

(Legislative Supplement No. 26)

LEGAL NOTICE NO. 67

THE POLITICAL PARTIES ACT

(No. 11 of 2011)

THE POLITICAL PARTIES DISPUTES TRIBUNAL (PROCEDURE)
REGULATIONS, 2017

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THE POLITICAL PARTIES ACT

(No. 11 of 2011)

THE POLITICAL PARTIES DISPUTES TRIBUNAL (PROCEDURE)
REGULATIONS, 2017

IN EXERCISE of the powers conferred by section 41(3A) of the Political Parties Act, 2011, the Chief Justice, in consultation with the Tribunal, makes the following Regulations:—

PART I—PRELIMINARY

1. These Regulations may be cited as the Political Parties Disputes Tribunal (Procedure) Regulations, 2017.

Citation.

2. In these Regulations, unless the context otherwise requires—

Interpretation.

“Act” means the Political Parties Act, 2011;

“complainant” means a person who lodges a dispute pursuant to section 40 of the Act;

“Commission” means the Independent Electoral Boundaries Commission established under Article 88 of the Constitution;

“complaint” means a dispute filed under section 40 of the Act;

“Chairperson” means the Chairperson appointed under section 39 of the Act;

“deputy registrar” means a person designated by the Judicial Service Commission for the discharge of judicial functions of the Tribunal and includes any person performing the duties of the office;

“hearing” means a sitting of the Tribunal duly constituted for the purposes of conducting proceedings under these Regulations;

“interested party” means a person named and enjoined as a party in proceedings before the Tribunal;

“member” means a person appointed under section 39 (2) (b) of the Act;

“political party” has the meaning assigned to it in Article 260 of the Constitution;

“respondent” means the person against whom the complaint is made; and

“Secretary” means the Secretary to the Tribunal appointed under section 43 of the Act.

3. These Regulations apply in the determination of disputes filed with the Tribunal pursuant to section 40 of the Act.

Application.

4. (1) The object of these Regulations is to set out the procedure to facilitate just, expeditious and impartial determination of disputes affecting political parties.

Object and guiding principles.

(2) In exercising its authority, the Tribunal shall be guided by the following principles—

- (a) justice shall be administered to all, irrespective of status;
- (b) justice shall not be delayed;
- (c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted;
- (d) justice shall be administered without undue regard to procedural technicalities; and
- (e) the national values and principles of governance in the Constitution.

(3) A party to a dispute shall assist the Tribunal to realize the object and guiding principles of these Regulations.

PART II—ORGANIZATION AND ADMINISTRATION OF THE TRIBUNAL

5. (1) Subject to sub-regulation (3), the Tribunal shall be properly constituted despite any vacancy in its membership.

Constitution of the Tribunal.

- (2) The Chairperson shall be responsible for—
 - (a) the constitution of panels of three or more members whenever circumstances demand;
 - (b) the overall administration and management of the Tribunal; and
 - (c) ensuring the orderly and prompt conduct of business of the Tribunal.

(3) Pursuant to section 39 (7) of the Act, the Tribunal shall be properly constituted for purposes of any proceedings before it if it is comprised of three members, one of whom shall be an advocate of the High Court.

(4) A sitting of the Tribunal shall be presided over by the Chairperson or, in the absence of the Chairperson, such other member being an advocate designated in writing by the Chairperson.

(5) Without prejudice to sub-regulation (3), a single member of the Tribunal designated by the Chairperson for that purpose may hear applications and make orders with regard to—

- (a) change of representation;
- (b) admission and recording of consent;
- (c) consolidation of matters;
- (d) correction of errors on the face of the record;
- (e) withdrawal of documents;
- (f) leave to file additional documents;
- (g) grant of interim orders; or

(h) admission of documents for filing in the registry.

(6) A party aggrieved by the decision of a single member of the Tribunal may file an application for review of the decision to the Tribunal.

6. (1) Sittings of the Tribunal may, unless the Chairperson otherwise directs, be held at a designated place between the hours of 8:00 a.m. and 5.00 p.m.

Sittings of the Tribunal.

