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**KENYA CITIZENSHIP AND IMMIGRATION ACT**

CHAPTER 172

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**CHAPTER 172**

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**ARRANGEMENT OF SECTIONS**

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## CHAPTER 172

## KENYA CITIZENSHIP AND IMMIGRATION ACT

[Date of assent: 27th August, 2011.]

[Date of commencement: 30th August, 2011.]

**AN ACT of Parliament to provide for matters relating to citizenship; issuance of travel documents; immigration and for connected purposes**

[Act No. 12 of 2011, Corr. No. 18/2012, Act No. 12 of 2012.]

## PART I – PRELIMINARY

**1. Short title**

This Act may be cited as the as the Kenya Citizenship and Immigration Act, 2011.

**2. Interpretation**

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

“**application**” means a request in a prescribed form made under this Act;

“**Board**” means the Kenya Citizens and Foreign Nationals Management Service Board established under section 5 of the Kenya Citizens and Foreign Nationals Management Service Act;

“**border**” means the national borders of Kenya and includes the ports of entry, the coastlines and the outer margin of territorial waters;

“**Cabinet Secretary**” means the Cabinet Secretary responsible for matters relating to citizenship and the management of foreign nationals;

“**carrier**” includes any ship, boat, aircraft, wagon, truck, or any other vessel of conveyance;

“**certificate of registration**” means a certificate of registration issued under section 18;

“**child**” means any human being under the age of eighteen years;

“**dependant**” means a person who by reason of age, disability or any status of incapacity is unable to maintain himself or herself adequately and relies on another person for his maintenance;

“**deportation**” means the action or procedure aimed at causing an illegal foreign national to leave the country either voluntarily or compulsorily, or under detention in terms of this Act and the verb ‘to deport’ has a corresponding meaning;

“**director**” means any person appointed as a director under section 16 of the Kenya Citizens and Foreign Nationals Management Service Act, 2011;

“**entry**” means admission into Kenya at a designated port of entry on the basis of the authority to do so validly granted under this Act;

**“exit”** means departing Kenya from a designated port of entry in compliance with this Act;

**“foreign national”** means any person who is not a citizen of Kenya;

**“foreign nationals order”** means an order made by the Cabinet Secretary under section 56;

**“foreign national registration certificate”** means a registration certificate issued under section 56;

**“habitual residence”** means stable, factual residence of a person, in Kenya;

**“holding facility”** means any place designated as a holding facility under section 50 of this Act;

**“human smuggling”** means the procurement, in order to obtain, directly or indirectly a financial or other material benefit, of the illegal entry (and exit) of a foreign national into and outside Kenya;

**“immigration officer”** means the Director and any of the persons appointed as an immigration officer under section 16 of the Kenya Citizens and Foreign Nationals Management Service Act (Cap. 174);

**“inadmissible person”** means a person declared under section 33(2) as an inadmissible person.

**“Kenya mission”** includes an office of a consular officer of the Government of Kenya and where there is no such office, such other office as may be prescribed;

**“marriage”** means a legally sanctioned conjugal relationship between a man and a woman intended to be permanent and recognized under the laws of Kenya;

**“pass”** means a pass issued pursuant section 36;

**“passport”** means a passport issued under this Act or issued by any lawful authority or government recognized by the Government of Kenya;

**“permit”** means a permit issued under section 40;

**“permanent resident”** means a person who has acquired permanent residence status under section 38 and has not subsequently lost that status;

**“permanent residence”** means a status granted to a person under section 37;

**“piracy”** has the meaning assigned under section 369 of the Merchant Shipping Act, 2009 (No. 4 of 2009);

**“premises”** means any building, structure, enclosure or tent together with or without the land on which it is situated and the adjoining land used in connection with it and includes any land without any building structure or tent and any vehicle, conveyance, vessel or ship;

**“prohibited immigrant”** means a person declared as a prohibited immigrant under section 33(1);



“**port**” means a designated place where a person has to report before he or she may move, sojourn, enter, exit or remain within the country;

“**Service**” means the Kenya Citizens and Foreign Nationals Management Service established under the Kenya Citizens and Foreign Nationals Management Service Act, 2011;

“**stateless person**” means a person who is not recognized as a citizen by any state under the operation of the laws of any state;

“**travel document**” means a document issued under this Act or issued by any lawful authority or government recognized by the Government of Kenya for the purpose of travel;

“**trafficking in persons**” has the meaning assigned to it by section 3 of the Counter Trafficking in Persons Act, 2010 (No. 8 of 2010);

“**visa**” means a visa issued under this Act or issued by any lawful authority or government recognized by the Government of Kenya.

(2) Despite subsection (1), until after the first elections under the Constitution, references in this Act to the expression “**Cabinet Secretary**” shall be construed to mean “**Minister**”.

### **3. Age**

For the purposes of this Act, a person is considered not to have attained a given age until the commencement of the relevant anniversary of the day of his birth.

## **PART II – ADMINISTRATION**

### **4. Appointment and functions of Director**

(1) The Service shall appoint a Director to be in charge of citizenship and immigration matters.

(2) The Director shall subject to such directions as may from time to time be given by the board perform the following functions—

- (a) advising the Cabinet Secretary on matters relating to grant and loss of citizenship;
- (b) the issuance of passports and other travel documents;
- (c) designating ports and points of entry and exit;
- (d) border management including the control and regulation of entry and exit of all persons at ports and points of entry and exit;
- (e) the control and regulation of residency;
- (f) advising the Cabinet Secretary on declaration and removal of prohibited immigrants and inadmissible persons;
- (g) provision of consular services at missions abroad;
- (h) advising the Service on citizenship and immigration matters;
- (i) conducting research, collection and analysis of data and management of records; and
- (j) performing any other functions as may be directed by the Service.

(2) The Director and all immigration officers under his or her charge shall perform their duties in accordance with the values and principles prescribed in the Constitution.

[Act No. 12 of 2012, Sch.]

#### **5. Appointment of immigration officers**

The Service shall appoint such immigration officers as may be necessary for the carrying out of the provisions of this Act.

### **PART III – CITIZENSHIP**

#### **6. Citizenship by birth**

A citizen by birth will carry the same meaning as provided in Article 14 as read together with clause 30 of the Sixth Schedule of the Constitution.

#### **7. Limitation as to descent**

A person born outside Kenya shall be a citizen by birth if on the date of birth that person's mother or father was or is a citizen by birth.

#### **8. Dual citizenship**

(1) A citizen of Kenya by birth who acquires the citizenship of another country shall be entitled to retain the citizenship of Kenya subject to the provisions of this Act and the limitations, relating to dual citizenship, prescribed in the Constitution.

(2) A dual citizen shall, subject to the limitations contained in the Constitution, be entitled to a passport and other travel documents and to such other rights as shall be the entitlement of citizens.

(3) Every dual citizen shall disclose his or her other citizenship in the prescribed manner within three months of becoming a dual citizen.

(4) A dual citizen who fails to disclose the dual citizenship in the prescribed manner commits an offence and shall be liable, on conviction, to a fine not exceeding five million shillings or imprisonment for a term not exceeding three years or both.

(5) A dual citizen who uses the dual citizenship to gain unfair advantage or to facilitate the commission of or to commit a criminal offence, commits an offence and shall be liable, on conviction, to a fine not exceeding five million shillings or imprisonment for a term not exceeding three years or both.

(6) A dual citizen who holds a Kenyan passport or other travel document and the passport or other travel document of another country shall use any of the passports or travel documents in the manner prescribed in the Regulations

(7) A dual citizen shall owe allegiance and be subject to the laws of Kenya.

#### **9. Citizenship by Presumption for foundlings**

(1) Any person who finds a child who is or appears to be less than eight years of age, and whose nationality and parents are not known shall present the child to the Government department dealing with matters relating to children and where there is no such department, present the child to the nearest Government department or agency.

(2) Where a child is received by a Government department or agency that is not responsible for matters relating to children, the department or agency shall immediately report and present the child to the Government department responsible for matters relating to children.

(3) The Government department responsible for matters relating to children shall undertake the necessary investigations including, subject to the rights of the child under any written law, the use of media to determine origin of the child.

(4) If the Government department responsible for matters relating to children fails to determine the origin and identity of the child in question, it shall present the child found to the Children's Courts and take out proceedings for the determination of the age, nationality, residence and the parentage of the child.

