

NO. 7 OF 2011

THE SUPREME COURT ACT

SUBSIDIARY LEGISLATION

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THE SUPREME COURT RULES, 2011

[Legal Notice 141 of 2011]

Revoked by Legal Notice 123 of 2012 on 1st February, 2013

THE SUPREME COURT RULES, 2012

[Legal Notice 123 of 2012, Legal Notice 14 of 2016]

Revoked by Legal Notice 6 of 2020 on 21st February, 2020

**THE SUPREME COURT (PRESIDENTIAL
ELECTION PETITION) RULES, 2013**

[Legal Notice 15 of 2013]

Revoked by Legal Notice 113 of 2017 on 28th July, 2017

THE SUPREME COURT (PRESIDENTIAL ELECTION PETITION) RULES

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THE SUPREME COURT (PRESIDENTIAL ELECTION PETITION) RULES

[Legal Notice 113 of 2017, Legal Notice 7 of 2020, Legal Notice 79 of 2022]

1. Citation

These Rules may be cited as the Supreme Court (Presidential Election Petition) Rules.

2. Interpretation

In these Rules, unless the context otherwise requires—

"Act" means the Supreme Court Act (Cap. 9B);

"Commission" means the Independent Electoral and Boundaries Commission established under Article 88 of the Constitution;

"Court" has the meaning assigned to it under the Act;

"document" includes an electronic document;

"electronic document" means any text, graphic or spreadsheet generated and stored in any electronic media content, other than computer programs or system files, that is intended to be used in either electronic form or as printed output;

"election" means an election of the President in accordance with the Article 138 and 140 of the Constitution;

"filing" means presentation, verification and acknowledgement of receipt of the documents;

"Judge" has the meaning assigned to it under the Act;

"interested party" means a person that has an identifiable stake or legal interest or duty in the proceedings before the Court but is not a party to the proceedings or may not be directly involved in the matter;

"nomination" has the meaning assigned to it under the Elections Act (Cap. 7);

"petition" means a presidential election petition filed under rule 7;

"petitioner" means a person who files a petition;

"practice directions" means practice directions issued by the Chief Justice under rule 25;

"Registrar" means the Registrar of the Court and includes a Deputy Registrar; and

"respondent" means the President-elect and includes the Deputy President-elect, and any other person named in the petition as a respondent.

[LN 7 of 2020, r. 2.]

3. Object of these Rules

The object of these Rules is to enable the Court to exercise its exclusive original jurisdiction under Article 163(3) (a) of the Constitution.

4. Application of these Rules

(1) These Rules apply to petitions in respect of presidential elections and includes petition arising—

- (a) upon declaration by the Commission of the President-elect;
- (b) pursuant to Article 138(1), (2), (3), (4), (5), (6) and (10); and
- (c) pursuant to Article 140 of the Constitution.

(2) Where there is no applicable provision in the Act or in these Rules, the procedures set out in the Supreme Court Rules, 2012, in so far as they are not inconsistent with the Act or these Rules, shall apply to all election petitions.

[Subsidiary]

5. Compliance with these Rules

The effect of any failure to comply with these Rules shall be a matter for determination at the Court's discretion subject to the provisions of Article 159(2)(d) of the Constitution.

6. Filing of petition

(1) A petition challenging the election of the President-elect shall be filed in Court within seven days after the date of the declaration of the results of the presidential election.

(2) The petitioner shall, on filing a petition, deposit a sum of one million shillings as security for costs.

(3) A petition is considered filed upon—

- (a) payment of the prescribed court fee;
- (b) depositing the security for costs; and
- (c) stamping by the Registrar.

7. Petitions generally

(1) A petition under these Rules shall be in Form A set out in the Second Schedule.

(2) Before filing a petition, the petitioner shall—

- (a) deposit a sum of one million shillings as security for costs; and
- (b) pay the prescribed court fee.

(3) Where the petition is filed on the last available day of filing, it shall be filed before 1400hrs of that day.

(4) A petitioner shall ensure the electronic version of the petition and the documents in support of the petition are similar to the paper version presented.

(5) The Registrar shall reject a petition before it is filed where the intended petitioner has not conformed with this Rule.

[LN 7 of 2020, r. 3.]

8. Form of petitions

(1) A petition may be filed by one or more persons joined as co-petitioners.

(2) A petition shall be signed by the petitioner or all the petitioners if they are more than one, or by a person duly authorized by the petitioner.

(3) A petition shall—

- (a) be divided into paragraphs and numbered consecutively;
- (b) have each paragraph being confined to a distinct portion of the subject;
- (c) be printed or typed legibly; and
- (d) briefly set out the facts and grounds relied on to sustain the relief claimed.

(4) A petitioner shall lodge, together with the petition, at least eight copies of the petition and all documents in support of the petition.

(5) An Affidavit in support of the petition shall be sworn personally by the petitioner or by one of the petitioners, if more than one, and shall —

- (a) contain the grounds on which relief is sought, setting out the facts relied on by the petitioner or petitioners;
- (b) be divided into paragraphs, each of which, as nearly as may be possible, shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively; and
- (c) conclude with a statement setting out particulars of the relief sought.

[LN 7 of 2020, r. 4.]

9. Affidavits by witnesses

A petitioner shall, at the time of filing the petition, file an affidavit sworn by a witness setting out the substance of the evidence relied on.

10. Service of petition

(1) A petitioner shall, within twenty-four hours of filing, serve the petition on the respondent—

- (a) directly on the respondent; or
- (b) by advertisement in a newspaper with nationwide circulation.

(2) Subject to sub rule (1), the petitioner shall, within six hours of filing the petition, serve the respondent with the petition by electronic means.

[LN 7 of 2020, r. 5.]

11. Response to petition

(1) On service of a petition under rule 10, a respondent who Respondsetopetition intends to oppose the petition may, within four days of service of the petition, file and serye a response which shall—

- (a) be in form of an answer to the petition in the manner specified in Form B set out in the Second ResponsetopetitionSchedule; and
- (b) be accompanied by a replying affidavit(s) sworn by the respondent and any witnesses, setting out the substance of the evidence relied on.

(2) Where the respondent does not intend to oppose the petition, the respondent shall—

- (a) file a notice of intention not to oppose the petition within three days of service of the petition in Form C set out in the Second Schedule; and
- (b) cause a copy of the notice to be served upon the petitioner.

(3) Subject to the Court's direction, a respondent who has given notice of intention not to oppose a petition under sub-rule (2) shall not be allowed to appear or act as a party in the Petition in any subsequent proceedings.

11A. Rejoinder

The petitioner shall file and serve a rejoinder within twenty-four hours of being served with the response.

[LN 7 of 2020, r. 6.]

12. Close of pleadings

The pleadings shall be closed upon filing a response to or notice of intention not to oppose the petition under Rule 11.

[LN 7 of 2020, r. 7.]

13. Computation of time in multiple petitions

Where multiple petitions are filed, time, for purposes of Article 140(2) of the Constitution, starts running on the date the last petition is filed.

14. Pre-trial conference

(1) There shall be a pre-trial conference on the eighth day after filing of the petition.

(2) The Registrar shall notify all the parties to the petition of the date and time of the conference in Form D set out in the Second Schedule.

15. Issues for determination during pre-trial conference

The Court shall, at the pre-trial conference—

- (a) frame contested and uncontested issues in the petition;

[Subsidiary]

- (b) consider consolidation of petitions in cases where more than one petition is filed;
- (ba) determine the number of advocates that the Court shall hear on behalf of each party;
- (bb) allocate time for each party to address the Court;
- (c) give directions specifying the place and time of the hearing of the petition; and
- (d) make such other orders as may be necessary to ensure a fair determination of the petition.

[LN 7 of 2020, r. 8.]

16. Written submissions

- (1) Written submissions together with a list of authorities and a bundle of authorities shall be lodged in accordance with the directions of the Court.
- (2) Written submissions shall be divided into paragraphs, numbered consecutively and each paragraph confined to a distinct portion of the subject.
- (3) Written submissions shall be printed-
 - (a) on one side of the paper only with the printed pages facing up on the left;
 - (b) in at least font size twelve;
 - (c) with at least one and one-half line spacing, except for quotations from authorities, which shall be indented and single-spaced;
 - (d) with margins of no less than three centimetres by one and one-half inches; and
 - (e) not exceeding forty pages.

[L.N. 7/2020, r. 9.]

17. Interlocutory applications

- (1) Any interlocutory application at the close of pleadings shall be filed together with written submissions, made in accordance with these Rules, and not exceeding five pages.
- (2) Within twenty-four hours of filing the interlocutory application, the applicant shall serve the application on every respondent.
- (3) The respondent shall file a response to the application together with written submissions not exceeding five pages within twenty-four hours of service.
- (4) There shall be no rejoinder from the applicant in an interlocutory application.
- (5) The Court may deliver the ruling on an interlocutory application by way of electronic communication to the parties.
- (6) In delivering a ruling under sub rule (5), the Court may defer the giving of reasons for the decision to a later date.

[LN 7 of 2020, r. 10.]

17A. Third party applications

- (1) A person seeking to be admitted as a friend of the Court may apply for admission at the close of pleadings.
- (2) An application made under sub-rule (1) shall include a friend of the court brief setting out the person's expertise and reasons for requesting the admission.
- (3) The Court may deliver a ruling by way of electronic communication to the applicant.
- (4) An application by any person to join the petition as an interested party shall not be allowed.

[LN 7 of 2020, r. 11.]

18. Hearing of petitions

(1) The Court shall immediately after the pre-trial conference commence the hearing of the petition.

(2) The petition shall be determined on the basis of affidavit evidence and written submissions.

(3) A party who has lodged written submissions under this rule may, with leave of the Court, address the Court at the hearing of the petition.

(4) Upon commencement of the hearing of the petition by the Court, litigants, their advocates and advocates' agents shall refrain from expressing their opinion on merit, demerit or predict the outcome of the petition in any manner that would prejudice or impede Court proceedings, until judgement is delivered.

(5) A breach of sub-rule (4) shall amount to contempt of Court under the Act and the Rules made thereunder.

[LN 79 of 2022, r. 2.]

19. Hearing to proceed uninterrupted

Save in exceptional circumstances as may be determined by the Court, the hearing of a petition once commenced shall proceed uninterrupted on a day to day basis until its conclusion.

20. Withdrawal of the petition and substitution of a petitioner

(1) A petitioner may, with leave of the Court, withdraw the petition at any stage of the proceedings.

(2) An application under sub rule (1) shall be by notice of motion in Form E set out in the Second Schedule and shall be supported by an affidavit.

(3) The Court may, on an application for withdrawal of a petition under sub-rule (2), grant leave on such terms as it may deem fit and just.

21. Abatement

(1) A petition shall not abate on the sole ground that a petitioner or a respondent has died in the course of the proceedings.

(2) Subject to sub-rule (1), the Court may make any order as it may deem fit and just in the circumstances.