(2) Despite sub-section (1), sittings of the Tribunal may, where circumstances demand, be held at such place and time as the Tribunal may deem necessary for the expedient and proper exercise of its authority.

(3) In determining the sittings of the Tribunal under this regulation, the Chairperson shall give reasonable notice and opportunity to all parties to appear before the Tribunal.

PART III—PROCEDURES FOR DETERMINATION OF DISPUTES

7. (1) A dispute to the Tribunal shall be commenced by filing a complaint within thirty days from the date of making the decision complained of, if the dispute is between—

Filing of disputes.

- (a) the members of a political party;
- (b) a member of a political party and a political party;
- (c) political parties;
- (d) an independent candidate and a political party;
- (e) coalition partners; or
- (f) appeals from decisions of the Registrar of Political Parties.

(2) A complaint under sub-regulation (1) shall be filed in the registry in Form 1A set out in the First Schedule.

(3) An appeal to the Tribunal against the decision of the Registrar of Political Parties shall be in Form 1B set out in the First Schedule.

8. (1) A complaint against the decision of an internal political party dispute resolution mechanism arising out of political party primaries shall be filed with the Tribunal not more than fourteen days from the date of the decision, and in any case, at least one day before the day set aside by the Commission for submission of names of the party candidates who have been selected to participate in the general elections pursuant to section 31 (2A) of the Elections Act.

Disputes relating to party primaries.

Act No. 24 of 2011.

(2) The Tribunal shall, with regard to disputes arising out of party primaries, exercise its powers under Regulation 37 to extend or reduce the time prescribed for the doing of any act under these Regulations to ensure that the ends of justice are met and, in particular, to enable parties to comply with the requirements of the Elections Act, the Political Parties Act and any other law relating to elections.

Act No. 11 of 2011.

(3) Where, after the lodging of a complaint an internal political party dispute resolution mechanism has not made a determination, an aggrieved party may, after the lapse of the thirty days contemplated under section 13 (2A) of the Elections Act or such other period as the Tribunal may allow, file a complaint with the Tribunal.

(4) A dispute arising out of party primaries shall be heard and determined on priority basis and in any case not later than one day before the day set aside by the Commission for submission of names of the party candidates who have been selected to participate in the general elections pursuant to section 31 (2A) of the Elections Act.

9. (1) A complaint under regulation 7 shall state—

Form and contents
of a complaint.

- (a) the name and address of the complainant;
- (b) the name and address of the respondent;
- (c) the date when the decision or action upon which the complaint is based arose;
- (d) the decision, if any, complained against;
- (e) the grounds on which the complaint is presented; and
- (f) the name and address of the advocate for the complainant, if any, which shall be the address for service.

(2) A complaint shall be—

- (a) supported by an affidavit by the complainant containing the grounds on which relief is sought and setting out the facts relied on by the complainant;
- (b) accompanied by witness statements signed by the witnesses;
- (c) accompanied by copies of any supporting documents to be relied on at the hearing; and
- (d) signed by the complainant or by a person duly authorized by the complainant.

(3) There shall be as many copies of the complaint filed as there are persons to be served, and a copy for the Tribunal.

(4) The complaint shall conclude with a prayer, requesting the Tribunal to make the appropriate relief.

(5) Where an aggrieved party makes a complaint in writing to the Tribunal other than in the prescribed form, the Tribunal may, after holding a preliminary hearing with the complainant, require that the complaint be reduced into the prescribed form and proceed with it in accordance with these Regulations.

10. (1) The complainant shall serve the complaint on the respondent within seven days of filing the complaint with the Tribunal.

Service on the
respondent.

(2) A complaint shall be served by—

- (a) direct service; or

(b) advertisement in a newspaper of national circulation.

(3) Service on a political party or Registrar of Political Parties shall be by—

(a) delivery at the registered office; or

(b) advertisement in a newspaper of national circulation.

11. The person serving a document under these Regulations shall swear and annex or cause to be annexed to the original document an affidavit of service stating the time and manner in which the document was served and the name and address of the person, if any, witnessing the delivery.

Proof of service.

12. (1) Upon being served with a complaint under regulation 10, the respondent may oppose the complaint by filing and serving a response within seven days from the date service.

