

(Legislative Supplement No. 6)

LEGAL NOTICE NO. 14

THE CONSTITUTION OF KENYA

THE SUPREME COURT ACT, 2011

(No. 7 of 2011)

THE SUPREME COURT (AMENDMENT) RULES, 2016

IN EXERCISE OF the power conferred by Article 163 (8) of the Constitution and section 31 of the Supreme Court of Kenya Act, the Supreme Court makes the following Rules:—

THE SUPREME COURT (AMENDMENT) RULES, 2016

1. These Rules may be cited as the Supreme Court (Amendment) Rules, 2016.

Citation.

2. The Supreme Court Rules, 2012 (in these Rules referred to as “the principal Rules”) are amended in rule 2 by—

Amendment of rule
2 of L.N. No. 123 of
2012.

- (a) deleting the word “suit” and substituting therefor the word “matter” appearing in the definition of the expression “*amicus curiae*”;
- (b) deleting the definition of the word “appellant”;
- (c) deleting the words “and includes a division of the Court or a single Judge of the Court exercising delegated authority of the Court” appearing in the definition of the word “Court”;
- (d) deleting the words “cannot afford” and substituting therefor the words “is unable” appearing in the definition of the expression “*in forma pauperis*”;
- (e) deleting the words “intended appellant” and substituting therefor the word “applicant” in the definition of the word “party”;
- (f) deleting the definition of the word “Registrar” and substituting therefor the following new definition—
“Registrar” has the meaning assigned to it under the Act;
- (g) inserting the following new definitions in their proper alphabetical order—

“association” includes a company, corporation or other body of persons, whether incorporated or not;

“electronic media” includes a compact disc, memory stick, digital versatile disc, e-mail or any unalterable electronic media;

“guardian *ad litem*” means a person appointed as such to defend a minor or a person with a disability in a matter;

“next friend” means a person who institutes a matter on behalf of a minor or a person with a disability;

“pleadings” include affidavits, reports or other documents filed in the Court; and

“Registry” has the same meaning as assigned to it under the Act.

3. The principle Rules are amended by deleting rule 4 and substituting therefor the following new rule—

Amendment of rule
4 of No.123 of 2012.

Role of the Chief Justice.

4. (1) The Chief Justice shall co-ordinate the activities of the Court, including—

- (a) constituting a Bench to hear and determine any matter filed before the Court;
- (b) determining the sittings of the Court and the matters to be disposed of at such sittings; and
- (c) determining the vacations of the Court.

(2) The Chief Justice may delegate the roles under sub-rule (1) to the Deputy Chief Justice.

(3) Without prejudice to the provisions of sub-rule (1) or sub-rule (2), a single Judge of the Court may hear applications and make orders with regard to—

- (a) change of representation;
- (b) admission of consent;
- (c) consolidation of matters;
- (d) dismissal of a matter for want of prosecution;
- (e) correction of errors on the face of the record;
- (f) withdrawal of documents;
- (g) review of the decision of the Registrar;
- (h) leave to file additional documents;
- (i) admission of documents for filing in the Registry; or
- (j) substitution of service.

(4) A party aggrieved by the decision of a single Judge of the Court may file an application for review of the decision to the Court.

4. The principal Rules are amended by inserting a new rule immediately after rule 4 as follows—

Insertion of a new rule.

Role of the Registrar.

4A. (1) The role of the Registrar shall be to—

- (a) schedule matters filed before the Court for a scheduling conference in accordance with rule 15;
- (b) decline to admit pleadings that are not in accordance with the Constitution, the Act, the relevant rule or the Court's Practice Directions for filings;
- (c) where the Registrar considers it fit and just to do so, impose sanctions or order costs against a party who does not comply with the directions of the Court and causes unnecessary delay by way of adjournments; and
- (d) fix matters for hearing in consultation with the Chief Justice.

(2) Any party aggrieved by the decision of the Registrar made under this rule may apply to a single Judge of the Court for a review of the decision.

(3) In reviewing the decision of the Registrar under sub-rule (2), the decision of the Judge of the Court shall be final.

5. The principal Rules are amended at rule 5 by deleting sub-rule (2) and substituting therefor the following new sub-rule—

Amendment of rule 5 of L.N. No. 123 of 2012.

(2) The working hours of the Registry shall be—

- (a) 8.30 a.m. to 5.00 p.m.; and
- (b) 9.00 a.m. to 12 noon during vacation.