22. Orders of the Court

At the conclusion of the hearing of an election petition, the Court may make an order—

- (a) dismissing the petition;
- (b) invalidating the declaration made by the Commission under Article 138(5) of the Constitution;
- (c) declaring the election of the President-elect to be—
 - (i) valid; or
 - (ii) invalid;
- (d) on payment of costs; or
- (e) as it may deem fit and just in the circumstances.

23. Determination of a petition

(1) Within fourteen days after filing of a petition, the Court shall determine the petition but may reserve its reasons to a date not later than twenty one days from the date the Court determines the petition.

(1A) Subject to Article 163(2) of the Constitution, all the Judges of the Court shall, as far as practicable, form the bench for hearing and determining the petition.

[Subsidiary]

(2) The decision of the Court shall be final.

[LN 7 of 2020, r. 12.]

24. Fees and costs

(1) The filing fees for petitions and other documents filed under these Rules shall be as set out in the Third Schedule.

(2) The Registrar shall be a taxing officer with power to tax the costs arising out of the proceedings under these Rules as between the parties.

(3) The costs taxed by the registrar under sub rule (2) shall be certified by the Court.

25. Practice directions

(1) The President of the Court may issue practice directions for the better carrying out of the provisions of these Rules.

(2) Where these Rules do not provide for the exercising of a right or for a procedure, the Court may adopt any procedure that is not inconsistent with the Constitution, the Act, these Rules or practice directions.

[LN 7 of 2020, r. 13.]

26. Review of these Rules

The Court may review these Rules from time to time.

27. Revocation of L.N. 15/2013

The Supreme Court (Presidential Election Petition) Rules, 2013 (L.N. 15/2013) are revoked.

FIRST SCHEDULE

PROVISIONS RELATING TO PETITIONS AND AFFIDAVITS

(r.7)

1. A petition may be filed by several persons who may be joined as co-petitioners.

2. A petition shall be signed by the petitioner or all*the petitioners if they are more than one, or by the duly authorized advocate.

3. A petition shall be divided into paragraphs, numbered consecutively, each paragraph being confined to a distinct portion of the subject, and shall be printed or typed legibly.

4. A petition shall briefly set out the facts and grounds relied on to sustain the relief claimed.

5. A petitioner shall lodge, together with the petition, at least eight copies of the petition and all documents which accompany it.

6. An Affidavit in support of the petition shall be sworn personally by the petitioner or by one of the petitioners, if more than one, and shall-

(a) contain the grounds on which relief is sought, setting out the facts relied on by the petitioner or petitioners;

(b) be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively; and

(c) conclude with a statement setting out particulars of the relief sought

Deleted by L.N. 7/2020, r. 14.

SECOND SCHEDULE

FORM OF PETITION

(r. 7)

FORM A

IN THE SUPREME COURT OF KENYA AT NAIROBI

Petition No. of 20

Between

.....**Petitioner**

AND

.....**Respondent**

PETITION

1. The humble petition of AB is as follows (set out, in consecutive paragraphs the specific issues contended by (each of the) petitioner(s) referring where necessary to the section of the Constitution or any Act of Parliament or decided cases relied upon.)

2. (briefly set out the point of law raised).

3. (briefly set out the facts necessary to enable the Court to properly decide the point of law raised).

4. (set out in summary the grounds for the petition).

5. (set out the arguments supporting each of the grounds of the petition).

6. The question or issue for the determination by the Court is (state the question).

7. The relief sought by the petitioner is

DATED this day of 20

Signed

Petitioner

..... Advocate for the petitioner

To:

The Supreme Court of Kenya

Copies to be served on

.....

Lodged in the Registry at on the day of

.....

Registrar

FORM B

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

IN THE SUPREME COURT OF KENYA AT NAIROBI

Petition No. of 20

Between

.....**Petitioner**

AND

.....**Respondent**

RESPONSE TO PETITION

[Subsidiary]

In response to the petition, the respondents state that (state the facts and grounds on which the respondents rely).

Wherefore your respondents pray that it be determined that the said was duly elected and the election was valid or invalid.

Dated 20 (Signed) A.

Dated 20 (Signed) B

FORM C (r.11 (2)(a))
IN THE SUPREME COURT OF KENYA AT NAIROBI

Petition No. of 20

Between

.....Petitioner

AND

.....Respondent

NOTICE OF INTENTION NOT TO OPPOSE THE PETITION

TAKE NOTICE that the respondent in this petition intends not to oppose the petition.

Dated this day of 20

Signed Respondent

Advocate for the respondent

To:

The Registrar/Deputy registrar of the Supreme Court of Kenya

Copies to be served on lodged in the registry/sub-registry at of, 20

.....

Registrar

FORM D (r. 14 (2))
IN THE SUPREME COURT OF KENYA AT NAIROBI

Petition No. of 20

Between

.....Petitioner

AND

.....Respondent

NOTICE BY REGISTRAR OF PRE-TRIAL CONFERENCE

TAKE NOTICE that the date of the pre-trial conference has been fixed on this day of 20

Signed

.....

Registrar

FORM E (r. 20(2))
IN THE SUPREME COURT OF KENYA AT NAIROBI

Petition No. of 20

Between

.....Petitioner

AND

.....Respondent

NOTICE OF MOTION

TAKE NOTICE that on the day of, 20, at o'clock in the morning/afternoon or as soon thereafter as he can be heard,, Advocate for the above-named applicant, will move the Court for an order thaton the grounds that

And for an order that the costs of and incidental to this application abide the result of the said appeal

The application will be supported by the affidavit of sworn on the day of, 20..... The address for service of the applicant is

Dated this day of, 20

Signed Applicant

Advocate for the applicant

Lodged in the Registry on the day of, 20

.....

Registrar

THIRD SCHEDULE

[r. 24(1)]

FEES

[L.N. 7/2020, r. 15.]

| <i>Item</i> | <i>KSh.</i> |
|--|-------------|
| Upon lodging a petition | 500,000 |
| Security for costs | 1,000,000 |
| On filing a response to the petition | 20,000 |
| Upon lodging a notice of motion, including under 30,000 certificate of urgency | |
| Upon lodging an affidavit other than an affidavit annexed to a petition | 6,000 |
| Filing a notice of intention not to oppose the petition | 4,000 |
| Filing annexures (per folio) | 200 |
| Filing written submissions (per folio) | 200 |

THE SUPREME COURT RULES, 2020

[Legal Notice 6 of 2020]

Revoked by Legal Notice 101 of 2020 on 12th June, 2020

THE SUPREME COURT RULES

ARRANGEMENT OF RULES

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SCHEDULES

FIRST SCHEDULE —

FORMS

FEES

TAXATION OF COSTS

THE SUPREME COURT RULES

[Legal Notice 101 of 2020]

1. Citation

These Rules may be cited as the Supreme Court Rules.

2. Interpretation

In these Rules, unless the context otherwise requires—

"Act" means the Supreme Court Act;

"Appeal" includes an intended appeal from the Court of Appeal or any other court or tribunal exercising original jurisdiction;

"bench" means a judge or any number of judges as may be constituted by the President of the Court in connection with any proceeding;

"Court" has the meaning assigned to it under section 2 of the Act;

"duty judge" means a judge of the Court assigned to conduct preliminary procedures during their time on duty;

"electronic media" means any type of device that stores and allows distribution or use of electronic information;

"guardian in the matter" means a person appointed as such, to defend a minor, or a person with a disability, in a matter;

"interested party" means a person who has an identifiable stake or legal interest or duty in the proceedings, who may be prejudiced if not joined, but is not an original party to the proceedings;

"party" includes a petitioner, respondent, interested party or an applicant;

"Petition" has the meaning assigned to it under the Act;

"preliminary procedures" means presentation made before a single judge, a two-judge bench, or the Registrar, on a matter preparatory in nature;

"President" means the President of the Supreme Court;

"proceedings" means presentation made before the Court under Article 163(2) of the Constitution, for final determination on a matter;

"reference" means an application to the Court for an Advisory Opinion;

"Registrar" has the meaning assigned to it under section 2 of the Act; and

"Registry" has the meaning assigned to it under section 2 of the Act.

3. Scope and objectives

(1) These Rules apply to proceedings under the Court's jurisdiction and includes petitions, references and applications.

(2) The overriding objective of these Rules is to ensure that the Court is accessible, fair and efficient.

(3) The Court may use appropriate technology in its proceedings and operations.

(4) The Court shall interpret and apply these Rules without undue regard to technicalities and procedure.

(5) Nothing in these Rules shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders or give directions as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

PART II – ADMINISTRATION OF THE COURT

4. Duties of the President

The duties of the President shall include—

- (a) coordination of the activities of the Court;
- (b) constitution of a bench to hear and determine any matter filed before the Court;
- (c) determination of the sittings of the Court and the matters to be disposed of at such sittings; and
- (d) determination of the period of vacation of the Court.

5. Duty Judge

The President shall appoint a duty judge who shall —

- (a) hear and determine applications for certification of urgent matters; and
- (b) any other matter as may be provided for under the Act.

6. Role of the Registrar

(1) The role of the Registrar is —

- (a) to schedule matters filed before the Court for a scheduling conference;
- (b) to decline pleadings that are not in accordance with the Constitution, the Act, these Rules, or the Court's practice directions for filings;
- (c) to impose sanctions or order costs against a party who fails to comply with directions of the Court;
- (d) to fix matters for hearing in consultation with the President; and
- (e) to give notice of any directions in any matter approved by the Court.

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

(3) A determination by the single judge on the decision of the Registrar shall be final.

7. Sittings of the court

(1) The Court shall have three sittings in a year.

(2) The sittings of the Court referred to under sub rule (1) shall be as follows—

- (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.

8. Language of the Court

(1) The language of the Court is English.

(2) A party who intends to address the Court in any language other than the language of the Court shall give the Registrar a seven-day notice before the date of the hearing.

9. Sealing of Court documents

The Registrar shall sign and seal with the seal of the Court any summons, warrant, order, notice or other formal document issued by the Court.

10. Registry

(1) The Registry shall be located at Nairobi.

(2) The President may from time to time establish sub-registries of the Court.

(3) The working hours of the Registry are from 8.30 a.m. to 5.00 p.m.

11. Maintenance of the register

- (1) The Registrar shall maintain a register of all documents lodged in the registry.
- (2) A register shall contain particulars of documents including—
 - (a) the sequencing 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.

PART III – CASE MANAGEMENT

12. Filing of documents

- (1) Pleadings and any other document filed in the Court shall be in both printed and electronic form.
- (2) A party filing any document shall ensure consistency in the printed and the electronic formats.
- (3) In case of any inconsistency between the hard copy and soft copy, the hard copy shall prevail.
- (4) Where a document is lodged in a sub-registry, the deputy registrar receiving the same shall transmit it to the Registry.

