

NO. 12 OF 2007

THE LABOUR INSTITUTIONS ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

	<i>Page</i>
1. Untitled.....	3
2. The Industrial Court (Procedure) Rules.....	5
3. The Labour Institutions (Building and Construction Industry) (Wages) Order.....	23
4. The Labour Institutions (General) Regulations.....	31
5. The Labour Institutions (Registration Fees) Regulations.....	37
6. The Labour Institutions (Private Employment Agencies) Regulations.....	39

UNTITLED

[Legal Notice 62 of 2008]

[This is a stub. Please see the publication document for the original content.]

THE INDUSTRIAL COURT (PROCEDURE) RULES

ARRANGEMENT OF RULES

Rule

1. Citation
2. Interpretation
3. Sittings of the Court
4. Institution of claim
5. Verifying affidavit to accompany a statement of claim
6. Statement of claim issued pursuant to the Labour Relations Act (Cap. 233)
7. Statement of claim issued under any other written law
8. Appeals
9. Institution of suits by several employees
10. Filing procedure
11. Service of summons
12. Service on a corporate body
13. Response to pleadings
14. Pleadings generally
15. Setting down the case for hearing
16. Interlocutory application and temporary injunctions
17. Pre-trial procedure
18. Case management
19. Witness summons
20. Notice of hearing
21. Determination by documentary evidence
22. Proceedings in the absence of either party
23. Consolidation of cases
24. Hearing procedure
25. Close of hearing
26. Submissions
27. Decision of the court
28. Costs and interest
29. Record of proceedings and decision
30. Decree
31. Execution and warrants
32. Review
33. Correction of errors
34. Seal of the Court
35. Collective Agreements
36. Court to regulate its procedure
37. Registration of collective agreements
38. *[Spent]*

SCHEDULES

FIRST SCHEDULE —

FORMS

FEES

THE INDUSTRIAL COURT (PROCEDURE) RULES

[Legal Notice 78 of 2010]

1. Citation

These Rules may be cited as the Industrial Court (Procedure) Rules.

2. Interpretation

In these Rules, unless the context otherwise requires—

“affidavit of service” means an affidavit of service in the form prescribed in these Rules;

“appeal” means an appeal made to the Court by a party against an order, a decision or proceedings under any written law;

“appellant” means a party who initiates an appeal;

“claim” includes any claim, complaint, application, reference, motion or trade dispute referred to the Court by a party for adjudication under any written law;

“claimant” means a party who files a claim, with the Court under any written law;

“Court” means the Industrial Court and includes a judge of the Industrial Court duly appointed under the Act;

“division” means a division of the Court, established by the Principal Judge, under section 16(1) of the Act;

“Judge” means a Judge of the Court appointed under the Act and includes the Principal Judge;

“member” means a member of the Court appointed under section 17 of the Act;

“notice” includes a notice of motion;

“notify” means to give a notice in writing;

“party” means a person, a trade union, an employer, employer’s organization or any corporate body directly involved or affected by an appeal, or claim to which the Court has taken cognizance or who is a party to a collective agreement referred to Court for registration;

“pleading” includes the statements in writing of the claim or demand of an applicant, and the defence by a respondent thereto, the reply of the applicant to any defence or a counterclaim of a respondent.;

“Registrar” includes a Deputy Registrar;

“registry” means any office designated by the Court for the purposes of filing pleadings under these Rules;

“respondent” means a person against whom a suit has been instituted in the Court or who replies to any pleadings in Court and includes any interested party to a suit;

“statement of claim” means a memorandum of claim filed in Court by a party under rule 4;

“suit” means a claim, an appeal, or any proceedings before the Court for determination;

“summon” means a notice requesting a party or a witness to appear before the Court.

3. Sittings of the Court

The Court may sit in any division of the Court established by the Principal Judge under section 16(1) of the Act.

[Subsidiary]

4. Institution of claim

A party who wishes to refer a dispute to the Court under any written law shall file a statement of claim setting out—

- (a) the name, the physical and the mailing address and full particulars of the claimant;
- (b) the name, the physical and mailing address and the description of the respondent;
- (c) the name, the physical and mailing address of any other party involved in the dispute;
- (d) the facts and grounds for the claim specifying issues which are alleged to have been violated, infringed, breached or not observed and in the case of trade dispute the rights of the employees not granted or to be granted, any other employment benefits sought and the terms of collective bargaining agreement on which the jurisdiction of the Court is being invoked;
- (e) any principle or policy, convention, law or industrial relations issue or management practice to be relied upon; and
- (f) the relief sought.

5. Verifying affidavit to accompany a statement of claim

(1) A statement of claim filed under rule 4 shall be accompanied by an affidavit verifying the facts relied on.

(2) Where a claimant, in the course of hearing seeks to adduce additional evidence, the claimant may, with the leave of the Court, file a further affidavit or adduce oral evidence.

6. Statement of claim issued pursuant to the Labour Relations Act (Cap. 233)

(1) Where a trade dispute is referred to the Court in accordance with the provisions of the Labour Relations Act (Cap. 233)—

- (a) the statement of claim shall be signed by the authorized representative of the party referring the trade dispute to the Court; or
- (b) where the trade dispute has been a subject of conciliation, the statement of claim shall be accompanied by—
 - (i) a report by the conciliator on the conciliation process supported by minutes of the conciliation meetings; and
 - (ii) a certificate of conciliation issued by the conciliator under section 69(a) of the Labour Relations Act (Cap. 233).

(2) Where the trade dispute has been a subject of conciliation and the conciliator has not issued a certificate, the statement of claim shall be accompanied by an affidavit sworn by the claimant or by the representative of that claimant attesting to the reasons why the conciliator has not issued a certificate of conciliation.

(3) Where no conciliation has taken place at all, the statement of claim shall be accompanied by an affidavit sworn by the claimant or by the representative of that claimant attesting to the reasons why the conciliation had not taken place.

7. Statement of claim issued under any other written law

Where a claim is referred to the Court in accordance with the provisions of any written law, other than the Labour Relations Act (Cap. 233), the statement of claim shall—

- (a) be signed by the claimant or by the advocate of that claimant; or
- (b) if the claimant is a body corporate, be signed by an authorized officer of the body corporate or its advocate.

8. Appeals

(1) Where any written law provides for an appeal to the Court, an aggrieved person shall file a memorandum of appeal with the Court within the time specified for that appeal under the written law.

(2) Where no period of appeal is specified in the written law, an appeal shall be filed within thirty days from the date the decision that is the subject of appeal was delivered.

(3) A memorandum of appeal shall be in Form 1 set out in the First Schedule.

(4) A memorandum of appeal shall be accompanied by copies of all documentary evidence that an appellant wishes to rely on in the appeal and a verifying affidavit.

(5) The Court may decline to hear an appeal where the memorandum of appeal filed is not in the prescribed form.

9. Institution of suits by several employees

(1) In a suit where more than one employee is instituting a claim against one employer in respect of breach of contract, the judge may permit one employee and one statement of claim to be filed by a labour officer or by one of the claimants in the suit on behalf of all other claimants.

(2) The claim filed under paragraph (1) shall be proved by the labour officer or by the claimant authorized by the Court.