6. The principal Rules are amended at rule 6 by—

Amendment of rule 6 of L.N. No. 123 of 2012.

- (1) renumbering the rule as sub-rule (1); and
- (2) inserting a new sub-rule as follows—

(2) Where a party intends to address the Court in any language other than the official language of the Court, including in Braille or sign language, the party shall give the Registrar a seven days' notice before the date of the hearing.

7. The principal Rules are amended by inserting new rules immediately after rule 7 as follows—

Insertion of a new rule.

Hours for lodging documents.

7A. (1) Parties shall file documents in the registry or present documents to the registry during the working hours specified in rule 5(2).

(2) Despite sub-rule (1), the Chief Justice may, from time to time, direct such other time during which parties may file documents in the registry or present documents to the registry.

Maintenance of registers.

7B. (1) The Registrar shall maintain a register of all documents lodged in the registry.

(2) A register maintained under this rule shall contain the particulars of documents including—

- (a) the number of the application;
- (b) in the case of an appeal, the file number of the proceedings in the lower court;
- (c) the names of the parties; and
- (d) the date when any action is required to be taken.

Sittings of the Court.

7C. (1) The Court shall have three sittings in every year.

(2) Notwithstanding the generality of sub-rule (1), the sittings of the Court shall be—

- (a) from the 14th January to the second Wednesday before Good Friday;
- (b) from the first Wednesday after Easter Week to the 31st July; and
- (c) from the 16th September to the 20th December.

(3) The sittings of the Court during vacation shall be conducted as directed by the Chief Justice.

Computation of time.
Cap. 2.

7D. (1) The provisions of section 57 of the Interpretations and General Provisions Act shall apply to the Court in relation to the computation of time.

(2) Where the Constitution provides for specific timelines in relation to any matter, the computation of time under these Rules shall be modified to accord with the constitutional timelines.

Filing of documents.

7E. (1) Parties shall file with the Court all documents in print and electronic form.

(2) The Registrar may refuse to accept any document that does not comply with the Act or these Rules and may issue an order of rectification of pleadings so that the document complies with the Act or these Rules.

(3) Parties shall prepare all documents in A4 size paper unless the nature of the documents renders

them impracticable to do so and shall be written only on one side of the page with a margin of at least one-and-a-half inches from the left edge of the page.

(4) Any document filed with the Court by a party shall be clear and legible and may be produced by printing, type lithography, stencil duplicating, photography, typewriting, any other appropriate technology, or a combination of these forms.

(5) In criminal or civil appeals—

(a) the memorandum of appeal and record of appeal shall be bound in book form with a cover of durable paper, shall have the title of the title of the appeal on the cover page, and may be bound in more than one volume; and

(b) the pages of each application, the memorandum of appeal and the record of appeal shall be numbered consecutively.

(6) In each application or appeal, every tenth line of each page of the application or appeal shall be indicated on the right side of the page.

(7) The Court may limit the number of pages of any documents to be filed with the Court.

(8) The Court may, where necessary, vary the requirements relating to the filings of pleadings with the Court.

(9) Pleadings shall be deemed to have been filed with the Court where—

(a) all the relevant copies of the pleadings have been lodged in the Registry; and

(b) where applicable—

(i) the requisite fee has been paid; or

(ii) the security for costs has been deposited as directed by the Court.

8. The principal Rules are amended at rule 8(2) by deleting the word “informally” appearing immediately after the word “made” and substituting therefor the word “orally”.

Amendment of rule 8 of L.N. No. 123 of 2012.

9. The principal Rules are amended at rule 9 by deleting sub-rule (2).

Amendment of rule 9 of L.N. No. 141 of 2012.

10. The principal Rules are amended at rule 10 by deleting sub-rule (2) and substituting therefor the following new sub-rule—

Amendment of rule 10 of L.N. No. 123 of 2012.

(2) Unless the Court requires proof of service by oral evidence, proof shall be by way of an affidavit of service which

shall specify the details of the persons served, the place, date, time and mode of service.

11. The principal Rules are amended by deleting rule 12 and substituting therefore the following new rule—

Amendment of rule
11 of L.N. No. 141
of 2012.

12. (1) A party may, in any proceedings before the Court—

- (a) appear in person;
- (b) be represented by an advocate; or
- (c) with the leave of the Court, be assisted by any other person chosen by the party.