13. Form of documents

- (1) A document prepared for use in Court shall conform to practice directions issued by the President.
- (2) The pages of every document in an application or appeal shall—
 - (a) be numbered consecutively; and
 - (b) have every tenth line of each page indicated on the margin of the right side of the sheet.
- (3) The documents lodged to institute an appeal shall be bound in book form, in volumes secured under cover of durable paper, with proper title appearing on the cover.
- (4) The Court may limit the number of pages of any set of documents to be filed.
- (5) Despite this rule, the Court may, where necessary, vary the requirements relating to filing of documents.

14. Hours of filing documents

- (1) Parties shall file or present documents in the registry during working hours.
- (2) Despite sub-rule (1), the President may specify other times when parties may file or present documents in the registry.

15. Computation and extension of time

- (1) The computation of time for any action under these Rules shall be in accordance with—
 - (a) any timeline provided for under the Constitution;
 - (b) section 57 of the Interpretations and General Provisions Act (Cap. 2);
 - (c) any directions of the Court.
- (2) The Court may extend the time limited by these Rules or by any decision of the Court.

16. Service and transmission of documents

- (1) Where a document is required to be served upon a person under these Rules, service may be effected—
 - (a) personally by hand;

[Subsidiary]

- (b) through a licensed courier service-provider approved by the Court;
- (c) by electronic means in accordance with the practice directions;
- (d) by registered post;
- (e) on a person entitled to appear on that person's behalf; or
- (f) in such other manner as the Registrar may direct.

(2) The attestation of service shall be by way of an affidavit of service, which shall specify the details of the person served, and the place, date, time and mode of service.

(3) Despite sub-rule (2), the Court may admit oral evidence of service.

17. Further pleadings

(1) A party may only file further pleadings or affidavits with the leave of the Court, and with the consent of the other party.

(2) An application for leave under this rule may be made orally.

(3) Any pleadings, affidavits or other documents filed under this rule shall be served in accordance with these Rules.

18. Representation in Court

(1) A party may in any proceedings—

- (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, a corporate body or group of persons may be represented in a proceeding by an advocate, a director, manager or secretary appointed in writing, in accordance with a duly-made resolution, which shall be filed in Court.

(3) Where a child or a person with disability is involved, the Court may appoint a guardian in the matter, or a next friend, for the purpose of lodging an appeal or a petition, and the Court may, at any time and for sufficient reason, remove or substitute the appointed guardian or next friend.

(4) A party may remove or substitute a representative at any stage of the proceedings.

(5) A party seeking to remove, substitute, nominate or otherwise change a representative, shall lodge with the Registrar a notice of change, and serve the notice upon other parties to the proceedings.

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

(7) An advocate who applies to cease acting, shall serve the application upon the other party or parties involved.

19. Participation of friends of the Court

(1) The Court may on its own motion, or at the request of any party, permit a person with particular expertise to appear in any matter as a friend of the Court.

(2) The Court shall before admitting a person as a friend of the court, consider—

- (a) proven expertise of the person;
- (b) independence and impartiality of the person; or
- (c) the public interest.

(3) Any fees or expenses incurred by a person appointed by the Court as a friend of the court on its own motion, shall be paid out of the Judiciary Fund, in accordance with a scale determined by the President.

(4) An application to be admitted as an *amicus* or a friend of the Court shall be done within 7 days upon filing of a response in any proceedings before the Court.

20. Assignment of advocate by court

(1) The President may, in the interest of justice, assign an advocate to represent a party.

(2) The fees and expenses of an advocate assigned, by virtue of sub-rule (1), may be paid out of the Judiciary Fund, on a scale determined by the President.

21. Test case

The Court may, upon application by any party or on its own motion, where satisfied that the issues involved in any two or more proceedings are similar, order that the proceedings be—

- (a) consolidated, on such terms as the Court may determine; or
- (b) determined as a test case, and there be a stay in all steps in the other matters until the test suit is determined, or shall have failed to be determined or to be a real trial of the issues.

22. Scheduling conference

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

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

- (a) ascertain the contested and the agreed issues;
- (b) resolve the question whether the parties can reach a settlement out of Court;
- (c) confirm the form of evidence to be adduced by the parties, and the number of witnesses parties will call;
- (d) receive proposals and give directions on the—
 - (i) proposed time-frame for oral submissions; and
 - (ii) filing of written submissions, lists and bundles of authorities, by parties;
- (e) confirm whether the parties' pleadings conform with these Rules and with the practice directions; and
- (f) (where the question of the jurisdiction of the Court is raised by a party), refer the matter to the President for determination.

(3) The Presiding Judge 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, to determine preliminary matters including —

- (a) whether to allow any friend of the Court, or interested party in the proceedings; and
- (b) any other matter requiring determination such as may have been raised at the scheduling conference.

23. List and bundle of authorities

(1) A party shall file and serve any list of authorities in respect of which reliance is sought before scheduling conference before the Registrar.

(2) The list of authorities shall contain summarized analysis of each of the listed authorities, specifying the rule of law bearing upon the decision, its relevance, and its applicability to the matter before Court.

(3) A party may file written submissions in addition to, or in place of, oral submissions.

(4) A judgment and ruling of the Court shall not be annexed as part of the bundle of authorities.

24. Interested parties

(1) A person may, within seven days of filing a response in any proceedings, apply for leave to be joined as an interested party.

[Subsidiary]

- (2) An application under sub-rule (1) shall include—
- (a) a description of the interested party;
 - (b) a depiction of such prejudice as the interested party would suffer if the intervention was denied; and
 - (c) the grounds or submissions to be advanced by the interested party, their relevance to the proceedings, and their departures from the standpoint of the parties.
- (3) An application under this rule shall be determined on the basis of written submissions.

PART IV – CONDUCT OF PROCEEDINGS

25. Hearing in Court

- (1) The Registrar shall, unless the Court certifies the matter as urgent, give parties to the proceedings a notice of not less than fourteen days, ahead of hearing date.
- (2) Proceedings may be conducted in open court or in chambers, as the Court may direct.
- (3) The Registrar shall only certify for a hearing a matter that has complied with the Act and these Rules.
- (4) The Court may prescribe the time allowed for making oral presentations, address by the parties, their advocates or other recognized representatives.

26. Admission of additional evidence

- (1) The Court may call or admit additional evidence in any proceedings.
- (2) A party seeking to adduce additional evidence shall make a formal application to the Court.
- (3) In any appeal from a decision of the Court of Appeal, or from a court or tribunal exercising original jurisdiction, the Court may—
- (a) call for or receive any record on any matter connected with the proceedings;
 - (b) re-appraise evidence and draw any inferences of fact;
 - (c) take additional evidence; or
 - (d) direct the trial court or the Registrar to take additional evidence.
- (4) Where the Court takes additional evidence either orally or by affidavit, the Court may allow any witness to be cross-examined.
- (5) Where the Court directs the trial court to take additional evidence, the trial court shall certify such evidence to the Court, with a statement of its opinion on the credibility of any witness adducing such evidence.
- (6) Where evidence is taken by the Registrar, the Registrar shall give statements of opinion on the credibility of the witness.
- (7) A party to an appeal is entitled to be present when additional evidence is being taken.

27. Withdrawal of proceedings

- (1) A party may, with the leave of the Court, withdraw the proceedings at any time before the delivery of judgment.
- (2) The Court may make an order as to costs, following such withdrawal of proceedings.

28. Judgment

- (1) The Court shall deliver a ruling, judgment or advisory opinion within ninety days from the last day of hearing.
- (2) The Court may issue its decision, while reserving the reasons for such decision to a later date.
- (3) Where the Court reserves the reasons for a decision, any judge of the Court may deliver the reasons on a determined date.
- (4) An Advisory Opinion shall be delivered in open court, and issued in writing.

(5) The Court may review any of its decisions in any circumstance which the Court considers meritorious, exceptional, and in the public interest, either on the Court's own motion, or upon application by a party.

(6) Pursuant to section 21(4) of the Act, a party may apply for formal correction of a judgment, ruling or order, through a Form B set out in the First Schedule.

29. Decrees and orders

(1) Except for an Advisory Opinion, a decision of the Court on any proceedings shall be in form of a decree or an order, as may be appropriate.

(2) A decree of the Court shall be as set out in Form C of the First Schedule.

(3) An Order of the Court shall be as set out in Form D of the First Schedule.

(4) 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 and who shall, within seven days of receiving the draft order—

(a) approve it, with or without any changes; or

(b) reject it.

(5) Where the parties approve the draft, it shall be submitted to the Registrar who shall, if satisfied that it is properly drawn, certify the Order accordingly.

(6) Where parties do not agree on the content of the Order, any judge who sat at the hearing shall settle the terms of the Order.

30. Execution

(1) The Registrar shall certify every decision of the Court for transmission to the High Court for execution.

(2) An order or a decree of the Court may be enforced as if it were an order of the High Court.

PART V – APPLICATIONS

31. Interlocutory applications

(1) Every interlocutory application to the Court shall be filed together with written submissions and shall be determined by way of written submissions.

(2) An interlocutory application shall not be originated before a petition of appeal or a reference is filed with the Court.

(3) An interlocutory application together with written submissions shall be served within seven days of filing.

(4) A response to the interlocutory application together with written submissions shall be filed and served within seven days.

(5) The applicant, upon service of the response, shall file a rejoinder which may include supplementary submissions within seven days.

(6) An interlocutory application shall be by way of a Notice of Motion.

32. Urgent applications

(1) A party seeking to have an application heard on a priority basis shall file the application—

(a) accompanied by a certificate of urgency; and

(b) supported by an affidavit attesting to the urgency.

(2) An application shall be placed before the duty judge who may grant or decline to certify the matter as urgent.

33. Application for certification

(1) An application for certification shall, in the first instance, be made in the court from which the appeal originates.

[Subsidiary]

(2) Where the Court of Appeal has certified or has declined to certify a matter as one of general public importance, an aggrieved party may apply to the Court for review, within fourteen days.

(3) An application under this rule shall be by way of originating motion as set out in Form E of the First Schedule.

(4) Upon filing an application under this rule—

- (a) the applicant shall serve the application within seven days;
- (b) all responses shall be filed and served within fourteen days of service; and
- (c) upon service of a response, the applicant shall file and serve any rejoinder within seven days.

(5) An application for certification shall—

- (a) only be limited to the parties in the original cause; and
- (b) be determined on the basis of written submissions.

34. Non-attendance at hearing of application

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

- (a) neither party attends the hearing, the application may be dismissed; or
- (b) where either the applicant or the respondent does not attend court, the Court may proceed as it deems fit.

(2) A party who, for a sufficient cause, 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.

(3) The Court, in the case of sub-rule (2), shall consider a request for a fresh determination, and may set aside or vary the decision made:

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

(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.

35. Abatement of applications

(1) An application in a criminal appeal shall abate where the applicant is the State, on the death of the respondent, and in any other case, on the death of the applicant.