(5) The court shall after determining the adequacy of the efforts undertaken by the Government department responsible for matters relating to children, issue an order directing that such a child be presumed to be a citizen by birth or any other order that it deems fit to grant.

(6) Where the court makes an order that the child be presumed to be a citizen by birth, it may direct the Director to register the child in the register of children presumed citizen by birth.

(7) Any person who brings into Kenya, conspires, assists or facilitates the abandoning of a child with the intention of conferring citizenship on the child commits an offence and is liable, on conviction, to a fine not exceeding ten million shillings or imprisonment for a term not exceeding ten years or to both.

#### **10. Regaining citizenship**

(1) A person who was a citizen of Kenya by birth and who ceased to be a citizen of Kenya because he or she acquired the citizenship of another country may apply in the prescribed manner, to the Cabinet Secretary to regain Kenyan citizenship.

(2) The application under subsection (1) shall be accompanied by—

- (a) proof of applicant's previous Kenyan citizenship;
- (b) proof of citizenship of the other country.

(3) Upon receipt of an application made under subsection (1), the Cabinet Secretary shall cause the application to be registered and keep a record of such application.

(4) The Cabinet Secretary shall after registering an application, issue a certificate in a prescribed form to the applicant.

(5) The Cabinet Secretary may issue an extract of the register to the applicant and such further extracts to such third parties as shall be entitled upon application and payment of such fees as may be prescribed.

#### **11. Citizenship by marriage**

A person who has been married to a citizen of Kenya for a period of at least seven years shall be entitled, on application, in the prescribed manner to be registered as a citizen of Kenya, if—

- (a) the marriage was solemnized under a system of law recognized in Kenya, whether solemnized in Kenya or outside Kenya;

- (b) the applicant has not been declared a prohibited immigrant under this Act or any other law;
- (c) the applicant has not been convicted of an offence and sentenced to imprisonment for a term of three years or longer;
- (d) the marriage was not entered into for the purpose of acquiring a status or privilege in relation to immigration or citizenship; and
- (e) the marriage was subsisting at the time of the application.

## **12. Widows and widowers**

(1) A foreign national who has been married to a citizen who but for the death of the citizen would have been entitled, after a period of seven years, to be registered as a citizen of Kenya under section 11, shall be deemed to be lawfully present in Kenya for the unexpired portion of the seven years and shall be eligible for registration as a citizen on application in the prescribed manner upon expiry of the seven year period.

(2) The conditions for registration provided in section 11(a) to (d) shall apply to a widow or widower who has applied for registration under this section.

(3) A widow or widower who marries a non-citizen before the expiry of the period of seven years shall not be entitled to acquire citizenship by registration under this section.

## **13. Lawful residence**

(1) A person who has attained the age of majority and capacity who has been lawfully resident in Kenya for a continuous period of at least seven years may on application be registered as a citizen if that person—

- (a) has been ordinarily resident in Kenya for a period of seven years, immediately preceding the date of application;
- (b) has been a resident under the authority of a valid permit or has been exempted by the Cabinet Secretary, in accordance with section 34(3)(h) and who is not enjoying the privileges and immunities under the Privileges and Immunities Act (Cap. 179);
- (c) has resided in Kenya throughout the period of twelve months immediately preceding the date of the application;
- (d) has an adequate knowledge of Kenya and of the duties and rights of citizens as contained in this Act;
- (e) is able to understand and speak Kiswahili or a local dialect;
- (f) understands the nature of the application under subsection (1);
- (g) has not been convicted of an offence and sentenced to imprisonment for a term of three years or longer;
- (h) satisfies the Cabinet Secretary that he or she intends to reside in Kenya after registration;
- (i) has been determined, through an objective criteria, and the justification made, in writing, that he or she has made or is capable of making a substantive contribution to the progress or advancement in any area of national development within Kenya; and
- (j) is not an adjudged bankrupt.

(2) The Cabinet Secretary shall not register an applicant as a citizen of Kenya under this section if at the date of making the application applicant's country of citizenship is at war with Kenya.

(3) A child of a citizen by registration who was born before the parent acquired citizenship may on application by the parent or legal guardian be registered as a Kenya citizen upon—

- (a) production of documents conferring Kenyan citizenship to any of the parents;
- (b) production of the child's birth certificate; and
- (c) proof of lawful residence of the child in Kenya.

(4) A person who is a dependant of any biological parent or who is under the legal guardianship of a person who is a citizen of Kenya by registration shall, upon application made in the prescribed manner, be registered as a citizen upon—

- (a) production of documents conferring Kenyan citizenship to any of the parents or the legal guardian;
- (b) production of the child's or the person with disability's birth certificate; and
- (c) proof of lawful residence of the child or person with disability in Kenya.

[Act No. 12 of 2012, Sch.]

#### **14. Adopted children**

A child who is not a citizen, but is adopted by a citizen, is entitled on application in the prescribed manner by the adopting parent or legal guardian to be registered as a citizen upon—

- (a) the production of proof of the Kenyan citizenship of the adopting parent;
- (b) the production of a valid adoption certificate issued in a reciprocating state or other jurisdiction whose orders, decrees are recognized in Kenya; and
- (c) proof of lawful residence of the child in Kenya.

#### **15. Stateless persons**

(1) A person who does not have an enforceable claim to the citizenship of any recognized state and has been living in Kenya for a continuous period since 12th December, 1963, shall be deemed to have been lawfully resident and may, on application, in the prescribed manner be eligible to be registered as a citizen of Kenya if that person—

- (a) has adequate knowledge of Kiswahili or a local dialect;
- (b) has not been convicted of an offence and sentenced to imprisonment for a term of three years or longer;
- (c) intends upon registration as a citizen to continue to permanently reside in Kenya or to maintain a close and continuing association with Kenya; and
- (d) the person understands the rights and duties of a citizen.

(2) Applications under this section shall be made within a period of five years from the date of commencement of this Act and may by notice in the *gazette* be extended by the Cabinet Secretary for an additional period of three years.

#### **16. Migrants**

(1) A person who voluntarily migrated into Kenya before the 12th December, 1963, and has been continuously living in Kenya shall be deemed to have been lawfully resident and may, on application in a prescribed manner, be eligible to be registered as a citizen of Kenya if that person—

- (a) does not hold a passport or an identification document of any other country;
- (b) has adequate knowledge of Kiswahili or a local dialect;
- (c) has not been convicted of an offence and sentenced to imprisonment for a term of three years or longer;
- (d) intends upon registration as a citizen to continue to permanently reside in Kenya or to maintain a close and continuing association with Kenya; and
- (e) the person understands the rights and duties of a citizen.

(2) Applications under this section shall be made within a period of five years from the date of commencement of this Act and may by notice in the *gazette* be extended by the Cabinet Secretary for an additional period of three years.

#### **17. Descendants of stateless persons and migrants**

(1) A person who has attained the age of eighteen years and whose parents are or in the case of deceased parents were eligible to be registered as a citizen under sections 15 and 16 may, upon application in the prescribed manner be registered as a citizen of Kenya if—

- (a) there is sufficient proof that the parents of that person fall within the class of persons referred to in section 15 and 16 of this Act;
- (b) the person was born in Kenya and has been continuously living in Kenya since birth;
- (c) the person does not hold and has never held a passport or identification documents of any other country;
- (d) the person understands and speaks Kiswahili or a local dialect;
- (e) has not been convicted of an offence and sentenced to imprisonment for a term of three years or longer;
- (f) the person intends upon registration as a citizen to continue to permanently reside in Kenya or to maintain a close and continuing association with Kenya; and
- (g) the person understands the rights and duties of a citizen.

(2) The Cabinet Secretary may for sufficient reason grant citizenship to individuals or children or dependants of individuals who are citizens of other countries and who voluntarily migrated to Kenya after 1963, and who, though they are holders of passports or identification documents of any other country, satisfy all the other requirements under section 15 or 16 of this Act.

[Act No. 12 of 2012, Sch.]

**18. Effect of registration**

A person who qualifies to be registered as a citizen of Kenya under this Act, shall upon taking the oath or affirmation or allegiance, in the prescribed manner, be issued with a certificate of registration as a citizen of Kenya.

**19. Voluntary renunciation of Kenyan citizenship**

(1) Where a Kenyan citizen by birth voluntarily makes a declaration of renunciation of Kenyan citizenship, in the prescribed manner, the Cabinet Secretary shall cause the declaration to be registered.

