

(Legislative Supplement No. 47)

LEGAL NOTICE NO. 117

THE CONSTITUTION OF KENYA

IN EXERCISE of the powers conferred by Article 22(3) as read with Article 23 and Article 165 (3) (b) of the Constitution of Kenya, the Chief Justice makes the following Rules:—

THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013

PART I—PRELIMINARY

1. These rules may be cited as the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013.

Citation.

2. In these rules, unless the context requires otherwise—

Interpretation.

“Constitution” means the Constitution of Kenya;

“costs” means lawyers’ fees and other disbursements of the parties but does not include court fees;

“Court of Appeal” means the Court of Appeal of Kenya established by Article 164 of the Constitution;

“document” includes—

(a) any publication, or any matter written, expressed, or inscribed on any substance by means of letters, figures or marks, or by more than one of those means, that is intended to be used or may be used for the purpose of recording that matter; and

(b) electronic files;

“friend of the court” is an independent and impartial expert on an issue which is the subject matter of proceedings but is not party to the case and serves to benefit the court with their expertise;

“High Court” means the High Court of Kenya established by Article 165 of the Constitution and includes courts with the status of a High Court established under Article 162 (2) of the Constitution;

“informal documentation” includes any legible document in any language that is simple, does not conform to any particular form or rules of grammar and conveys information;

“interested party” means a person or entity 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 litigation;

“person” includes an individual, organisation, company, association or any other body of persons whether incorporated or unincorporated;

“petitioner” means any person who institutes proceedings or cross petitions under these rules and for the purposes of a cross petition includes a cross petitioner;

“Registrar” includes assistant and deputy registrar in any particular court;

“respondent” means a person who is alleged to have denied, violated or infringed, or threatened to deny, violate or infringe a right or fundamental freedom;

“service” means delivery of an order, summons, or other legal papers to the person required to respond to them; and

“Supreme Court” means the Supreme Court of Kenya established by Article 163 of the Constitution.

3.(1) These rules shall apply to all proceedings made under Article 22 of the Constitution.

Scope and objectives.

(2) The overriding objective of these rules is to facilitate access to justice for all persons as required under Article 48 of the Constitution.

(3) These rules shall be interpreted in accordance with Article 259(1) of the Constitution and shall be applied with a view to advancing and realising the—

- (a) rights and fundamental freedoms enshrined in the Bill of Rights; and
- (b) values and principles in the Constitution.

(4) The Court in exercise of its jurisdiction under these rules shall facilitate the just, expeditious, proportionate and affordable resolution of all cases.

(5) For the purpose of furthering the overriding objective, the Court shall handle all matters presented before it to achieve the—

- (a) just determination of the proceedings;
- (b) efficient use of the available and administrative resources;
- (c) timely disposal of proceedings at a cost affordable by the respective parties; and
- (d) use of appropriate technology.

(6) A party to proceedings commenced under these rules, or an advocate for such party is under a duty to assist the Court to further the overriding objective of these rules and in that regard to—

- (a) participate in the processes of the Court; and

(b) comply with the directions and orders of the Court.

(7) The Court shall pursue access to justice for all persons including the—

- (a) poor;
- (b) illiterate;
- (c) uninformed;
- (d) unrepresented; and
- (e) persons with disabilities

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

PART II—PROCEDURE FOR INSTITUTING COURT PROCEEDINGS

4. (1) Where any right or fundamental freedom provided for in the Constitution is allegedly denied, violated or infringed or threatened, a person so affected or likely to be affected, may make an application to the High Court in accordance to these rules.

Contravention of rights or fundamental freedoms.

(2) In addition to a person acting in their own interest, court proceedings under sub rule (1) may be instituted by—

- (i) a person acting on behalf of another person who cannot act in their own name;
- (ii) a person acting as a member of, or in the interest of, a group or class of persons;
- (iii) a person acting in the public interest; or
- (iv) an association acting in the interest of one or more of its members.

5. The following procedure shall apply with respect to addition, joinder, substitution and striking out of parties—

Addition, joinder, substitution and striking out of parties.

- (a) Where the petitioner is in doubt as to the persons from whom redress should be sought, the petitioner may join two or more respondents in order that the question as to which of the respondent is liable, and to what extent, may be determined as between all parties.
- (b) A petition shall not be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every proceeding deal with the matter in dispute.
- (c) Where proceedings have been instituted in the name of the wrong person as petitioner, or where it is doubtful whether it has been instituted in the name of the right petitioner, the Court may at any stage of the proceedings, if satisfied that

the proceedings have been instituted through a mistake made in good faith, and that it is necessary for the determination of the matter in dispute, order any other person to be substituted or added as petitioner upon such terms as it thinks fit.

