

CERTIFIED COPY OF THE ORIGINAL
Bill 9.3.20.
FOR COMMISSIONER

SPECIAL ISSUE

105

Kenya Gazette Supplement No. 11

26th February, 2020

(Legislative Supplement No. 9)

LEGAL NOTICE No. 22

THE CIVIL PROCEDURE ACT

(Cap. 21)

IN EXERCISE of the powers conferred by section 81 (1) of the Civil Procedure Act, the Rules Committee makes the following Rules—

THE CIVIL PROCEDURE (AMENDMENT) RULES, 2020

1. These Rules may be cited as the Civil Procedure (Amendment) Rules, 2020.

Citation

2. Rule 15 of Order 1 of the Civil Procedure Rules, 2010 (hereafter referred to as the “principal Rules”) is amended in sub-rule (3) by deleting the words “be filed within fourteen days of service” and substituting therefor the words “be filed and served within fourteen days of leave”.

Amendment of
Order 1 of L.N.
No. 151/2010.

3. The principal Rules are amended by inserting the following new rule immediately after rule 25 of Order 1—

Parties to provide
contacts [Order 1, rule
26]

1. A party to a suit shall provide contact details to the Court when filing pleadings including the party’s—

- (a) postal address;
- (b) telephone number;
- (c) email address; and
- (d) physical address.

2. A party shall notify the Court of any changes to the contact details provided under sub-rule (1).

4. Rule 1 of Order 3 of the principal Rules is amended in sub-rule (3) (a) by deleting the definition of “Small Claims” and substituting therefor the following new definition—

Amendment of
Order 3 of L.N.
No. 151/2010.

“small claim” refers to a simple claim whose monetary value does not exceed two hundred thousand shillings.

5. Rule 1 (6) of Order 5 of the principal Rules is amended in sub-rule (6) by deleting the words “or notification, whichever is later”.

Amendment of
Order 5 of L.N.
No. 151/2010.

FOR COMMISSIONER
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6. Rule 3 of Order 5 of the principal Rules is amended in paragraph (b) (iii) by deleting the words “postal address” and substituting therefor the words “registered office or physical address”.

Amendment of Order 5 of L.N. No. 151/2010.

7. Rule 22 of Order 5 of the principal Rules is amended in sub-rule (1) (d) by deleting the words “neither a Commonwealth citizen nor residing within the Commonwealth” and substituting therefor the words “not resident in Kenya”.

Amendment of Order 5 of L.N. No. 151/2010.

8. Rule 22 of Order 5 of the principal Rules is amended in sub-rule (2) by deleting the expression “29”.

Amendment of Order 5 of L.N. No. 151/2010.

9. Rule 25 of Order 5 of the principal Rules is amended by deleting the words “a Commonwealth citizen or a British protected person” and substituting therefor the expression “not resident in Kenya”.

Amendment of Order 5 of L.N. No. 151/2010.

10. Rule 28 of Order 5 of the principal Rules are amended by deleting sub-rule (1).

Amendment of Order 5 of L.N. No. 151/2010.

11. Order 5 of the principal Rules is amended by inserting the following new rules immediately after rule 22—

Amendment of Order 5 of L.N. No. 151/2010.

Internationally registered and recognized courier services [Order 5, rule 22A]

1. Summons may be sent to the Defendant by way of registered courier service provider; service shall be effected only with the leave of the Court through an internationally registered and recognized courier service provider to the defendant’s last known physical address.

2. Service shall be deemed to have been effected when the person being served acknowledges receipt by affixing his signature on the document or on confirmation of delivery by the courier service provider.

3. An officer of the court duly authorized to effect service shall file an Affidavit of Service attaching the way bill receipt or consignment note from the courier service provider confirming service.

4. An affidavit of service shall be proof enough that service was effected, even if the person being served declines to acknowledge receipt.

Electronic Mail Services (E-mail) [Order 5, rule 22B]

1. Summons sent by Electronic Mail Service shall be sent to the defendant’s last confirmed and used E-mail address.

2. Service shall be deemed to have been effected when the Sender receives a delivery receipt.

3. Summons shall be deemed served on the day which it is sent; if it is sent within the official business hours on a business day in the jurisdiction sent, or and if it is sent outside of the business hours and on a day that is not a business day it shall be

considered to have been served on the business day subsequent.

4. An officer of the court who is duly authorized to effect service shall file an Affidavit of Service attaching the Electronic Mail Service delivery receipt confirming service.

Mobile-enabled
messaging
Applications [Order
5, rule 22C]

1. Summons may be sent by mobile-enabled messaging Applications to the defendant's last known and used telephone number.

2. Summons shall be deemed served on the day which it is sent; if it is sent within the official business hours on a business day in the jurisdiction sent, or and if it is sent outside of the business hours and on a day that is not a business day it shall be considered to have been served on the business day subsequent.

3. Service shall be deemed to have been effected when mobile-enabled messaging services when the Sender receives a delivery receipt.

4. An officer of the court who is duly authorized to effect service shall file an Affidavit of Service attaching the delivery receipt confirming service.

12. Rule 2 of Order 9 of the principal Rules is amended in paragraph (a) by inserting the words "or an affidavit sworn by the party" immediately after the words "powers of attorney".

Amendment of
Order 9 of L.N.
No. 151/2010.

13. The principal Rules are amended by deleting Order 11 and replacing it with the following new Order—

Deletion and
replacement of
Order 11 of L.N.
No. 151/2010.

ORDER 11—CASE MANAGEMENT AND CONFERENCES

Application [Order
11, rule 1]

This Order shall apply to all suits other than suits for small claims or such other suits as the Court may order to vary the whole or any part of this Order.

Case Management
Checklist [Order 11,
rule 2]

(1) Within fourteen days after the close of pleadings, the plaintiff shall file with the court a case management checklist in the form set out in Appendix B.

(2) The plaintiff shall complete the checklist with—

- (a) the name of the advocate or firm of advocates representing each party;
- (b) the postal address, telephone number, email address and physical address of the

advocate or firm of advocates representing each party;

- (c) where a party is not represented by an advocate or a firm of advocates, the postal address, telephone number, email address and physical address of the party; and
- (d) a list of all the pleadings which have been filed with the date on which each pleading was filed.

Case Management
Conference [Order
11, Rule 3]

(1) The purpose of a case management conference shall be to—

- (a) promote the expeditious disposal of cases;
- (b) afford the parties an opportunity to use alternative dispute resolution mechanisms to determine the case;
- (c) afford the parties an opportunity to settle the case;
- (d) determine any other matter relating to the management, hearing or disposal of the case;
- (e) deal with pre-trial applications at first instance or formulate a timetable to deal with them as the court may deem fit; and
- (f) identify the issues for determination.

(2) The judge or deputy registrar or magistrate or case management officer shall, at the case management conference, complete the case management checklist in the form set out in Appendix B.

(3) Parties to a suit shall sign the completed case management checklist which shall be certified by the judge or deputy registrar or magistrate or case management officer who shall also set out the issues for determination at the hearing.

(4) At a case management conference—

- (a) only the advocate or firm of advocates on record or a designated advocate, with instructions to deal with any matter that may be raised during the conference, shall be permitted to participate and by any order or direction given by the court shall be binding to the parties; or
- (b) where a party is not represented by an advocate or firm of advocates, only the

named party or recognized agent of the party to the suit shall be permitted to participate.

(5) Where orders or directions are given at a case management conference—

- (a) The judge or deputy registrar or magistrate or case management officer shall record the orders or directions and inform the parties thereof; and
- (b) where necessary, the judge or deputy registrar or magistrate or case management officer shall allocate time within which the orders or directions shall be complied with by the parties and fix a date at which the judge or deputy registrar or magistrate or case management officer shall record compliance by the parties or make such other orders as may be just or necessary including the striking out of the suit.

(6) Where any pleadings have been amended, the case management checklist shall also contain—

- (a) the list of the original and amended pleadings with the date on which the original and amended pleadings were filed; and
- (b) the details of all bundles of documents, lists of witnesses and statements of witnesses where they have been filed with the court.

