

NO. 23 OF 2011

THE COMMISSION ON ADMINISTRATIVE JUSTICE ACT

SUBSIDIARY LEGISLATION

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THE COMMISSION ON ADMINISTRATIVE JUSTICE REGULATIONS

[Legal Notice 64 of 2013]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Commission on Administrative Justice Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Act" means the Commission on Administrative Justice Act (Cap. 7J);

"admission" means the process by which the eligibility of a complaint to determination by the Commission is done;

"Chairperson" means the Chairperson of the Commission appointed in accordance with section 11 of the Act;

"Commission" means the Commission on Administrative Justice established under section 3 of the Act;

"Commissioner" means a member of the Commission appointed under section 11 of the Act;

"Complainant" means a person or institution alleging breach of any matter under the mandate of the Commission;

"Complaint" means an oral, written or any other communication made or addressed to the Commission or taken up by the Commission against a State Office or State Officer or Public Officer or Public Office;

"hearing" means a sitting of a hearing panel for the purpose of enabling it to reach or announce a decision on a complaint under adjudication;

"investigation" includes the formal process following a preliminary inquiry or on the Commission's own motion of establishing the facts in a matter, by an investigator, upon a decision of the Commission;

"mediation" means the process by which the Commission assists a complainant and the respondent to reach a fair settlement regarding the complaint and may include, the process of conciliation or negotiation;

"respondent" means a person or institution against whom or who the complaint is made;

"State office" has the meaning assigned to it under Article 260 of the Constitution; and

"State officer" has the meaning assigned to it under Article 260 of the Constitution.

PART II – LODGING AND HANDLING PROCEDURE OF A COMPLAINT

3. Lodging of complaints

A complaint may be lodged at the offices of the Commission or at such place or places and in such form as the Commission may from time to time determine.

4. Parties to a Complaint

A complaint may be lodged by the complainant in person or by a person acting on behalf of the complainant or by any other person authorized by law to act for the complainant, provided that the Commission may admit anonymous complaints.

[Subsidiary]

5. Form of a complaint

(1) Where the complaint is made orally, or otherwise, or the complainant cannot read or write, the complaint may be reduced to writing by a designated officer of the Commission.

(2) A written complaint shall be in such form as the Commission may determine and shall include -

- (a) the name and contact details of the complainant;
- (b) the particulars of the respondent;
- (c) the substance of the complaint in sufficient detail to enable the Commission to act.

(3) The complainant may attach or provide any documents necessary to support the complaint.

(4) Despite the foregoing, a complaint may be made anonymously, or treated in such a manner as to protect the identity of, or particulars of, the complainant where necessary, as may be directed by the Chairperson.

6. Principles of natural justice

In the determination of complaints under these Regulations, the Commission shall have due regard to the principles of natural justice and shall not be bound by any legal or technical rules of evidence applicable to proceedings before a court of law.

7. Fees

The Commission shall not charge any fee in the lodging and determination of complaints.

8. Service of process

(1) Any document required or authorized to be served under these Regulations shall, where practicable, be served personally on the person by delivering or tendering the document to that person.

(2) Where it is not possible to effect personal service, the document may be served in such manner as the Commission may determine.

(3) Any document requiring service under these Regulations shall be served by an officer of the Commission or any other person authorized to do so by the Commission.

9. Screening of Complaints

(1) A complaint shall, upon being entered into the register under regulation 16, be forwarded to the appropriate Department in the Commission for screening.

(2) The Commission, upon screening the complaint, may—

- (a) admit the complaint;
- (b) where appropriate, advise the complainant in writing that the matter is not within the mandate of the Commission; or
- (c) advise the complainant that the matter lies for determination by another body or institution and refer the same to the said body or institution.

10. Discontinuation of a complaint

Where, in the opinion of the Commission, a complaint does not merit further consideration, it may discontinue further proceedings on the complaint, record its reasons and notify the complainant accordingly.

11. Appeal

(1) Where a complaint has been discontinued under regulation 10, the complainant may, in writing, appeal to the Chairperson against the discontinuation.

(2) Where an appeal is disallowed, the complaint shall be closed and the appellant notified appropriately.

(3) For purposes of this regulation, a letter under the hand of the Chairperson notifying the complainant of the decision of the Commission shall be considered as notice for the purposes of this regulation.

12. Withdrawal and lapse of complaint

(1) A complainant may, in writing, withdraw a complaint pending before the Commission at any stage during its consideration.

(2) Where a complainant unjustifiably fails or neglects to respond to communication from the Commission within three months from the date of the last communication, the Commission may deem the complaint to have lapsed.