- (d) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear just—
 - (i) order that the name of any party improperly joined, be struck out; and
 - (ii) that the name of any person who ought to have been joined, or whose presence before the court may be necessary in order to enable the court adjudicate upon and settle the matter, be added.
- (e) Where a respondent is added or substituted, the petition shall unless the court otherwise directs, be amended in such a manner as may be necessary, and amended copies of the petition shall be served on the new respondent and, if the court thinks, fit on the original respondents.

6. The following procedure shall apply with respect to a friend of the court—

Friend of the Court.

- (a) The Court may allow any person with expertise in a particular issue which is before the Court to appear as a friend of the Court.
- (b) Leave to appear as a friend of the Court may be granted to any person on application orally or in writing.
- (c) The Court may on its own motion request a person with expertise to appear as a friend of the Court in proceedings before it.

7. (1) A person, with leave of the Court, may make an oral or written application to be joined as an interested party.

Interested party.

(2) A court may on its own motion join any interested party to the proceedings before it.

8. (1) Every case shall be instituted in the High Court within whose jurisdiction the alleged violation took place.

Place of filing.

(2) Despite sub rule (1), the High Court may order that a petition be transferred to another court of competent jurisdiction either on its own motion or on the application of a party.

9.(1) The Court may direct that notice of institution of petition be posted on the Court notice board or be published in the Gazette, a daily newspaper with national circulation or the Judiciary's website.

Notice of institution of the petition.

(2) The notice referred to in sub rule (1) shall—

- (a) contain a brief summary of the case, reference to the provisions of the Constitution violated or infringed and the

relief sought; and

(b) be approved by the Registrar.

10. (1) An application under rule 4 shall be made by way of a petition as set out in Form A in the Schedule with such alterations as may be necessary. Form of petition.

(2) The petition shall disclose the following—

- (a) the petitioner's name and address;
- (b) the facts relied upon;
- (c) the constitutional provision violated;
- (d) the nature of injury caused or likely to be caused to the petitioner or the person in whose name the petitioner has instituted the suit; or in a public interest case to the public, class of persons or community;
- (e) details regarding any civil or criminal case, involving the petitioner or any of the petitioners, which is related to the matters in issue in the petition;
- (f) the petition shall be signed by the petitioner or the advocate of the petitioner; and
- (g) the relief sought by the petitioner.

(3) Subject to rules 9 and 10, the Court may accept an oral application, a letter or any other informal documentation which discloses denial, violation, infringement or threat to a right or fundamental freedom.

(4) An oral application entertained under sub rule (3) shall be reduced into writing by the Court.

11. (1) The petition filed under these rules may be supported by an affidavit. Documents to be annexed to affidavit or petition.

(2) If a party wishes to rely on any document, the documents shall be annexed to the supporting affidavit or the petition where there is no supporting affidavit.

12. The Registrar shall cause a prescribed form to be available in the Registry to assist petitioners who bring oral applications to have them reduced in writing. Registrar to assist in filing of petitions.

13. A petition filed under certificate of urgency may be placed before a Judge for appropriate orders or directions. Petition filed under certificate of urgency.

14. (1) The petitioner shall serve the respondent with the petition, documents and relevant annexures within 15 days of filing or such time as the court may direct. Service of petition.

(2) Proof of service shall be the affidavit of service set out in Form B in the Schedule with such variations as may be necessary.

15. (1) The Attorney-General or any other State organ shall within fourteen days of service of a petition respond by way of a Reply to a petition.

replying affidavit and if any document is relied upon, it shall be annexed to the replying affidavit.

(2) (a) A respondent not in the category of sub rule (1) shall within seven days file a memorandum of appearance and either a—

(i) replying affidavit; or

(ii) statement setting out the grounds relied upon to oppose the petition.

(b) After filing either of the documents referred to in sub rule (2) (a), a respondent may respond by way of a replying affidavit or provide any other written document as a response to the petition within fourteen days.

(3) The respondent may file a cross-petition which shall disclose the matter set out in rule 10(2).

16. (1) If the respondent does not respond within the time stipulated in rule 15, the Court may hear and determine the petition in the respondent's absence.

Failure to respond within stipulated time.