(7) Within fourteen days of filing the case management checklist, the plaintiff shall serve the checklist on the other party or all the other parties to the suit and invite the other party or parties, in writing, to meet at the registry with a view to fixing a date on which to hold a case management conference which shall—

- (a) take place within sixty days of the date of service of the checklist in the case of a fast-track case; or
- (b) take place within ninety days of the date of the service of the checklist in the case of a multi-track case.

(8) The parties shall, not less than seven days before the date of the case management conference, serve on the other party or parties—

- (a) a case management request in the form set out in Appendix B setting out any orders the

parties may seek at the case management conference and to which all necessary documents including draft amended pleadings, request for particulars and request for interrogatories shall be attached; or

- (b) a request to refer the case to alternative dispute resolution or any other amicable settlement process;

Case Management
Order [Order 11, rule
4]

(1) The court shall sign a case management conference certificate in the form set out in Appendix C and make a case management order at the end of a case management conference in the form set out in Appendix D.

(2) Where the parties are able to settle the case or issues in the case, the judicial officer shall issue a case settlement order in relation to the case or the issues in the case.

(3) Where parties accept an alternative dispute resolution request—

- (a) where the plaintiff specified the form of alternative dispute resolution mechanism to be used, the court may make an order to stay proceedings for a specified period during which the parties will attempt to settle the case through that alternative mechanism; or
- (b) where the plaintiff did not specify the form of alternative dispute resolution mechanism, the judge or case management judge may make an order to stay proceedings for a specified period, and specify the alternative dispute resolution mechanism the parties shall use in an attempt to settle the case.

(4) Where the parties are able to settle the case or issues in the case through alternative dispute resolution, the judge, magistrate, deputy registrar or case management officer shall adopt the resolution by the parties as an order of the court.

(5) The judge, magistrate, deputy registrar or case management judge shall, where the parties have failed to settle the case or undergo alternative dispute resolution mechanism, direct that the case may be set down for hearing and may, in the circumstances, determine the date on which the case shall be set down for hearing.

14. Rule 6 of Order 12 of the principal Rules is amended in sub-rule (1) by inserting the words “or may apply to the court to reinstate the suit” immediately after the words “bring a fresh suit”.

Amendment of Order 12 of L.N. No. 151/2010.

15. Rule 2 of Order 17 of the principal Rules is amended by inserting the following new sub-rules immediately after sub-rule (4)—

Amendment of Order 17 of L.N. No. 151/2010.

(5) A suit stands dismissed after two years where no step has been undertaken.

(6) A party may apply to court after dismissal of a suit under this Order.

16. Rule 9 of Order 21 of the principal Rules is amended in sub-rule (1) (c) by deleting the expression “under Section 68A of the Advocates (Remuneration Order)”.

Amendment of Order 21 of L.N. No. 151/2010.

17. The principal Rules are amended by inserting the following new rule immediately after rule 9 of Order 21 —

Party to file and serve letter as to costs [Order 21, rule 9A].

1. A party claiming costs at a Magistrates Court shall file a written request, statement of costs and supporting documents with the Court and serve it on the other parties with a breakdown of the costs sought.

Respondent may admit, partially reject or wholly reject letter [Order 21, rule 9B].

2. Once served with the written request, a statement of costs and supporting documents under sub-rule 1, the Respondent may file a response with the Court within seven days of service.

Court to make determination within 14 days [Order 21, rule 9C].

3. The Court shall consider the written request, statement of costs and supporting documents filed by the parties within fourteen days of response by the respondent and make appropriate orders as to costs.

Court to be guided by Advocates (Remuneration) Order [Order 21, rule 9D].

4. In awarding costs, the Court shall be guided by the Advocates (Remuneration) Order.

18. Rule 12 of Order 21 of the principal Rules is amended in sub-rule 12 (2) by inserting the words “judgment or” after the words “after passing any such”.

Amendment of Order 21 of L.N. No. 151/2010.

19. Order 22 of the principal Rules is amended by deleting paragraph (2) (j) (ii) of Rule 7 and substituting thereof with the following new paragraph—

Amendment of Order 22 of L.N. No. 151/2010.

(ii) by the attachment and sale of any immovable property, or by the sale without attachment or by proclamation and sale immovable property.

