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**THE KAKAMEGA COUNTY PUBLIC SERVICE BOARD ACT,
2017**

No. 7 of 2017

Date of Assent: 12th May, 2017

Date of Commencement: 17th October, 2017

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**THE KAKAMEGA COUNTY PUBLIC SERVICE BOARD ACT,
2017**

AN ACT of the County Assembly of Kakamega to make further provisions as to the functions, powers and administration of Kakamega County Public Service Board

ENACTED by the County Assembly of Kakamega, as follows—

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Kakamega County Public Service Board Act, 2017.

Interpretation

2. In this Act, unless the context otherwise requires—

“board” means the Kakamega County Public Service Board established under section 57 of the County Governments Act, 2012;

“chairperson” means the chairperson of the Board appointed in accordance with section 58(1) of the County Governments Act, 2012 and the procedure set out in the First Schedule of this Act;

“county” means County Government of Kakamega;

“county Government Entity” means any department, or agency of the County government, or any authority, body or other entity declared a county government entity under section 5(1) of Public Finance Management Act, 2012;

“county Assembly” means the County Assembly of Kakamega County;

“county Gazette” means a gazette published by the authority of the county government or a supplement of such gazette;

“executive Committee Member” means the Executive Committee Member responsible for matters relating to the County Public Service;

“judge” means any Judge of the High Court of Kenya;

“member” means a member of the Board appointed in accordance with section 58(2) of the County Governments Act and the procedure set out in section 7 of this Act and includes the chairperson and vice chairperson;

“secretary” means the Secretary to the Board appointed in accordance with section 58(1)(c) of the County Governments Act and the procedure set out in the first schedule of this Act;

“vice-chairperson” means the vice-chairperson of the Board appointed under section 58(6) of the County Governments Act and the procedure set out in the First Schedule of this Act.

Object and Purpose

3. The object and purpose of this Act is to—
 - (a) make further provisions as to the functions, powers, and the administration of the Kakamega County Public Service Board;
 - (b) provide a legal framework for the identification and appointment of the chairperson, members and secretary to the Board in accordance with section 58 of the County Governments Act, 2012; and
 - (c) provide for the establishment of a secretariat to the Board.

Guiding Principles

4. The Board shall in fulfilling its mandate be guided by the National Values and Principles of Governance in Article 10 and the Values and Principles of Public Service in Article 232 of the Constitution as well as section 55 and 56 of the County Governments Act 2012.

PART II—ADMINISTRATION OF THE BOARD

Composition and Appointment of the Board

5. (1) The Board shall be appointed in accordance with section 58(1) of the County Governments Act, 2012.

(2) The procedure set out in the First Schedule shall apply to the appointment of the Board and with necessary modifications whenever there is a vacancy in the Board.

(3) The Board shall be properly constituted notwithstanding a vacancy in its membership

Powers of the Board as a Body corporate

6. (1) In addition to the powers of the Board as a body corporate under section 57 of the County Governments Act, 2012, the Board shall have the power to—

- (a) acquire, hold, charge and dispose of movable and immovable property; and
- (b) do or perform or such things or acts for the proper discharge of its functions under the Constitution the County Governments Act 2012, this Act and any other written law as may lawfully be done or performed by a body corporate.

(2) The headquarters of the Board shall be in Kakamega Town, but the Board may establish offices at any sub county office within the County.

(3) Notwithstanding the provisions of any other county law, the exercise of the power by a Board of management of a county government entity to recruit, employ or determine salaries and other terms and conditions of service of employees of the entity shall be a delegated power from the County Public Service Board and the exercise of such power by the entity shall not divest the County Public Service Board of its responsibility over the exercise of such power.

Chief Executive Officer of the Board

7. (1) The Board shall, through an open, transparent and competitive process, recruit a suitably qualified person for the Governor's appointment, to be the Chief Executive Officer to the Board.

(2) The Chief Executive Officer shall hold office, on a full time basis, for a term of three years but may be eligible for reappointment for one further term of three years.