(2) The Cabinet Secretary shall not register a declaration of renunciation unless

- (a) he or she is satisfied of the identity and place of residence of the applicant; and
- (b) he or she has duly informed the person renouncing the citizenship of the implications of such renunciation.

(3) The Cabinet Secretary may withhold the registration of any declaration of renunciation made when Kenya is at war with another country.

(4) The Cabinet Secretary shall not register a declaration of renunciation if the Cabinet Secretary is satisfied that it would not be in the interests of Kenya to do so or if in his opinion the renunciation is likely to render the applicant stateless.

(5) Upon the registration of a declaration of renunciation made in accordance with this section, the person who made it shall cease to be a Kenya citizen.

(6) Any citizen who renounces his or her Kenya citizenship shall immediately surrender all documents identifying them as a citizen to the relevant Government agency.

(7) A Government agency that receives documents surrendered under subsection (6) shall acknowledge receipt of the documents, in writing.

**20. Voluntary renunciation of citizenship of another country**

(1) A foreign national who applies for registration as a citizen of Kenya shall indicate in the application whether he or she intends to renounce the citizenship of the other country.

(2) If a foreign national who had indicated his intention to renounce the citizenship of the other country under subsection (1), shall, within ninety days after being registered as a citizen of Kenya, avail to the Cabinet Secretary evidence of renunciation of the citizenship of the other country.

(3) A person who does not avail the evidence of renunciation as required in subsection (2) shall be deemed to be a dual citizen.

(4) The Cabinet Secretary may refuse to register any such renunciation if it is made during any period of war in which Kenya may be engaged in with the country referred to in the application or if, in his opinion it is otherwise contrary to public policy.

**21. Revocation of citizenship**

(1) The Cabinet Secretary may, where there is sufficient proof and on recommendation of the Citizenship Advisory Committee, revoke any citizenship acquired by registration on the grounds specified in Article 17 of the Constitution.

(2) The Cabinet Secretary shall by notice, in writing, inform any person whose citizenship is due for revocation of the intention to revoke his or her citizenship giving reasons for the intended revocation.

(3) The Cabinet Secretary shall give a person who has been given a notice under subsection (2) an opportunity to present the reasons why his or her citizenship should not be revoked.

(4) The Cabinet Secretary may after considering the presentations made under subsection (3) revoke the citizenship and cause the revocation to be entered into the register for revocation of citizenship.

(5) The Cabinet Secretary shall within fourteen days of revocation notify the person of the decision to revoke his or her citizenship giving the reasons for the revocation.

(6) A person who is aggrieved by the decision of the Cabinet Secretary's to revoke his citizenship may within thirty days after receipt of communication on the revocation appeal to the High Court.

(7) Where an appeal has been filed under subsection (6), the person who has appealed shall be deemed to be lawfully present in Kenya until the appeal is determined.

(8) Where an appeal to the High Court is not allowed, the person may appeal to the Court of Appeal and the Supreme Court and such person may not be removed from Kenya until he has exhausted all the avenues of appeal.

(9) A person whose citizenship is revoked by the Cabinet Secretary shall cease to be a citizen of Kenya on the date of the revocation or in any case upon exhaustion of appeal.

(10) The documents of identification that had been previously issued to a person whose citizenship has been revoked shall become invalid on the date of revocation and the holder shall surrender them immediately after the revocation of citizenship is communicated.

(11) A person who does not surrender the documents of identification commits an offence.

(12) The renunciation by any person of his or her Kenyan citizenship or the revocation of citizenship shall not relieve that person from his personal obligations or any liability that had accrued before such renunciation or revocation of his or her citizenship.

**PART IV – RIGHTS AND DUTIES OF CITIZENS****22. Rights of citizens**

(1) Every citizen is entitled to the rights, privileges and benefits and is subject to the limitations provided for or permitted by the Constitution or any other written law including—

- (a) the right to enter, exit, remain in and reside anywhere in Kenya;



- (b) the right to be registered as a voter without unlawful restriction;
- (c) the right to participate in free, fair and regular elections based on universal suffrage and subject to the Constitution, to vote and vie for—
  - (i) any elective body or office established under the Constitution;
  - (ii) any office of any political party of which the citizen is a member;
  - (iii) vote in any referendum;
- (d) the right to own land and other property in any part of the country, in accordance with the law;
- (e) the right to be appointed to a public office subject to the Constitution and other relevant laws;
- (f) if the person is a citizen by birth and does not owe allegiance to any other state, the right to vie for any elective office as President or Deputy President subject Article 78 and 137 of the Constitution; and
- (g) the entitlement to any document of registration or identification issued by the State to citizens including—
  - (i) a birth certificate;
  - (ii) a certificate of registration
  - (iii) a passport;
  - (iv) a national identification card; and
  - (v) a voter's card, where applicable.

### **23. Duties of citizens**

Every citizen of Kenya shall—

- (a) owe full allegiance to the State and the Constitution of Kenya;
- (b) obey the laws of Kenya;
- (c) pay taxes as provided for under the laws of Kenya;
- (d) protect and conserve the environment and ensure ecologically sustainable development and use of natural resources;
- (e) cooperate with State organs and other Citizen of Kenya to ensure enforcement of the law
- (f) respect and promote the dignity and rights of other persons;
- (g) respect and promote national integration and unity, peaceful co-existence; and
- (h) promote the values and principles prescribed in the Constitution

### **PART V – PASSPORTS AND OTHER TRAVEL DOCUMENTS**

### **24. Persons entitled to passports and other travel documents**

(1) Every citizen is, subject to this Act, entitled upon application, in the prescribed manner, to be issued with a passport or other travel documents to facilitate international travel.

(2) A passport or travel document issued under this Act shall remain the property of the Government of Kenya.

(3) Notwithstanding subsection (2), a passport validly issued under this Act must remain in the possession of its holder until such time as there is lawful cause for its withdrawal, suspension or confiscation

(4) The Cabinet Secretary may subject to the Constitution and subject subsection (1), prescribe the information to be provided in a passport or travel document.

## **25. Types of passports and other travel documents**

(1) The following types of passports and travel documents may be issued under this Act—

- (a) Ordinary passport, issued on application to any citizen of Kenya;
- (b) Diplomatic passport, issued to such persons as may be prescribed in Regulations;
- (c) East African Passport, issued to a citizen of Kenya who intends to travel within the Partner States in East African Community;
- (d) Temporary passport, issued to any citizen of Kenya who for special circumstances cannot travel on an ordinary passport;
- (e) Emergency Travel Document, issued to a citizen of Kenya who is stranded outside Kenya or is being deported;
- (f) Certificate of Identity and Nationality, issued to a person other than a citizen of Kenya who cannot obtain a passport from the country of citizenship for the purpose of traveling outside Kenya;
- (g) Temporary Permit, issued to a citizen of Kenya who intends to travel within the East African Community Partner States or to such States as may be prescribed by the Cabinet Secretary; and
- (h) Travel Document issued subject to the provisions of the Refugee Act, 2006 (No. 13 of 2006), and any other Humanitarian Convention.

(2) The Cabinet Secretary may make regulations prescribing the form of passport and other travel documents.

(3) Notwithstanding the provisions of subsection (1), the Cabinet Secretary may after consultations with relevant agencies, by order, in the *Gazette*, declare any other document to be a travel document for the purpose of this Act.

## **26. Validity of passports and other travel documents**

(1) An Ordinary or Diplomatic passport shall be valid—

- (a) for use in all countries in the world, except for any countries specified in the passport; and
- (b) for a period that does not exceed ten years from the date of issue, and in the case of children for a period not exceeding five years.

(2) An East African passport shall be valid for—

- (a) use in all Partner States in the East African Community or for such other countries as may be prescribed by the Cabinet Secretary;

- (b) a period not exceeding ten years from the date of issue, and in the case of children for a period not exceeding five years.
- (3) A temporary passport shall be valid for—
  - (a) use in all countries in the world, except for any countries specified in the temporary passport in respect of which it is stated not to be valid; and
  - (b) a period not exceeding one year from the date of issue.
- (4) An emergency travel document shall be valid for—
  - (a) travel to Kenya and other countries of transit; and
  - (b) a single journey for a period stated therein;
- (5) A Certificate of Identity and Nationality is valid for travel to all countries stated therein and shall be valid for a period not exceeding two years from the date of issue.
- (6) A Temporary Permit shall be valid for—
  - (a) travel in all partner states in the East African Community or for such other countries as may be prescribed by the Cabinet Secretary; and
  - (b) a period not exceeding one year from the date of issue.
- (7) Travel Document issued to a refugee shall be valid for travel to all countries except the country of the holder's nationality and shall be valid for a period of five years.

**27. Application for and issuance of passports and other travel documents**

(1) An application for issuance or replacement of a passport or other travel document shall be in the prescribed form.

(2) A person who wishes to apply for a passport shall appear in person before an immigration officer and make an application in the prescribed manner:

Provided that in special circumstance the Director may use his discretion to dispense with personal appearance.

- (3) An application made under subsection (1) shall be accompanied by—
  - (a) the birth certificate or adoption certificate of the applicant;
  - (b) the national identity card of the applicant; or
  - (c) a certificate of registration or naturalization, where applicable; or
  - (d) service identity cards for members of the Defence Force;
  - (e) passport size photographs as may be determined in Regulations;
  - (f) in case of an applicant who is a child or with a disability that renders them dependent, the parent's or legal guardian's written consent; and
  - (g) the prescribed fee.
- (4) An immigration officer shall, subject to this Act, issue or replace passports and other travel documents to any applicant.

(5) A passport or a travel document issued under this Act shall contain information prescribed by the Cabinet Secretary.

**28. Application for replacement of a passport and other travel document**

(1) Where the holder of a passport or other travel document requires a replacement of the passport or travel document or wishes to change the particulars in the passport or travel document, the holder shall apply in the prescribed manner.

(2) An application made under subsection (1) shall not be considered unless accompanied by the passport or travel document that is being held by the applicant.

(3) Upon issuance of a new passport or travel document the previously issued passport or travel document shall be cancelled.

**29. Lost, stolen mutilated or damaged passport**

(1) Where a passport or travel document is lost or stolen, the holder shall report the loss or theft to the nearest police station and immigration office or if outside the country, to the nearest Kenya mission.

(2) The immigration officer shall upon receiving information of the loss or theft of the passport or travel document, notify all immigration offices, Kenya missions abroad and other relevant authorities, of the loss or theft of the passport or travel document.

(3) Any person whose passport or travel document is lost, stolen, mutilated or damaged may apply for replacement, in the prescribed form and pay the prescribed fee.

(4) An application under subsection (3) shall be accompanied by a statutory declaration or a sworn affidavit of the circumstances surrounding the loss, theft, mutilation or damage of the passport or travel document.

(5) The immigration officer may, where a passport or travel document is lost, stolen, mutilated or damaged outside Kenya, issue or cause to be issued a passport or travel document upon the applicant complying with the provisions of subsections (3) and (4) as far as is reasonably possible.

**30. Rejection of an application for a passport or other travel document**

(1) An immigration officer shall reject an application for a passport or other travel document where the applicant—

- (a) is not a citizen in the case of an application for passport;
- (b) does not qualify under the provision of this Act in the case of other Travel Documents;
- (c) gives false material information for the purpose of obtaining a passport or other travel document; or
- (d) submits an incomplete application.

(2) Where an application for passport or other travel document has been rejected, the immigration officer shall within fourteen days give the reasons for rejection to an applicant, in writing.

### **31. Confiscation or suspension of a passport or travel document**

(1) An immigration officer or any other law enforcement officer may suspend or confiscate a passport or other travel document where—

- (a) the holder permits another person to use his passport or travel document;
- (b) the holder has been deported or repatriated to Kenya at the expense of the Government;
- (c) the holder is convicted for drug trafficking, money laundering, trafficking in persons and smuggling, acts of terrorism or any other international crime;
- (d) a warrant of arrest has been issued against the holder and there is a risk of absconding;
- (e) the holder is a person against whom there is a court order restricting movement or authorizing denial, confiscation, or suspension of the passport or travel document;
- (f) the holder is involved in passport or document fraud, passport or document forgery or transnational crimes; and
- (g) it is necessary to examine the passport or travel document for a period not exceeding seven days.

(2) The immigration officer shall, on suspending or confiscating the passport or travel document in accordance with subsection (1), inform the holder, in writing, within seven days, citing the reason, and may require him to surrender the passport or travel document.

(3) Upon being served with a notice under subsection (2), the holder shall within twenty one days of service, surrender the passport or travel document to the nearest immigration office or an authorized agent.

(4) Where the holder of a passport or travel document fails to surrender the passport or travel document as required under subsection (3), it shall become null and void after the expiry of twenty one days from the date of service of the notice to surrender the passport or travel document.

(5) A person who is aggrieved by the decision to suspend or confiscate their passport may, within fourteen days of the receipt of written notice of such suspension or confiscation, file an appeal to the High Court.

### **32. Passports and travel documents to be evidence of citizenship and domicile.**

(1) A passport shall be *prima-facie* evidence of the citizenship or domicile of the holder, as the case may be, and of their entitlement to state protection.

(2) Notwithstanding subsection (1), possession of a passport or travel document does not bar inquiry, investigation or judicial proceedings pertaining to the validity of the passport.

## PART VI – IMMIGRATION CONTROL

**33. Prohibited Immigrants and inadmissible persons**

(1) For purposes of this Act, a prohibited immigrant is a person who is not a citizen of Kenya and who is—

- (a) not having received a pardon—
  - (i) has been convicted in Kenya or any country of an offence created under a statute for which a sentence of imprisonment is for a minimum term of three years;
  - (ii) has been acquitted by a court of any offence and who at the time of acquittal has no valid immigration status;
  - (iii) has committed or is suspected of having committed an offence provided for under international treaties and conventions ratified by Kenya;
- (b) a person engaged in human trafficking, human smuggling, sexual exploitation and sex crimes;
- (c) a person who procures or attempts engage in trafficking or smuggling into and out of Kenya any person for the purpose of engaging in sexual offenses;
- (d) a person who is reasonably suspected to be engaged in or facilitates the trafficking of narcotics, prohibited, controlled or banned substances;
- (e) a person who there is reasonable cause to believe that he is engaged in or facilitates trafficking in persons;
- (f) a person whose presence in or entry into Kenya is unlawful under any written law;
- (g) a person in respect of whom there is in force an order made or deemed to be made under section 43 directing that such person must be removed from and remain out of Kenya;
- (h) a person in respect of whom there is reasonable cause to believe that he or she is engaged in, facilitates any activity detrimental to the security of Kenya or any other state;
- (i) a person in respect of whom there is reasonable cause to believe that he or she is engaged in, facilitates or is sympathetic to acts of terrorism or terrorist activities directed against Kenya or detrimental to the security of Kenya or any other state;
- (j) a person involved in or is reasonably suspected to be engaged in money laundering;
- (k) a person convicted of war crimes or crimes against humanity, genocide, murder, torture, kidnapping or in respect of whom there are reasonable grounds for believing they have financed or facilitated any such acts;
- (l) a person engaged in or suspected to be engaged in illicit arms trade;
- (m) a person engaged in or suspected to be engaged in illegal human body organs trade;

- (n) a person involved or reasonably suspected to be involved in crimes related to patents, copyrights, intellectual property rights, cyber-crimes and related crimes;
- (o) a person involved in or reasonably suspected to be involved in piracy or has been convicted of piracy and served his sentence;
- (p) a person who is or has been at any time a member of group or adherent or advocate of an association or organization advocating the practice of racial, ethnic, regional hatred or social violence or any form of violation of fundamental rights;
- (q) a person whose conduct offends public morality;
- (r) a person who knowingly or for profit aids, encourages or procures other persons who are not citizens to enter into Kenya illegally;
- (s) a person who is seeking to enter Kenya illegally;
- (t) a person who is a fugitive from justice;
- (u) a person whose refugee status in Kenya has been revoked under the Refugee Act, 2006 (No. 13 of 2006); and
- (v) any other person who is declared a prohibited immigrant by the order of Cabinet Secretary subject to the approval of parliament or who was, immediately before the commencement of this Act, a prohibited immigrant within the meaning of the Immigration Act (now repealed).