(3) Despite the provisions of paragraphs (1) and (2), the Commission may, in its discretion, proceed to deal with a complaint in the public interest.

(4) Where a complaint has lapsed, the complainant may apply to the Chairperson for re-admission of the complaint and give reasons in support of the application for re-admission to the satisfaction of the Chairperson.

13. Joint consideration of complaint

(1) Where two or more complaints are lodged in which the same or similar allegations are raised against a respondent or respondents, the Commission may—

- (a) consolidate the complaints; or
- (b) treat one complaint as a test complaint and stay further action on the other complaints pending resolution of the test complaint.

(2) The decision on a test complaint shall apply, *mutatis mutandis*, to all other complaints with which the test complaint was consolidated.

14. Judicial notice

The Commission may take judicial notice of facts that are publicly known.

15. Language

(1) Proceedings before the Commission shall be conducted in the English or Swahili languages.

(2) The Commission shall endeavour to ensure that a party who cannot speak or understand the language of proceedings is entitled to the services of an interpreter to be provided by the Commission.

(3) For purposes of paragraph (2), interpretation shall include interpretation for braille, sign-language or such other interpretation as may be deemed necessary.

16. Register of Complaints

The Commission shall keep a register of complaints in which all complaints shall, upon receipt, be entered.

PART III – ADMISSION AND RESOLUTION OF A COMPLAINT

17. Action on complaint

(1) Upon admission of a complaint, the Commission shall draft a communication in form CAJ 1-1 or CAJ 2-1, as applicable, set out in the First Schedule, to the respondent.

(2) Upon the expiry of fourteen working days, if there is no response after receipt, a reminder giving seven days to comply in form CAJ 3-1 set out in the Second Schedule shall be communicated to the respondent.

(3) If there is still no response under paragraph (2), a further and final reminder giving seven days to comply in form CAJ 3-1 set out in the Second Schedule, shall be sent to the respondent.

[Subsidiary]

(4) If upon the expiry of twenty-eight days there is still no response, the Commission shall issue summons or make such other orders to attend to the respondent in a form to be determined by the Commission.

18. Failure to respond to Summon

If a respondent fails to respond to the summonses or other orders referred to in regulation 17, the Commission may proceed to—

- (a) determine the complaint in the absence of the respondent;
- (b) institute legal proceedings against the respondent under to section 52(c) of the Act;
- (c) cite the respondent as an unresponsive State or Public Office or Officer or declare such State or Public Officer to be unfit to serve in the Public Service;
- (d) take appropriate action against the unresponsive State or Public Office or Officer through Performance Contracting; or
- (e) report the respondent in the Commission's Statutory Reports.

19. Resolution of complaint

In resolving a complaint, the Commission may—

- (a) conduct investigations;
- (b) requisite and obtain information or documents;
- (c) conduct an inquiry;
- (d) undertake mediation, negotiation and conciliation;
- (e) constitute a hearing panel;
- (f) invite or summon any person or persons to attend to the Commission;
- (g) obtain warrants of arrest for breach of any summons or orders of the Commission; or
- (h) obtain orders from court authorizing search or seizure.

20. Action against respondent

After adopting any of the options stated in regulation 19, the Commission may determine the complaint and—

- (a) make a formal determination that the respondent is in breach of the Constitution, the Act or any other legislation;
- (b) declare the respondent to be a person ineligible to hold a state or public office;
- (c) enter the name of the respondent in the Commission's Citation Register which shall be signed and sealed by the Chairperson and which shall include the nature of the complaint and the determination made; or
- (d) make any other adverse finding against the respondent.

21. Determination of complaint

In determining the complaint, the Commission may—

- (a) recommend an appropriate remedy;
- (b) award appropriate compensation to the complainant;
- (c) recommend the removal of the respondent from State or Public office;
- (d) issue a formal caution or warning to the respondent; or
- (e) publish the action taken in the Commission's Statutory Report.

PART IV – INVESTIGATIONS

22. Investigations

(1) Where the complaint has been admitted, or where the commission has taken up a matter on its own initiative, the Chairperson may commission an investigation by an officer of the Commission or any public office or investigation agency.

(2) The investigator may, subject to the direction and control of the Commission—

- (a) issue summonses or requisition information in form to be determined by the Commission;
- (b) administer an Oath or Affirmation;
- (c) requisite any document or information from any person or institution; and
- (d) by order of court, enter into any establishment or premises, conduct inspections or collect documents.

(3) Upon completion of the investigation, the investigator shall prepare a report and submit it to the Chairperson of the Commission.

(4) Upon review of the report, the Commission may—

- (a) conduct a formal hearing;
- (b) undertake a mediation or a conciliation;
- (c) refer the complaint to the appropriate public body for further action; or
- (d) determine the complaint appropriately.