(3) The Chief Executive Officer shall be responsible for the day-to-day management of the affairs of the Board on such terms and conditions of service as the Board may determine in line with the Salaries and Remuneration Commission guidelines.

Qualifications of the Chief Executive Officer

8. (1) A person shall be qualified for appointment as Chief Executive Officer if the person meets the following minimum requirements—

- (a) is a citizen of Kenya;
- (b) holds a masters' degree from a university recognized in Kenya;
- (c) has experience in matters relating to leadership, management, or any other relevant discipline;
- (d) has at least 10 years' experience five of which should be in senior management of a large organization; and
- (e) be a professional and demonstrate absence of breach of relevant professional code of conduct.

(2) In addition to the qualifications specified under subsection (1) a person appointed in this position shall meet the requirements of Chapter Six of the Constitution.

(3) The Chief Executive Officer shall in the performance of the functions and duties of office be accountable to the Board.

(4) The Chief Executive Officer shall be—

- (a) head of Secretariat;
- (b) the Accounting Officer;
- (c) custodian of the Board's records; and
- (d) responsible for—
 - (i) the execution of the decisions of the Board;
 - (ii) overseeing training, assignment of duties and supervision of the staff of the Board;
 - (iii) facilitating, coordinating and ensuring execution of the Board's mandate
 - (iv) the preparation and submission of programmes and strategies necessary for the achievement of the Board's mandate for the approval of the Board
 - (v) ensuring staff compliance with principles and values of public service;
 - (vi) steering budgeting and procurement matters; and
 - (vii) the performance of such other duties as may be assigned by the Board or any other written law.

(5) The Chief Executive Officer may be removed from office by the Board on grounds of—

- (a) inability to perform functions of the office arising out of mental and physical infirmity;
- (b) incompetence;
- (c) gross misconduct;
- (d) bankruptcy;
- (e) violation of the Constitution; and
- (f) any other ground that would justify removal from office under the terms and conditions of service.

(6) Before removal under subsection (5) the Board shall ensure that due process of the law is followed.

(7) The office of the Chief Executive Officer shall become vacant if the holder—

- (a) dies;
- (b) by notice in writing to the Chairperson of the Board resigns from office; and
- (c) is removed in accordance with subsection (6).

Oath or affirmation of office

9. The Chairperson, members, Secretary and the Chief Executive Officer shall before assuming office, take and subscribe to the oath or affirmation of office prescribed in the Second Schedule.

Vacancy in the office of the Board

10. (1) The office of the Chairperson, Vice chairperson, members or Secretary shall become vacant if the holder-

- (a) dies;
- (b) by notice writes to the Governor resigns from office;
- (c) is removed in accordance with Section 58 of the County Governments Act, 2012.

Secretariat and staff of the Board

11. (1) There shall be a secretariat of the Board, which shall be headed by the Chief Executive Officer.

- (2) The Secretariat shall comprise of—
 - (a) such professionals, technical and administrative officers and support staff as may be appointed by the Board; and
 - (b) such public officers as may be seconded to the Board upon its request.

(3) The staff of the Board shall be appointed subject to its approved establishment.

Seal of the Board

12. (1) The seal of the Board shall be such device as may be determined by the Board and shall be kept by the Chief Executive Officer.

(2) The affixing of the seal shall be authenticated by the Chairperson and the Chief Executive Officer or any other person authorised in that behalf by a resolution of the Board.

(3) Any document purporting to be under the seal of the Board or issued on behalf of the Board shall be received in evidence and shall be deemed to be so executed or issued as the case may be without further proof unless the contrary is proved.

Protection from personal liability

13. (1) No matter or thing done by a member of the Board or by any officer, member of staff, or agent of the Board shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Board under this Act, render the member, officer, employee or agent or any other person acting on their directions personally liable to any action, claim or demand whatsoever provided that the action was done in accordance with this Act or any other written law.

(2) Any expenses incurred by any person in any suit or prosecution brought against him or her in any court or tribunal in respect of any act which is done or purported to be done by him or her under the direction of the Board, shall, if the court or tribunal holds that such act was done bona fide, be paid out of the funds of the Board.