(2) For purposes of this Act, an inadmissible person is a person who is not a Kenyan citizen and who—

- (a) refuses to submit for examination by a medical practitioner after being required to do so under section 48(1)(d) of this Act;
- (b) the family and dependants of a prohibited immigrant;
- (c) incapable of supporting himself and his dependants (if any) in Kenya;
- (d) is adjudged bankrupt;
- (e) anyone who has been judicially declared incompetent;
- (f) an asylum seeker whose application for grant of refugee status has been rejected under the Refugee Act, 2006 (No. 13 of 2006); or
- (g) is, by order of the Cabinet Secretary, declared inadmissible on grounds of national security or national interest.

(3) The Cabinet Secretary may make regulations on admission of immigration officer's right to deny entry a person other than an asylum seeker who, upon entering or seeking to enter Kenya, fails to produce a valid and acceptable passport or travel document recognized in Kenya to an immigration officer on demand or within such time as that officer may allow.

(4) *Deleted by Act No. 12 of 2012, Sch.*

(5) Subject to section 34 the entry into and residence in Kenya of a Prohibited Immigrant or an inadmissible person shall be unlawful, and a person seeking to enter Kenya shall, if he or she is a prohibited immigrant or inadmissible person,

be refused permission to enter or transit through Kenya, whether or not he or she is in possession of any document which, were it not for this section, would entitle him or her to enter or transit through Kenya.

(6) An immigration officer may issue a pass to a prohibited immigrant or inadmissible person to enter or remain temporarily in Kenya for such period or authorize such prohibited immigrant or inadmissible to transit through Kenya subject to such conditions as may be specified in that pass or for transit purposes.

(7) The Cabinet Secretary may make Regulations for the declaration of prohibited immigrants or inadmissible persons.

(8) The Cabinet Secretary may from time to time review the status of prohibited immigrants and inadmissible persons, subject to the advice of the relevant committee.

[Act No. 12 of 2012, Sch.]

### **34. Residence**

(1) A person who is not a citizen of Kenya or an asylum seeker shall not enter or remain in Kenya unless she or he has a valid permit or pass.

(2) Subject to the provisions of this section, the presence in Kenya of any person who is not a citizen of Kenya shall, unless otherwise authorized under this Act, be unlawful, unless that person is in possession of a valid work permit or a valid residence permit or a valid pass.

(3) This section shall not apply to—

- (a) the accredited representative to Kenya of the government of any Commonwealth country, and the spouse and any child of that representative;
- (b) the accredited envoy to Kenya of a foreign sovereign state, and the spouse and any child of that envoy;
- (c) a person upon whom the immunities and privileges set in the laws relating to Privileges and Immunities have been conferred under these laws, and the spouses and any children or other dependants of that person;
- (d) the accredited diplomatic or consular staff of the persons referred to in paragraphs (a) and (b), and the spouses and any children of the accredited diplomatic or consular staff;
- (e) the official staff of the persons referred to in paragraphs (a) and (b), and the spouses and any children of the official staff;
- (f) the domestic staff of the persons referred to in paragraph (a), (b) and (c), and the spouses and any children of the domestic staff;
- (g) any person, or class or description of persons, exempted by the Cabinet Secretary from the provisions of this section by notice in the *Gazette*.

(4) Where a person who is exempted from the provisions of this section under subsection (3) ceases to be so exempted, that person shall after the



expiration of such period of time, not exceeding six months, as an immigration officer may allow for the departure of the person from Kenya, report to the director accordingly and apply for the grant of a new status under this Act.

[Act No. 12 of 2012, Sch.]

### **35. Issuance of visas**

(1) The Cabinet Secretary shall from time to time, make regulations, prescribing the types of visas and specifying persons or groups of persons and countries whose citizens shall be required to obtain or exempted from obtaining visas before entering Kenya.

(2) A person who wishes to obtain a visa shall apply to the Director in the prescribed form.

(3) A visa shall be issued by the Director or such officers as may act under powers delegated by the Director.

(4) Notwithstanding subsection (3), possession of a visa under this section shall not exempt any person entering Kenya from complying with any legislation relating to immigration.

### **36. Types of permits and passes**

(1) There shall be such classes of permits and passes as shall be prescribed under the regulations.

(2) Permits shall be issued in the manner provided in section 40 of this Act.

(3) Passes shall be issued by immigration officers in such manner as shall be prescribed in Regulations.

### **37. Permanent residence**

The following persons, their children and spouses shall be eligible upon application in the prescribed manner for grant of permanent residence status in Kenya—

- (a) persons who were citizens by birth but have since renounced or otherwise lost their citizenship status and are precluded by the laws of the countries of their acquired domicile from holding dual citizenship;
- (b) persons who have held work permits for at least seven years and have been continuously resident in Kenya for the three years immediately preceding the making of the application;
- (c) children of citizens who are born outside Kenya and have acquired citizenship of the domicile; and
- (d) the spouses of Kenyan citizen married for at least three years.

### **38. Rights and obligations of permanent residents**

A permanent resident shall—

- (a) have the right to enter and remain in Kenya, subject to the provisions of this Act;
- (b) have the right to be employed in Kenya;

- (c) have the right to attend educational facilities;
- (d) have right to own property legally in Kenya;
- (e) have the right to move and settle anywhere in Kenya;
- (f) have the right to access and enjoy social services and facilities in Kenya;
- (g) comply with residency obligation as may be prescribed;
- (h) be provided with a permanent residence certificate as prescribed under the regulations; and
- (i) comply with such other conditions as shall be imposed under the Regulations.

### 39. Loss of permanent residence status

A person shall lose permanent residence status—

- (a) upon acquisition of Kenya citizenship;
- (b) upon failing to comply with obligations and conditions under section 38;
- (c) when a removal order against him comes into force;
- (d) upon communicating in writing to the Director the intention to cease holding the permanent residence status; and
- (e) where the marriage is not *bona fide*.

### 40. Issuance of permits

(1) In this section—

“**Committee**” means the Permit Determination Committee established under section 7 of the Kenya Citizens and Foreign Nationals Management Service Act, 2011.

(2) An application for a permit shall be made to the Director in the prescribed manner.

(3) The Director shall issue a permit of the required class to a person who is not a prohibited immigrant or inadmissible person, who has—

- (a) made an application in the prescribed manner; and
- (b) satisfied the Committee that he has met the requirements relating to the particular class of permit.

(4) The Director shall issue or revoke a permit on recommendations of the Committee.

(5) The Committee shall have power to request for additional information and where necessary, summon the applicants, require production of production supporting documents.

(6) The Director shall, within fourteen days of receipt of recommendations of the Committee, cause to be issued a permit to an applicant who so applies and qualifies.

(7) Where the Director is of the opinion that the issue of permits to an applicant is not in the interest of the country or for any other sufficient reason, the Director may upon giving reasons, in writing, to both the applicant and the Committee—

- (a) refer the matter back to the Committee for further consideration; or
- (b) decline to issue the permit to the applicant.

(8) Where the application has been referred back to the Committee, the Committee shall, within fourteen days, make its findings to the Director and such findings shall be limited to the reasons given for the referral.

(9) Subject to the provisions of this Act, the Committee shall regulate its own procedures.

(10) Any person who is aggrieved by a decision made under this section may appeal to the High Court.

#### **41. Invalidation of a work or residence permit**

(1) Where a permit has been issued to a person, and that person—

- (a) fails, without the written approval of the Director, to engage within ninety days of the date of issue of the permit or of that person's entry into Kenya, whichever is the earlier, in the employment, occupation, trade, business or profession in respect of which the permit was issued or take up residence;
- (b) ceases to engage in the said employment, occupation, trade, business or profession; or
- (c) engages in any employment, occupation, trade business or profession, whether or not for remuneration or profit, other than the employment, occupation, trade, business or profession referred to in paragraph (a),

the permit shall cease to be valid and the presence of that person in Kenya shall be unlawful, unless otherwise authorized under this Act.

(2) Notwithstanding any other provision of this Act, and subject to the provisions of any other written law, a person to whom a work permit of class M is issued may engage in any occupation, trade, business or profession, and sections 34, 35, and 36 shall not apply to a child of that person.

#### **42. Permits, etc., void for fraud etc.**

Any entry permit, pass, certificate or other authority, whether issued under this Act or under the repealed Acts, which has been obtained by or was issued in consequence of fraud or misrepresentation, or the concealment or nondisclosure, whether intentional or inadvertent, of any material fact or circumstance, shall be and be deemed always to have been void and of no effect and shall be surrendered to the service for cancellation.