(2) An application in a civil appeal shall not abate on the death of any party, but the Court may, on the application of an interested person, cause the legal representative of the deceased to be made a party in place of the deceased.

(3) If no application is made within twelve months from the date of death, the application shall abate.

(4) A legal representative of a deceased party or any other interested person may apply for an order to revive an application which has abated.

(5) The Court shall, if it is proved that an applicant was prevented by sufficient cause from continuing with the application, revive the application on such terms as to costs, or otherwise, as the Court may deem fit.

PART VI – APPEALS

36. Notice of Appeal

(1) A person who intends to make an appeal to the Court shall file a notice of appeal within fourteen days from the date of judgment or ruling which is the subject of appeal.

(2) The notice of appeal shall be—

- (a) in Form F set out in the First Schedule;

- (b) filed at the first instance with the Registrar of the court, or with the tribunal from which an appeal originates.

(3) Upon filing of the notice of appeal, the petitioner shall transmit a copy of the notice to the Registrar.

(4) In lodging an appeal on a matter of general public importance, it shall not be mandatory to obtain such certification before filing the notice of appeal.

37. Service of Notice of Appeal

(1) A petitioner shall, within seven days of lodging a notice of appeal, serve transmitted copies of the notice upon all persons directly affected by the appeal.

(2) A person upon whom a notice of appeal is served shall—

- (a) within fourteen days of receiving the notice, file in the registry a notice of address for service, which shall contain that person's contact detail, including telephone numbers and email address, and shall serve the intended appellant with copies of the notice; and

- (b) within a further fourteen days, shall serve a copy of the notice of address for service on every other person named in the notice of appeal.

(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.

38. Institution of appeal

(1) An appeal to the Court shall be filed within—

- (a) thirty days of the date of filing the notice of appeal, where the appeal is as of right; or
(b) thirty days after the grant of certification, where such certification is required.

(2) The requirement for instituting an appeal include—

- (a) a petition of appeal;
(b) a record of appeal; and
(c) the prescribed fee.

39. Form of Petition of an appeal

(1) A petition of appeal shall be as set out in Form G of the First Schedule.

(2) The petition shall contain—

- (a) a concise statement of the facts relied upon;
(b) a summary of the grounds for the petition;
(c) a concise presentation of arguments supporting each of the grounds of the petition;
(d) the relief sought in the petition and any directions sought pursuant to these Rules; and
(e) a schedule listing all the documents annexed to the petition.

40. Content of a record of Appeals from the Court of Appeal

(1) For the purpose of instituting an appeal from a Court of Appeal decision, the record of appeal shall entail—

- (a) a certificate, if any, certifying the matter as of general public importance;
(b) the judgment or ruling of the Court of Appeal being appealed from;
(c) a judgment or ruling of the High Court or a court of equal status; and
(d) the relevant pleadings required to determine the appeal.

(2) A ruling under sub rule (1)(b) is relevant only if it relates to the determination of a substantive matter, and shall not include a ruling on an application of less gravity.

[Subsidiary]

(3) The court may, on the application of any party, direct certain documents to be excluded from the record, and an application for such exclusion may be made orally.

(4) Where a document is omitted from the record of appeal under this rule, the appellant may within fifteen days of lodging the record of appeal, without leave, include the document in a supplementary record of appeal.

41. Content of a record of Appeal from other courts or tribunals

The record of appeal from a court or tribunal exercising original jurisdiction shall contain

- (a) an index of the documents in the record, with a numbering of the pages on which they appear;
- (b) the notice of appeal;
- (c) the certificate, if any, certifying the matter to be of general public importance;
- (d) a statement showing the address for service of the appellant, including telephone numbers and email address;
- (e) the address for service furnished by the respondent, and as regards any respondent who has not furnished an address for service, the address and proof of service upon the respondent in the notice of appeal;
- (f) pleadings;
- (g) the record of proceedings;
- (h) the trial judge's notes at the hearing;
- (i) the transcript of any shorthand notes taken at the trial;
- (j) the affidavits read, and all documents of evidence at the hearing, or, if such documents are not in the English language, certified translations thereof;
- (k) the judgment or ruling;
- (l) the certified decree or order; and
- (m) such other documents, if any, as may be necessary for the proper determination of the appeal, including any interlocutory proceedings which may be directly relevant.

42. Response to petition of appeal

(1) Unless otherwise directed by the Court, a respondent shall file grounds of objection, an affidavit, or both, within fourteen days of service of the petition.

(2) The petitioner shall file and serve a rejoinder within seven days of being served with the response.

(3) Pleadings shall close seven days after the lapse of time for the filing of a rejoinder.

43. Abatement of appeals

(1) An appeal in a criminal appeal shall abate where the appellant is the State, on the death of the respondent, and in any other case, on the death of the appellant.

(2) An appeal in a civil appeal shall not abate on the death of any party, but the Court may, on the application of an interested person, cause the legal representative of the deceased to be made a party in place of the deceased.

(3) If no application is made within twelve months from the date of death, the appeal shall abate.

(4) A legal representative of a deceased party or any other interested person may apply for an order to revive an appeal which has abated.

(5) The Court shall, if it is proved that an applicant was prevented by sufficient cause from continuing with the application, revive the appeal on such terms as to costs, or otherwise, as the Court may deem fit.

44. Death of respondent before service of notice

A notice of appeal shall be served, as soon as practicable, upon the legal representative, where the person upon whom it was to be served is deceased.

45. Address for service

A person upon whom a notice of appeal is served shall, within fourteen days after service of the notice of appeal, lodge in the registry and serve on the appellant and every other person named in the notice—

- (a) an address for service; and
- (b) a notice of address for service, as set out in Form H of the First Schedule.

46. Default in instituting appeal

(1) Where a party has lodged a notice of appeal, but fails to institute the appeal within the prescribed time, the notice of Appeal shall be deemed to have been withdrawn, and the Court may on its own motion, or on application by any party, make such orders as may be necessary.

(2) The party in default shall be liable to pay the costs arising, to any person upon whom the notice of appeal was served.

47. Notice of cross-appeal

(1) A respondent who intends to cross-appeal shall specify the grounds of contention, and the nature of the relief that the respondent seeks from the Court.

(2) The respondent shall—

- (a) provide contact details including the names, postal address, telephone number and email address of any persons intended to be served with the notice; and
- (b) lodge eight copies of the memorandum of appeal and record of appeal in the registry within thirty days of service upon the respondent, or not less than thirty days before the hearing of the appeal, whichever is the later.

(3) An application or notice to cross-appeal shall be as set out in Form I of the First Schedule.

(4) In a criminal appeal, the Registrar of the court or tribunal from which an appeal originates shall prepare the record of appeal, and cause copies to be served upon the parties and to the Registrar.

48. Notice of grounds for affirming decision and service

(1) A respondent who contends on an appeal that a decision of a court or tribunal should be affirmed on grounds other than, or additional to those relied upon by the court, shall give notice in the terms set out in Form J of the First Schedule, specifying the grounds of the contention.

(2) A respondent intending to contend at the hearing of the appeal that part of the decision of the court should be varied or reversed, and another part be affirmed on grounds other than, or additional to those relied upon by that court, may include both such contentions in a notice of cross-appeal, and shall not be required to give further notice.

(3) Sub-rules (1) and (2) shall apply, with necessary modifications, to an appellant who desires to contend in opposition to a cross-appeal, that the decision of a court or tribunal should be affirmed on grounds other than, or additional to those relied on by that court.

(4) A notice under this rule shall be served upon other parties within seven days of filing.

[Subsidiary]

49. Withdrawal of notice of cross-appeal, or notice of grounds for affirming decision

(1) Where an appeal is withdrawn after notice of cross-appeal is given, the respondent who gave the notice may withdraw it within fourteen days of receiving the notice of withdrawal.

(2) If an appeal is not so withdrawn, the cross-appeal shall proceed to hearing, and the provisions of these Rules shall apply as if the cross-appellant were an appellant and the appellant a respondent.

(3) Where an appeal is withdrawn within fourteen days from the date when it was instituted, any respondent who has not lodged a notice of cross-appeal shall be entitled to give notice of appeal despite the expiry of time, except where the respondent gives the notice within fourteen days from the date when the appellant's notice of withdrawal was received.

PART VII – ADVISORY OPINIONS

50. Reference for an advisory opinion

(1) The national government, state organ or a county government may make a reference to the Court for an advisory opinion under Article 163(6) of the Constitution.

(2) The reference for an advisory opinion shall—

- (a) be in the form set out in Form K of the First Schedule;
- (b) be signed by a duly-authorized officer;
- (c) specify the questions or issues for determination by the Court; and
- (d) concisely and briefly state the question upon which advice is sought.

51. Participants in a reference

(1) A person filing a reference may propose that the Court may consider admitting any other person to participate in the reference.

(2) Despite sub-rule (1), the Court may on its own motion identify any other person to participate in the reference.

(3) A person who has been admitted as a participant shall file and serve written submission within fourteen days of service of the reference.

(4) The content of the written submissions of an admitted participant shall be in accordance with the directions of the Court.

(5) Any application for joinder as interested party in a reference shall not be allowed.

(6) Where a friend of the court or an expert has been admitted in any proceedings, the Court shall give directions on whether such person shall—

- (a) file written submissions; or
- (b) address the Court orally.

52. Notice of reference

Upon filing of a reference, the Registrar shall give—

- (a) notice to the applicant to appear before the Court for directions on the persons to be served with notice of such reference; and
- (b) notice of the reference to parties, if any, inviting them to attend the Court for directions regarding the date and mode of hearing.

53. Determining a reference

(1) The court may, after giving the parties an opportunity to be heard, reject a reference in whole or in part, if—

- (a) it is incompetent within the meaning of Article 163(6) of the Constitution;
- (b) the applicant does not represent those who have interest in the opinion;

- (c) the matter in respect of which the reference is made can, in the opinion of the Court, be resolved by the advice of the Attorney-General, and such advice has not been sought;
- (d) it is satisfied that the application is frivolous, or otherwise an abuse of the process of the Court;
- (e) the applicant has failed to comply with any rule, direction or order of the Court; or
- (f) the reference is materially incomplete, or lacking in clarity, and the applicant has failed to remedy the defects as directed by the Court.

(2) The Court shall, within sixty days of the close of hearing, deliver its opinion on the reference, and the Registrar shall publish the decision.

PART VIII – PETITION ON DECLARATION OF STATE OF EMERGENCY

54. Filing a petition

(1) A petition may be filed under Article 58 of the Constitution challenging—

- (a) the validity of a declaration of state of emergency;
- (b) the validity of an extension of a declaration of state of emergency; and
- (c) any legislation enacted, or any action taken, in consequence of a state of emergency.

(2) The petition shall set out grounds upon which the declaration is challenged, accompanied by a supporting affidavit sworn by the petitioner.

(3) The Court shall issue directions on how to proceed with the petition, including the manner of hearing.

55. Service and hearing of petition

(1) A petition filed shall be served within—

- (a) three days, for a petition challenging the declaration being made;
- (b) seven days, for a petition challenging grant of extension of a declaration of the state of emergency; or
- (c) seven days, for any action, being taken or the publication in the *Gazette* of the legislation being challenged.

(2) The respondent shall respond to the petition within three days of service, by filing and serving a replying affidavit or response.

(3) The Court shall issue directions on how to proceed with the petition, including the manner of hearing.

PART IX – CONTEMPT OF COURT

56. Contempt in the face of the Court

(1) The Court may cause any person whose conduct before it manifests disobedience, obstruction or contempt, to be detained in custody.

(2) Within twenty-four hours of making an order under sub-rule (1), the Court shall—

- (a) cause the person to be informed in writing of the contempt of Court with which the person is charged; and
- (b) afford that person an opportunity to make a defence to the charge.

(3) Upon taking such evidence as may be necessary or as may be offered by such person, the Court shall proceed to determine the charge and make necessary orders in accordance with the Act.

57. Cognizance of contempt in other cases

(1) In a case of contempt referred to under section 28(4) of the Act, the Court may take action on its own motion or on an application made by any person.

[Subsidiary]

(2) Any application for contempt filed shall specify the acts of contempt of court the person is charged with.

(3) The applicant shall serve the application for contempt on the respondent within three days of filing.

(4) Where the Court initiates contempt proceedings on its own motion, the accused shall file a response within 14 days of being notified of the intention to commence such proceedings.

(5) The Court shall determine the contempt matter within ninety days from the date of filing the response or where no response is filed, from the date the period of filing of response lapses.

58. Penalty for contempt

The Court may make such order as it may deem fit, in determining a matter of contempt, including issuing an order denying audience to the contemnor for a period not exceeding one year.

PART X – FEES AND COSTS

59. Assessment of Fees payable

(1) Subject to Article 22 of the Constitution and section 11 of the Act, there shall be payable to the Court such fees as specified in the Second Schedule to these Rules.

(2) Any costs payable by a party shall be—

- (a) assessed by the Court when making its decision; or
- (b) be taxed by the Registrar; or
- (c) determined by consent of the parties.

60. Taxation of costs

(1) The Registrar has powers to tax costs arising out of any proceedings before the Court, between the parties.

(2) The party-to-party costs shall be taxed in accordance with the scale set out in the Third Schedule to these Rules.

61. Costs improperly incurred

(1) The Court may require an advocate, or a representative of a party upon whom costs have been incurred, to show cause why they should not personally bear such costs, where it appears to the Court that the costs were incurred—

- (a) improperly or without reasonable cause;
- (b) on account of any undue delay in the proceedings; or
- (c) due to any misconduct or default on the part of the advocate or other recognized representative.

(2) The Court may make such order as the justice of the case may require.

62. Reference on taxation

(1) A person who is dissatisfied with a decision of the Registrar in the taxing of costs may refer the matter, within seven days, to a single judge for determination.

(2) The decision of the single judge shall be final.

63. Waiver of court fees

(1) A party may apply to the Court, in any proceedings, to waive payment of court fees.

(2) The Registrar may, where satisfied that a party lacks the means to pay the required fees, permit that the matter be lodged.

(3) In considering a request for waiver of fees, the Registrar shall take into account—

- (a) whether the person has the capacity to pay the costs;

- (b) whether the fees were waived in the preceding court;
 - (c) any affidavit of means deposed by the party;
 - (d) the objective merit of the case; and
 - (e) any practice directions made by the President.
- (4) No fee shall be payable in making an application for waiver of fees.
- (5) Any expenses arising from waiver of fees shall be a charge on the Judiciary Fund.

PART XI – GENERAL PROVISIONS

64. Practice directions

(1) The President of the Court may issue practice directions for the better carrying out of the provisions of these Rules.

(2) Where these Rules contain no provision for exercising a right or procedure, the court may adopt any procedure that is not inconsistent with the Act, these Rules or practice directions.

65. Effect of non-compliance with Rules

(1) Where any provision in these Rules, or any relevant practice direction is not complied with, the Court may issue such directions as may be appropriate, having regard to the gravity of the non-compliance, and generally to the circumstances of the case.

(2) Any direction given under this rule may include the dismissal of the petition, reference or application.

66. Disposal of records

The disposal of the records in the custody of the court shall be in accordance with—

- (a) provisions of the Records Disposal Act (Cap. 14); or
- (b) any directions issued by the President.

67. Revocation of L.N. 6 of 2020 and saving provision

(1) The Supreme Court Rules, 2020 (L.N. 6/2020) are hereby revoked.

(2) Despite the provision of sub-rule (1), any legal or administrative action taken under the revoked Rules shall be deemed to have been taken under these Rules.

68. Review of Rules

The Court may review these Rules from time to time.

FIRST SCHEDULE

FORMS

FORM A

(r. 22(1))

IN THE SUPREME COURT OF KENYA AT NAIROBI

APPLICATION/PETITION/REFERENCE No. of 20

BETWEEN

..... PETITIONER

[Name and address of the Advocate]

AND

..... RESPONDENT

[Name and address of the Advocate]

..... RESPONDENT

[Name and address of the Advocate]

SCHEDULING QUESTIONNAIRE

Question

TICK YES OR NO REMARKS

[Subsidiary]

1. Have you filed and served all the parties the documents you wish to rely on in Court?
2. Do you have any interlocutory application (s)?
3. Are you aware that all interlocutory applications will be determined by way of written submission?
4. Have you made contact with the other party(ies) in these proceedings with a view to settle the case or to narrow down the issues?
5. Written Submissions
 - a. Have you filed written submissions?
 - b. Do the written submissions comply with the Court's Practice Directions?
 - c. Length of oral highlighting
6. Is there any outstanding direction(s) to be complied with?
7. Have you filed and served your List of Authorities?
8. Is the Application/ Petition/Reference ready for hearing? If not state the reason in the remarks.
9. How much time is required during hearing?
10. Any other direction for example pending applications?

Advocate

Name

Signed

Date

I hereby certify that all matters that are necessary for the preparation of this Application/Appeal/Reference for hearing have been done and that the Application/Appeal/Reference may be set down for hearing.

Deputy Registrar

Date

FORM B

(r. 28(6))

In the Supreme Court

Criminal (1) Application No. of, 20

Civil

an intended appeal (1)

In the matter of

In the matter of

Criminal/Civil Appeal No. of, 20

between Applicant

and Respondent

(Appeal from the (2) of the High Court of Kenya/

Court of Appeal at (Mr.Justice)

dated, 20, in

Criminal (1) Applicant (1) No. of 20
Civil Appeal.

NOTICE OF MOTION

TAKE NOTICE that on the day of, 20,
at o'clock in the morning (1) afternoon as soon thereafter as he can be
heard, Mr., Advocate for the above-named applicant, will move the
Court (1) a judge of the Court that on the grounds that
And for an order that the costs of and incidental to this application abide the
result of the said appeal (2).

The application will be supported by the affidavit of
sworn on the day of, 20

The address for service of the applicant is

Dated this day of 20

Signed Applicant

Advocate for the applicant

Lodged in the Registry on the day of, 20

.....

Registrar

- (1) Delete inappropriate words.
- (2) Insert conviction, sentence, judgement, decree, order or as the case may be.
- (3) Amend as necessary.

FORM C

.....
(r. 29(2))

(Heading as in the proceeding form)

DECREE

CLAIM FOR—

- (a)
- (b)
- (c)
- (d)

THIS PETITION COMING UP FOR HEARING ON THE
DAY OF and for orders and upon hearing counsel for
the

and counsel for

IT IS HEREBY ORDERED THAT—

- 1.
- 2.

GIVEN under my hand and seal of the Court this day of

ISSUED on

.....

Registrar, Supreme Court of Kenya

FORM D

.....
(r. 29(3))

(Heading as in the proceeding form)

ORDER

Before in Chambers/in Court

Upon hearing

and upon reading the affidavit of

filed herein on the

[Subsidiary]

IT IS ORDERED that and that costs of this application be dated this day of ISSUED on

Registrar, Supreme Court of Kenya

FORM E (r. 33(3)) Motion No. of, 20 ... Between Applicant And Respondent

ORIGINATING MOTION Let of within days after service of this motion on him/her which is issued on the application of who claims to (state the nature of the claim) for the determination of the following questions(state questions). Dated theday of, 20 This motion was taken out by of, advocate For the above-named Appearance may be effected personally or by advocate. Note. – if the respondent does not enter appearance within the time above-mentioned such order may be made and proceedings taken as the Court may think just a expedient.

FORM F (r. 36 (2)(a)) (Heading as in proceeding appealed form) NOTICE OF APPEAL TAKE NOTICE that being dissatisfied with the decision of (Court or Tribunal) given at on the day 20 Intends to appeal to the Supreme Court against the whole of the said decision or such part of the said decision as decided that The address for service of the appellant is It is intended to serve copies of this notice on Dated this, day of, 20 The Registrar of the Supreme Court Lodged in the (Court or Tribunal) at this day of, 20 Registrar

FORM G (r. 39(1)) In the Supreme Court of Kenya Petition No. of 20 ... Between Petitioner and Respondent

Appeal from judgment or ruling of..... (Court of Tribunal) at dated the day of, 20 In Case NO. OF, 20 PETITION

- 1. The humble petition of AB is as follows (set out, in consecutive paragraphs the specific issues contended by (each of the) petitioner(s) referring where necessary to the section of the Constitution or any Act of Parliament or decided cases relied upon.) 2. (briefly set out the point of law raised). 3. (briefly set out the facts necessary to enable the Court to properly decide the point of law raised). 4. (set out in summary the grounds for the petition). 5. (set out succinctly presentation of the arguments supporting each of the grounds of the petition). 6. The question or issue for the determination by the Court is (state the question).

7. The relief sought by the petitioner is Dated this day of, 20 Signed Petitioner

..... Advocate for the petitioner To: The Supreme Court of Kenya Copies to be served on

Lodged in the Registry at on the day of Registrar

FORM H (r. 45)

NOTICE OF ADDRESS FOR SERVICE TAKE NOTICE that the address for service of a respondent served with notice of appeal is Dated this day of, 20 Signed Respondent

..... Advocate for the Respondent To: The Supreme Court of Kenya Copies to be served on

Lodged in the Registry/Sub-registry at on the day of Registrar

FORM I (r. 47(3))

NOTICE OF CROSS-APPEAL

[Subsidiary]

TAKE NOTICE that on the hearing of this appeal the above-named respondent will contend that the above-mentioned decision ought to be varied or reversed to the extent and in the manner and on the grounds hereinafter set out, namely –

- 1.
- 2.

It is proposed to ask the Court for an order that

It is intended to serve copies of this notice on

Dated this day of, 20

Signed

Respondent

..... Advocate for the petitioner

To:

The Supreme Court of Kenya

Copies to be served on

Lodged in the Registry/Sub-registry at on the day of

Registrar

FORM J

(r. 48(1))

NOTICE OF GROUNDS FOR AFFIRMING THE DECISION

TAKE NOTICE that on the hearing of this appeal,the above-named respondent will contend that the above-mentioned decision ought to be affirmed upon grounds other than those relied upon by the Court of Appeal, namely—

- 1.
- 2.

It is intended to serve copies of this notice on

Dated this day of, 20

Signed

Respondent

..... Advocate for the Respondent

To:

The Supreme Court of Kenya

Copies to be served on

Lodged in the Registry/Sub-registry at on the day of

Registrar

FORM K

(r. 50(2))

In the Supreme Court of Kenya

Reference No. of 20

In the matter of an application by (National Government, State Organ or County Government) for Advisory Opinion under Article 163 (6) of the Constitution

Between

..... Applicant

Whereas

Whereas

Whereas

The Advisory Opinion of the Court is sought on the following issues;

1.
2.
3.
4.

Dated this day of, 20

Signed

To:

The Supreme Court of Kenya

Copies to be served on

lodged in the Registry/Sub-registry at on the day of

.....

Registrar

SECOND SCHEDULE

[r. 59]

FEES

PART 1 – FEES IN CONNECTION WITH APPLICATIONS

| ITEM | | KSHS. |
|------|---|------------|
| 1. | Upon lodging a notice of motion | 800 |
| 2. | Upon lodging a notice of motion under certificate of urgency For each subsequent day of hearing or part thereof excluding the first day | 1,500 |
| 3. | Upon lodging an affidavit other than an affidavit annexed to a notice of motion | 250 |
| 4. | Upon giving notice under rule 30 Filing a notice of objection or address of service | 300 150 |
| 5. | Filing annexures (per folio) | 20 |
| 6. | Filing written submissions | 200 |

PART 2 – FEES IN CONNECTION WITH PETITIONS AND REFERENCES

| ITEM | | KSHS. |
|------|--|-------|
| 8. | Upon lodging a Petition | 3000 |
| 9. | Upon lodging a Reference | NIL |
| 10. | Filing a notice of objection or address of service or change of address of service | 100 |
| 11. | Filing annexures to the petition | 20 |
| 12. | Filing written submissions | 200 |
| 13. | Lodging a notice of cross-appeal | 3,000 |
| 14. | Lodging a notice of grounds for affirming a decision | 200 |
| 15. | Lodging a notice withdrawing an appeal | 200 |
| 16. | Filing written submissions | 200 |
| 17. | Filing a notice of preliminary objection | 500 |
| 18. | Filing grounds of objection | 500 |
| 19. | Security for costs | 6,000 |

[Subsidiary]

PART 3 – MISCELLANEOUS

| ITEM | | KSHS. |
|-------------|--|--------------|
| 20. | For serving a document in addition to all 500 necessary expenses of travel— (a) Where the person to be served resides or has his place of business within the city or town where the registry or sub-registry of Court is situated (b) In any other case | 1500 |
| 21 | For sealing an order | 300 |
| 22. | For preparing certified copies of a document— (a) For each folio or part thereof (b) For each subsequent copy | 20 10 |
| 23. | Upon applying to inspect the proceedings, or an application, or appeal that has been determined | 300 |

PART 4 – FEES IN CONNECTION WITH THE TAXATION OF COSTS

| ITEM | | KSHS. |
|-------------|---|--------------|
| 24. | Lodging a bill of costs for taxation | 750 |
| 25. | Applying for the Certificate of the determination of taxation | 500 |
| 26. | Reference under rule 112 | 1,000 |

THIRD SCHEDULE

[r. 60(2)]

TAXATION OF COSTS

1. Interpretation

- (1) In this Schedule, a folio means one hundred words.
- (2) A single figure or a group of figures up to seven shall count as one word.

2. Lodging and service of bill of costs

- (1) Where costs are to be taxed, the advocate for the party to whom the costs were awarded shall—
 - (a) lodge a bill with the taxing officer; and
 - (b) before or within seven days after lodging the bill, serve a copy on the advocate for the party liable to pay it.
- (2) A bill of costs shall be lodged as soon as practicable after the making of the order for costs and not later than twenty-one days after a request in writing by the party liable, or such further time as the Registrar may allow.
- (3) A bill of costs may not be lodged by an advocate who is not on the record.

3. Form of bill

- (1) A bill of costs shall be instituted and filed in the proceedings and shall be prepared in five columns as follows—
 - (a) the first or left hand column for the dates of the items;
 - (b) the second column for the serial numbers of the items;
 - (c) the third column for the particulars of the services charged for;
 - (d) the fourth column for the professional or scale charges; and
 - (e) the fifth column for the taxing officer's deductions.

- (2) A bill of costs shall be endorsed with—
 - (a) the name and address of the advocate lodging it;
 - (b) the name and address of every party to be served or their advocate;
 - (c) a certificate signed by the advocate lodging the bill that the number of folios in respect of any item in the bill charged for by the folio, is correct.
- (3) If such certificate is found to be incorrect the item may be disallowed.
- (4) A bill of costs shall be endorsed at the end with a form of certificate for signature by the taxing certifying the result of the taxation.

4. Disbursements

- (1) Disbursements shall be shown separately at the foot of the bill of costs.
- (2) Receipts for all disbursements shall be produced to the taxing officer at the time of taxation.
- (3) No disbursement shall be allowed which has not been paid at the time of taxation.

5. Bills not to be altered after lodging

No alteration or addition to a bill of costs once lodged shall be made except by consent of the parties or by permission of the taxing officer or a judge.

6. Notice of taxation

When a bill of costs has been lodged as aforesaid, the taxing officer shall issue a notice to all parties concerned or their advocates giving the date, time and place at which the bill will be taxed.

7. Time and adjournment

The taxing officer shall have power to limit or extend the time for proceedings before him or her, and to adjourn the same from time to time and from place to place.

8. Failure to attend taxation

If any party or advocate who has been duly served with a notice of taxation fails to appear at the date and time specified in such notice, the taxing officer may proceed to tax the bill notwithstanding such absence.

9. Quantum of costs

- (1) The fee to be allowed for instruction to make, support or oppose any application shall be such sum as the taxing officer shall consider reasonable but shall not be less than one thousand shillings.
- (2) The fees to be allowed for instructions to appeal or to oppose an appeal shall be such sum as the taxing officer shall consider reasonable, having regard to the amount involved in the appeal, its nature, importance and difficulty, the interest of the parties, the other costs to be allowed, the general conduct of the proceedings, the fund or person to bear the costs and all other relevant circumstances.
- (3) The sum allowed under sub-paragraph (2) shall include all works necessary and properly done in connection with the appeal and not otherwise chargeable, including attendances, correspondence, perusals, and consulting authorities.
- (4) Other costs shall, subject to the provisions of paragraphs 10, 11 and 12, be awarded in accordance with the scale set out below or, in respect of any matter for which no provision is made in those scales, in accordance with the scales applicable in the High Court.

10. Fees for drawing documents

- (1) The fee for drawing a document shall include the preparation of all copies for the use of the party drawing it and for filing and service when only one other party or one advocate for other parties has to be served.
- (2) Where there are additional parties, fees may be charged for making the necessary additional copies.

[Subsidiary]

11. Taxation of bills

- (1) On taxation the taxing officer shall allow such costs, charges and disbursements as shall appear to have been reasonably incurred for the attainment of justice but no costs shall be allowed which appear to the taxing officer to have been incurred through overpayment, extravagance, over caution, negligence or mistake or payment of special charges or expenses to witnesses or other persons or by other unusual expenses.
- (2) In taxing the costs of any civil appeal, the taxing officer shall disallow the costs of any matter improperly included in the record of appeal or in any supplementary record of appeal.

12. Over-riding discretion

If, after a bill of costs has been taxed, the taxing officer considers that, having regard to all the circumstances, the total of the bill before signing the certificate of taxation is excessive, he may make such a deduction from the total as will in his opinion render the sum reasonable.

13. Excessive claims

If more than one quarter of the profit costs claimed is disallowed on taxation the costs of drawing, filing and serving the bill and of attending taxation shall be disallowed.

14. Set-off of costs

Where a party entitled to receive costs is also liable to pay costs, the taxing officer may tax the costs, which that party is liable to pay and adjust them by way of deduction or set-off and direct payment of any balance.

15. Costs of more than one advocate

- (1) Costs of more than one advocate shall not be allowed unless the Court has so directed.
- (2) Where an advocate has instructed another advocate to appear at the hearing of an appeal, the fee paid to the latter, or so much thereof as the taxing officer considers reasonable, may be allowed but so that the total of such fee and the instructions fee allowed to the instructing advocate shall not be greater than it would have been if one advocate only had acted in the matter.
- (3) Where the Court has directed that the costs of two advocates be allowed—
 - (a) where the senior advocate is not a member of the same firm as the advocate on the record, he shall be allowed the fee paid to him, including fees for attending in court, or so much thereof as the taxing officer shall consider reasonable;
 - (b) where the senior advocate is a member of the same firm as the advocate on the record, he shall be allowed such fee as would have been allowed in the case of an advocate not a member of that firm; and
 - (c) the advocate on record shall be allowed the usual instruction, hearing and other fees.
- (4) The fee paid to another advocate by the advocate on the record shall be shown as a disbursement.

16. Costs where advocate changed during proceedings

If there has been a change of advocates the bill of costs of the first advocate may be annexed to that of the current advocate and its total shown as a disbursement and the bill will be taxed in the ordinary way, the current advocate being heard on it, but the taxing officer may require the first advocate to attend.

17. Two or more parties

Where the same advocate is employed for two or more parties and separate proceedings are taken by or on behalf of any two such parties, the taxing officer shall consider in the

taxation of such advocate's bill of costs whether such separate proceedings were necessary and proper, and if of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed.

18. Costs where trustee defend separately

In taxing the costs as between party and party or for payment out of a trust fund of joint executors or trustees who are separately represented, the taxing officer shall, unless otherwise ordered by the Court or a Judge, allow only one set of costs for such parties, such costs to be apportioned among them as the taxing officer shall deem fit.

19. Expenses of persons attending hearing

A taxing officer shall allow the reasonable expenses of a party who appeared in person at the hearing of an application or appeal and those of a witness who gave evidence at any such hearing but shall not allow the expenses of any other person who may have attended the hearing, unless the Court has so ordered.

SCALE OF COSTS

| | KSHS |
|---|-------|
| 1. For instructions to file a notice of appeal | 1,500 |
| 2. For instructions to act for a respondent | |
| (a) in any petition, reference or application | 1,500 |
| (b) where no appeal is subsequently instituted, to cover all costs arising out of the notice of appeal, other than disbursements and those of any application to the court or tribunal appealed from the Court. | 750 |
| 3. For drawing a petition, reference, originating motion or notice of motion | 1,000 |
| 4. For drawing an affidavit, for each folio or part thereof, exclusive of exhibits | |
| 5. For drawing a notice of appeal | 500 |
| 6. For drawing a notice of address for service | 500 |
| 7. For drawing Petition of appeal | 2,000 |
| 8. For drawing a notice of cross-appeal | 1,000 |
| 9. For drawing a notice of grounds for affirming a decision | 1,000 |
| 10. For drawing an order, for each folio or part thereof | 100 |
| 11. For drawing a bill of costs, for each folio or part thereof | 100 |
| 12. For drawing any other necessary documents to be filed or used in the court, for each folio or part thereof | 100 |
| 13. For making any necessary copies, for each folio or part thereof— | 20 |
| (a) for the first copy | |
| (b) for each subsequent copy | 20 |
| 14. For attendance at the Registry | 200 |
| 15. For attendance on the Registrar— | 300 |
| (a) for the first 15 minutes | |
| (b) for each subsequent 15 minutes | 100 |
| 16. For attending on a judge in chambers— | 1,000 |
| (a) for the first 30 minutes | |
| (b) for each subsequent 30 minutes | 500 |
| 17. For attending in court, where the matter was listed but not reached, for each day | 750 |
| 18. For attending in court on the hearing of any petition, reference or application— | 1,000 |

[Subsidiary]

| | |
|---|-------|
| (a) for the first 30 minutes | |
| (b) for each subsequent 30 minutes | 500 |
| 19. For attending in court to take judgment | 1,000 |

THE SUPREME COURT (GENERAL) PRACTICE DIRECTIONS

[Gazette Notice 9586 of 2020]

PURSUANT to rule 64 of the Supreme Court Rules, 2020, the Chief Justice and President of the Supreme Court issues the Supreme Court (General) Practice Directions set out in the Schedule hereto, to be observed by and binding upon parties to the proceedings.

SCHEDULE

PART A – PRELIMINARY

1. These Practice Directions may be cited as the Supreme Court (General) Practice Directions.
2. In these Practise Directions, unless the context otherwise requires—
 - "Court" means the Supreme Court;
 - "Registry" means the Registry of the Supreme Court; and
 - "Rules" means the Supreme Court Rules, 2020.

PART B – THE REGISTRY OF THE SUPREME COURT

3. The Registry of the Court is situated on the Ground Floor, Room 8, of the Supreme Court Building, along City Hall Way, Nairobi.
4. The contacts of the Registry are as follows—
 - Supreme Court Registry
 - P.O. Box 30041 — 00100, Nairobi.
 - Telephone number: (020) 2221221 or 0774749527.
 - E-mail: supremeregistry@court.go.ke or supremecourtkenya@gmail.com
 - Website: www.judiciary.go.ke
5. The Registry shall be open from 8.30 a.m. to 5.00 p.m. on Mondays to Fridays.
6. The Registry is open every day except—
 - (a) Saturdays and Sundays;
 - (b) public holidays; and
 - (c) such other days as the Chief Justice may direct.

PART B – FILING GENERALLY

7. All documents filed in the Court shall be prepared and filed in accordance with rules 12 and 13 of the Rules.
8. The outer cover of all documents and pleadings filed in the Court shall be colour-coded based on the party who is filing as follows—
 - (a) the cover of all documents by the petitioner shall be in blue;
 - (b) the cover of all documents by the respondent shall be in green; and
 - (c) the cover of all documents by the amicus, interested parties and interveners shall be in red.
9. Pleadings and documents filed in Court shall be contained in separate volumes, where applicable.

[Subsidiary]

- 10.** A volume of any document shall be bound in book form, printed on one side of the paper, and shall not exceed one hundred and fifty pages in length.
- 11.** The pages of each document shall be consecutively numbered, on the top right-hand corner and every tenth line of each document shall be numbered in sequence, on the right-hand margin.
- 12.** Each document shall be double-spaced, font-size 12, and template, Times New Roman font-type, with margins of no less than 3.0 centimeters on the left, 2.0 Centimeters on top and bottom and 1.5 Centimeters on the right.
- 13.** In accordance with rule 12 of the Rules, a party shall file a complete record of appeal in electronic form as well as in hard copy.
- 14.** Documents filed electronically shall be in 'Portable Document Format' (PDF) and shall match what is contained in the hard copy document.
- 15.** The default display view of all documents filed electronically shall be 100 percent.
- 16.** In all pleadings filed in Court, parties shall include their e-mail, physical addresses, mobile telephone numbers and landline numbers where applicable to facilitate communication by the Registry.

PART C – SUBMISSIONS GENERALLY

- 17.** Written submissions shall be in the following form—
 - (a) contained in one volume only, whose length shall be as follows—
 - (i) in appeals arising from the Court of Appeal decisions, submissions shall not exceed fifteen pages; and
 - (ii) in matters where the Supreme Court has original jurisdiction, submissions shall not exceed thirty pages;
 - (b) on A4 paper, double line-spaced, font size 12, and Times New Roman font type;
 - (c) contained in a separate volume from the list and bundle of authorities and any annexures to it;
 - (d) contain a summarized chronology of relevant events, including any previous Court history;
 - (e) be set out in numbered paragraphs;
 - (j) not include extensive quotations from documents or authorities;
 - (g) divided into sub-headings, on the specific issues being addressed.
- 18.** Where written submissions relate to an appeal, the submissions shall, in addition to the requirements under paragraph 17—
 - (a) refer to the grounds of appeal being urged and indicate if any grounds are being abandoned or canvassed together;
 - (b) identify any error said to have been made by the Court or Tribunal being appealed from, and the basis in principle or authority for that contention; and
 - (c) cross-reference to the relevant pages or passages in the record of appeal.
- 19.** Written submissions shall not raise or address any new issue, ground or point of law not contained in the pleadings filed before the Court.
- 20.** A party may waive the right to make oral submissions, where written submissions have been filed.
- 21.** Before the commencement of any hearing, the Court shall set out timelines for making oral submissions by each party and the parties shall adhere to the prescribed timelines.
- 22.** If either party is abandoning any point taken in the lower courts, this should be made explicit in their submissions.

PART D – APPLICATIONS GENERALLY

- 23.** All applications to the Court shall be determined by way of written submissions.
- 24.** Interlocutory applications shall be served within seven days of filing.
- 25.** Responses to the interlocutory applications shall be filed and served within seven days of receipt of service.
- 26.** The applicant in the interlocutory application shall file and serve a rejoinder, if any, within seven days of receipt of service of the response.
- 27.** An interlocutory application shall not be admitted before a petition or a reference is filed in Court.
- 28.** Interlocutory applications shall be disposed of in the order of filing before the Court, save where the Court directs otherwise.
- 29.** All applications for review of certification shall be determined through written submissions except in such cases as the Court may determine.
- 30.** A determination by the Court under paragraph 29 above shall be in the form annexed to these Practice Directions.

PART E – URGENT APPLICATIONS

- 31.** All urgent applications shall be—
- (a) filed in Court not later than noon on a Court working day;
 - (b) accompanied by a certificate of urgency and an affidavit sworn and signed by the Applicant's advocate and setting out the reasons for such urgency.
- 32.** Once filed, the urgent application shall be referred to the Duty Judge, who shall make a determination on the question of urgency within twenty-four hours.
- 33.** The Judge considering an urgent application may conduct an ex parte oral hearing or take a decision based on the pleadings filed.

PART F – PETITIONS

- 34.** Filing of petitions shall be as specified in Part B of these Practice Directions.
- 35.** Written submissions relating to petitions shall be prepared in accordance with in Part C of these Practice Directions.
- 36.** Petitions shall be heard and determined on a first-in, first-out basis, except as may be directed by the President of the Court or in his absence, the Vice President of the Court or in their absence, the most senior Judge.

PART G – ADVISORY OPINIONS

- 37.** In addition to rule 50 of the Rules, a party seeking an advisory opinion shall file a reference, which shall set out—
- (a) the question referred to the Court;
 - (b) a concise statement of the background of the matter;
 - (c) the legal provisions in issue for clarification; and
 - (d) the reason why the opinion is sought.
- 38.** The Court shall determine the parties to participate in the reference.
- 39.** There shall be no interested parties in a reference.

PART H – ORDER OF ARRANGING DOCUMENTS

- 40.** All documents filed in the Court shall be arranged in the following order—
- (a) the petition or application before the Court or any other document invoking the Court's jurisdiction;

[Subsidiary]

- (b) the Judgment or Ruling of the Court of Appeal which is being appealed, or any other tribunal being appealed from;
- (c) the ruling on certification of the Court of Appeal which is being appealed;
- (d) any other ruling or order made by the Court of Appeal relevant to the subject matter;
- (e) Judges' transcripts and proceedings before the Court of Appeal;
- (f) the judgment or ruling of the High Court as well as any other Order or Ruling made by the High Court;
- (g) the proceedings before the High Court and or Judges' transcripts;
- (h) any other order or ruling made by any other Court;
- (i) all pleadings filed in the courts or tribunal below;
- (j) where necessary for understanding the legal issues and the arguments the relevant documents as well as correspond (aces filed in the courts below.

PART I – LIST AND BUNDLES OF AUTHORITIES

41. The list and bundle of authorities shall be filed and served in accordance with rule 23 of the Rules and the Registry shall stamp the list and bundle of authorities to acknowledge receipt.

42. Where the authorities are decisions of the Supreme Court, a party shall only give the full citation and make reference to the relevant paragraphs and exclude the hard copy of the judgment or ruling.

43. Where the authorities are other decisions, the parties shall give the full citation, attach the hard-copy case law and highlight the relevant portion being relied on.

44. Where a party seeks to rely on the Constitution, Statutes, or other legal instruments, such as Treaties, Protocols and Conventions, parties should only give the full citation, as well as an excerpt of the relevant provision.

45. For ease of reference, the bundle of authorities shall be—

- (a) flagged appropriately, indicating the first page of each authority; and
- (b) numerically paginated and chronologically arranged in accordance with the list of authorities.

46. Where applicable, the authorities filed should be divided into categories such as Kenyan case law, foreign cases and academic and other materials.

PART J – WITHDRAWAL OF MATTERS BEFORE COURT

47. In furtherance to rule 27 of the Rules, a party may withdraw a matter at any stage of the proceedings but before delivery of judgement or determination of the Court.

48. A party who wishes to withdraw a matter shall make a formal application to the Court, indicating the reasons for the withdrawal and shall serve the application upon all other parties.

49. Parties may enter into a consent for the withdrawal of a document.

PART K – HEARING DATES

50. Any hearing date shall be allocated by the Court and served on the parties.

51. Appeals raising similar issues shall be heard together or consecutively by the Court or as the Court may direct.

52. The Court may conduct virtual hearings through the use of appropriate technology.

PART L – PRE-TRIAL DIRECTIONS

53. Within seven days after the close of the pleadings, a party shall fill in and submit to the Registrar, a scheduling questionnaire as provided under rule 22 of the Rules.

