has not been a citizen of Kenya for at least the ten years immediately preceding the date of election;
- (d) is of unsound mind;
- (e) is an undischarged bankrupt;
- (f) is serving a sentence of imprisonment of at least six months; or
- (g) has been found, in accordance with any law, to have misused or abused a State office or public office or to have contravened Chapter Six.

(3) A person is not disqualified under clause (2) unless all possibility of appeal or review of the relevant sentence or decision has been exhausted.

*Section 24 of No.24 of 2011 that the Bill proposes to amend—*

**24. Qualifications and disqualifications for nomination as member of Parliament**

(1) Unless disqualified under subsection (2), a person qualifies for nomination as a member of Parliament if the person—

- (a) is registered as a voter;
- (b) satisfies any educational, moral and ethical requirements prescribed by the Constitution and this Act; and
- (c) is nominated by a political party, or is an independent candidate who is supported—
  - (i) in the case of election to the National Assembly, by at least one thousand registered voters in the constituency; or
  - (ii) in the case of election to the Senate, by at least two thousand registered voters in the county.

(2) A person is disqualified from being elected a member of Parliament if the person—

- (a) is a State officer or other public officer, other than a member of Parliament;
- (b) has, at any time within the five years immediately preceding the date of election, held office as a member of the Commission;
- (c) has not been a citizen of Kenya for at least the ten years immediately preceding the date of election;
- (d) is a member of a county assembly;
- (e) is of unsound mind;
- (f) is an undischarged bankrupt;
- (g) is subject to a sentence of imprisonment of at least six months, as at the date of registration as a candidate, or at the date of election; or
- (h) is found, in accordance with any law, to have misused or abused a State office or public office or in any way to have contravened Chapter Six of the Constitution.

(3) A person is not disqualified under subsection (2) unless all possibility of appeal or review of the relevant sentence or decision has been exhausted.

*Section 25 of no.24 of 2011 that the Bill proposes to amend—*

**25. Qualifications for nomination as member of county assembly**

(1) Unless disqualified under subsection (2), a person qualifies for nomination as a member of a county assembly if the person—

- (a) is registered as a voter;

- (b) satisfies any educational, moral and ethical requirements prescribed the Constitution and this Act; and
  - (c) is either—
    - (i) nominated by a political party; or
    - (ii) an independent candidate supported by at least five hundred registered voters in the ward concerned.
- (2) A person is disqualified from being elected a member of a county assembly if the person—
- (a) is a State officer or other public officer, other than a member of the county assembly;
  - (b) has, at any time within the five years immediately before the date of election, held office as a member of the Commission;
  - (c) has not been a citizen of Kenya for at least the ten years immediately preceding the date of election;
  - (d) is of unsound mind;
  - (e) is an undischarged bankrupt;
  - (f) is serving a sentence of imprisonment of at least six months; or
  - (g) has been found, in accordance with any law, to have misused or abused a State office or public office or to have contravened Chapter Six of the Constitution.
- (3) A person is not disqualified under subsection (2) unless all possibility of appeal or review of the relevant sentence or decision has been exhausted.