Response by the respondent.

(2) The response to a complaint filed under sub-regulation (1) shall be in Form 1C set out in the First Schedule and shall be—

(a) supported by an affidavit verifying contents in the form;

(b) accompanied by witness statements signed by the witnesses;

(c) accompanied by copies of any supporting documents to be relied on at the hearing; and

(d) signed by the respondent or by a person duly authorized by the respondent.

(3) There shall be as many copies of the response filed as there are persons to be served, and a copy for the Tribunal.

(4) Unless otherwise ordered by the Tribunal, every response to a complaint shall be served by the respondent as set out in regulation 10 within seven days from the date of filing that response.

(5) A response shall respond to each claim made in the complaint.

(6) A respondent who has not filed a response as provided under this regulation shall not be allowed to take part in the proceedings.

13. (1) After the response is filed by the respondent, the complainant shall be at liberty to file a reply to the response within four days of service or such period as may be directed by the Tribunal.

Close of pleadings.

(2) Pleadings shall close five days after the filing of the reply by the complainant or such other period as may be directed by the Tribunal.

14. Upon receipt of the documents filed under regulations 7, 8 and 12, the registry shall—

Acknowledgement by the registry.

(a) acknowledge receipt of the documents by stamping and endorsing the date on which the documents were received;

(b) enter the name of the complainant, respondent and their advocates in a register;

- (c) inform the person of the case file number as entered in the case register; and
- (d) advise the person of any steps required to be performed to enable the Tribunal to determine the matter.

15. (1) After close of pleadings, the Tribunal may hold a scheduling conference to—

Scheduling conference.

- (a) determine the possibility of alternative dispute resolution;
- (b) determine whether there are any documents that the Tribunal may order to be produced before or during the hearing;
- (c) consider compliance with these Regulations;
- (d) identify contested and uncontested issues;
- (e) create a timetable for the proceedings;
- (f) consider consolidation of complaints or appeals; and
- (g) consider any other form of settlement.

(2) Where the parties reach an agreement and the Tribunal is satisfied that it is the will and intention of the parties to so agree, the Tribunal shall record a settlement on the terms agreed upon by the parties.

(3) A scheduling conference shall be presided over by a member of the Tribunal, who shall be an advocate of the High Court designated by the Chairperson for that purpose.

16. (1) Where the parties fail to reach an agreement after the scheduling conference and alternative dispute resolution is not an option, the Tribunal shall fix a hearing date and notify the parties.

Notice of hearing.

(2) The deputy registrar shall give the parties not less than seven days notice of the date fixed for the hearing.

17. (1) The evidence of the complainant shall be heard first, followed by that of his or her witnesses, if any, unless the Tribunal orders otherwise.

Procedure at the hearing.

(2) At the close of the evidence of the complainant and each of the witnesses, the respondent shall be given an opportunity to examine each of them.

(3) At the close of the evidence of the complainant and the witnesses, the evidence of the respondent shall be heard and the complainant shall be given an opportunity to examine the respondent and each of the respondent's witnesses.

(4) The Tribunal may, at any time during the proceedings, examine either party or any witness and may, in its discretion, call any additional evidence it considers necessary.

(5) The Tribunal may at its discretion require parties to file written submissions either in addition to or in lieu of taking oral evidence.

18. (1) The proceedings of the Tribunal shall be open to the public. Hearing to be open to the public.
- (2) The Tribunal may, if it thinks fit, order that the public generally or any particular person shall not have access to the proceedings.
19. (1) The Tribunal shall, as far as practicable, hear the case on a day-to-day basis once the proceedings have commenced. Hearing to be on day to day basis.
- (2) Despite sub-regulation (1), the Tribunal may, where sufficient cause is shown, upon the application of any of the parties, adjourn the proceedings from time to time.
20. Where, on the date fixed for the hearing, the respondent appears and the complainant does not appear, the Tribunal shall, if it is satisfied that the hearing notice was duly served, ask the respondent whether he or she admits the claim and if— Non-appearance of complainant.
- (a) the respondent admits the claim or any part of the claim, the Tribunal may make a ruling against the respondent for the claim or for the part of the claim so admitted and dismiss the part not admitted; or
- (b) the respondent does not admit the claim, the Tribunal may dismiss the matter.
21. Where on the date fixed for the hearing, the complainant appears, but the respondent does not appear, the Tribunal may— Non-appearance of respondent.
- (a) if satisfied that the hearing notice notifying the respondent of the place and time of the hearing was duly served, proceed to receive the evidence and submissions; and
- (b) if satisfied that the complainant has established a case, in whole or in part, make a decision in favour of the complainant accordingly.
22. (1) Where on the date fixed for the hearing both parties do not appear, the Tribunal may dismiss the complaint. Non-appearance of both parties.
- (2) Where a complaint is dismissed under sub-regulation (1), the Tribunal may reinstate the complaint if the complainant shows sufficient cause for non-appearance.
23. (1) A party may, at any time before or during the hearing apply to withdraw any pleadings filed by the party. Withdrawal of pleadings.
- (2) Upon receipt of an application under sub-regulation (1), the Tribunal shall consider the application and make a determination.
- (3) Where pleadings are withdrawn under sub-regulation (1)—
- (a) the Tribunal shall, by notice, inform all the parties of such withdrawal; and
- (b) a party may request the Tribunal to order costs to be paid by the party withdrawing the pleadings.
24. (1) A party against whom a decision has been made under regulations 20 and 21 may apply to the Tribunal to set aside the decision. Setting aside judgments.

(2) The Tribunal shall not set aside any decision unless it is satisfied that the party has given sufficient cause for non-appearance.

25. Where a member of the Tribunal has an interest in any matter before the Tribunal, that member shall declare the interest in the matter which shall be recorded and the member shall not participate in the hearing or decision making process of the Tribunal in relation to that matter.

Disclosure of interest.

26. (1) The official languages of the Tribunal are English and Kiswahili.

Language of the Tribunal.

(2) Translation of the proceedings may be provided by the Tribunal in appropriate cases.

27. (1) A complainant shall have the burden of proving their case.

Burden and standard of proof.

(2) Where any party asserts any fact or claim, he or she shall prove that fact or claim.

(3) An issue before the Tribunal shall be proved on the balance of probabilities.

28. (1) The Tribunal may, at any stage in the proceedings, after giving the parties an opportunity to be heard, reject an application in whole or in part if it considers that the application discloses no valid ground or that it is vexatious.

Rejection of an application.

(2) Where the Tribunal rejects an application, it may make any consequential order it considers appropriate.

29. (1) The decision of the Tribunal may be unanimous or determined by majority verdict.

Decisions of the Tribunal.

(2) The decision of the Tribunal shall be written by the Chairperson or the person presiding over the proceedings.

(3) The decision of the Tribunal shall contain the following—

- (a) the nature of the complaint;
- (b) the number of the complaint;
- (c) the names of the parties;
- (d) a summary of all the relevant evidence produced before the Tribunal and the reasons for accepting or rejecting the evidence;
- (e) the order or decision and the reasons thereof;
- (f) the relief or remedy to which the parties are entitled; and
- (g) an order as to costs.

(4) The decision of the Tribunal shall be read out in open court.

(5) The members of the panel, with the exception of any dissenting member, shall sign the decision.

(6) The Chairperson, the member presiding over any proceedings or the deputy registrar may certify orders, directions or decisions of the Tribunal.

PART IV—PROVISIONS RELATING TO WITNESSES

30 A person is competent to testify unless the Tribunal considers that the person is prevented from understanding the questions put to him or her or is not capable of giving rational answers, due to his or her tender age or infirmity, whether of body, mind or any cause.

Competence of witnesses.

31. (1) The Tribunal may at any stage of the proceedings—

- (a) summon any person to appear before it as a witness;
- (a) examine any person in attendance though not summoned as a witness; or
- (a) recall and re-examine any person, if the Tribunal deems his or her evidence essential.

Power to summon material witness or re-examine person present.

(2) The complainant or respondent shall have the right to cross examine any person examined under sub-regulation (1) and the Tribunal may, upon request by a party, adjourn the hearing for such time as it thinks necessary to enable the party to adequately prepare for cross examination.

(3) A witness before the Tribunal shall have the same immunities and privileges as if the person was a witness before the High Court.

(4) Where a witness, without sufficient cause, does not appear in response to the summons, the Tribunal may, on proof of proper service of summons in reasonable time before the hearing date, issue a warrant to bring the witness before the Tribunal at the time and place specified in the warrant.

32. A person summoned to attend as a witness who—

- (a) fails to attend as required by the summons;
- (a) having attended, departs without having obtained the permission of the Tribunal; or
- (a) fails to attend after adjournment of the Tribunal after having been ordered to attend,

Penalty for non-attendance of witnesses.

commits an offence and is liable on conviction to a fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding six months or to both such fine and imprisonment.

PART V—REVIEWS AND APPEALS

33. (1) The Tribunal may, of its own motion or upon application by an aggrieved party, review its decisions or orders.

Reviews.

(2) A person aggrieved by a decision of the Tribunal may, within fourteen days from the date of the decision or order, apply to the Tribunal for a review.

(3) The law applicable to reviews before the High Court in civil matters shall, with the necessary modifications, apply in reviews before the Tribunal.

34. (1) A person aggrieved by a decision of the Tribunal may, within thirty days from the date of the decision or order, appeal to the High Court. Appeals.

(2) The law applicable to appeals before the High Court in civil matters shall, with the necessary modifications, apply in appeals before the Tribunal.

(3) A decision of the High Court shall be final.

PART VI—MISCELLANEOUS PROVISIONS

35. (1) The principal registry of the Tribunal is located in Nairobi. Registry.

(2) The Tribunal may establish registries in other parts of the Republic as appropriate.

(3) The Secretary shall be responsible for—

- (a) the establishment and maintenance of the registry;
- (a) the acceptance, transmission, service and custody of documents; and
- (a) keeping records of proceedings of the Tribunal.

(4) There shall be a register which shall contain the following particulars—

- (a) the serial number of the complaint;
- (a) the date of filing the complaint;
- (a) the name and address of the complainant, or where there is more than one complainant, the names and addresses of all the complainants;
- (a) the name of the respondent, or where there is more than one respondent, the names and addresses of all the respondents;
- (a) the nature of the complaint;
- (a) the date of hearing;
- (a) a list of documents, either produced or filed, including those requested by the Tribunal;
- (a) the decision or order of the Tribunal and the date it was made;
- (a) the date on which the remedy was executed;
- (a) the particulars and details of execution of the decision or order; and
- (a) the final disposition of the complaint.

36. The Tribunal shall have the power to order any person to produce documents relevant to a matter before it. Production of documents.

37. The Tribunal may, for sufficient reason, extend or reduce the time prescribed by these Regulations for the doing of any act upon such terms and conditions as may appear to it just and expedient. Extension and reduction of time.

38. (1) A person affected by an order or decision of the Tribunal who requires a copy of the order or decision shall, on applying for the copy, be issued with the copy upon payment of the prescribed fee set out in the Second Schedule.

Copies of Tribunal documents.

(2) The Tribunal may waive the prescribed fee where sufficient reason is given for the waiver.

(3) A person, other than a person affected by the decision or order of the Tribunal, may obtain copies of documents of the Tribunal on payment of the fee prescribed in the Second Schedule.

39. Where an issue is not provided for under these Regulations, the Civil Procedure Rules shall apply with such modifications as the Tribunal shall deem necessary.

Application of Civil Procedure Rules.

40. The Tribunal is, in the resolution of disputes under these Regulations, not bound by technicalities or legal rules of procedure and may waive any rules or procedural requirements.

Tribunal not to be bound by technicalities.

41. (1) A member of the Tribunal is not liable to be sued in any civil court or Tribunal for any act done or ordered to be done by the member in the discharge of judicial functions.

Immunity of the Tribunal.

(2) An officer of the Tribunal or any other person designated to execute any order or warrant of the Tribunal is not liable to be sued in any civil court or Tribunal in respect of any lawful act done in the execution of the warrant.