54. The Registrar shall, within three days of receiving the filled-in questionnaire, convene a scheduling conference for directions under rule 22 of the Rules.

55. 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 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 matter that requires a determination that was raised at the scheduling conference.
- (c) whether or not to allow amicus curiae or interested parties to participate in the proceedings before the Court; and
- (d) any matter that requires a determination that was raised at the scheduling conference.

PART M – ADJOURNMENTS

56. Adjournments of scheduled proceedings shall not be allowed by the Court except in exceptional circumstances.

57. Where a matter is taken out at the instance of the Court, the parties shall be duly notified and the matter shall be given a hearing date on a priority basis.

PART N – SERVICE OF PROCESS

58. A licensed court process server shall effect service of all Court process in accordance with Rule 16 of the Rules.

59. Upon effecting service, the Court process server shall promptly file in Court an affidavit of return of service indicating the following—

- (a) the date and time when service was effected;
- (b) the person upon whom service was effected, and how the person was identified; and
- (c) the place where service was effected and the circumstances of the service.

60. The affidavit of return of service shall have annexed to the original process served, duly signed by the person served.

61. Where the Court process server is unable to effect service, the Court may grant leave for substituted service on the application by a Party.

62. The service of court process may be effected via electronic means and advocates shall provide their e-mail addresses to the Registry for this purpose.

PART O – MISCELLANEOUS

63. All correspondence relating to matters before the Court shall be filed in the Court Registry and shall be responded to promptly.

64. In any proceedings for dismissal for want of prosecution, the Court shall issue a party with a notice to show cause why the application, a reference or an appeal should not be dismissed.

65. If cause is shown to the satisfaction of the Court, it may make such orders as it thinks fit to obtain an expeditious hearing of the appeal.

66. Advocates and Judges shall robe during the hearing of a petition or reference and the delivery of judgments but not for hearing of applications and delivery of rulings.

67. The President of the Court may amend these practice directions from time to time.

[Subsidiary]

PART P – SANCTIONS FOR NON-COMPLIANCE

68. Non-compliance with these Directions shall result in such penalty as the Court may order which penalties may include-

- (a) payment of costs and adjournment fees;
- (b) dismissal of the matter; and
- (c) any other sanction that the Court may impose in its discretion.

Form for an interlocutory ruling (Paragraph 30)

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram; xxx)

APPLICATION NO _____

—BETWEEN—

XXXXXXXX APPLICANT

— AND —

YYYYYYYYY RESPONDENT

(Being an application for stay of execution/ extension of time to file a notice of appeal/ record of appeal/petition of appeal /application to be enjoined as an amicus curiae/interested party/ review of certification/ review of a decision of a single Judge/ against the Ruling and orders of the Court of Appeal (xxx, xxx and xxx JJ.A) delivered on xxx in Civil Appeal No.xxx of 20xxx.)

RULING OF THE COURT

This application is dated xxx and filed on xxx seeking an extension of time to file an appeal out of time against the Judgment and Order of the Court of Appeal in Civil Appeal No. xxx of xxx delivered on xxx. It is brought under the provisions of Rules xxx and xxx of the Supreme Court Rules, 2020.

The application is supported by an affidavit sworn by xxx on xxx who depones that the Court of Appeal delayed in issuing certified proceedings. Through his written submissions filed on xxx, the Applicant urges that the circumstances of this case meet the threshold for grant of extension of time to file an appeal out of time.

In response, the Respondent contends that the delay was inordinate and that the Applicant has not sufficiently demonstrated the steps he took to obtain proceedings, within the time from the Court of Appeal.

Having therefore considered the application and the affidavit in support as well as the written submission of the parties, we find as follows:

(a) The principles for extension of time were laid down in the cases of Nicholas Kiptoo Arap Korir Salat v. Independent Electoral and Boundaries Commission & 7 others S.C. Appl. No. 16 of 2014; [2014], Aviation & Allied Workers Union Kenya v. Kenya Airways Ltd & 3 Others, SC Appl. 50 of 2014 and Hassan Nyanje Charo v. Khatib Mwashetani & 3 Others SC Appl. No. 23 of 2014; [2014] eKLR.

(b) In the case of Executive of Kisumu v County Government of Kisumu & 8 others, SC. Civil Appl. No. 3 of 2016; [2017] eKLR, we emphasized on the need for the Applicant, in an application for extension of time, to satisfactorily declare and explain the whole period of delay to the Court.

(c) The Applicant has satisfactorily explained to the Court the reason for the delay, and the Orders sought would not be prejudicial to the Respondent.

Consequently, by a unanimous decision of this Bench, we make the following orders under section xxxxx of the Supreme Court Act and xxxxx of the Supreme Court Rules, 2020.

ORDERS

(a) The application dated xxx is hereby allowed/dismissed.

(b) Order on costs.

Orders accordingly.

DATED and DELIVERED at NAIROBI this Day of

CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT

DEPUTY CHIEF JUSTICE & VICE-PRESIDENT OF THE SUPREME COURT

JUSTICE OF THE SUPREME COURT

JUSTICE OF THE SUPREME COURT

JUSTICE OF THE SUPREME COURT

JUSTICE OF THE SUPREME COURT

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR

SUPREME COURT OF KENYA

SUPREME COURT (VIRTUAL SESSIONS) PRACTICE DIRECTIONS, 2023

ARRANGEMENT OF SECTIONS

1. Citation
 2. Commencement
 3. Interpretation
 4. Application
 30. Miscellaneous
-

SUPREME COURT (VIRTUAL SESSIONS) PRACTICE DIRECTIONS, 2023

[Gazette Notice 107 of 2023]

PURSUANT to Rule 64 of the Supreme Court Rules, 2020, the Hon. Chief Justice and the President of the Supreme Court issues the following practice directions –

1. Citation

These Practice Directions may be cited as the Supreme Court (Virtual Sessions) Practice Directions, 2023.

2. Commencement

The Practice Directions shall come into force on a date to be determined by the Hon. Chief Justice and President of the Court.

3. Interpretation

In these Practice Directions, unless the context otherwise requires –

“**Act**” means the Supreme Court Act (Cap. 9B)

“**Court**” means the Supreme Court of Kenya as established under Article 163 (1) of the Constitution.

“**Video and Audio Conference**” means an online technology that allows users/ participants in different locations to communicate in real time over an internet connection.

“**Video and Audio Conference Link**” means a connection enabling access to a video and audio conference.

“**Registrar**” means the Registrar of the Court, and includes Deputy Registrar(s) of the Court.

“**Rules**” means the Supreme Court Rules, 2020.

4. Application

These Practice Directions apply to all virtual proceedings before the Court.

Objectives

5. The objective of these Practice Directions is to guide the integration of Information Communication Technology (ICT) in proceedings before the Court and in particular to provide for:

- (a) Use of technology in Court sessions.
- (b) Conduct of virtual proceedings before the Court.
- (c) Expeditious and efficient disposal of cases.
- (d) Efficient use of available judicial and administrative resources.
- (e) Court etiquette during virtual sessions.

6. Proceedings before the Court may be conducted virtually by use of video and audio conference or other electronic communication as the President of the Court may direct.

7. Hearing of applications shall proceed by way of written submissions as prescribed by the Rules, save where the Bench seized of the matter directs that it shall be through video and/or audio conferencing.

8. Where proceedings are to be conducted virtually, the Registrar shall provide a video and audio conference link to the concerned advocates or parties through email or other electronic means at least three (3) days before the proceedings.

[Subsidiary]

9. In any proceedings conducted by video and audio conferencing, each party must ensure its electronic equipment and internet connection is of appropriate quality and robustness for the duration of the proceedings.

10. Where a party is not able to access necessary equipment or internet access, such a party shall inform the Registrar of the Court at least two (2) days before the hearing and the Registrar shall make necessary arrangements to provide the necessary equipment and internet access within the Court premises.

11. Each party must ensure that the video and audio conference hearing is conducted with the same decorum and respect as a physical hearing.

Conduct of Virtual Proceedings and Etiquette for Participants

12. The conduct of virtual Court proceedings shall be guided by the Court.

13. All advocates and parties must join the video and audio conference at least fifteen (15) minutes before the stipulated time for the Court session.

14. During virtual proceedings inappropriate profiles or background photos shall not be used. Failure of which may lead to denial of audience before the Court or removal from the virtual session.

15. All advocates shall be properly robed for a virtual hearing Court session. Failure to robe may lead to denial of audience before the Court.

16. All advocates and parties, where they appear in person, must be visible and audible during a virtual session. Failure to visibly appear may lead to denial of audience before the Court.

17. All advocates and parties, where they appear in person, must log in to the video and audio conference using their official names as they appear in their pleadings, and where applicable, using the name of the law firm. Advocates and parties are also encouraged to provide their prefixes (e.g., Mr./Ms./Mrs. etc.). All Advocates should ensure that they work from a decent background and from surroundings that are not noisy.

18. All microphones shall be muted until an advocate or party is given audience by the President of the Court or the Presiding Judge and while such an advocate or party is addressing the Court their camera should be switched on. Advocates and parties as much as possible should minimize distractions and avoid disrupting the court.

19. In order to minimize disruptions during the virtual sessions, advocates and parties, who appear in person, are required to raise their hands using the icon when they need to speak or raise an objection.

20. While making submissions, advocates and parties, who appear in person, should be precise and conscious of their speed to facilitate interpretation, where necessary, and verbatim recording. Time allocated shall not be extended unless the President of the Court or Presiding Judge directs otherwise.

21. Once the President of the Court or the Presiding Judge declares the end of a virtual session, the Judges of the Court will disconnect from the video and audio conference before all the other participants.

22. All participants must at all times act with utmost good faith, decorum and etiquette during virtual sessions.

Recording

23. Proceedings of virtual sessions shall be recorded by the Court.

24. Recording of proceedings by advocates and/or parties shall only be with leave of the Court.

25. Certified transcripts of virtual sessions shall constitute the official court record of the session.

26. Certified true copies of the transcripts of virtual sessions shall be made available upon request and on payment of the relevant fees.

Decision of the Court

27. The Court may deliver its rulings and judgments in a virtual session or forward true copies thereof to advocates and parties, where they appear in person, electronically.

28. The Registrar shall notify advocates and/or parties of the date reserved for delivery of judgments and rulings by the Court in accordance with the Act and the Rules.

Sanctions for Non-Compliance

29. Non-compliance with these Directions shall result in such penalty as the Court may order, which penalty may include—

- (a) Citation for contempt of Court in accordance with the Act and Rules;
- (b) Payment of fines, costs and adjournment fees; and
- (c) Any other sanction that the Court may impose in its discretion.

30. Miscellaneous

The Chief Justice and President of the Court may amend these practice directions from time to time.