(3) Any negligent or reckless act or omission by a member of the Board or an employee of the Board that subjects the Board to loss may lead to sanction by the Board.

Liability for damages

14. The provisions of section 13 shall not relieve the Board of the liability to pay compensation or damages to any person for personal injury, or to his or her property or to his or her interest caused by the exercise of any power conferred by this Act or other written law or by the failure, wholly or partially, of any works that may be lawfully awarded.

Code of Conduct

15. The members and the employees of the Board shall subscribe to such code of conduct as the Board may by regulations prescribe.

PART III—FINANCIAL PROVISIONS RELATING TO THE BOARD

Funds of the Board

16. The funds of the Board shall be subject to the law related to Public Finance Management and shall consist of—

- (a) monies allocated by Assembly for the purposes of the Board;
- (b) such monies as may be lawfully earned from levies, charges and fees;
- (c) monies donated, appropriation-in-aid or other monies which the Board may receive by way of grants, gifts or other endowments; and

- (d) such funds as may vest in or accrue to the Board in the performance of its functions under this Act or any other written law.

Expenses of the Board

17. The administrative and other expenses of the Board including salaries, allowances, gratuities and pensions of members of the Board shall be a charge on the County Revenue Fund.

Remuneration and allowances

18. (1) The members of the Board shall be paid such remuneration or allowances as the Salaries and Remuneration Commission shall determine.

(2) The employees of the Board shall be paid such remuneration and allowances as the Salaries and Remuneration Commission may advise.

Financial year

19. The financial year of the Board shall be the period of twelve months ending on the thirtieth June of each year.

Annual Estimates

20. (1) Before the commencement of each financial year the Chief Executive Officer with the approval of the Board shall cause to be prepared estimates of the revenue and expenditure of the Board for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Board for the financial year concerned and in particular, shall provide for—

- (a) the operations of the Board;
- (b) the payment of the salaries, allowances and other charges in respect of the staff of the Board;
- (c) the payment of pensions, gratuities and other charges, and in respect of benefits which are payable out of the funds of the Board;
- (d) the maintenance of the assets of the Board;
- (e) the funding of operations, training, research and development activities of the Board; and
- (f) the creation of such reserves to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Board, may think fit.

(3) The annual estimates shall be approved by the Board, before the commencement of the financial year to which they relate and shall be submitted to the Executive Committee Member for County Treasury for approval and after the Executive Committee Member has given approval, the Board shall not increase any sum provided in the estimates without the consent of the Executive Committee Member.

(4) No expenditure shall be incurred for the purposes of the Board except in accordance with funds voted or appropriated by County Assembly.

Accounts and Audit

21. (1) The Board shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Board.

(2) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor-General the accounts of the Board in respect of that year together with—

- (a) a statement of the income and expenditure of the Board during that year; and
- (b) a statement of the assets and liabilities of the Board on the last day of that financial year.

(3) The annual accounts of the Board shall be prepared, audited and reported upon in accordance with the provisions of the Public Audit Act, 2015.

Annual Reports

22. (1) Within ninety days after the end of the financial year, the Board shall furnish the Executive Committee Member of County Treasury with an annual financial report of the operations of the Board for that year.

(2) Upon receipt of the annual report under subsection (2), the Executive Committee Member for County Treasury shall, within 15 days of receipt, transmit the same to the County Assembly for tabling and debate.

PART IV—MISCELLANEOUS AND TRANSITIONAL PROVISIONS

Committees of the Board

23. (1) The Board may from time to time establish such committees as may be necessary for the better carrying out of its functions and the exercise of its powers.

(2) In addition to the committees established under subsection (1), the Board shall, in order to perform the functions conferred on it by section 59 of the County Governments Act, 2012 establish a consultative committee on the conditions of service of officers in the County Public Service.

(3) Without prejudice to the generality of subsection (1) such committees may deal with matters relating to the recruitment, promotion, terms and conditions of service, discipline of county public officers and such other matters as the Board may specify.