(5) The Commission shall keep a record of each investigation and may publish the findings and recommendations, pursuant to an investigation, and may include these in its Statutory Report.

PART V – MEDIATION, CONCILIATION AND NEGOTIATION

23. Procedure

(1) The Commission may, in writing, advise the parties to a complaint that the dispute may be best resolved through mediation and conciliation.

(2) Where both parties to a complaint consent to mediation and conciliation, the Commission shall, in consultation with the parties, fix an appropriate date for a meeting.

(3) The Commission shall issue a mediation notice which shall include—

- (a) the names of the parties to the complaint; and
- (b) the date, time and venue of the mediation meeting.

(4) Upon the issuance of a mediation notice, but before the date of the meeting, the Chairperson shall constitute a mediation panel consisting of at least one Commissioner and such number of other persons as the Chairperson may consider necessary.

24. Procedures at conciliation meeting

During the mediation or meeting, the panel appointed under regulation 23(4) may apply such procedures as it may, in the interests of the parties, deem appropriate in the circumstances.

25. Conciliation agreement

(1) At the conclusion of the mediation process, both parties shall sign a mediation and conciliation agreement bearing the common seal of the Commission and signed by the designated Commissioner.

(2) A mediation or conciliation agreement signed under this regulation, shall be deemed to be a determination of the Commission, and shall be enforceable as such.

(3) Despite provisions of this regulation, the Commission may make awards for compensation under this Part.

[Subsidiary]

PART VI – COMMISSION HEARINGS

26. Hearings

(1) The Commission may conduct a hearing on any complaint or matter under its jurisdiction where it considers desirable or appropriate to do so.

(2) A hearing panel shall consist of such persons as the Chairperson may appoint.

(3) Unless the circumstances otherwise require, for reasons stated, the Commission shall conduct its hearings in public.

27. Hearing procedure

(1) Upon determination that a complaint should be addressed through a hearing, the Commission shall issue a notice to the concerned parties on the constitution of a hearing panel and require them to enter appearance.

(2) The notice referred to in paragraph (1) shall be in the form to be determined by the Commission and shall include—

- (a) the names of the parties;
- (b) the date, place and time of the hearing;
- (c) the penalty for non-compliance;
- (d) the duration within which appearance is required; and
- (e) a notice that a party may appear in person or with an advocate, representative or intermediary.

(3) An appearance before the hearing panel shall be made within fourteen days from the date of service of the notice to the parties under paragraph (2).

(4) Where a party has entered appearance under to paragraph (3), the Commission shall give directions and fix a hearing date.

(5) For purpose of this regulation, a letter or any other sufficient indication in writing, by a party, informing the Commission that the party shall appear on the date and place of hearing, shall be considered as notice of appearance by that party.

(6) Upon fixing a hearing date, a hearing notice in form to be determined by the Commission, shall be served on all the parties.

28. Default in appearance

(1) Where a party to a complaint has been duly served and fails to appear as required, the hearing panel may proceed to hear the respondent and make orders in default of appearance as it may deem fit.

(2) If, on the day fixed for the hearing of a complaint, the respondent appears in answer to the summons but the complainant does not appear, or vice-versa, the hearing panel may, if satisfied that a hearing notice was duly served, proceed to dispense with the complaint on the basis of the evidence before it.

(3) Where a complaint is determined under paragraphs (1) and (2), the party in default may move the Commission to set aside the decision and reinstate the complaint subject to satisfying the Commission that there were satisfactory grounds and reasons for non-attendance at the hearing.

(4) The hearing panel may, upon consideration of the motion under paragraph (3), set aside the decision and fix a new date for the hearing of the complaint with notice to both parties, and upon such terms and conditions as it deems fit.

29. Procedure at hearing

(1) Despite the provisions of this regulation, a hearing panel may adopt a suitable procedure for the purpose of resolving the matter while avoiding unnecessary legal technicalities and formalities.

(2) The parties shall be heard in such order as the hearing panel shall determine and shall be entitled to give evidence, call witnesses, question any witnesses and address the hearing panel both on the evidence and generally on the subject matter of the complaint.

(3) The hearing panel may, at any time, put questions to either party or any witnesses and may, at its discretion, call such additional evidence or expert testimony as it considers necessary.

(4) The hearing panel shall enter an appropriate decision on part or all of the complaint.

(5) The hearing panel may, for sufficient reason, at any time before or after the beginning of the hearing, adjourn the proceedings and in every such case the Commission shall fix a date for further hearing of the complaint.

(6) In the course of the proceedings, the hearing panel may make such preservatory or interim orders, as it may deem fit and just in the circumstances.