(3) The statement of claim shall be accompanied by a schedule of the names of other claimants in the suit, their address and descriptions and the details of wages due to or the particulars of any other breaches and reliefs sought by each claimant.

(4) All claims referred to in paragraph (1) shall rank equally between the claimants, and shall be paid in full, unless the amount recovered from the respondent is less than the total amount of the claims with costs.

(5) After payment of the costs, all the claims shall abate in equal proportions among the claimants and be paid accordingly.

(6) The claimants, or any one of them, shall pay any costs given against them in a proportion as the Court shall direct.

10. Filing procedure

(1) The Court shall maintain a separate filing system for claims and appeals.

(2) A party filing a suit shall file six original copies of pleadings under these Rules by depositing them at the registry and pay the prescribed.

(3) Notwithstanding paragraph (2), the Court may, depending on the number of parties, require a party to file additional copies of any pleading.

(4) A party shall indicate the physical and mailing address of that party on all filed pleadings.

(5) The Court shall allocate a cause number or appeal number to a statement of claim or appeal at the time of filing.

(6) Where a party intends to file a pleading in more than one cause or appeal, the party shall submit a sufficient number of copies for each cause or appeal.

(7) The claimant shall, after filing a statement of claim or an appeal as the case may be, cause the statement of claim or appeal to be served on the respondent by a qualified process server.

11. Service of summons

(1) The Court shall issue summons in Form 2 set out in the First Schedule.

(2) A claimant shall serve the summons issued under paragraph (1) to the respondent together with the statement of claim or the appeal.

[Subsidiary]

(3) Where a respondent files pleadings in response to any pleading filed by a claimant or an appellant, the respondent shall have the pleadings served on the claimant or the appellant by a qualified process server within fourteen days of filing.

(4) A party shall, upon effecting service of pleadings on any other party, prepare and file in Court an affidavit of service in Form 3 set out in the First Schedule.

(5) An affidavit of service shall be accompanied by evidence of acknowledgement of receipt of the served document signed by the recipient, respondent, claimant or appellant as the case may be or the persons accepting service on their behalf.

(6) If for any reason the signature of the recipient cannot be secured, the process server shall state so in the affidavit of service.

(7) Where service of pleadings under these Rules is effected through the post, the affidavit of service shall be accompanied by the certificate of mailing.

(8) The Court may effect service on behalf of any party upon, request in writing, made by the party in Form 4 as set out in the First Schedule and upon payment of a prescribed fee.

12. Service on a corporate body

(1) Service on a corporate body may be effected—

- (a) on the secretary, the director or any other principal officer of the corporate body;
- (b) where the process server is unable to find any of the officers of the corporate body mentioned in subparagraph (a), by—
 - (i) leaving the pleadings with an employee of the corporate body to be identified by the process server; or
 - (ii) leaving the pleadings at the registered office of the corporate body; or
 - (iii) sending the pleadings by prepaid registered post to the registered postal address of the corporate body; or
 - (iv) leaving the pleadings at the place where the corporate body carries out business; or
 - (v) sending the pleadings by registered post to the last known postal address of the corporate body if the corporate body does not have a registered office or postal address.

(2) Notwithstanding anything contained in this Rule, a party may, with leave of the Court, effect service of process by any other method of service.

13. Response to pleadings

(1) If a party served with a statement of claim or a memorandum of appeal intends to respond to the claim or appeal the party shall, within fourteen days from the date of service file and serve a response to the claim or appeal.

(2) A respondent's statement of response shall contain—

- (i) the respondent's name and address for purposes of service of process;
- (ii) a reply on issues raised in the statement of claim or appeal;
- (iii) any admission of statement of facts set out in the statement of claim or appeal as the respondent admits, and a denial of any statements made in the statement of facts or appeal that the respondent does not admit;
- (iv) any additional statements of facts which the respondent may wish to make in support of its reply;
- (v) grounds upon which the respondent may wish to rely;
- (vi) any principle or policy, convention, law or industrial relations or management practice to be relied upon;
- (vii) a counterclaim; or

- (viii) relief that might be sought by the respondent against the claimant or the appellant.

(3) A party may respond to an application by filing grounds of opposition to the application verified by an affidavit.

(4) The Court may, on application by a party to any proceedings, extend or reduce the time within which a responding party may respond to a pleading.

14. Pleadings generally

(1) A pleading shall be divided into paragraphs numbered consecutively, each allegation being so far as appropriate contained in a separate paragraph.

(2) Dates, sums and other numbers shall be expressed in figures and not words save for where a party is quoting a passage from a secondary document.

(3) A party may through pleadings raise any point of law or quote any provision, statement or principle of law.

(4) Pleadings may contain evidence:

Provided that the Court may require the evidence to be verified by an affidavit or sworn oral evidence.

(5) A party may, by notice, object to a pleading stating grounds of objection:

Provided that no objection may be raised to any pleading on the ground of any want of form.

(6) A party may, with the leave of the Court, amend pleadings:

Provided that where leave is granted to a party to amend any pleading, a responding party shall have a corresponding right of to amend that party's pleadings.

(7) Where the Court, on its own motion or on application by a party, is satisfied that a pleading does not adequately set the particulars required by the Court, or for any other reason the Court requires clarification of any pleading or submission by a party, the Court may request the party to provide further details as it may consider necessary within such period as it may determine or specify.

(8) A party requested to provide further details shall provide to the Court and the other party the details required.

(9) A party shall notify the Court when submitting a statement of claim or a response to a statement of claim under rule 4 and rule 11(1) of any witnesses a party proposes to call in support of that party's submissions and shall, at the same time notify the other party of the same.

(10) A party may, with the leave of the Court, call other witnesses.

15. Setting down the case for hearing

Upon expiry of fourteen days from the date of filing and serving response to a statement of claim or a response to memorandum of appeal or such period as may be fixed by the Court, a party may apply to the Court to issue directions on hearing of the case:

Provided that the Court may, on application of either party give direction within the shortest period possible.

16. Interlocutory application and temporary injunctions

(1) An interlocutory application shall be by notice of motion and shall be heard in an open Court.

(2) A party shall, before filing a motion, notify all the parties of the intended motion:

Provided that the Court may, if satisfied that the delay caused by proceedings in the ordinary way would cause irreparable or serious mischief, may make an order *ex parte* upon terms as to costs or otherwise and subject to such undertaking, if any, as the Court considers just, and a party affected by that order may move to set it aside.

[Subsidiary]

(3) In a suit where an injunction is sought, a claimant or an applicant may, irrespective of whether he is seeking compensation, any time after the commencement of the suit apply to the Court for an interim or temporary injunction to restrain the respondent from committing a breach of contract or an injury complained, or any injury of a like kind arising out of the same contract or relating to the same property or right.

(4) Where an application is made to the Court under paragraph (3) for a temporary or an interim injunction, the Court may, by order, grant an injunction on such terms as the Court thinks fit.

(5) A notice of motion shall state in general terms the grounds of the application and where the motion is supported by an affidavit, both the notice of motion and a copy of the affidavit shall be served.

(6) Where a motion or any other application is served either without a hearing date or more than seven days before the date fixed for its hearing, a respondent who wishes to oppose the application shall, within seven days of service, file and serve on the applicant, in addition to any affidavit, a statement of the grounds upon which the respondent will oppose the application.

(7) Where the subject matter of a suit can be disposed by hearing and determining the suit without prejudicing the applicant, the Court may discourage interlocutory proceedings.

(8) Notwithstanding anything contained in this provision—

- (a) the Court shall not grant an *ex parte* order that reinstates into employment an employee whose services has been terminated; and
- (b) an *ex parte* order shall be granted once for a period of fourteen days and shall not be extended.

17. Pre-trial procedure

(1) Where a party intends to rely on a document that has not been identified in a verifying affidavit filed as part of the pleading or where no verifying affidavit is filed, a party shall make sufficient copies of each document for the Court and serve the other party with a copy before the case is set down for hearing.

(2) A party shall submit to the Court original documents or where the original is not available, a certified copy of the original.

18. Case management

(1) The Court may, on its own motion and where considers it fit, serve a pleading on any other party whom it is satisfied may be interested in the matter being considered.

(2) The Court may summon any person or expert for the purposes of an examination of facts and full adjudication of a dispute.

(3) A party may request the Court that a particular expert, if any, who took part in and is conversant with particulars of any matter in issue makes representation in writing or be called upon to attend the hearing of the case and give evidence.

(4) The Court may serve the parties in a suit with pleadings and documents.

(5) The Court shall encourage parties to proceedings before it to enter into conciliation, negotiations and agreements and where a consensus is reached, consent to that effect shall be recorded by the Court at any time before conclusion of the hearing of the proceedings and the Court shall adopt the consent reached by the parties as its own ruling in that matter.

19. Witness summons

(1) The Court may, on its own motion or at the request of a party, summon for examination of any person who has information relevant to any of the issues before the Court.

(2) The summons for examination shall be signed by the Registrar and shall—

- (a) require the person named in the summons to appear before the Court;
- (b) state the date, time and the place at which the person must appear; and

- (c) sufficiently identify any book, a document or an object required to be produced by that person.

(3) The Court may direct the party at whose request summons is issued to pay, at a reasonable rate determined by the Court, witness fees, travel and subsistence allowances to a person summoned to appear before the Court.

(4) The Court may administer an oath or accept an affirmation from a person summoned to give evidence before it.

(5) Witness summons shall be in Form 5 set out in the First Schedule.

20. Notice of hearing

(1) The Court shall, with due regard to the convenience of all parties, fix a date, time and place for hearing.

(2) The Court not less than twenty-one days before the date fixed for hearing, cause to be sent to each party a hearing notice specifying the date, time and place of hearing:

Provided that the Court may for reasons to be recorded, fix an earlier hearing date or may proceed with a case on priority basis.

21. Determination by documentary evidence

The Court may, subject to an agreement by all parties, proceed to determine a suit before it on the basis of pleadings, affidavits, documents filed and submissions made by the parties.

22. Proceedings in the absence of either party

Where a hearing notice was served on the parties, the Court may proceed with the case before it in the absence of any party thereto if—

- (a) that party has indicated that, that party does not wish to attend the hearing;
- (b) that party fails to appear for the hearing without providing any reasons; or
- (c) the Court is satisfied that the reasons forwarded to it by that party are not of such a nature as to prevent the attendance of that party.

23. Consolidation of cases

The Court may consolidate suits if it appears that in any number of suits—

- (a) some common question of fact or law arises; or
- (b) it is practical and appropriate to proceed with the issues raised in the suits simultaneously.

24. Hearing procedure

(1) The Court shall give directions as may be necessary to enable the parties to prepare for the hearing.

(2) The Court shall, at the beginning of the hearing, explain the order of the proceedings which the Court proposes to adopt.

(3) The Court shall not be bound by rules of evidence under the Evidence Act (Cap. 80):

Provided that the claimant or the appellant shall be given the first opportunity to present that claimant's or that appellant's case.

(4) Evidence before the Court may be given orally or if the Judge so orders, by affidavit or a written statement and the Court may at any stage of hearing, require the attendance of a deponent or an author of a written statement if the attendance is required for the purposes of examination of the facts deposed or written.

(5) The Court shall conduct the hearing in a manner it considers most suitable to the just handling and recording of proceedings and shall, if appropriate, avoid legal technicalities and formalities.

(6) The Court may use electronic modes of presentation and recording of evidence.

[Subsidiary]

(7) The Court may require a witness to give evidence on oath or affirmation and the Court may, for that purpose, administer the oath or the affirmation.

(8) The Court may at its own request or at the request of a party to a suit be provided with visual demonstration facilities for the display of any maps, photographs, charts, diagrams and demonstrations or illustrations of texts and any other documents that are to be used for the purposes of making a finding in the matter for determination before it.

25. Close of hearing

(1) Upon completion of the hearing and presentation of the facts and evidence and statements by parties, witnesses and experts, if any, the Court shall declare the hearing closed.

(2) The Court shall not re-open hearing or review facts unless it, for sufficient reason, considers it fit to do so or as provided for in rule 32(1).

26. Submissions

(1) Upon hearing all facts and evidence and the consideration of the matters in question, the parties may orally submit or file written submissions, summing up their respective cases before the Court.

(2) Where written submissions are made, three original copies of the submission shall be filed with the Court and additional copies served on each party to the proceedings.

27. Decision of the court

(1) The Court shall, after considering all relevant facts and supporting documents and in accordance with the procedures set in these Rules—

- (a) where the suit was originated by a statement of claim, deliver an award;
- (b) where the suit was originated by a memorandum of appeal, deliver a judgment; or
- (c) in any other proceedings, deliver a ruling:

Provided that, subject to these Rules and to any other written law, the Court may at any time in the conduct of its proceedings issue—

- (a) an injunctive order;
- (b) a prohibitory order;
- (c) a declaratory order;
- (d) an order for specific performance;
- (e) an order for payment of costs;
- (f) an order for payment of interest on any principal sum awarded by the Court; or
- (g) any other order to meet the ends of justice.

(2) A decision of the Court shall contain concise statement of facts and the reasons for the decision.

(3) The decision of the Court shall be in writing and signed by the Judge sitting with two members and duly sealed:

Provided that where the parties have, by consent, agreed that the judge sits alone or with one member, the judge sitting or the judge and the sitting member shall sign the award.

(4) A party may appeal against the decision of the Court on matters of law.

28. Costs and interest

(1) The Court shall be guided by section 12(8) of the Act in awarding costs to a party.

(2) The Court shall not award exemplary or punitive costs.

(3) Where a suit involves a liquidated amount that is claimed and specified at the time of filing a statement of claim and the Court orders that the amount claimed or part of the amount be paid to the claimant, the Court may in addition to that order, direct that interest

be paid on the liquidated amount awarded at applicable interest rates as if the suit was filed in the High Court.

29. Record of proceedings and decision

(1) The Registrar shall cause a record of the proceedings and the decisions of the Court to be made.

(2) The record of the proceedings and decisions of the Court shall be made available to any interested person upon request and upon payment of the prescribed fee.

(3) The record of proceedings and decisions of the Court referred to in paragraph (1) shall be kept in accordance with the provisions of the Act and any other written law governing the keeping of judicial records.

(4) An award, a judgment, a ruling, an order or a decision of the Court certified, signed and sealed by the Registrar shall be conclusive evidence of the existence of the award, the judgment, the ruling, the order or the decision of the Court.

30. Decree

(1) The Registrar shall draw, seal, and issue an order and a decree of the Court.

(2) An order or a decree shall be drawn in accordance with the decision of the Court and shall specify clearly in paragraphs the relief granted and any other determination and costs, if any.

31. Execution and warrants

(1) The Registrar shall issue an execution order and a warrant of arrest.

(2) Rules on execution of an order and a decree applicable in the High Court shall be applicable to an order and a decree of the Court.

32. Review

(1) A person who is aggrieved by a decree or an order of the Court may apply for a review of the award, judgment or ruling—

- (a) if there is a discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made; or
- (b) on account of some mistake or error apparent on the face of the record; or
- (c) on account of the award, judgment or ruling being in breach of any written law; or
- (d) if the award, the judgment or ruling requires clarification; or
- (e) for any other sufficient reasons.

(2) An application for review of a decree or order of the Court under subparagraphs (b), (c), (d), or (e), shall be made to the judge who passed the decree, or made the order sought to be reviewed.

(3) A party seeking review of a Court decree or order of the Court shall apply to the Court in Form 6 set out in the First Schedule.

(4) An application under paragraph (3) shall be accompanied by a memorandum supporting the application and the Court shall proceed to hear the parties in accordance with section 26 of the Act.

(5) The Court shall, upon hearing an application for review, deliver a ruling allowing the application or dismissing the application.

(6) Where an application for review is granted, the Court may review its decision to conform to the findings of the review or quash its decision and order that the suit be heard again.

(7) An order made for a review of a decree or order shall not be subject to further review.

[Subsidiary]

33. Correction of errors

The Court shall cause any clerical mistake, incidental error or omission to be rectified without reference to the parties and shall notify the parties of the mistake, incidental error or omission.

34. Seal of the Court

(1) The Seal of the Court shall be authenticated by the signature of the Registrar.

(2) In the absence of the Registrar, a Deputy Registrar designated by the Principal Judge for that purpose, may authenticate the Seal of the Court.

35. Collective Agreements

(1) An employer or an organization of employers that have entered into a collective agreement shall lodge a copy of the agreement with the Cabinet Secretary within fourteen days of its execution.

(2) The Cabinet Secretary shall furnish the Court with a copy of each collective agreement that has been lodged with the Cabinet Secretary pursuant to this Rule, and the Cabinet Secretary may also furnish the Court with such information and comments as the Cabinet Secretary considers necessary.

(3) Where the Cabinet Secretary objects to the registration of a collective agreement, a copy of the agreement furnished to the Court shall be accompanied by a statement of the objection giving reasons for objection.

(4) The Court shall maintain a register of collective agreements that have been accepted by the Court for registration.

(5) A collective agreement shall not take effect until it has been registered by the Court.

36. Court to regulate its procedure

Subject to these Rules, the Court may regulate its own procedure.

37. Registration of collective agreements

The Fees chargeable by the court for filing pleadings, instruments and procedures shall be as set out in the Second Schedule as amended from time to time:

Provided that the court may, on application by a party, waive all or any fee chargeable.

38.

[Spent]

FIRST SCHEDULE

FORMS

FORM 1

(r. 8(3))

IN THE INDUSTRIAL COURT OF KENYA
APPEAL UNDER SECTIONOF.....
APPEAL NO. OF.....
IN THE MATTER OF APPEAL OF
[NAME OF APPELLANT]
APPELLANT
AND
[NAME OF THE INSTITUTION OR AUTHORITY
AGAINST WHOSE DECISION APPEAL IS
LODGED].....RESPONDENT
OR
[NAME OF INTERESTED PARTY [IF
APPLICABLE] SECOND RESPONDENT

1. Take Notice that the Appellant appeals against the decision of the
2. The Appeal relates to
3. The decision Appealed against is
4. The Appeal is to be determined by the Industrial Court at a date, time and place to be set by Notice to the Parties.

(2) The Appeal is based on the following grounds [set out each ground concisely]

.....

(attach any relevant documents)

(3) The decision sought for is:

.....

.....

(4) And take note that the Appellant appoints..... as Appellant's representative in this matter

(5) Take note also that the Appellant shall accept services of all documents on the above matter at the Appellant's address which is set below:

.....

.....

Signed and dated at this day of, 20.....

.....

Appellant/Advocate

FORM 2

..... (r. 11 (1))

NOTICE OF SUMMONS

To (name) of (address)

Take notice that a statement of claim/memorandum of appeal has been filed in the Industrial Court at in Cause/Appeal No. 20 in which you are named as Respondent. Service of the summons on you was ordered to be by this notice.

Labour Institutions

[Subsidiary]

A copy of the summons and the Statement of Claim/Memorandum of Appeal is herewith attached.

Unless you file a Response within fourteen days from the date of this summon, the suit will be heard and determined in your absence.

Dated at this day of, 20

Registrar

FORM 3 (r. 11 (4))

AFFIDAVIT OF SERVICE

I of

an *advocate/a police officer/a process server of the court make oath and stay as follows:

(1) On, 20 at (time) I served the summons in this suit on at (place) by tendering a copy thereof to *him/her and requiring a signature on the original.

*He/She *signed/refused to sign the summons. He/She was personally known to me/ was identified to me by and admitted that *he/she was the Respondent.

(2) Not being able to find the Respondent on, 20 at (time) I served the summons on (name) an employee of the Respondent who is working with the Respondent.

(3) (Otherwise specify the manner in which the summons was served).

SWORN by the said this day of, 20

Before me

A Commissioner of Oaths/Magistrate

*Delete as necessary

FORM 4 (r. 11 (8))

REQUEST TO THE COURT TO EFFECT SERVICE

To the Registrar

Industrial Court of Kenya

1. The *Claimant/Appellant/Respondent hereby requests the Registrar to effect service of process on the *Claimant/Appellant/Respondent.

2. The Physical address of the *Claimant/Appellant/Respondent for purpose of this suit is as follows:

.....
.....

3. The *Claimant /Appellant/Respondent has paid the requisite fee for service.

DATED at NAIROBI this day of 20

*Claimant/Appellant/Respondent

*Delete as necessary

FORM 5

_____ (r. 19 (5))

IN THE INDUSTRIAL COURT OF KENYA

FORM OF PLEADINGS

INDUSTRIAL COURT CAUSE/APEAL NO.* OF

IN THE MATTER OF APPEAL OF CAUSE/APEAL

BETWEEN

[NAME OF

CLAIMANT/APPELLANT*] CLAIMANT/APPELLANT

AND

[NAME OF RESPONDENT] RESPONDENTS

SUMMONS FOR ATTENDANCE

You are hereby summonsed to appear in person before the above-named Court at on day of and thereafter to remain in attendance until excused by the Court in regard to all matters within your knowledge relating to the matter pending before the Court wherein the

Claimant/Appellant/Applicant* is seeking as follows:

.....
.....
.....
.....
.....

YOU ARE REQUIRED to bring and produce to the Court the following;

[insert accurately the document, book or thing to be produced]

1

2

BE INFORMED that should you on any account neglect to comply with any of the provisions of this summons the Court will be left with no option but to resort to the provisions of Rule 32 of the Industrial Court Rules.

(*delete whichever is not applicable)

Signed and dated at this day of, 20

.....

Registrar

FORM 6

_____ (r. 32 (3))

CAUSE/APEAL NO. OF 20

IN THE MATTER OF APPLICATION FOR REVIEW

BETWEEN

[Name of Applicant] Applicant

[Name of Respondent] Respondent

Labour Institutions

[Subsidiary]

The Registrar
 The Industrial Court
 P.O. Box 47606
 NAIROBI
 REVIEW OF AWARD

We/I the Applicant party being aggrieved by the award, in Cause No. dated submit(s) that the ward requires review and enclose herewith the requisite memoranda in support of the application for review. The Applicant party wishes/does not wish to be heard in respect of the application for review and intends/does not intend to call witnesses in support of its claim.

Dated at this day of, 20

.....

Applicant/Advocate

Drawn & Filed by:

(Applicant on the review application)

To be served upon:

(Respondent to the review application)

SECOND SCHEDULE

[r. 37]

FEES

No.	Pleading	KSh.
1.	Sale of forms:	
	per form	5
	per 50 forms	150
2.	On filing a Statement of Claim	
	(a) Individuals employees	
	(i) Fee on Statement of claim	200
	(ii) Supporting affidavit	75
	(iii) Annexure	20
	(b) Any other party	
	(i) Fee on Statement of Claim	500
	(ii) Supporting Affidavit	75
	(iii) Annexure (per document)	10
	(c) Filing Reply to Claim	500
	(d) Replying affidavit	75
	(e) Annexure (per document)	10
3.	(a) On filing Interlocutory Application	250
	(b) Affidavits in support of Applications	75

Labour Institutions

[Subsidiary]

	(c) Annexure (per document)	10
4.	(a) On filing Grounds of Opposition	250
	(b) Replying Affidavits	75
	(c) Annexure (per document)	10
5.	(a) On filing Application for Review of the Award	500
	(b) Affidavits in support of Application	75
	(c) Annexure (per document)	10
6.	(a) On filing Response to Application for Review	500
	(b) Affidavit in support of Application	75
	(c) Annexure per document	10
7.	(a) On filing Appeals from the Decision of Registrar of Trade Unions.	5000
	(b) Affidavit in support of Appeals	75
	(c) Annexure per document	10
8.	(a) On filing Appeals from the decision of the Cabinet Secretary.	2,000
	(b) Affidavit in support of Appeal.	75
	(c) Annexure per document.	10
9.	(a) On Filing Appeals other than Appeals from the decision of the Registrar of Trade Unions or the Cabinet Secretary.	1,000
	(b) Affidavit in support of Appeal.	75
	(c) Annexure (per document.)	10
10.	(a) On filing Memorandum of Reply to any Appeal.	1,000
	(b) Replying Affidavit.	75
	(c) Annexure per document	10
11.	(a) On filing Affidavit of Service, Supplementary or further Affidavits	75
		10

Labour Institutions

[Subsidiary]

12.	Issue of summons/Notice of Appearance.	50
13.	Taking out witness summons or any other summons not provided for	100
14.	Filing Memorandum of Appearance of Notice of Appointment of advocates	100
15.	For filing any document for which no fee is prescribed under this schedule	75
16.	Certification/attestation of documents	75
17.	For swearing an affidavit (Cap 15)	50
18.	Certification/attestation of documents	75
19.	For swearing an affidavit (Cap 15)	50
20.	On filing matter under certificate of urgency	550
21.	On application for adjournment at time of hearing.	400
22.	On filing consent orders.	150
23.	(a) On filing application for execution	250
	(b) Issuance of execution order	150
	(c) Notice to show course	150
	(d) Issuance of Notice to show course	150
	(e) Issue of attachment warrant	50
	(f) Issue of sale warrant	50
24.	Application of decree	100
25.	On filing a bill of costs.	250
26.	Application for judgment	30
27.	Application to draw/be issued with Court order	50
28.	Issue of a certificate by registrar after award is given by the Court	100
29.	On filing any application for which no provision is made under this schedule	1,000

**THE LABOUR INSTITUTIONS (BUILDING AND
CONSTRUCTION INDUSTRY) (WAGES) ORDER**

ARRANGEMENT OF ORDERS

Order

1. Citation
2. Application
3. House allowance
4. Payment of Wages
5. Leave travelling allowance
6. Safari allowance
7. Acting allowance
8. Tools allowance
9. Transportation
10. Medical allowances
11. Death in Service

SCHEDULES

SCHEDULE —

BASIC MINIMUM RATE OF WAGES (PER DAY,
PER SHIFT AND PERMONTH) EXLCUSIVE OF
HOUSING ALLOWANCE

THE LABOUR INSTITUTIONS (BUILDING AND CONSTRUCTION INDUSTRY) (WAGES) ORDER

[Legal Notice 20 of 2013]

1. Citation

These Regulations may be cited as the Labour Institutions (Building and Construction Industry) (Wages) Order.

2. Application

These Regulations shall apply to all persons other than managerial and executive staff employed in an undertaking which carries on for gain of one or more of the following activities—

- (a) the construction, structural alteration, maintenance or repair of any building, green house, demolition of any building and the preparation for and laying the foundation or fabrication of any intended building, land scapping; or
- (b) the construction of any railway line or siding, and the construction, structural alteration or repair or the demolition of any airfield, dock harbor, wharf, quay, pier, inland navigation works, roads, road tunnel, bridge, viaduct, waterworks, dam, reservoir, pipeline, sewer, sewage works or lattice work structure designed solely for the support of electricity lines; or
- (c) electrical installation, lift installation, plumbing installation, painting and decorating works and allied building activities.

3. House allowance

(1) An employee who is not provided with a reasonable free housing accommodation by the employer shall be entitled, in addition to the basic minimum wage to housing allowance as follows—

	<i>Area</i>	<i>KSh.</i>
(a)	Nairobi, Mombasa and Kisumu (per month)	2,277.00
(b)	All municipalities, towns, urban centres and all other areas (per month)	1,725.00

(2) In respect of employees who are employed for a period of time less than one calendar month, the daily rate of housing allowance shall be not less than the following rates—

	<i>Area</i>	<i>KSh.</i>
(a)	Nairobi, Mombasa and Kisumu (per day)	88.00
(b)	All municipalities, towns, urban centres and all other areas (per day)	66.00

(3) A employee shall not be paid housing allowance of less than twenty per cent of the employee's rate of wages.

4. Payment of Wages

(1) The basic wage paid to an employee shall not be less than the amount that is specified, in relation to a category of employees and to the area of employment, in the Schedule to these Regulations.

(2) Subject to subsection (1) an employee whose present daily or monthly wage is above wages specified in the Regulation of Wages (Building and Construction Industry) Order, 2004 (now revoked) is entitled to a wage increase of a rate not less than the difference between that present wage and the amount specified in this Order.

[Subsidiary]

(3) The wages shall be paid in arrears and shall become due and payable on or before the first day of the following month and shall be paid in Kenya currency and where an employee is paid daily, weekly or fortnightly, the wages shall be due and payable at the end of the day, end of the week or fortnightly.

(4) In respect of an employee who is employed for a period of less than one calendar month, the wages shall become due and payable on the termination of employment.

(5) The payment of wages shall be done on a working day, during the working hours and at the place of employment and the method or mode of payment of wages shall not in any way prejudice the right of an employee to enjoy any or all fringe benefits stipulated in this Order.

(6) Where an employer pays wages outside working hours, the time spent in paying the wages shall be regarded and paid for as overtime in accordance with provisions of this Order.

(7) The method of conversion of daily rates of wages shall be the monthly wages of the employee divided by twenty-six days.

(8) An employee who is taken by his employer to work in another area shall not be paid less than the basic minimum wage payable in the area where the employer engaged him.

(9) Except watchmen, where an employee is required to work during the night he shall be paid an allowance of five per cent of his basic daily or monthly wage for the night shift.

5. Leave travelling allowance

(1) Where an employee has worked for twelve consecutive months and he is travelling on leave, he shall be entitled to be paid an advance minimum leave travelling allowance of—

- (a) two hundred shillings; or
- (b) the actual cost of travel by the most reasonable and economical means of travel.

(2) Where the employee continues his service he shall be paid, at the time of returning to work, a sum equivalent to the actual cost of the return journey from his home to the place of work.

(3) Where an employee has been asked by his employer to be paid in lieu of his annual leave, such an employee shall be entitled to leave travelling allowance.

6. Safari allowance

(1) An employee who is required to perform work away from his principal area of employment shall be entitled to be paid subsistence and accommodation allowances as follows—

	KSh.
(a) Breakfast (applicable only to overnight stop)	70.00
(b) Lunch (applicable only to overnight stop)	110.00
(c) Supper (applicable only to overnight stop and where an employee does not return to his principal area of employment by 8.00 pm)	130.00
(d) For an overnight stop in Nairobi, Mombasa and Kisumu an employee shall be entitled to accommodation allowance of	350.00

- (e) For an overnight stop elsewhere an employee shall be entitled to an accommodation allowance of 310.00
- (f) For an overnight stop when the employer provides accommodation, the rate will be equivalent to the total amount of (a), (b) and (c) above and as they may be applicable 3 10.00

(2) The subsistence and accommodation allowance payable under paragraph (1) shall cease to be payable to an employee after thirty consecutive days of absence on duty from his principal area of employment and thereafter an agreement in respect of additional accommodation and subsistence allowance shall be negotiated between the employer and the employee or the employee's representative.

7. Acting allowance

Where an employee is required to work in full acting capacity for a period of not less than one month in an occupation or grade for which the minimum wage prescribed in the Schedule is higher than the minimum wage normally earned by the employee, the employee shall be paid acting allowance at the rate not less than the difference between the higher rate and his basic wage.

8. Tools allowance

(1) Machines and tools shall be provided by the employer in an established workshop.

(2) Where the employer does not provide tools, the employee shall be paid a tools allowance if the employee has the tools as specified in the list of the Director of Industrial Training or that the employee has determined to be the necessary tools for the work assigned to the employee, at the following rates—

Category	KSh. per month
Mechanics	221.00
Carpenters, jointers, electricians, plumb	152.00
Mason, stone dressers, bricklayers, plasterers, terrazzo paviours, steel fixers, steel erectors, metal workers	131.00
Painters, decorators, benders, twisters, asphalters, floor Layers, roofs	110.00

(3) In the case of painters, brushes will be provided for by the employer.

9. Transportation

(1) An employer shall provide the employees with reasonable transport from an agreed point to their working place and from their working place to an agreed point.

(2) For the purpose of this section, an agreed point shall be a point agreed upon between the employer and employee's representatives.

10. Medical allowances

(1) An employee who falls sick and undergoes medical treatment shall be entitled to reimbursement of the expenses incurred in respect of such medical treatment up to fifteen thousand shillings in a period of twelve months.

(2) Subject to subsection (1), an employer shall not reimburse the cost of medical treatment on production of receipts issued by registered medical practitioners.

[Subsidiary]

11. Death in Service

In case of death of an employee, the employer shall pay an amount of not less than twenty thousand shillings towards the funeral expenses.

SCHEDULE

BASIC MINIMUM RATE OF WAGES (PER DAY, PER SHIFT
AND PERMONTH) EXCLUSIVE OF HOUSING ALLOWANCE

Occupation	Nairobi, Mombasa and Kisumu cities	All Municipalities all towns and urban councils and other areas
1. Labourers	416.00	411.00
2. General tradesmen (artisans): (Carpenters, joiners, masons, stone dressers, bricklayers, plasterers, electricians, decorators, metal workers, terrazzo paviours, painters, steel fixers, benders and twisters, asphalters, floor layers, sign- writers, glaziers, roofers and Steel erectors, drilling rig operators, pipe fitters, plumbers) learner tradesman (for a maximum of 2%years)	502.00	492.00
Ungraded tradesman	560.00	538.00
Grade III trade tested	733.00	695.00
Grade II trade tested	819.00	787.00
Grade I trade tested	1,012.00	973.00
3. Plant Operators		
Greasers	502.00	497.00
Plant operators (comp. driver), mix driver (bankers), small pneumatic plant operator and jackhammer to one pneumatic jack-hammer weighting 27 kilos and over) driver, 2tons and below	462.00	459.00
4. Light plant operator		
Class I (agricultural tractors, roller dumpers)	523.00	510.00
Class II (light tracked tractors, D4s etc.)	529.00	519.00
Heavy plant operators D8 tractors, graders,	1014.00	971.00

Labour Institutions

[Subsidiary]

excavators and over head crane driver, well drillers		
5. Vehicle operators		
Driver's mates, greasers and tyre men	502.00	497.00
Trucks up to 2 tons	540.00	517.00
Trucks over 2 to 8 tons	705.00	669.00
Trucks over 8 to 15 tons (load) with or without trailer	1012.00	973.00
Trucks over 15 to 25 tons (load) with or without trailer	1068.00	1040.00
6. Mechanic and fitters		
Greasers	502.00	497.00
Ungraded	559.00	538.00
Grade III trade tested	734.00	695.00
Grade II trade tested	818.00	787.00
Grade I trade tested	1012.00	973.00
7. Welders		
Learner welder (for a maximum period of 2½ years)	502.00	497.00
Ungraded	559.00	538.00
Grade III trade tested	34.00	695.00
Grade II trade tested	818.00	87.00
Grade I trade tested	1012.00	973.00
8. Junior headmen	462.00	459.00
Senior headmen	512.00	503.00
9. Miscellaneous		
Chainman, laboratory attendants, office messenger, Fuel pump attendant, sea folder, boilman, checker and Sweeper (sanitary)	462.00	459.00
10. Watchmen (basic minimum wage rates per 10 hours shift)	546.00	539.00
11. Clerical categories:		
Basic minimum rate per month (exclusive of housing Allowance) Junior clerk and storemen	15,606.00	15,606.00
Telephone operator, copy typist, general clerk and Storekeeper	19,229.00	19,229.00
Grade II	22,253.00	22,253.00
Grade I	25,509.00	25,509.00
12. Steel fabricators, steel shop/workshop		

Labour Institutions

[Subsidiary]

Mobile crane drivers	618.00	618.00
Learner platters	479.00	479.00
Platters	618.00	618.00
Learner machine operators	479.00	479.00
Machine operators	570.00	570.00
13. Soil laboratory: (Monthly pay)		
Laboratory technician	19,831.00	19,831.00
Soil technician	13,477.00	13,477.00
Learner surveyor	13,477.00	13,477.00
Assistant surveyor/leveler	19,233.00	19,233.00
Surveyor	23,640.00	23,640.00
14. Draftsmen; (Monthly pay)		
Learner draftsmen	19,233.00	19,233.00
Draftsmen	13,477.00	13,477.00
Plan tracer	23,640.00	23,640.00
15. Junior foremen: (Monthly pay)		
Labour camp supervisor, security officer and canteen/mess Supervisor	23,726.00	23,726.00

THE LABOUR INSTITUTIONS (GENERAL) REGULATIONS

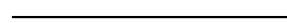
ARRANGEMENT OF REGULATIONS

Regulation

1. Citation
2. Interpretation
3. Eligibility for accreditation
4. Procedure for application for accreditation
5. Accreditation certificate
6. Renewal of certificate
7. Fees and commissions
8. Cost to be met by agents or employer
9. Advertisement for jobs

SCHEDULES

FEES



THE LABOUR INSTITUTIONS (GENERAL) REGULATIONS

[Legal Notice 63 of 2014]

1. Citation

These Regulations may be cited as the Labour Institutions (General) Regulations.

2. Interpretation

In these Regulations unless the context otherwise requires—

“accreditation” means the grant of authority, in writing, to a private employment agent to recruit Kenyans to work locally or abroad;

“employment office” means an employment office, established under the Ministry for the time being responsible for matters relating to employment;

“principal” means a foreign person, partnership, or corporation hiring Kenyan workers through a licensed agency;

“foreign employment” means employment of Kenyan workers outside Kenya under a valid contract of employment.

3. Eligibility for accreditation

A person may be accredited as an employment agent by the Director of Employment if the person—

- (a) is a Kenyan citizen and in the case of a non-citizen be in possession of the relevant permits;
- (b) has attained at least O-Level Education and is in possession of a relevant certificate or its equivalent;
- (c) is duly registered as a business, partnership or corporation by the Registrar of Companies;
- (d) is licensed to carry out business within the county of intended operation;
- (e) has a registered office and address;
- (f) has a tax compliance certificate from the Kenya Revenue Authority;
- (g) has executed a guarantee of Kenya Shillings one million from a reputable bank or insurance agency in Kenya;
- (h) has and in the case of a company all the Directors have a Certificate of Good Conduct from the Criminal Investigations Department which must be renewed after every six months from the date of issuance.

4. Procedure for application for accreditation

An applicant who requires accreditation to operate a private employment agency shall submit an application in the prescribed form to the Director of Employment together with—

- (a) a certified copy of a certificate of incorporation or registration certificate in the case of a business name;
- (b) a copy of operating license from the county authority;
- (c) a duly signed valid lease or tenancy agreement;
- (d) a copy of an identity card or of passport of the applicant or all directors in the case of a company;
- (e) two passport size photos of the applicant or of all the directors in the case of a company;
- (f) valid Certificate of Good Conduct from the Criminal Investigations Department, of the applicant or all directors in the case of a company;

[Subsidiary]

- (g) a valid Entry Permit of the applicant or in the case of a company of any Foreign Director;
- (h) a duly completed application form.

5. Accreditation certificate

(1) If the Director of employment is satisfied that an applicant qualifies to be accredited, the Director of Employment shall issue the certificate upon the payment of the fee specified in the Schedule.

(2) An accreditation certificate issued under these Regulations shall be valid for a period of one year.

(3) Notwithstanding paragraph (2), a certificate of accreditation shall expire on the last day of the calendar year in which it was issued.

6. Renewal of certificate

(1) An application for the renewal of a certificate of accreditation shall be submitted at least one month before its expiry to the Director of Employment and the application shall be accompanied by—

- (a) proof that the agency has been submitting statistical returns to the Director of Employment, in the prescribed form;
- (b) particulars of the employer and principal who was involved during the preceding year; and
- (c) copy of a valid lease agreement in case of change of office location.

(2) If the Director is satisfied that the applicant qualifies for renewal of the Accreditation Certificate, the Director shall issue the renewal certificate upon payment of the prescribed fee.

7. Fees and commissions

Agencies shall charge from their principals a service fee to cover services rendered in the recruitment, documentation and placement of workers.

8. Cost to be met by agents or employer

Unless otherwise provided, an employer or agent shall in the case of foreign employment be responsible to the job seeker for the payment of the—

- (a) visa fee;
- (b) airfare; and
- (c) surety bond:

Provided that reasonable administrative costs may be charged by the agent in respect of trade test, occupational test or medical examination fees and the administrative fees shall not exceed one quarter of the job seeker's proposed one month's salary.

9. Advertisement for jobs

(1) Accredited agencies shall advertise job vacancies either within their premises, public offices or through the media and the advertisements.

(2) An advertisement made under paragraph (1) shall specify—

- (a) the name and address of the agency including physical address;
- (b) the place where vacancy is available;
- (c) the terms and conditions of employment;
- (d) the job specification and description;
- (e) the number of available positions; and

Labour Institutions

[Subsidiary]

- (f) the reference number of their Accreditation letter from the Ministry, Registration from the Attorney General's office and local Authority Trading License.

SCHEDULE

[r. 5(1)]

FEES

Application for Registration	20,000
Annual Renewal of Registration	10,000
A copy of Registration Certificate	500

THE LABOUR INSTITUTIONS (REGISTRATION FEES) REGULATIONS

[Legal Notice 42 of 2015]

1. Citation

These Regulations may be cited as the Labour Institutions (Registration Fees) Regulations.

2. Fees

The fees charged for—

- (a) the registration of a recruitment agency;
- (b) the renewal of registration of a recruitment agency; and
- (c) the replacement of a certificate of registration of an agency,

shall be as specified in the Schedule.

SCHEDULE

FEES

	<i>Description of fee</i>	<i>Amount of fee (KSh.)</i>
1.	Fees for an application for the registration of an agency dealing with foreign recruitment	500,000
2.	Fees for an application for the registration of an agency dealing only with local recruitment	125,000
3.	Fees for an application for the renewal of registration of an agency dealing with foreign recruitment	250,000
4.	Fees for an application for the renewal of registration of an agency dealing only with local recruitment	75,000
5.	Fees for a replacement of a certificate of registration	10,000

**THE LABOUR INSTITUTIONS (PRIVATE
EMPLOYMENT AGENCIES) REGULATIONS**

ARRANGEMENT OF REGULATIONS

PART I – PRELIMINARY

Regulation

1. Citation
2. Interpretation

PART II – REGISTRATION OF PRIVATE EMPLOYMENT AGENCIES

3. Eligibility for registration
4. Procedure for application for registration
5. Registration certificate
6. Renewal or replacement of registration certificate
7. Fees and commissions
8. Cost to be met by agents or employer
9. Notification and advertisement for jobs

SCHEDULES

FORM

FEES

THE LABOUR INSTITUTIONS (PRIVATE EMPLOYMENT AGENCIES) REGULATIONS

[Legal Notice 110 of 2016, Legal Notice 25 of 2019]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Labour Institutions (Private Employment Agencies) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“Director” means the Director of Employment appointed under section 30 of the Labour Institutions Act (Cap. 234);

“employment office” means an office established under the Ministry for the time being responsible for matters relating to employment;

“foreign employment” means employment of Kenyan workers outside Kenya under a valid contract of employment;

“manager” means a person who heads, supervises or controls the operations of a private employment agency or branch thereof;

“principal” means an employer hiring Kenyans for employment through a registered employment agency;

“registration” means the grant of authority in writing to a private employment agency to recruit Kenyans to work locally or abroad.

PART II – REGISTRATION OF PRIVATE EMPLOYMENT AGENCIES

3. Eligibility for registration

An Agency may be registered by the Director to carry out the business of a private employment agency if—

- (a) it is duly registered as a limited liability company under the Companies Act and in which at least one Kenyan citizen owns shares;
- (b) at least one of the directors has attained at least O-level certificate or its equivalent;
- (c) the manager is in possession of at least a diploma in a business-related field from a college recognised in Kenya and relevant experience of at least three years;
- (d) it has a minimum share capital of five million shillings;
- (e) it is licensed to carry out business within the country of intended operation;
- (f) it has a registered fully equipped physical office covering not less than 225 square feet;
- (g) it has a tax compliance certificate from the Kenya Revenue Authority;
- (h) it has completed form ML/NEB/FE/SB/I set out in the First Schedule and executed a guarantee of one million five hundred thousand shillings with a reputable bank or insurance agency in Kenya, to be used for the purpose of repatriation, paying wages and other entitlements in the event of default by the agent or the employer;
- (i) all Directors have valid Police Clearance Certificates from the Directorate of Criminal Investigations which must be renewed after every twelve months from the date of issuance;

[Subsidiary]

- (j) is a member of an association of private employment agencies recognized by the Director; and
- (k) it makes a commitment to observe the provisions of the existing code of conduct for recruitment agencies.

[L.N. 25/2019, r. 2.]

4. Procedure for application for registration

An application for registration to operate a private employment agency shall be submitted in writing to the Director together with—

- (a) the duly completed prescribed form;
- (b) a certified copy of a certificate of incorporation;
- (c) a certified copy of academic and professional certificates of the managers and directors;
- (d) a copy of operating licence from the relevant county authority;
- (e) a duly signed valid lease or tenancy agreement authenticated by a Commissioner for Oaths;
- (f) copies of identity cards or passports for all directors;
- (g) two recent passport size photographs of the directors; and
- (h) valid Police Clearance Certificates from the Directorate of Criminal Investigations for the applicant and all directors.

5. Registration certificate

(1) If the Director is satisfied that an applicant qualifies to be registered, the Director shall issue the certificate of registration upon the payment of the fees specified in the Second Schedule.

(2) A registration certificate issued under these Regulations shall be valid for a period of one year.

(3) Notwithstanding the provisions of paragraph (2), a certificate of registration shall expire on the 30th June each year.

[L.N. 25/2019, r. 3.]

6. Renewal or replacement of registration certificate

(1) An application for the renewal of a certificate of registration shall be submitted at least one month before its expiry to the Director accompanied by—

- (a) proof that the agency has been submitting returns to the Director in the prescribed form;
- (b) proof that the agency has renewed the guarantee specified in regulation 3(h);
- (c) audited financial statements and accounts; and
- (d) a copy of a valid lease agreement in case of change of office location.

(2) If the Director is satisfied that the applicant qualifies for renewal of the registration certificate, the Director shall issue the renewal certificate upon payment of the prescribed fee set out in the Second Schedule.

(3) An application for the replacement of a certificate of registration shall be submitted to the Director accompanied by the documents set out in subparagraphs (1)(a) to (d).

7. Fees and commissions

Agencies shall charge their principals a service fee for the recruitment, documentation and placement of workers.

8. Cost to be met by agents or employer

A foreign contract of employment shall specify the party responsible for the payment of the—

- (a) visa fee;
- (b) airfare; and
- (c) medical examination:

Provided that reasonable administrative costs may be charged by the agent in respect of trade test, occupational test and the administrative fees shall not exceed the job seeker's proposed one month's salary.

9. Notification and advertisement for jobs

- (1) All job opportunities and visas for employment shall be notified to the Director.
- (2) Registered agencies shall advertise job vacancies either within their premises, public offices or through the media provided that such advertisement is notified to the Director.
- (3) An advertisement made under paragraph (1) shall specify—
 - (a) the name and address of the agency, including its physical address;
 - (b) the place where the vacancy is available;
 - (c) the terms and conditions of employment;
 - (d) the job specification and description;
 - (e) the number of positions available; and
 - (f) the reference number of the registration certificate of the agency, registration certificates for the company and the county trading licence.

FIRST SCHEDULE

[r. 3(h)]

FORM

FORM ML/NEB/FE/SB/1

REPUBLIC OF KENYA

THE LABOUR INSTITUTIONS ACT

(Cap. 234)

SECURITY BOND

KNOW ALL MEN BY THESE PRESENTS THAT WE (1)*

Of

(hereinafter referred to as the obligor) and (2)**

of

and (3)***

of

(hereinafter referred to as the sureties) are jointly and severally held and firmly bound unto the Government of Kenya in the sum of

Of good and lawful money of Kenya to be paid to the said Government, for which payment well and truly to be made we bind ourselves and each and every one of us jointly and severally for and in the whole, our heirs, executors, and administrators and every one of them firmly by these presents.

Dated this day of

NOW AND ABOVE WRITTEN OBLIGATION is conditioned to be void if the said sureties or any of them shall on demand pay forthwith to the said Government any expenses which may, within from the date hereof, be incurred by the said Government

Labour Institutions

[Subsidiary]

in connection with the unpaid salaries, maintenance Repatriation from the country of engagement

SIGNED by the above bounded obligor in the presence of:

.....

(Obligor) /
(Witness)

(Address of Witness)

SIGNED by the above bounded first surety in the presence of:

.....

(First Surety)

(Witness)

(Address of Witness)

SIGNED by the above bounded second surety in the presence of:

.....

.....

(Second Surety)

*Name of applicant or some person on his behalf

** Name of sureties

***Name of Migrant Worker

SECOND SCHEDULE

[r. 5]

FEES

	Description of fee	Amount of fee (KSh.)
1.	Fees for an initial application for the registrations of an agency dealing with recruitment for foreign labour market	500,000
2.	Fees for an initial application for registration of an agency dealing with recruitment for local/ Kenyan labour market	125,000
3.	Fees for an application for the renewal of registration of an agency dealing with recruitment for foreign labour market	250,000
4.	Fees for an application for renewal of registration of an agency dealing	75,000

5. with recruitment for local/
Kenyan labour market
Fees for a replacement of 10,000
a certificate of registration
-