(4) The Board may co-opt into the membership of any of the committees established under subsection (1) any person or persons whose knowledge and skills are necessary for the proper performance of the functions of the Board.

(5) A person co-opted under subsection (4) shall have no right to vote at any meeting of the committee.

Units of the Board

24. (1) The Board may create within itself such directorates, divisions or units and appoint thereto such staff as it may determine in line with its approved establishment.

(2) Every directorate, division or unit created by the Board shall act in accordance with the mandate approved by the Board and directives given by the Chief Executive officer, in writing.

(3) The Board may do such other things as may be necessary to give effect to the provisions of section 59 of the County Governments Act, 2012.

Conduct of business of the Board

25. (1) The conduct and regulation of the business and affairs of the Board shall be as provided for in the Third Schedule but subject thereto, the Board may regulate its own procedure.

(2) The Board may invite any person to attend any of its meetings and to participate in its deliberations, but such a person shall not have a vote in any decision of the Board.

Management of information

26. (1) The Board shall publish and publicize any important information within its mandate affecting the County.

(2) A request for information by a citizen, in the public interest—

- (a) shall be addressed to the Chief Executive Officer or such other person as the Board may for that purpose designate and may be subject to payment of a reasonable fee in instances where the Board shall incur an expense in providing the information; and
 - (b) may be subject to confidentiality requirements of the Board.
- (3) Subject to the provision of Article 35 of the Constitution and to the law relating to Data Protection and Freedom of Information, the Board may decline to give information to an applicant where—
- (a) the request is unreasonable in the circumstances;
 - (b) the information requested is at a deliberative stage by the Board;
 - (c) failure of payment of the prescribed fee; or
 - (d) the applicant fails to satisfy any confidentiality requirements by the Board.
- (4) The right of access to information under Article 35 of the Constitution shall be limited to the nature and extent specified under this section.
- (5) Every member and employee of the Board shall sign a confidentiality agreement.

Offences

27. (1) Without prejudice to any other law, no member or officer of the Board nor any other person shall publish or disclose to any unauthorized person or otherwise than in the course of duty the contents or any part of the contents of any document, communication or information whatsoever which has come to his or her knowledge in the course of his or her duties under this Act or under any regulation made there under.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both such fine and such imprisonment.

(3) Without prejudice to any other law, any person who discloses or publishes any information other than in accordance with Article 35 of the Constitution and the law relating to data protection and freedom of information commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding two years:

Provided that no person shall be guilty of an offence if the disclosure relates to acts or conduct of any person that constitute a crime under any law.

(4) Without prejudice to any other law, any person who, in connection with an application by himself or any other person for employment or appointment, promotion or transfer in the service of the County Government, or in connection with any matter upon which it is the duty of the Board to require information or evidence, or into which it is the duty of the Board to inquire, willfully gives to the Board or to any member thereof any information which is false or misleading in any particular material commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both such fine and such imprisonment.

Regulations

28. (1) The Board may make regulations for the better carrying out of its functions under the Constitution, this Act and any other written law.

(2) Without prejudice to the generality of subsection (1), such regulations may provide for—

- (a) the establishment and abolition of offices in the County public service;
- (b) the appointment, including the power to confirm appointments of persons, promotions, and deployment to any office in respect of which the Board is responsible under this Act or any other law;
- (c) the disciplinary control of persons holding or acting in any office in respect of which the Board is responsible under this Act;
- (d) promotion of values and principles of governance in the County public service;
- (e) the investigation, monitoring and evaluation of the organization, administration and personnel practices of the county public service;
- (f) promotion of efficiency and effectiveness in the county public service;
- (g) the review of conditions of service, code of conduct and qualifications of officers in the county public service;

- (h) the hearing and determination of appeals in respect of County Government public service;
 - (i) the termination of appointments and the removal of persons from any office, in respect of which the Board is responsible under this Act or any other law;
 - (j) the practice and procedure of the Board in the exercise of its functions under this Act;
 - (k) the delegation of the Board's functions or powers; and
 - (l) any other matter required under the Constitution, this Act or any other written law.
- (3) The power to make regulations conferred to the Board under this Act shall be—
- (a) for the objective and purpose of giving effect to the Constitution, the County Governments Act, 2012 and this Act;
 - (b) limited to the nature and scope specifically stipulated in the Constitution, the County Governments Act, 2012 and this Act; and
 - (c) based on the general principles and standards contained in the Constitution, the County Governments Act, 2012 and this Act.

