



THE KENYA GAZETTE

Published by Authority of the Republic of Kenya

(Registered as a Newspaper at the G.P.O.)

Vol. CVI—No. 4

NAIROBI, 6th January, 2004

Price Sh. 40

GAZETTE NOTICE NO. 96

THE CONSTITUTION OF KENYA

TRIBUNAL TO INVESTIGATE CONDUCT OF PUISNE JUDGES

(G. N. No. 8829 of 2003)

RULES OF PROCEDURE

WHEREAS in exercise of the powers conferred by section 62 (5) of the Constitution of Kenya, His Excellency the President, through Gazette Notice No. 8829 of the 11th December, 2003, appointed a Tribunal to investigate the conduct of Puisne Judges, Daniel K. S. Aganyanya, Tom Mbaluto, A. Mbogholi Msagha, Roselyn Nambuye, J. V. Odero Juma, and J. Kasanga Mulwa;

AND WHEREAS the said Gazette Notice mandates the Tribunal to regulate its own procedure;

NOW THEREFORE, the Tribunal makes the following Rules of Procedure:

1. Nothing in these Rules shall be deemed to limit or otherwise affect all the powers of the Tribunal necessary for the proper execution of its mandate as set out in the aforementioned Gazette Notice.
2. The Tribunal shall sit on such days, and at such times and venues as shall be determined by the Tribunal.
3. The quorum necessary for the conduct of the hearing of the Tribunal shall be the Chairman and two (2) other members.
4. The business of the Tribunal shall be carried on by any three members and the Secretary.
5. The hearings shall be held in private save that the subject of the investigation may choose to have the hearing in public.
6. The Tribunal may exclude any person or class of persons from all or any part of the investigation if satisfied that it is desirable so to do for the following reasons—
 - (a) the preservation of order; or
 - (b) the due conduct of the investigation; or
 - (c) the protection of any witness in the investigation or any person referred to in the course of the investigation or the property or reputation of such witness or person,and may, if satisfied that it is desirable for any of the purposes aforesaid so to do, order that no person shall publish the name, address photograph of any such witness or person or any evidence or information whereby he would or may be identified from.
7. The subject of the investigation shall have the right to be present

during all of the proceedings that relate to him or to her and shall be entitled to legal representation by counsel.

8. The Counsel assisting the Tribunal will present evidence relating to the conduct of the subject and any matter relevant to the investigation.
9. (1) The Tribunal shall serve on each subject of the investigation a hearing notice, at least fourteen (14) days before the date of 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 hearing.
10. The Tribunal may, at its sole discretion, 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.
11. The Tribunal shall not be bound by the provisions of the Evidence Act but shall be guided by the ordinary rules of evidence and procedure, including the rules of natural justice and relevancy.
12. The subject of the investigation shall have the right to cross-examine any or all witnesses in the investigation.
13. (1) The subject of the investigation shall be entitled to call evidence to rebut allegations made against him or her.
(2) The subject duly served may elect not to attend in person or by counsel or at all, in which event in Tribunal shall be entitled to consider the evidence available and make a report and appropriate recommendations.
14. The Tribunal and Counsel assisting the Tribunal shall be entitled to cross-examine the subject or any of the witnesses called by the subject.
15. The Tribunal shall have the power to recall any witness or witnesses.
16. Evidence may be presented in form of memorandum, affidavit or other documentation and the Tribunal shall be entitled to receive such documents and to use the contents thereof in forming its opinion.

Provided however that the subject shall be furnished with copies of any documentary evidence and may seek leave to address the Tribunal thereon.

17. At the close of the hearing all evidence before the Tribunal in respect of the subject, Counsel assisting the Tribunal and the subject, or his or her Counsel shall be entitled to make submissions.

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

19. Gazette Notice No. 7776 of 2003, is revoked.

Made on the 22nd December, 2003.

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