(2) The Court may set aside an order made under subrule (1) on its own motion or upon the application of the respondent or a party affected by the order.

17. The Court may on its own motion or on application by any party consolidate several petitions on such terms as it may deem just.

Consolidation.

18. A party that wishes to amend its pleadings at any stage of the proceedings may do so with the leave of the Court.

Amendment of pleadings.

19. A formal application under these rules shall be by Notice of Motion set out in Form D in the schedule and may be supported by an affidavit.

Formal applications.

PART III — HEARING AND DETERMINATION OF COURT PROCEEDINGS

20. (1) The hearing of the petition shall, unless the Court otherwise directs, be by way of—

Hearing of the petition.

(a) affidavits;

(b) written submissions; or

(c) oral evidence.

(2) The Court may limit the time for oral submissions by the parties.

(3) The Court may upon application or on its own motion direct that the petition or part thereof be heard by oral evidence.

(4) The Court may on its own motion, examine any witness or call and examine or recall any witness if the Court is of the opinion that the evidence is likely to assist the court to arrive at a decision.

(5) A person summoned as a witness by the court may be cross examined by the parties to the petition.

21. (1) In giving directions on the hearing of the case, a Judge may require that parties file and serve written submissions within fourteen days of such directions or such other time as the Judge may direct.

Evaluating petition for directions and allocating hearing dates.

(2) A party who wishes to file further information at any stage of the proceedings may do so with the leave of the Court.

(3) The Court may frame the issues for determination at the hearing and give such directions as are necessary for the expeditious hearing of the case.

22. (1) Each party may file written submissions.

Written submissions.

(2) Subject to such directions as may be issued by the court, written submissions shall contain the following—

- (a) a brief statement of facts with reference to exhibits, if any, attached to the petition;
- (b) issues arising for determination; and
- (c) a concise statement of argument on each issue incorporating the relevant authorities referred to together with the full citation of each authority.

(3) Copies of the authorities to be relied on shall be attached to the written submissions.

23. (1) Despite any provision to the contrary, a Judge before whom a petition under rule 4 is presented shall hear and determine an application for conservatory or interim orders.

Conservatory or interim orders.

(2) Service of the application in sub rule (1) may be dispensed with, with leave of the Court.

(3) The orders issued in sub rule (1) shall be personally served on the respondent or the advocate on record or with leave of the Court, by substituted service within such time as may be limited by the Court.

24. (1) An application under rule 23 may be made by way of notice of motion or by informal documentation.

Application under rule 21.

(2) Where an oral application is made under rule 23, the Court shall reduce it in writing.

25. An order issued under rule 22 may be discharged, varied or set aside by the Court either on its own motion or on application by a party dissatisfied with the order.

Setting aside, varying or discharge.

26. (1) The award of costs is at the discretion of the Court.

Costs.

(2) In exercising its discretion to award costs, the Court shall take appropriate measures to ensure that every person has access to the Court to determine their rights and fundamental freedoms.

27. (1) The petitioner may—

Withdrawal or discontinuance.

- (a) on notice to the court and to the respondent, apply to withdraw the petition; or

- (b) with the leave of the court, discontinue the proceedings.
- (2) The Court shall, after hearing the parties to the proceedings, decide on the matter and determine the juridical effects of that decision.
- (3) Despite sub rule (2), the Court may, for reasons to be recorded, proceed with the hearing of a case petition in spite of the wish of the petitioner to withdraw or discontinue the proceedings.
28. If the respondent does not dispute the facts in the petition whether wholly or in part, the Court shall, after hearing the parties, make such orders as it may deem fit. Acquiescence.
29. The parties may, with leave of the Court, record an amicable settlement reached by the parties in partial or final determination of the case. Settlement by consent.
30. The Court may extend time limited by these rules, or by any decision of the Court. Extension of time.
31. The Court may refer a matter for hearing and determination by alternative dispute resolution mechanism. Use of alternative dispute resolution.
32. (1) An appeal or a second appeal shall not operate as a stay of execution or proceedings under a decree or order appealed. Stay pending appeal.
- (2) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling and the court may issue such orders as it deems fit and just.
- (3) A formal application for stay may be filed within 14 days of the decision appealed from or within such time as the court may direct.
33. (1) Part III of The Constitution of Kenya (Supervisory Jurisdiction and Protection of Fundamental Rights and Freedoms of the Individual) High Court Practice and Procedure Rules, 2006 is revoked. Revocation of part III of L.N. 6 of 2006.
- (2) Despite sub rule (1), a matter currently pending in Court under Part III of Legal Notice No.6 of 2006 may be continued under these rules.
34. There shall be paid in respect of all proceedings under these Rules the same court fees as are payable in respect of civil proceedings in the High Court in so far as the same are applicable. Court Fees
35. (1) A person who wishes to be exempted from paying court fees may apply to the Registrar. Waiver of court fees.
- (2) An application under sub-rule (1) may be made by informal documentation.
- (3) The reasons for the Registrar's decision shall be recorded.
36. The Chief Justice may issue practice directions for the better carrying out of these rules. Practice Directions.
37. The Chief Justice may review these rules from time to time. Review.

SCHEDULE

FORM A

(r. 10(1))

IN THE HIGH COURT OF KENYA AT
PETITION NO. OF20.....

IN THE MATTER OF Article 22(1)

IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS OR
FUNDAMENTAL FREEDOMS UNDER ARTICLE *(insert article)*

.....

BETWEEN

A.B. *(insert names of parties)* PETITIONER

AND

C.D. *(insert names of parties)*RESPONDENT
TO:

The High Court of Kenya

The Petition of A.B *(insert names of Petitioner)* of *(insert address of Petitioner)*in
the Republic of Kenya is as follows-*(the*
allegations upon which the Petitioner(s) rely must be concisely set out, in consecutively
numbered paragraphs and should address the following:

(a) the facts of the case,

(b) nature of the injury caused or likely to be caused to Petitioner or public in public
interest suits,

(c) details regarding any civil, criminal or other litigation involving the Petitioner which
could have a legal nexus with the issue raised in the suit)

Your Petitioner(s) therefore pray(s) that
(set out exact order(s) sought)

Or that such other order(s) as this Honourable Court shall deem just.

DATED at thisday of20.....

Signed Petitioner/Advocate for the Petitioner

DRAWN & FILED BY:

TO BE SERVED UPON:

FORM B

(r. 14(2))

AFFIDAVIT OF SERVICE

(Title)

I.....of..... an adult of sound mind/advocate/a police officer/a process server of the court make oath and say as follows:

(1) On, 20at.....(time) I served the petition/replying affidavit/document in this case on.....(name) at..... (place) by tendering a copy thereof to him/her and requiring a signature on the original. He/She signed/refused to sign the petition/replying affidavit/document. He/She was personally known to me/was identified to me by.....and admitted that he/she was the respondent/petitioner.

(2) Not being able to find the respondent/petitioner on....., 20.....at(time) I served the petition/replying affidavit/document on..... (name) an adult member of the family of the respondent/petitioner who is residing with him/her.

(3) Not being able to find the respondent/petitioner or any person on whom service could be made, on....., 20at(time), I affixed a copy of the petition/replying affidavit/document to the outer door of.....being the house in which he/she ordinarily resides/carries on business/personally works for gain. I was accompanied bywho identified the house to me.

(4) (Otherwise specify the manner in which the petition/replying affidavit/document was served).

SWORN by the saidthis..... day.....of....., 20.....

Before me.....

A Commissioner of Oaths/Magistrate.

FORM C

(r. 22(3))

SUBSTITUTED SERVICE BY ADVERTISEMENT

To:.....

of.....

Take notice that a petition has been filed in theCourt atin Civil Suit No.of 20, in which you are named as respondent. Service of the petition on you has been ordered by means of this advertisement. A copy of the petition may be obtained from the court at.....

(insert postal address of registry).

And further take notice that, unless you enter an appearance within days, the case will be heard in your absence.

FORM D

Title
(as in the Petition)

NOTICE OF MOTION

TAKE NOTICE THAT that this Honourable Court Shall be moved on the.....day of..... 20 at 9:00 o'clock in the forenoon or as soon thereafter as the applicant/counsel for the applicant may be heard on an application FOR ORDERS: -

(a)

(b)

WHICH APPLICATION is made on the following grounds: -

(i).....

(ii).....

(iii).....

AND WHICH APPLICATION is supported by the annexed affidavit of and by such other grounds, reasons and arguments as shall be adduced at the hearing hereof.

DATED at this day of20.....

APPLICANT/ADVOCATES FOR THE APPLICANTS

Drawn and filed by:

To be served upon:

“If any person served does not appear at the time and place abovementioned such orders shall be made and proceedings taken as the court deems just and expedient”.

Dated 25th day of June, 2013.

WILLY MUTUNGA,
Chief Justice.