#### **43. Power to remove persons unlawfully present in Kenya**

(1) The Cabinet Secretary may make an order in writing, directing that any person whose presence in Kenya was, immediately before the making of that order, unlawful under this Act or in respect of whom a recommendation has been

made to him or her under section 26A of the Penal Code (Cap. 63), shall be removed from and remain out of Kenya either indefinitely or for such period as may be specified in the order.

(2) A person against whom an order has been made under this section shall—

- (a) be returned to the place where he originated from, or with the approval of the Cabinet Secretary, to a place in the country of habitual residence, permanent residence or citizenship, or to any place to which he consents to be taken if the competent authorities or government of that place consents to admit him or her to the country; or
- (b) if the cabinet secretary so directs, be kept and remain in police custody, prison or immigration holding facility or until his departure from Kenya, and while so kept is deemed to be in lawful custody whether or not he has commenced any legal proceedings in court challenging the Tribunals decision until the suit is finally disposed of.

(3) Subject to this section, an order under this section shall be carried out in such manner as the Cabinet Secretary may direct, subject to the Constitution and related laws.

(4) Any order made or directions given under this section may at any time be varied or revoked by the Cabinet Secretary by a further order, in writing.

(5) In the case of a person who arrives in Kenya illegally, the powers of the Cabinet Secretary under this section may be exercised either by the Cabinet Secretary or by an immigration officer.

(6) An order made or deemed to have been made under this section shall, for so long as it provides that the person to whom it relates shall remain out of Kenya, continue to have effect as an order for the removal from Kenya of that person whenever he is found in Kenya, and may be enforced accordingly; but nothing in this subsection shall prevent the prosecution for an offence under this Act or any other written law of any person who returns to Kenya in contravention of such an order.

(7) Where a person is brought before a court for being unlawfully present in Kenya, and the court is informed that an application, to the Cabinet Secretary, for an order under this section has been made or is about to be made, the court may order that such person be detained for a period not exceeding fourteen days or admit the person to bail, pending a decision by the Cabinet Secretary.

#### **44. Duties and Liabilities of carriers**

(1) A person in charge of a carrier arriving from or leaving for any place outside Kenya, or the owner of or agent of the carrier, shall, furnish to an immigration officer at the first port of entry or departure a list in duplicate, signed by himself or by some person authorized to sign it on his behalf, the names of all persons in the carrier including—

- (a) details of identity of all passengers on board the carrier classified according to their respective destinations;

- (b) a list of crew; and
- (c) such other information as the cabinet secretary may prescribe.

(2) A person in charge of a carrier about to call at any port or place outside Kenya, shall, if so required by an immigration officer, take into his custody any person in respect of which subsection (3) applies, and, on due payment, afford that person a passage to that port or place, and proper accommodation and maintenance during that passage.

(3) Where any person who is conveyed to Kenya in a carrier, is refused permission to enter Kenya on the ground that he is a prohibited immigrant or inadmissible person—

- (a) the owner of the carrier and the person in charge of the carrier which brings in a prohibited immigrant or inadmissible person shall be liable to a surcharge in the sum not exceeding Kenya shillings two hundred thousand for every such person brought into Kenya and in default of payment of the sum surcharged the carrier shall be liable to detention at the cost jointly and severally of the owner and the person in charge;
- (b) the person in charge of the carrier shall, if so required by an immigration officer, take that person into his custody and ensure that he is removed from Kenya;
- (c) the owner of the carrier and the person in charge of the carrier shall jointly and severally be liable to pay to the Government all expenses incurred by the Government in respect of the transportation, maintenance and upkeep of that person and his removal from Kenya, and the amount of such expenses shall be a civil debt recoverable summarily;
- (d) notwithstanding paragraphs (a), (b) and (c) above, any carrier knowingly bringing in passengers with forged documents, passengers without travel documents, passengers with documents issued to other people, passengers without return or onward ticket or passengers without visa shall be liable to a surcharge of Kenya shillings One Million for every passenger and in default of payment of the surcharge the carrier shall be liable to detention at own cost; or
- (e) notwithstanding paragraphs (a), (b) and (c) above, any carrier bringing in passengers in transit who are improperly documented shall be surcharged Kenya Shillings one Million per passenger failure to which the carrier may be detained at their own cost.

(4) Any person who is taken into the custody of the person in charge of a carrier pursuant to this section is deemed to be in lawful custody while he is in Kenya.

(5) An immigration officer may examine the passports or travel documents of transit passengers at any entry or exit point and take action where necessary.

(6) Where in the opinion of an immigration officer it becomes necessary to examine the travel and other documents of a passenger onboard a carrier, the person in charge of the carrier shall present upon demand by a immigration officer the passenger's travel documents or details of identity presented at the last point of departure to Kenya.

(7) An immigration officer shall have powers to detain a carrier, compel a carrier to pay such surcharge or penalties for bringing inadmissible persons into Kenya and compel the carrier to remove such persons.

[Act No. 12 of 2012, Sch.]

#### **45. Duties and obligations of employers**

(1) No person shall employ—

- (a) a foreign national who entered Kenya illegally;
- (b) a foreign national whose status does not authorize him or her to engage in employment;
- (c) a foreign national on terms, conditions or in a capacity different from those authorized in such foreign national's status.

(2) It shall be the duty of every employer to apply for and obtain a work permit or a pass conferring upon a foreign national the right to engage in employment before granting him employment and it shall be presumed that the employer knew at the time of the employment that such person was among those referred to in subsection (1).

(3) An employer employing a foreign national shall—

- (a) for two years after the termination of such employment of the non-national, keep the prescribed records relating thereto; and
- (b) file a report with the Service in the prescribed manner in respect of—
  - (i) foreign nationals under his employment; or
  - (ii) any breach on the side of the foreign national's employment.

(4) If there is credible evidence that the foreign national who entered Kenya illegally is found on any premises where a business is conducted, conducting himself in such a manner as to suggest that he is in employment within the premises, it shall be presumed that such illegal foreign national was employed by the person who has control over such premises, unless evidence to the contrary is provided

(5) For the purposes of this section a person who performs for the benefit of or at the request of another person any work or service of a kind which is commonly performed by a person in employment, is deemed to engage in an employment, and that other person is considered to employ that person.

(6) A person who contravenes the provisions of this section commits an offence.

#### **46. Learning institutions**

(1) A learning institution and a person in charge of a learning institution providing training or instruction shall before admitting a person for purposes of training or instruction ensure that a person is not—

- (a) a foreign national who is in the country illegally;
- (b) a foreign national whose status does not authorize him or her to receive such training or instruction by such person; or

- (c) a foreign national on terms or conditions in a capacity different from those authorized in such foreign national status.

(2) Any person, being in charge of learning institution, who allows a student who is required under this Act to obtain a student's pass to attend such institution before such student is in possession of a student's pass, commits an offence.

(3) If any person referred to in subsection (1) is found undertaking or receiving training or instruction on any premises where instruction or training is provided, it shall be presumed that such person was allowed to receive instruction or training by, the person who has control over such premises, unless contrary is proved.

(4) The provisions of this section shall not apply to persons holding refugee status residing in designate refugee camps.

[Act No. 12 of 2012, Sch.]

#### **47. Accommodation**

(1) Any business or person offering accommodation shall require all its customers to produce identification documents pertaining to their citizenship before admission.

(2) Any business offering accommodation shall maintain a record of all its customers who are foreign nationals in the prescribed manner.

(3) Where subsection (2) is not complied with and an illegal foreign national is found on any premises referred to in that subsection, it shall be presumed that such illegal foreign national was harbored by the person who has control over such premises, unless evidence to the contrary is provided.

(4) A person who contravenes the provisions of this section commits an offence.

#### **48. Powers of immigration Officer**

(1) Subject to and for the purposes of this Act an immigration officer shall have the power to—

- (a) board, or enter, and search any carrier or premises in Kenya;
- (b) require any person seeking to enter Kenya to answer any question or to produce any document in his possession for the purpose of ascertaining whether that person is or is not a citizen of Kenya and, in the case of any person who is not a citizen of Kenya, for the purpose of determining whether that person should be permitted to enter Kenya under this Act;
- (c) require any person seeking to enter or leave Kenya other than a refugee or any asylum seeker, to produce to him a valid passport or a valid travel document and any form of declaration that may be prescribed;
- (d) require any person seeking to enter Kenya to submit to examination by a medical practitioner; or
- (e) arrest, restrain, stop or deny departure to any person against whom a warrant of arrest has been issued by a competent Kenyan court and hand over the person for custody to the nearest police officer.

(2) An immigration officer may investigate any offence or suspected offence under this Act and shall have all the powers and immunities conferred by law on a police officer for the purpose of the investigation.

(3) An immigration or other authorized officer of the Service shall capture biometrics in the course of the discharge of the mandate of the Service.

#### **49. Power of arrest and search of persons**

(1) Within twenty four hours after a permanent resident or a foreign national is taken into detention, or without delay afterward, the arresting officer of the Service shall produce the person detained before a judicial officer to review the reasons for the continued detention.

(2) An immigration officer or a police officer who has reasonable cause to believe that a person has committed an offence under this Act, or is unlawfully present in Kenya, may, if it appears to him to be necessary to do so in order to ensure that the purposes of this Act are not defeated, arrest that person without warrant subject to the Bill of Rights; and the Criminal Procedures as if police officer include a reference to immigration officer.

(3) At least once during the seven days following the review under subsection (1), and at least once during each thirty day period following each previous review, the Service shall produce the detained person before a judicial officer to review the reasons for continued detention.

(4) A person other than a citizen of Kenya who, having been ordered to be deported from any country, enters Kenya on his way to his final destination, may be arrested without warrant by an immigration officer or a police officer and may be detained in prison or in police custody or immigration holding facility pending the making of arrangements for his departure from Kenya, and shall be deemed to be in lawful custody while so detained and such person needs to be taken to court within twenty four hours.

(5) The Court shall not order the release of a permanent resident or a foreign national unless it is satisfied that the permanent resident or foreign national shall present himself on being required to do so by an immigration officer or a police officer and taking into account the following factors—

- (a) whether he is a danger to the public and whether or not he is carrying or conveying any documents;
- (b) whether he is likely to appear for examination or an admissibility hearing or a hearing regarding his removal from Kenya or a hearing to determine whether he should be permitted to remain in Kenya or whether there are pending proceedings that could lead to the making of a removal order;
- (c) where the Cabinet Secretary is taking necessary steps to inquire into a reasonable suspicion that they are inadmissible on the grounds of security or for violating human or international rights;
- (d) where the Cabinet Secretary is of the opinion that the identity of the foreign national has not been, but may be, established and have not reasonably cooperated with the Cabinet Secretary by providing relevant information for the purposes of establishing his or her identity or the Cabinet Secretary is making reasonable efforts to establish his or her identity.



(6) Notwithstanding any provisions of this Act, all persons against who a deportation order has been issued shall be removed from Kenya within a period of ninety days from the day such final removal order is made or after appeal and further detention shall be extended by a court of law for not more than thirty days; or

(7) The court ordering release of a permanent resident or a foreign national in (d) above may impose any conditions that it considers necessary, including the payment of a deposit or the posting of a guarantee for compliance with the conditions.

(8) An immigration officer may, by summons in writing, require any person other than a citizen of Kenya to attend at his office and to furnish to that officer such information, documents and other particulars as are necessary for the purposes of determining whether that person should be permitted to remain in Kenya.

(9) An immigration officer may by summons, in writing, require any citizen of Kenya to attend at his office, for the purposes of determining whether that person has committed an offence under this Act, or to provide that officer with necessary information, documents and other particulars as may be required.

(10) An immigration officer may enter into recognizance any person suspected of having committed an offence under this Act.

[Corr. No. 18/2012, Act No. 12 of 2012, Sch.]

## **50. Holding facility**

The Service shall establish a holding facility at ports of entry and exit and any other immigration operation areas which shall be used for holding persons ordered to be removed to their countries under section 26A of the Penal Code (Cap. 63), ordered deported under section 43 of this Act, persons whose citizenship has not been established, deportees in transit, and persons denied entry awaiting return and who are not under carrier liability.

## **51. Evidence**

(1) In any legal proceedings under or for any of the purposes of this Act, a certificate bearing the Cabinet Secretary's signature or that of any of his officials, or the signature of a duly accredited representative of the Government of Kenya, or of the government of any country, is admissible, upon authentication, as evidence of any of the following matters stated therein, namely—

- (a) the birth, date, place of birth, and the parentage, of any person stated in such certificate to have been born in that country;
- (b) the death, date, place, circumstances of the death, and the parentage, of any person, stated in such certificate to have died or been married in such country;
- (c) the relationship by blood, marriage or adoption of any such person as aforesaid to any other such person;
- (d) the true or the reputed name or names of any such person as aforesaid, of either of the parents, or of the husband, wife or child, of any other relative by blood, marriage or adoption of any such person;

- (e) the adoption of any child stated in such certificate to have been adopted in such country, and the date, place and circumstances of any such adoption, and the true or the reputed name or names of and child so adopted and of either of his natural or adoptive parents; and
- (f) passport, travel documents, visa, identification documents.

(2) In any prosecution for an offence under this Act, in any proceedings of a civil nature, and in any proceedings in the nature of *habeas corpus* or under Article 22 of the Constitution, any document lawfully obtained from, any person by immigration officer in the exercise of his powers under this Act is admissible in evidence.

(3) An order purporting to be signed by the Cabinet Secretary and to be made for any of the purposes of section 43, or purporting to be signed by a immigration officer and to be made for any of the purposes of section 43, is *prima facie* evidence of its contents in any court.

(4) Any reference to a passport, travel document, visa, certificate of registration, certificate of naturalization, entry permit, work permit, residence permit, pass, written authority, consent or approval in this Act includes a reference to any such document issued or purporting to have been issued under the repealed Acts.

## **52. Institution and conduct of criminal proceedings**

Prosecution for an offence under this Act may, without prejudice to any other powers granted to any other public officers, be instituted by an immigration officer, and where the proceedings are instituted in a subordinate court an immigration officer may conduct the prosecution.

## **53. General offences**

(1) A person who—

- (a) knowingly misleads an immigration officer seeking information material to the exercise of any of his or her powers under this Act;
- (b) having left or been removed from Kenya in consequence of an order made or deemed to have been made under section 43, if found in Kenya while that order is still in force;
- (c) being a prohibited immigrant or inadmissible person fails to comply with an order of a immigration officer to leave Kenya;
- (d) harbors any person whom he knows or has reasonable cause to believe to be a person who has committed an offence under paragraph (g) or paragraph (h);
- (e) being an agent or a carrier facilitates or assists or enables entry or exit of improperly documented person;
- (f) not being a immigration officer or other member of staff of the Service, by words, conduct or demeanor falsely represents himself to be an immigration officer or member of staff of the Service;
- (g) exercises or attempts to exercise undue influence over an immigration officer or other member of staff of the Service which is

- (h) willfully obstructs or impedes a immigration officer or a police officer in the exercise of any of his powers under this Act;
- (i) refuses or neglects to answer any question, to furnish any information, to produce any document, to attend at any place or to submit to medical examination, when required to do so under this Act;
- (j) unlawfully enters or is unlawfully present in Kenya in contravention of this Act;
- (k) harbors any person whom he knows or has reasonable cause to believe to be a person who has committed an offence under this Act;
- (l) fails to comply with any term or condition imposed by a work permit, residence permit or pass, being a term or condition which he is required to comply with;
- (m) not being a citizen of Kenya, engages in any employment, occupation, trade, business or profession, whether or not for profit or reward, without being authorized to do so by a work permit, or exempted from this provision by regulations made under this Act;
- (n) employs any person, whether or not for reward, whom he knows or has reasonable cause to believe is committing an offence under paragraph (n) by engaging in that employment;
- (o) any person who, for the purpose of procuring anything to be done or not to be done under this Act, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular commits an offence;
- (p) smuggles or is reasonably suspected to be engaged in smuggling of human beings;
- (q) employs a foreign national in a capacity in which the foreign national is not authorized under this Act to be employed;
- (r) offers accommodation without maintaining a record of all its customers who are foreign national in the prescribed manner, commits an offence.

(2) Any person convicted of an offence under this section shall be liable upon conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or to both;

(3) Any person convicted under subsection (1)(q) is, in addition to the prescribed fine and or term of imprisonment as the case may be, liable to pay for the cost of maintenance and removal of the person he employed.

(4) For purposes of paragraph (1)(p), a person who is a victim of the offence of human smuggling may not be held liable so long as he identifies and is willing to act as a witness in the prosecution of the smuggler.

[Act No. 12 of 2012, Sch.]

**54. Offences relating to documents**

(1) A person who—

- (a) makes, whether within or outside Kenya, a false declaration or statement, which he knows or has reasonable cause to believe to be false or misleading, for the purpose of obtaining or assisting another person to obtain a passport, travel document, citizen registration, visa, work permit, residence permit, pass, written authority, consent or approval under this Act;
- (b) forges, alters, destroys or willfully defaces a passport, travel document, certificate of registration, visa, work permit, residence permit, pass, written authority, consent or approval, or a copy of any written authority, work or residence permit, pass, written authority, consent or approval, or any entry or endorsement in or passport or travel document, issued or granted by a lawful service;
- (c) knowingly uses or has in his possession a forged passport, certificate of registration, visa, foreign person certificate work permit, residence permit, pass, written authority, consent or approval, or a passport, work permit, residence permit, pass, written authority, consent or approval which has been altered or issued without lawful authority, or a passport or travel document or similar document in which a visa, or endorsement has been forged, or altered or issued without lawful service;
- (d) knowingly has in his possession a passport, travel document, certificate of registration, visa, work permit, residence permit, pass, written authority, consent or approval and who cannot reasonably give a proper account of its possession;
- (e) gives, sells or parts with the possession of a passport, certificate of registration, visa, work permit, residence permit, pass, written consent or approval intending or knowing or having reasonable cause to believe that it may be used by any other person;
- (f) without prior written approval of the immigration officer, in connection with any activity carried on by him takes, assumes, uses or in any manner publishes any name, description, title or symbol indicating or conveying or purporting to indicate or convey or which is calculated or is likely to lead other persons to believe or infer that such activity is carried on under or by virtue of the provisions of the Act or under the patronage of the Service;
- (g) presents a forged, altered or false documents for the purposes of obtaining a passport, travel document, certificate of registration, visa, work permit, residence permit, pass, written authority;
- (h) counterfeits immigration stamps, receipts, work permits, residence permits, citizenship forms, passes, passport, travel documents, or is in possession of any immigration material without lawful service;
- (i) without any lawful cause confiscates, forcefully takes or detains a passport or travel document issued to another person;

- (j) any person who fails to comply with any requirement imposed on him by regulations made under this Act or under the repealed immigration Act with respect to surrendering of certificates of naturalization or certificates of registration;
- (k) any person printing, publishing, uttering or knowingly being in possession of a document, card, booklet or paper, purporting, either by reason of the use of the word passport or by reason of the contents thereof, to be a passport, other than a passport lawfully issued by the Government of Kenya or by the Government of any other country;
- (l) any person who possesses a passport, travel document, visa or other document of Kenyan or other origin that purports to establish or that could be used to establish a person's identity; or uses such a document, including for purposes of entering or remaining in Kenya; or imports, exports or deals in such a document, commits an offence.

(2) Any person convicted of an offence under this section shall be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both.

#### **55. Instant fine**

(1) Where at any port of entry or exit a departing foreign national is found to have overstayed in the country in contravention of this Act, the immigration officer shall have the power to bring it to the notice of that person the option to enter a written admission of contravention in the prescribed manner in relation to the offence.

(2) Upon receipt of the said written admission of contravention the immigration officer may impose a fine not exceeding fifty thousand shillings:

Provided that the provisions of this section shall not be invoked if it is proved that the foreign national has overstayed beyond the period of ten days.

(3) An immigration officer may prosecute any person who fails to immediately pay the penalty imposed in subsection (1) above for the offence of unlawful presence.

### **PART VII – FOREIGN NATIONALS MANAGEMENT**

#### **56. Foreign Nationals Management**

(1) The Cabinet Secretary may on advice of the Cabinet and National Security Council, at any time when a state of war exists between Kenya and any foreign power or when it appears that an occasion of imminent danger or great emergency has arisen, by order impose from time to time restrictions on foreign nationals and provision may be made by the order—

- (a) for prohibiting foreign nationals from landing in or otherwise entering Kenya either generally or at certain places and for imposing restrictions or conditions on foreign nationals landing or arriving at any port in Kenya;

- (b) for prohibiting foreign nationals from embarking in or otherwise leaving Kenya either generally or at certain places, and for imposing restrictions and conditions on foreign nationals embarking or about to embark in Kenya;
- (c) for requiring foreign nationals to reside and remain within certain places within Kenya;
- (d) for prohibiting foreign nationals from residing or remaining in any areas specified in the order;
- (e) for imposing penalties on persons who aid or abet any contravention of the order, and for imposing such obligations and restrictions on masters of ships or any other persons specified in the order as appear necessary or expedient for giving full effect to the order;
- (f) for any other matters which appear necessary or expedient with relating to the security of the country.

(2) Notwithstanding subsection (1), the Cabinet Secretary may at any time by order require foreign nationals residing in Kenya to comply with such provisions as to registration, notification of change of address, traveling or otherwise, and in such manner, as may be specified in the regulations.

(3) A person who contravenes any provision or requirement of an order issued to a foreign nationals commits an offence and liable upon conviction to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

(4) The court before which a person is convicted under this section may, in addition to or in lieu of any such punishment, require that person enter into recognizance with or without sureties to comply with the provision of the order or such provision thereof as the court may direct, and if the person fails to comply with the order of the court requiring him to enter into recognizance, the court may commit that person to imprisonment for a term not exceeding three years.

(5) Any provision contained in this Act in respect of a Foreign National Order may relate to foreign nationals in general or to any class or description of foreign nationals.

(6) If any question arises in any proceedings under a foreign national order, or with reference to anything done or proposed to be done under any such order, as to whether any person is a foreign nationals or not, or is a foreign nationals of a particular class or not, the onus of proving that that person is not a foreign national, or, as the case may be, is not a foreign national of that class, shall lie upon person contending so.

(7) The Cabinet Secretary may at any time revoke, alter, or add to any foreign nationals' order.

(8) Any powers given under this section, or in any foreign nationals' order, shall be in addition to, and not in derogation of, any powers with respect to the expulsion of foreign nationals or the prohibition of foreign nationals from entering Kenya or any other powers conferred on the Cabinet Secretary or any other service by any other written law.

**57. Review and Appeal**

(1) Any person aggrieved by a decision of a public officer made under this Act may apply to the High Court for a review of the decision.

(2) An appeal against the decisions of the Cabinet Secretary or of the Service under this Act may be made to the High Court.

**PART VIII – MISCELLANEOUS AND TRANSITIONAL PROVISIONS****58. Electronic communication**

(1) Any application, enquiry or other action undertaken under this Act may, subject to the Constitution and conditions prescribed by the Cabinet Secretary be carried out by use of electronic information technology.

(2) The Cabinet Secretary may bring the provisions of this section into operation by notice in the *Gazette*.

**59. Regulations**

The Cabinet Secretary may make Regulations for the better carrying into effect the provisions of this Act.

**60. General penalty**

A person who is convicted of an offence, under this Act, for which no penalty is specifically provided shall be liable to a fine not exceeding one million shillings or imprisonment for a term not exceeding five years, or both.

**61. Temporary validity of permits and passes issued under repealed Acts**

Any resident's certificate, certificate of exemption, entry permit or pass granted or issued under the repealed Acts shall have effect according to the terms as if it had been issued under this Act, and the provisions of this Act shall apply accordingly.

**62. Transitional Provisions regarding re-entry**

Any person, other than a prohibited immigrant, who would but for the repeal of the former immigration laws, have been entitled to re-enter Kenya by virtue of the grant of a resident's certificate, certificate of exemption, entry permit or pass, shall, at any time within the period of six months immediately following the commencement of this Act, be permitted to enter Kenya.

**63. Transitional provisions regarding passports**

Notwithstanding the provisions of this Act, any passport, travel or other document issued according to the rules, circulars and procedures in force before the enactment of this Act shall be deemed to have been issued under this Act.

**64. Transitional provisions regarding removal or deportation**

Any order made before the commencement of this Act under the repealed Acts directing that a person be removed or deported from Kenya and remain out of Kenya, whether indefinitely or for a specified period, shall be deemed to be an order made under this Act, and shall be deemed enforced accordingly.

**65. Repeal of Caps. 170, 172 and 173**

The Kenya Citizenship Act, the Immigration Act, and the Aliens Restriction Act are hereby repealed.

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