

## **SPECIAL ISSUE**



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GAZETTE NOTICE NO. 7775

### **THE CONSTITUTION OF KENYA**

#### **IN THE MATTER OF THE TRIBUNAL APPOINTED UNDER SECTIONS 62 AND 64 OF THE CONSTITUTION OF KENYA TO INVESTIGATE THE CONDUCT OF JUDGES OF APPEAL**

#### **RULES OF PROCEDURE**

THIS Tribunal has been convened pursuant to its appointment to investigate the conduct of Judges of Appeal, Richard Otieno Kwach, Amritlal B. Shah, A. A. Lakha, Moijo M. ole Keiwua, Effie Owuor and P. N. Waki, including, but not limited to, the allegations that the said Judges of Appeal have been involved in corruption, unethical practices and absence of integrity in the performance of the functions of their office, as stated in Gazette Notice No. 7280 of 2003.

The Tribunal makes the following rules for the conduct and management of the proceedings of the investigation, pursuant to its mandate under the Constitution of Kenya and the aforementioned Gazette Notice:

1. The Tribunal shall sit daily from Monday to Friday, from 9.30 a.m. to 1.00 p.m. and from 3.00 p.m. to 5.00 p.m., at such place as the Tribunal shall determine and notify the public.
2. The investigation by the Tribunal shall be held in private unless the Tribunal, at its own discretion or at the request of any of the subjects of the investigation, otherwise directs.
3. The Tribunal may exclude any person or class of persons from all or any part of the investigation if satisfied that it is desirable to do so—
  - (a) the preservation of order; or
  - (b) the due conduct of the investigation; or
  - (c) the protection of the person, property or reputation of any witness in the investigation or any person referred to in the course of the investigation,and may, if satisfied that it is desirable to do so for any of the foregoing purposes, order that no person shall publish the name, address or photograph of any such witness or person or any evidence or information whereby he would be likely to be identified.
4. Each subject of the investigation or any person adversely affected or implicated in the investigation shall have the right to be present during all of the proceedings that relate to him or her and may choose to be represented by counsel of their choice.

5. The counsel assisting the Tribunal shall present evidence relating to the investigation.

6. (1) The Tribunal shall serve on each subject of the investigation a hearing notice in Form 1 in the Schedule, at least fourteen (14) days before the date of the hearing.

(2) The counsel assisting the Tribunal shall draw up a list of the allegations against each subject of the investigation, together with a summary of the evidence in support of the allegations and shall serve the document containing the allegations and the summary of the evidence on the subject of the investigation, at least fourteen (14) days before the date of the hearing.

7. (1) The Tribunal may—

(a) at its sole discretion; or

(b) at the request of the counsel assisting the Tribunal or any of the subjects of the investigation,

summon any person or persons to testify before it on oath or to produce such documents as the Tribunal may require, and the person so summoned shall be obliged to attend and to testify or produce the required documents and the provisions applying to witnesses summoned by ordinary courts of law shall apply to such person.

(2) A request made under paragraph (1) shall be in writing and shall be addressed to the Secretary to the Tribunal.

(3) A witness summons under this rule shall be in Form 2 in the Schedule.

8. The Tribunal shall not be bound by the provisions of the Evidence Act (Cap. 80) but shall be guided by the ordinary rules of evidence and procedure, including the rules of natural justice and relevancy.

9. Each subject of the investigation shall have the right to cross-examine any or all witnesses who give evidence against him or her. If the subject is represented by counsel, then such counsel shall conduct the cross-examination.

10. Each subject of the investigation shall be entitled to call evidence to rebut allegations made against him or her.

11. Each subject of the investigation and any witness called by the subject may be examined by the Tribunal, or by the counsel assisting the Tribunal, whether such subject or witness elects to give evidence or not.

12. The Tribunal may call for further evidence on any relevant point or matter before it and may recall any witness for further examination.

13. At the close of all the evidence that may be called before the Tribunal, counsel assisting the Tribunal and each subject of the investigation or, if represented, their counsel may make such submissions as they may think necessary.

14. The Tribunal may, from time to time, by notice in the Gazette, amend these Rules.

#### SCHEDULE

##### FORM 1 (r. 6 (1))

##### HEARING NOTICE

To: .....(Subject)

WHEREAS His Excellency the President and Commander-in-Chief of the Armed Forces of the Republic of Kenya has appointed a Tribunal to investigate your conduct as per the mandate of the Tribunal set out in Gazette Notice No. 7280 of 2003, annexed hereto:

TAKE NOTICE that we, the said Tribunal will assemble at .....(venue), at .....a.m., on ..... 2003, to carry out the said investigation.

AND FURTHER, TAKE NOTICE that you .....(subject) may appear either in person or by your advocate at the hearing of the evidence, to cross-examine any witness testifying thereto, and to adduce, without unreasonable delay, material evidence in your behalf in refutation of, or otherwise in relation to the evidence.

AND FURTHER, TAKE NOTICE that the Tribunal will proceed to conduct the investigation and receive evidence pertaining thereto your absence notwithstanding.

GIVEN under the hand of the Chairman for and on behalf of the said Tribunal this .....day of ..... 2003.

.....  
Chairman of the Tribunal.

To be served on:

.....  
.....  
.....  
.....

Please acknowledge this notice and the attached instrument by signing hereunder:

.....  
..... day of ..... 2003

##### FORM 2 (r. 7 (3))

##### WITNESS SUMMONS

To: .....(Subject)

WHEREAS His Excellency the President and Commander-in-Chief of the Armed Forces of the Republic of Kenya has appointed a Tribunal to investigate the conduct of Judges of Appeal, the mandate of which is set out in Gazette Notice No. 7280 of 2003:

AND WHEREAS your personal attendance is required as a witness to give evidence.

NOW THEREFORE you are commanded to attend the investigation at .....(venue) at ..... a.m., on the .....day of ..... 2003, as a witness in the said investigation and to remain in attendance until released by the Tribunal.

GIVEN under the hand of the Chairman for and on behalf of the said Tribunal this .....day of ..... 2003.

.....  
Chairman of the Tribunal.

To be served on:

.....  
.....  
.....  
.....

Please acknowledge this witness summons by signing hereunder:

.....  
..... day of ..... 2003

Made on the 28th October, 2003.

JUSTICE (RTD.) A. M. AKIWUMI,  
Chairman of the Tribunal.