Transition

29. (1) The Governor shall ensure that at least six months before the expiry of the term of the current Board, the process of recruiting a new Board is commenced such that the new Board Members report at least one month before the expiry of the term of the current Board.

(2) Notwithstanding the provisions of Section 58 (4) of the County Governments Act, 2012, the Governor may with the approval of the County Assembly extend the term of the Chairperson and one or more of the Board members for a period not exceeding six months to ensure smooth transition and continuity in the affairs of the Board at the expiry of the term of the current Board.

(3) In making appointments of a new Board after the expiry of the term of the current Board the Governor shall ensure that the appointment of Chairperson and members provide for continuity in the activities of the Board.

FIRST SCHEDULE**(s. 5(2))****PROCEDURE FOR APPOINTMENT OF CHAIRPERSON AND MEMBERS OF THE BOARD****Selection Panel**

1. (1) When ever a vacancy arises, the County Secretary shall by notice in at least two newspapers with nationwide circulation declare vacancies in the Board.

(2) The Executive Committee Member shall following the declaration constitute a selection panel comprising chairperson and six professionals drawn from the private and public sector, one of whom must have training and experience in law and the other in human resource.

(3) Subject to the provisions of this Schedule, the panel shall determine its own procedure.

(4) The office of the county secretary shall provide facilities and any support required by the panel in the performance of its functions

Oath or affirmation of office

2. The chairperson and members of the panel shall, before assuming office, take and subscribe the oath or affirmation of office prescribed in the Fourth Schedule.

Selection of nominees

3. (1) The panel shall, within fourteen days of appointment, invite applications from qualified persons and publish the names of all applicants and their qualifications in at least two newspapers with nationwide circulation and on the County Government's website.

(2) The panel shall consider the applications, shortlist and interview the applicants.

(3) After carrying out the interviews, the panel shall—

(a) select three persons qualified to be appointed as chairperson;

(b) select at least three persons qualified to be appointed as members of the Board for each vacancy; and

(c) forward the names of the persons selected under paragraphs (a) and

(b) to the Governor for nomination as the chairperson or member respectively or as the case may be.

(4) The Governor shall within fourteen days forward the names of nominees to the County Assembly for vetting and approval.

Approval by County Assembly

4. (1) The County Assembly shall within fourteen days consider all nominations received, vet and approve or reject any of them.

(2) Upon approval by the County Assembly, the Speaker of the County Assembly shall within seven days of the approval, forward the names of the approved persons to the Governor for appointment.

Rejection by County Assembly

5. (1) Where the County Assembly rejects any nomination pursuant to paragraph 4(1), the Speaker of the County Assembly shall, within seven days, notify the Governor of the rejection with a memorandum of reasons.

(2) The Governor shall within fourteen days of receipt of the rejection, submit to the County Assembly a fresh nomination from amongst the list of nominees received from the panel under paragraph 3(3).

(3) If the County Assembly rejects all or any subsequent nominee submitted under sub-paragraph (2), the panel shall forward to the Governor fresh names from the persons shortlisted and interviewed under paragraph 3(2) and the provisions of paragraphs 3(4), 4 and 5 shall with necessary modifications, apply.

Appointment of chairperson, and members

6. The Governor shall by notice in the Gazette, appoint the Chairperson and the members approved and forwarded by the County Assembly within seven days upon receipt of the approved names.

Dissolution of panel

7. (1) The panel shall stand dissolved upon the appointments under paragraph 6.

(2) Where the provisions of paragraph 5 apply, the panel shall continue to exist but shall stand dissolved upon the requisite appointments being made under paragraph 6.