(2) An association, in any proceedings before the Court—

- (a) may be represented by an advocate, a director, manager or secretary appointed in accordance with a resolution of the association and the appointment of the advocate, director, manager or secretary shall be in writing and shall be sealed with the official seal of the association; and
- (b) shall file the resolution made under paragraph (a) with the Court.

(3) Subject to sub-Rule (4), the Court may appoint a guardian *ad litem* or a next friend for the purpose of lodging an appeal or petition at the Court and may, at any time and for sufficient reason, remove or substitute the guardian *ad litem*.

(4) Where a person has acted as a guardian *ad litem* or next friend in the preceding court, and the minor or person with disability for which the guardian *ad litem* or next had acted is a respondent in an appeal or petition at the Court, the guardian *ad litem* or next friend may file a consent to act as a guardian *ad litem* or next friend with the Court if he or she wishes to continue acting for the minor or person with disability.

(5) A party may remove or substitute that party's representative at any stage of the proceedings.

(6) Where a party—

- (a) removes or substitutes that party's representative;
- (b) elects to act in person without representation; or
- (c) having elected to act in person without representation, elects to appoint a representative

that party shall lodge with the Registrar a notice of change of representation and shall serve the notice on the other party or parties to the proceedings.

(7) An advocate may, at any stage in proceedings before the Court, apply to the Court to cease acting for a party.

(8) An advocate who applies to the Court to cease acting for a party under sub-rule (7) shall serve the application on the other party or parties to the proceedings.

12. The principal Rules are amended by deleting rule 15 and substituting therefor the following new rule—

Amendment to rule 15 of L.N. No. 141 of 2012.

15. (1) A party shall, within seven days after the close of pleadings before the Court, fill in and submit to the Registrar a scheduling questionnaire as set out in Form G in the First Schedule to these Rules.

(2) The Registrar shall, within three days of receiving the filled-in questionnaire, convene a scheduling conference to—

- (a) determine the contested issues and agreed issues;
- (b) determine whether the parties can reach a settlement out of court;
- (c) determine the form of evidence to be adduced by the parties and the number of witnesses parties shall call, if any;
- (d) receive proposals, and give directions, on the proposed time frame for oral submissions, the filing of written submissions, and the lists of authorities, bundles of authorities and digests by parties;
- (e) confirm whether or not the parties' pleadings conform with these Rules and the practice directions of the Court; and
- (f) where the question of the jurisdiction of the Court is raised by a party, refer the matter to the Chief Justice for determination.

(3) The presiding judge of the Court shall, within seven days after the registrar certifies that the parties have complied with the directions made at the scheduling conference, convene a pre-trial conference in order to determine preliminary matters including—

- (a) whether or not to allow amicus curiae or interested parties to participate in the proceedings before the Court; and
- (b) any other matter that requires determination that may have been raised at the scheduling conference.

13. The principal Rules are amended by deleting rule 19 and substituting therefor the following new rule—

Amendment of rule 19 of L.N. No. 123 of 2012.

19. A party may, at any time before or after the hearing but before the delivery of judgment, with the leave of the Court, withdraw any proceedings.

14. The principal Rules are amended in rule 20 by inserting the following new sub-rule immediately after sub-rule (4)—

Amendment of rule 20 of L.N. No. 123 of 2012.

(4A) An application for the correction of a judgment, ruling or order as provided under section 21(4) shall be made in Form A as set out in the First Schedule to these Rules.

15. The principal Rules are amended in rule 21 by deleting sub-rule (3) and substituting therefor the following new sub-rule—

Amendment of rule 21 of L.N. 123 of 2012.

(3) Any party may, within fourteen days from the date of judgment or ruling, prepare a draft order and submit it for the approval of the other party or parties and who shall, within seven days of receiving the draft order—

- (a) approve it, with or without any changes; or
- (b) reject it.

16. The principal Rules are amended by inserting the following new rule immediately after rule 21—

Insertion of a new rule.

Signature and sealing of court documents.

21A. A summons, warrant, order, notice or other formal document issued by the Court shall be signed by the Registrar and sealed with the seal of the Court.

17. The principal Rules are amended by deleting rule 23 and substituting therefor the following new rule—

Amendment of rule 23 of L.N. o. 141 of 2012.

23. An interlocutory application to the Court shall be by way of a written submission only:

Provided that where a party is not represented, that party may address the Court orally.

18. The principal Rules are amended at rule 24 by deleting the marginal note and substituting therefor the following new marginal note—

Amendment of rule 24 of L.N. o. 141 of 2012.

“Application for certification.”

19. The principal Rules are amended at rule 24(2) by inserting the words “or has declined to certify” after the words “has certified”.

Amendment of rule 24 of L.N. o. 141 of 2012.

20. The principal Rules are amended at rule 24 by inserting the following new sub-rule immediately after sub-rule (4)—

Amendment of rule 24 of L.N. o. 141 of 2012.

(5) An application under this rule shall be determined on the basis of written submissions:

Provided that the Court may, where an applicant is unrepresented, direct that the submissions may be made orally.

21. The principal Rules are amended at rule 25 by inserting a new sub-rule immediately after sub-rule (3) as follows—

Amendment of rule 25 of L.N. No. 123 of 2012.

(4) An application under this rule shall be determined on the basis of written submissions:

Provided that the Court may, where the applicant is unrepresented, direct that submissions may be made orally.

22. The principal Rules are amended by deleting rule 28 and substituting therefor the following new rule—

Amendment of rule 25 of L.N. No. 123 of 2012.

28. (1) If on the date fixed for the hearing of an application—

- (a) neither party attends court, the Court may dismiss the application; or
- (b) the applicant does not attend court or the respondent does not attend court, the Court may allow or dismiss the application, or may proceed in any manner that the Court deems fit.

(2) A party that did not attend court and is aggrieved by the decision of the Court under sub-rule (1) may apply to the Court to have the application heard afresh:

Provided that the party shall demonstrate sufficient cause for non-attendance.

(3) The Court shall consider an application under sub-rule (2) and may set aside or vary the decision made under sub-rule (1).

(4) Where in a criminal matter the applicant does not attend court by reason of being in custody but is represented by an advocate, the application shall be heard in the absence of the applicant:

Provided that the Court may direct that the applicant shall be presented in court for the hearing.

23. The principal Rules are amended at rule 32 by inserting a new sub-rule immediately after sub-rule (2) as follows—

Amendment of rule 32 of L.N. No. 123 of 2012.

(3) Where a party cannot serve a petition or a response to a petition or cannot make any other service under these Rules the party may apply in writing to the Court for an order of substituted service through a newspaper with a nationwide circulation and the Court may, for sufficient cause, grant such an order.

24. The principal Rules are amended at rule 33(1) by inserting the words “where the appeal is as of right, or within thirty days after the grant of certification where such certification is required” immediately after the words “notice of appeal”.

Amendment of rule 33 of L.N. No. 123 of 2012.

25. The principal Rules are amended at rule 33 by inserting a new sub-rule immediately after sub-rule (6) as follows—

Amendment of rule 33 of L.N. No. 123 of 2012.

(7) For the avoidance of doubt, the record of appeal shall contain the judgment being appealed, the judgment or ruling of the High Court, the proceedings of the Court of Appeal, and the relevant pleadings required to make a determination of the appeal.

26. The principal Rules are amended at rule 41(2) by inserting a new paragraph immediately after paragraph (c) as follows—

Amendment of rule 41 of L.N. No. 123 of 2012.

(d) concisely and briefly state the question upon which advice is sought.

27. The principal Rules are amended at rule 41 by inserting a new sub-rule immediately after sub-rule (2) as follows—

Amendment of rule 41 of L.N. No. 123 of 2012.

(2A) Where an *amicus curiae* or an expert has been admitted in any proceedings before the Court, the *amicus curiae* or expert shall file written submissions with the Court or shall orally address the Court as the Court may direct.

28. The principal Rules are amended by deleting Part Eight which consists of rules 42, 43 and 44.

Repeal of Part Eight of L.N. No. 141 of 2011.

29. The principal Rules are amended at rule 50(3)(b) by deleting the words "suit" and "below" and substituting therefor the words "matter" and "preceding", respectively.

Amendment of rule 50 of L.N. No. 123 of 2012.

30. The principal Rules are amended by inserting a new rule immediately after rule 55 as follows—

Insertion of a new rule.

55A. The disposal of records in the custody of the Court shall be in accordance with the provisions of the Records Disposal Act or as the Chief Justice may direct.

Cap. 124.

Made on the 15th January, 2015.

WILLY MUTUNGA,
*Chief Justice and President of
the Supreme Court of Kenya.*