20. Rule 5 of Order 35 of the principal Rules is amended in sub-rule (1) by deleting the expression “10B” and substituting therefor the expression “11”.

Amendment of Order 35 of L.N. No. 151/2010.

21. Rule 8 of Order 37 of the principal Rules is amended by deleting the words “Registered Land Act (Cap. 300) other than under sections 120, 128, 133, 138, 143 and 150” and substituting therefor the words “Land Registration Act, 2012 other than under Part VII and Part VIII”.

Amendment of
Order 37 of L.N.
No. 151/2010.

22. Order 42 of the principal Rules is amended by—

Amendment of
Order 42 of L.N.
No. 151/2010.

(a) deleting rule 11 and substituting therefor the following new rule—

11. A judge of the High Court shall, within thirty days of the filing of an appeal under section 79B of the Act, peruse the appeal and give directions in accordance with the provisions of section 79B of the Act.

(b) deleting the words “After the refusal of a judge to reject the appeal” appearing in rule 12 and substituting therefor the words “Where the judge admits the appeal”.

(c) deleting sub-rule 13 (1) and substituting therefor the following new sub rule—

13 (1) Upon notice to the parties delivered not less than twenty-one days after the date of service of the memorandum of appeal the registrar shall cause the appeal to be listed for the giving of directions by a judge in chambers.

23. Order 49 of the principal Rules is amended by inserting the following new rule immediately after rule 1—

Amendment of
Order 49 of L.N.
No. 151/2010.

Signing summons [Order 49, rule 1A] The Registrar has power to sign summons to enter appearance.

24. Rule 14 of Order 51 of the principal Rules is amended by deleting the expression “t” appearing after the words “may file”.

Amendment of
Order 51 of L.N.
No. 151/2010.

25. Rule 1 of Order 53 of the principal Rules is amended by deleting sub-rule (2) and substituting therefor the following new sub-rule—

Amendment of
Order 53 of L.N.
No. 151/2010.

(2) An application for such leave shall be made *ex parte* to a judge in chambers, and shall be accompanied by—

(a) a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought; and

(b) affidavits verifying the facts and averment that there is no other cause pending, and that there have been no previous proceedings in any court between the applicant and the respondent, over the same subject matter and that the cause of action relates to the applicants named in the application.

26. Rule 1 of Order 53 of the principal Rules is amended by deleting sub-rule (3) and substituting therefor the following new sub-rule—

Amendment of
Order 53 of L.N.
No. 151/2010.

(3) The judge may, where leave denotes stay, impose such terms as to costs and as to giving security as he thinks fit including cash deposit, bank guarantee or insurance bond from a reputable institution.

27. The Appendix to the principal Rules is amended by deleting Appendix B and substituting therefor the following new Appendix B—

Amendment of
Appendix to
L.N. No.
151/2010.

Appendix B
Case Management Checklist

Nature of the Claim:

.....
PLAINTIFF

[Name and address of advocate:]

VERSUS

.....
DEFENDANT

[Name and address of advocate:]

.....
DEFENDANT

[Name and address of advocate:]

CASE MANAGEMENT CHECKLIST

Plaint Filed on		Defence filed on		Reply filed on	
Other Pleadings					

Pleadings, Statements and Bundles of Documents:

Compliance with Order 3 rule 2 and Order 7 rule 5:

	Dated Filed	Orders for compliance	Unless Orders	Compliance certified
1. Plaintiff's List of witnesses and statements				
2. Plaintiff's Indexed and paginated Bundle of Documents				
3. Defendant's List of witnesses and statements				
4. Defendant's Indexed and paginated Bundle of Documents				

	Application	Directions
5. Alternative dispute resolution.		
Should this case be referred to ADR?		

Further orders relating to pleadings and supporting statements and documents:

	Application	Orders made	Date Filed	Compliance certified
6. Amendment of pleadings				
7. Additional witness statements				
8. Additional documents				
9. Particulars				
10. Interlocutory relief				
11. Striking out				
12. Other applications				

13. Are there any objections to admissibility of any statement or documents or part thereof? When should such objection be determined?

Objections	Directions for determination of objections	Directions on admissibility

14. Issues	Yes/No	Directions	Compliance
Have Issues been agreed and filed under, if not has each party filed its Issues?			

	Application	Directions
15. Consolidation, Case Stated, Test Case		
a) Consolidation with any other suit?		
b) Agreement for Case Stated for the opinion of the Court		
c) Test Cases		

Witnesses and Evidence:

	Application	Orders
16. Witness Summonses?		
17. Admission of statements of evidence without calling the makers as witnesses?		
18. Admission of evidence on affidavit		

19. Discovery, production or inspection of documents?		
20. Interrogatories?		
21. Examination of witness by an examiner or by the issue of Commission outside court and for the admission of any such examination as evidence in court?		
22. Examination of Accounts		

23. Expert Reports

Which Experts	Date of Report	Directions on exchange	Direction on Admissibility

24. Chronologies, maps, plans etc	Yes/No	Directions	Compliance
Are directions required regarding chronologies; maps; plans; diagrams			

Hearing

25. How much time is required for the hearing?		
26. Should any evidence be taken by video conferencing link?		
27. Is case ready for hearing?		

I hereby certify that all matters which are necessary for the preparation of this case for hearing have been done and that the case may now be set down for hearing.

Judge: Dated:

Case fixed for hearing on Judge Dated

Case Management Request

Nature of the Claim:

.....
PLAINTIFF

VERSUS

.....
DEFENDANT

.....
DEFENDANT

CASE MANAGEMENT REQUEST BY

Thegives notice that at the Case Management Conference the following applications will be made or orders requested:

Alternative Dispute Resolution	Application
1. Should this case be referred to ADR	

Further orders relating to pleadings and supporting statements and documents:

2. Amendment of pleadings	Application
3. Additional witness statements	
4. Additional documents	
5. Particulars	
6. Interlocutory relief	
7. Striking out	
8. Other applications	

9. Are there any objections to admissibility of any statement or documents or part thereof?
When should such objection be determined?

What is objected to	Nature of Objections

10. Issues - Are any directions required?	Nature of Directions required

11. Consolidation, Case Stated, Test Case	Application
a) Consolidation with any other suit?	

b) Agreement for Case Stated for the opinion of the Court	
c) Test Cases	

Witnesses and Evidence:

	Application
12. Witness Summonses?	
13. Admission of statements of evidence without calling the makers as witnesses?	
14. Admission of evidence on affidavit	
15. Discovery, production or inspection of documents?	
16. Interrogatories?	
17. Examination of witness by an examiner or by the issue of Commission outside court and for the admission of any such examination as evidence in court?	
18. Examination of Accounts	

19. Expert Reports

Which Experts	Date of Report	Directions required

20. Chronologies, maps, plans, etc.		Directions required
Are directions required regarding chronologies; maps; plans; diagrams		

Hearing

	Applications
21. How much time is required for the hearing?	

22. Should any evidence be taken by video conferencing link?	
23. Is case ready for hearing?	

Dated at Nairobi this.....day of....., 20....

Drawn and filed by:

ADVOCATES FOR

to be served upon:

28. The Appendix to the principal Rules is amended by deleting Appendix C and substituting therefor the following new Appendix C—

Amendment of Appendix to L.N. No. 151/2010.

Appendix C

[O. 11, r. 4]

Case Management Conference Certificate

I hereby certify that all matters which are necessary for the preparation of this case for hearing have been done and that the case may now be set down for hearing.

Judge: Dated:

Case fixed for hearing on JudgeDated

29. The Appendix to the principal Rules is amended by deleting Appendix D and substituting therefor the following new Appendix D—

Amendment of Appendix to L.N. No. 151/2010.

Appendix D

[O. 11, r. 4]

Case Management Order

Following the case management conference held on the.....day of..... 20.....where the following parties were in attendance-

- 1.
- 2.
- 3.

It is ordered and decreed that-

- a).....
- b).....
- c).....

Given under my hand and the seal of the court this.....day of.....20.....

.....,

Judge

Dated the 21st January, 2020.

DAVID K. MARAGA,
Chief Justice,
and Chairman of the Rules Committee.

Civil Procedure

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