(7) Evidence before the hearing panel may be given orally, or if the hearing panel so orders, by affidavit or written statement, but the hearing panel may at any stage require the personal attendance of any witness, deponent or author of a written statement or document.

(8) At any hearing, the hearing panel may, if it is satisfied that it is just and reasonable to do so with no resulting prejudice to the respondent, permit a party to rely on grounds not stated in his complaint, or as the case may be, his reply, and adduce any evidence not initially presented to the Commission.

(9) Evidence before the hearing panel shall be given on oath or affirmation and for that purpose, the hearing panel shall administer such oath or affirmation.

(10) The evidence of the parties and that of each witness shall be recorded by the hearing panel or by any person authorized to do so by the Commission.

30. Change of Advocate

An advocate who appears for a party at any stage shall be deemed to be that party's advocate throughout the proceedings unless—

- (a) the party to the complaint files a written revocation of the advocate's authority with the Commission;
- (b) the advocate files a written notice of withdrawal from the matter with the Commission.

31. Panel decisions

(1) After concluding the hearing of the matter, the hearing panel shall render a decision reflecting substantive justice.

(2) A decision under paragraph (1) shall be in writing and shall state—

- (a) the nature of the complaint;
- (b) a summary of the relevant facts and evidence adduced before the panel;
- (c) the determination and reasons supporting the panel's decision;
- (d) the remedy to which the complaint is entitled; and
- (e) the order of the panel necessary to enforce the remedy.

(3) Where the decision of the hearing panel is not given immediately after the hearing of the complaint, the panel shall deliver the decision on notice.

(4) After the decision is rendered, the Commission may correct typographical errors without prejudice to the substance of its findings.

32. Orders

(1) The orders made in a decision of the hearing panel shall be extracted, sealed and authenticated as orders of the Commission and shall be signed by the Chairperson.

(2) Orders of the Commission shall be enforced in similar manner as Orders of Court.

[Subsidiary]

33. Copies of proceedings

Parties may obtain a copy of the Commission’s decision free of charge.

PART VII – MISCELLANEOUS

34. Amicus curiae

(1) The Commission may, on its own motion or upon invitation, seek to join legal proceedings in a court of law or judicial tribunal as interested party, interveners or *amicus curiae*, provided that when the Commission is requested to do so it may, upon giving written reasons, decline to be enjoined in such proceedings.

(2) In determining whether to join proceedings as interested parties, interveners or *amicus curiae*, the Commission shall satisfy itself that the issues before the court—

- (a) are matters of broad public interest;
- (b) are matters raising substantial policy implications;
- (c) are matters affecting public administration;
- (d) are matters relating to administrative justice;
- (e) are matters concerning leadership and integrity; or
- (f) are matters of interest to the Commission in light of its mandate.

35. Forms

The Commission may from time to time determine any other forms for the better carrying out of the provisions of the Act and these Regulations.

36. Cases not covered by these Regulations

Any case not covered by these Regulations shall be dealt with in accordance with such instructions as the Commission may issue from time to time.

SCHEDULE

FORMS

FORM CAJ 1.1

(r. 17(1))

COMPLAINT

- 1. CAJ Reference:
- 2. Complainant’s Name/Anonymous [ss.32 & 33]:
- 3. Complainant’s ID Number [ss.32 & 33]:
- 4. Subject of Complaint:
- 5. Public Officer/Institution complained against:.....
- 6. Screening/Categorisation: Within CAJ Mandate? YES: _____ NO: _____
- 7. Reasons:
- 8. Certification:
- 9. Action taken:

FORM: CAJ 2-1

(r. 17(1))

NOTICE OF COMPLAINT & CALL FOR INFORMATION

- 1. CAJ Reference:
- 2. Addressee:

- 3. Complainant's Identity:
- 4. Summary of Complaint:
- 5. Recommendation/Call for Information/ Direction/Mediation/Review of legislation, Processes & Procedures:.....
- 6. Timeframe:.....
- 7. Certification:

FORM: CAJ 3-1 (r. 17(2),(3))

SUMMONS TO ATTEND THE COMMISSION

- 1. CAJ Reference:
- 2. Addressee:
- 3. Reasons for Summons:

"TAKE NOTICE that a Summons has been issued to secure your attendance before the Commission on Administrative Justice pursuant to Article 252(3) of the Constitution as read with sections 27 & 28 of The Commission on Administrative Justice Act 2011 for the purpose/s of production of documents/discovery of documents/examination, particulars of which are set out below:

.....

4. Time-frame and Penal Notice:

"You have 7 working days from the day following service of this Summons to attend to this Summons, otherwise you will be personally liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both".

5. Certification:
