



MEDIA RELEASE

FOR IMMEDIATE RELEASE

NAIROBI, KENYA: SATURDAY, 4TH JUNE 2022

STATUS UPDATE ON ASPIRANTS' COMPLIANCE WITH CHAPTER SIX OF THE CONSTITUTION.

1. The Independent Electoral and Boundaries Commission has a constitutional mandate to conduct or supervise elections to elective state offices established by the Constitution of Kenya, 2010.
2. In terms of Article 88(4)(f) of the Constitution, the Commission is required to register candidates for election.
3. The Commission in keeping with the prescriptions of Chapter Six of the Constitution on leadership and integrity is obligated to ensure that only persons who meet the educational, moral and ethical requirements are registered and cleared to contest as candidates in election.
4. On 18th May, 2022, the Commission wrote a letter to the Ethics and Anti-Corruption (EACC) and forwarded a list of twenty one thousand eight hundred and sixty three (21,863) aspirants interested in participating in the General election of 9th August, 2022. The Commission invited EACC to make representation on the aspirants with a particular focus on compliance with Chapter Six of the Constitution.
5. On 31st May, 2022, EACC responded to the request and favored the Commission with a sixty three (63) paged report bearing a list of two hundred and forty one (241) persons replete with information on candidates that it deemed relevant for consideration by the Commission as the Commission exercises its mandate of registering candidates pursuant to the provisions of Article 88(4)(f) of the Constitution.

6. The EACC in their report indicated that they are conducting further verification on some of the aspirants and will avail more information as and when obtained.
7. The Commission deliberated the report, appraised the Constitutional provisions, statutory and regulatory prescriptions relevant and in addition applicable judicial determinations and resolved as follows:-

A. Cases Under Investigations

The Commission received a report on eleven (11) cases under investigation. These include one presidential aspirant and ten (10) gubernatorial aspirants.

The Commission appreciated the Constitutional principle of presumption of innocence until the contrary is proved by a court of competent jurisdiction. This principle is spelt out in Article 50 (2)(a) of the Constitution.

The Commission is required by Article 249 of the Constitution to promote constitutionalism.

In the circumstances to disqualify a person(s) under investigation is to affront the constitution. So a person(s) mentioned in the report as undergoing investigations is not disqualified by law and may contest in the elections as candidates.

B. Cases Under Prosecution.

The Commission received a report on fifty five (55) aspirants, who are undergoing active prosecution in court. These are one (1) presidential, twelve (12) gubernatorial, five (5) senatorial, one (1) County Woman Member of the National Assembly, twelve (12) Members of National Assembly, and twenty four (24) Members of County Assembly.

Again in keeping with the constitutional principle of innocence until the contrary is proved, the Commission advises that persons facing active prosecutions in court are not disqualified by law and may contest in elections as candidates.

C. Cases of Convicted Aspirants Without Appeals.

The Commission received one (1) case of a convicted gubernatorial candidate, two (2) cases of members of National Assembly and one (1) case of a Member of County Assembly aspirant.

The Commission was guided by the Provisions of Article 99 (2)(g) of the Constitution and Article 193(2)(f) of the Constitution which provide that a person is disqualified from being elected a member of Parliament and a member of County Assembly (applies to Governors) respectively if he is subject to a sentence of imprisonment of at least six months **as at the date of registration as a candidate, or at the date of election.**

It is important to state that it is not trite that any conviction without an appeal presents a ground for disqualification. The sentence of imprisonment must be one that is alive at the time of registration of the candidate or at the date of the election.

The Commission's position is that if the convicted persons in the report have not pursued an appeal or unsuccessfully exhausted their appeals; they stand disqualified as candidates.

D. Cases of Convicted Aspirants Pursuing Appeals.

The Commission received a report on one (1) aspirant who had been convicted by the court but has since appealed the decision in the High Court.

The Commission reckoned that such an aspirant is protected by the provisions of Article 99(3) and Article 193(3) of the Constitution; Which stipulates that a person is not disqualified unless all possibility of appeals and review of the relevant sentence or decision has been exhausted.

E. Acquitted Persons.

The Commission received a report on six (6) gubernatorial aspirants and a Woman representative of the National Assembly who were prosecuted but have since been acquitted by the Courts. It is trite law that persons who have been tried in court but acquitted are innocent and cannot therefore be barred from contesting as candidates in an election. The six aspirants are therefore qualified, under this field to contest as candidates.

F. Educational Requirements (Degree Qualification).

The Commission received a report on two (2) gubernatorial aspirants who lacked genuine degrees.

Section 22(2) of the Elections Act requires that persons seeking election as President, Deputy President, Governor and Deputy Governor must possess a degree from a university recognized in Kenya.

The Commission wishes to state that one of the aspirants who is seeking to be a Governor was disqualified by the Commission in the 2017 general election following the holding of the Court in Nyeri Constitutional Election Petition No. 1 of 2013 and in Civil Appeal No. 29 of 2013 which declared that he held an invalid degree certificate.

The Commission's position and indeed the law remains that the aspirant is disqualified unless he submits a valid degree from a university recognized in Kenya.

The Commission wishes to inform aspirants with degrees from universities within Kenya that aside from the original degree certificate, they must produce a copy of the certificate certified by the issuing university confirming it as a true copy of the original. For degree certificates from universities outside Kenya (foreign degrees), an aspirant is required to obtain a letter of recognition and equation from the Commission for University Education (CUE).

G. Aspirants Impeached and Removed from Public Office for Abuse of Office.

The Commission received a report on two (2) aspirants for the position of Governor and one (1) aspirant for the position of Senator who had been impeached.

The Commission's position is that the stipulation of Article 75 of the Constitution was never intended for ornamental purposes but as an effective clause that requires holders of public office to conduct themselves with decorum and in a manner that brings honour to the office held.

In terms of the provisions of Article 75(3) of the Constitution, a person dismissed or otherwise removed from office for contravention of Chapter Six of the Constitution is disqualified from holding any other state or public office whether elective or appointive.

The Commission's position is that Article 75 of the Constitution is self-speaking and self-executing and does not have a proviso (i.e. saving clause). Therefore, the three (3) aspirants who have been removed from public office through impeachment are disqualified from contesting in the elections.

In addition, a gubernatorial aspirant seeking election in Mombasa County was disqualified by the Commission from contesting as a candidate in the 2017 general election. The reason for disqualification was and remains that he was removed from public office for abuse of office. He was convicted by the court on 15th December, 2011 and sentenced to serve 3 years imprisonment. He therefore stands disqualified.

H. Public officers who did not resign by 9th February, 2022.

The Commission received a report on one hundred and sixty six (166) aspirants who whilst serving as public officers did not resign from public office latest 9th February, 2022.

The Commission appreciates that Section 43(5) of the Elections Act requires a public officer who intends to contest an election to resign from public office at least six months before the date of the election.

The Commission vide a gazette notice dated 20th January, 2022 published this requirement and subsequently through several pressers reminded public officers keen on contesting elections to adhere to the dictate of Section 43(5) of the Elections Act.

This instruction was given to all Returning Officers (ROs) to ensure that aspirants, who are public officers produce letters of resignation to the ROs before being cleared. It is the responsibility of the ROs to consider the material evidence placed before them by aspirants and make a determination thereof. At the close of the exercise of registering candidates, IEBC will issue a comprehensive statement on persons disqualified under this category.

However, this requirement does not apply to elected state officers currently serving as they are protected by Section 43(6) of the Elections Act.

In the circumstances, the Commission wishes to advise that the flagging out of an aspirant who is a serving Deputy Governor as being in breach of Section 43(5) of the Elections Act is in error and inappropriate as he is qualified to contest as such.


The Commission directs that any aspirant who previously served as a public officer but did not resign as at 9th February, 2022 is disqualified from contesting as a candidate in the election.

SUMMARY OF THE LEADERSHIP AND INTEGRITY REPORT

S/No	Cases	President	Governor	Senate	WMNA	MNA	MCA
1.	Under Investigation	1	10	-	-	-	-
2.	Under Prosecution	1	12	5	1	12	24
3.	Impeached	-	2	1	-	-	-
4.	Public Officers who did not resign by 9 th February, 2022	1	40	-	17	39	69
5.	Convicted	-	1	-	-	2	1
6.	Convicted but pursuing active appeals	-	-	-	-	1	-
7.	Acquitted	-	6	-	-	-	-
8.	Academic Requirements	-	2	-	-	-	-

DISQUALIFIED ASPIRANTS AS AT TODAY, 4TH JUNE, 2022

S/No	Cases	President	Governor	Senate	WMNA	MNA	MCA
1.	Impeached/ Removed from public office for breach of chapter six of the Constitution.	-	-Mike Mbuvi Sonko (Mombasa). -Chitavi Antony Mkhala (Mombasa)	-Paul Karungo Thangwa (Kiambu)	-	-	-
2.	Academic Requirements: Invalid Degree.	-	- Thuo Mathenge (Nyeri). -Ekamais Jeremiah Loromukai (Turkana)	-	-	-	-
3.	Convicted of economic crimes offence but not pursuing appeal. In addition barred by the Court from holding public office pursuant to the Bribery Act.	-	-	-	-	-	-David Njilithia Mberia (Karen Ward).
4.	Public Officers who did not resign by 9 th February, 2022	Subject to the Returning Officers' reports after the close of registration of candidates					


W.W. CHEBUKATI
CHAIRMAN