42. (1) Notwithstanding anything contained in these Regulations, the Tribunal may hear and determine an application for conservatory or interim orders.

Conservatory or interim orders.

(2) Any such order may be discharged, varied or set aside by the Tribunal on application made thereto by any party dissatisfied with such order.

43. (1) The costs of any matter before the Tribunal shall be determined by the Chairperson or the person presiding over a panel who shall have power to determine by whom and out of what property such costs are to be paid.

Taxation of costs.

(2) The costs of any complaint, cause or other matter shall follow the event unless the Tribunal, for good reason, otherwise orders.

(3) Where the Tribunal does not determine the amount of costs to be paid, any party may apply to the deputy registrar for taxation of the costs and the deputy registrar shall notify all parties of the date fixed for such taxation.

FORM 1A

FIRST SCHEDULE

(r. 7 (2))

COMPLAINT FORM

REPUBLIC OF KENYA

IN THE POLITICAL PARTIES DISPUTES TRIBUNAL

COMPLAINT NO..... OF 20.....

.....COMPLAINANT

-VERSUS -

.....RESPONDENT

AND (where applicable)

.....INTERESTED PARTY

(Tick as appropriate)

- Dispute between members of a political party.
- Dispute between a member and a political party.
- Dispute between political parties.
- Dispute between an independent candidate and a political party.
- Dispute between coalition partners.
- Dispute arising from party primary.

Address of the complainant:.....

Name and address of the Respondent:.....

1. Nature of Complaint

.....

2. Grounds on which the complaint is presented

.....

3. Have there been any efforts to resolve this matter within the Party? (Please indicate the date of the decision taken, if any by the party's internal dispute resolution mechanism)

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4. Prayers sought from the Tribunal

.....

Drawn and filed by:

.....

To be served upon:

.....

FORM 1B

(r. 7 (3))

APPEAL FORM

REPUBLIC OF KENYA

IN THE POLITICAL PARTIES DISPUTES TRIBUNAL

APPEAL NO..... OF 20.....

.....APPELLANT

-VERSUS -

THE REGISTRAR OF POLITICAL PARTIESRESPONDENT

AND (where applicable)

.....INTERESTED PARTY

Address of the Appellant:

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.....
.....

Name and address of the interested party:

1. Claim by Appellant:

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.....

2. Grounds on which the appeal is presented:

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3. Prayers sought from the Tribunal:

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Drawn and filed by:

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To be served upon:

.....

FORM 1C

(r. 12 (2))

RESPONSE FORM

REPUBLIC OF KENYA

IN THE POLITICAL PARTIES DISPUTES TRIBUNAL

RESPONSE TO A COMPLAINT NO..... OF 20.....

.....COMPLAINANT/APPELLANT

-VERSUS -

.....RESPONDENT

AND (*where applicable*)

.....INTERESTED PARTY

Name and address of the Respondent:

1. Nature of the Response.....
.....
.....

2. Grounds on which the response to the complaint is presented
.....
.....

3. Prayers sought from the Tribunal
.....
.....

Drawn and filed by:
.....

To be served upon:
.....

SECOND SCHEDULE

(r.38 (1), r. 38 (3))

FEES

No.	<i>Nature of Documents</i>	<i>Fees in KSh.</i>
	Filing of complaint/statement of claim	1,500
	Declaratory orders	6,000
	Notice of motion or chamber summons	250
	Order in each prayer therein i.e. in the notice of motion	150 per prayer
	Affidavits	100
	Annexures	10 per annexure
	Submissions	250
	Preliminary Objection	250
	Hearing Notice	100
	Mention Notice	100
	Proceedings original (certified)	60 per page
	Uncertified proceedings	30 per page
	Making copies of records other than proceedings in the Tribunal's file (copying fees)	10 per page and the party to bear their own copying charges

These fees guidelines are applicable as per the Judiciary's Guide to Assessment of Court Fees 1995 and are subject to change by the Judiciary of Kenya.

Dated the 11th April, 2017.

DAVID MARAGA,
Chief Justice of Kenya and President, Supreme Court of Kenya.