Appointment of Board secretary

8. (1) The Board shall invite applications from qualified persons or firms for the position of secretary and publish the names of all applicants and their qualifications in at least two newspapers with nationwide circulation and the County Government website.

(2) The Board shall consider the applications, shortlist and interview the applicants.

- (3) After carrying out the interviews—
- (a) the Board shall select three names of persons or firms qualified to be appointed as Secretary;
 - (b) forward the names of the person selected under paragraph (a) to the Governor for nomination as Board Secretary;
- (4) The procedure provided in regulations 3 (4), 4, 5, and 6 shall with necessary modifications apply.

Extension of time

9. Despite the foregoing provisions of this Schedule, the Governor may, by notice in the Gazette, extend the period specified in respect of any matter under this section by a period not exceeding twenty-one days.

SECOND SCHEDULE

(s. 9)

**OATH OR SOLEMN AFFIRMATION OF CHAIRPERSON/
MEMBER/ SECRETARY/CHIEF EXECUTIVE OFFICER OF THE
BOARD**

I.....having
been appointed as (Chairperson/ Member/ Secretary/Chief Executive
Officer) of the Board, do swear/solemnly affirm that I will without fear or
favor, affection or ill-will, discharge the functions of the office of
(Chairperson/ Member/ Secretary/Chief Executive Officer) of the Board,
and that I will not, directly or indirectly, reveal any matter relating to such
functions to unauthorized persons or otherwise than in the course of duty.

So help me God.

Signed.....

Sworn/Declared before me this.....day of20.....

Judge of the High Court/Magistrate/Commissioner for Oaths.

THIRD SCHEDULE**(s.15)****PROVISIONS AS TO THE CONDUCT OF THE BUSINESS AND
AFFAIRS OF THE BOARD****Meeting of the Board**

1. The Board shall meet in plenary in a meeting convened by the Chairperson as often as may be necessary for the carrying out of its business but it shall meet at least once every calendar month.

Date of meeting

2. A meeting of the Board shall be held on such date and at such time as the chairperson shall decide.

Special meeting

3. The chairperson shall, on the written application of one- third of the members, convene a special meeting of the Board.

Quorum for meeting

4. The quorum for the conduct of business at a meeting of the Board shall be at least three members in addition to the Chairperson or in his /her absence the Vice Chairperson of the Board or a member chairing.

Chairperson of meeting

5. The chairperson shall preside at every meeting of the Board and in the absence of the chairperson at a meeting, the vice-chairperson shall preside and in the absence of both the chairperson and the vice-chairperson, the members present shall elect one of their number to preside and who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

Decision of the board

6. Unless a unanimous decision is reached, a decision on any matter before the Board shall be by concurrence of a majority of all the members.

Validity of proceedings

7. Subject to paragraph 4, no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

Secretary of meeting

8. The secretary shall be the secretary at all meetings of the Board.

Minutes of meetings

9. The Board shall cause minutes of all proceedings of meetings of the Board to be entered in books for that purpose.

Regulation of procedure

10. Except as provided by this Schedule, the Board may regulate its own procedure.

Disclosure of interest

11. (1) If any person is present at a meeting of the Board or any committee at which any matter is the subject of consideration and in which matter that person is directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Board or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(4) A member or employee of the Board or their relatives shall not transact any business or trade with the Board.

FOURTH SCHEDULE (Sch. I Reg 2)

OATH OR SOLEMN AFFIRMATION OF CHAIRPERSON AND MEMBERS OF THE SELECTION PANEL

I.....being called upon to exercise the functions of the Chairperson/member selection panel for Chairperson and members of the Kakamega County Public Service Board, do swear/solemnly affirm that I will without fear or favour affection or ill will discharge the functions of my office. That I will not, directly or indirectly, reveal to any unauthorized person or otherwise than in the course of duty the contents or any part of the contents of any document, communication or information whatsoever which may come to my knowledge in the course of my duties as a member of the panel.

So help me God.

Signed.....

Sworn/Declared before me this day of 20

Judge of the High Court/Magistrate/Commissioner for Oaths.

