

EAST AFRICAN COURT OF JUSTICE (EACJ) ADVOCATES PRACTICING MANUAL



EDITED BY

Teddy Musiga | Hannington Amol | David Sigano



FOREWORD

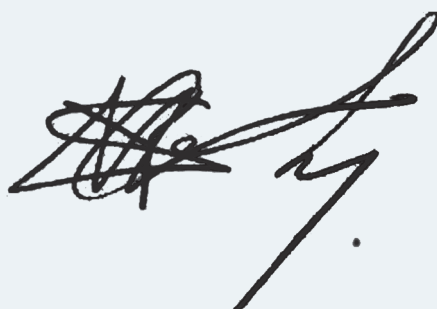
This simplified guide has been developed to be used as a training manual for advocates and other legal practitioners within the East African Community. It is intended to be used to train advocates and other legal practitioners on the operations and processes of the East African Court of Justice (EACJ).

It is aimed at encouraging people to know about the EACJ, to make use of it in their civil cases or disputes and to obtain justice. This booklet aims to clarify who does what; how proceedings are handled in the Court; and how users of the Court can get the most out of the services provided by the Court.

The booklet has adopted a simplified and summarised approach in presenting the key issues governing the operations and processes of the East Africa Court of Justice. In some instances it has also made references to relevant statutory provisions, case law and other relevant texts. Readers of this booklet will also immensely benefit from the attached East African Court of Justice Rules of Procedure 2019 which have been annexed at the back of the booklet.

Whereas this booklet does not cover all the details concerning the Court and what is required for all the users of the court, it attempts to simplify the basic information required of them. We therefore encourage the readers of this booklet to use it as a complementary reading material together with all the other key legislative texts governing the East Africa Court of Justice.

It is our sincere hope that all the court users at the East Africa Court of Justice will find this booklet extremely useful. The said court users may include; the litigating parties and their lawyers, the witnesses (including expert witnesses); as well as others, such as the "the friends of the Court" (*amicus curiae*), researchers, scholars, students of law and integration, administrators and Policy makers both at the East African Community level and at the Partner States level, and many others of that kind.



Hon. Yufnalis N. Okubo, FCI Arb
Registrar
EAST AFRICAN COURT OF JUSTICE

AUGUST 2020

ACKNOWLEDGMENTS

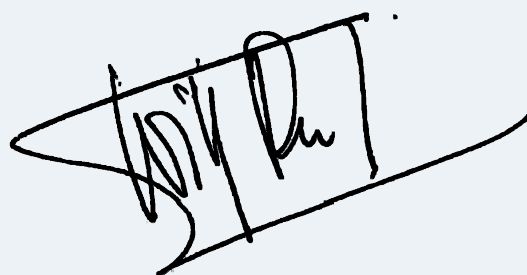
This Advocates' Practice Manual was developed by the East Africa Law Society as a simplified guide to advocates aspiring to practice before the East African Court of Justice. Its preparation benefited greatly from a close partnership with the East Africa Court of Justice (EACJ) and the East Africa Community (EAC) as a whole. The process of developing this publication also benefited immensely from consultations internally within East Africa Law Society's Regional Africa Project implemented in Partnership with the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, the Pan African Lawyers Union, the African Court Coalition, Equality Now, National Human Rights Institutions (NAHNRI) and various Academic Institutions.

The East Africa Law Society and its development partners are also grateful to Mr Teddy Musiga as the primary contributor to this document and to the following people for their effort towards this publication: Hon. Yufnalis Okubo, Registrar, East African Court of Justice, Hannington Amol, Chief Executive Officer, EALS, David Sigano, EALS Regional Africa Project Manager, Prof. Fredrick Edward Ssempebwa (SC), Dr. Henry Onoria, Mr. Francis Gimara (SC), Lady Justice Joyce Aluoch (Rtd), Boniface Ogoti, Juma Fikirini and Achilleus Rwelamira.

The East Africa Law Society acknowledges with gratitude the Raoul Wallenberg Institute for providing financial support for this initiative. The East Africa Law Society also wishes to acknowledge with gratitude the following partners for their contribution: The East African Court of Justice, the African Court of Human and People's Rights, the Law Society of Kenya, the Law Society of Kenya, Nairobi Branch, the Lawyers Hub, the Uganda Law Society, the Tanganyika Law Society, the Zanzibar Law Society, the Rwanda Bar Association, the Burundi Bar Association, the South Sudan Bar Association and the Pan African Lawyers Union.

Finally, we would also like to acknowledge the entire Secretariat of the East Africa Law Society led by the Chief Executive Officer Mr. Hannington Amol. We also wish to thank other members of staff of the East Africa Law Society Secretariat, researchers and interns that have been more specifically involved in this process.

In general, we thank everyone who directly or indirectly toiled for the success of this booklet.

A handwritten signature in black ink, appearing to read 'Willy Rubeya', is written over a rectangular box. The signature is stylized and slanted.

WILLY RUBEYA
PRESIDENT
EAST AFRICA LAW SOCIETY

AUGUST 2020

EXECUTIVE SUMMARY

When the East Africa Law Society undertook a baseline study on the status of implementation of decisions of the East African Court of Justice and level of awareness of the Court among East Africans, there were two outstanding outcomes. First, many advocates across the region were found to have limited understanding of how the Court functions. They also had limited knowledge of the rules of procedure of the Court. On further investigation, it was found that this had led to two undesirable outcomes. Low quality of pleadings submitted before the Court and high rates of dismissal of cases on technicalities. Secondly, the study found that most people in the region are unaware of the existence and mandate of the Court. This has led to under-utilisation of the Court, a key institution established to oversee the implementation of the Treaty for the Establishment of the East African Community.

This booklet has been prepared to bridge these existing knowledge and awareness gaps among advocates and citizens. It seeks to present a simplified and summarised view of the Court. It contains a brief description of the Court as well as a description of key issues governing the operations and processes of the Court.

The booklet is structured in six key parts. The first part introduces the Court. It then delves into the legal, policy and institutional framework governing the Courts operations. It also looks at the jurisdiction, roles and mandate of the Court. What types of cases can be brought before the Court? Are there time limitations for litigants to present their cases? Can a matter be referred from National Courts of an EAC Partner State? This part also looks at the structure and composition of the Court as well as the relationship between the Court and national level courts.

The second part of the booklet looks at the admissibility prerequisites such as the requirements for locus standi to appear before the EACJ; whether parties ought to satisfy the doctrine of exhaustion of local remedies (which is usually a key prerequisite in most international tribunals); filing fees etc. The third part deals with the trial process at the EACJ. It answers key litigation questions including, how does one lodge a case before the Court? How do you prepare pleadings? What stages are there during the litigation process?

The fourth part deals with procedures for filing and considerations by the Court such as preliminary matters, hearings and adjournments etc.

The fifth part deals with issues regarding judgments and sentences. After how long upon conclusion of the hearing process is judgement expected? How can one implement the decisions of the Court? Finally, the sixth part deals with issues concerning appeals and revision.

HANNINGTON EAMOL

CHIEF EXECUTIVE OFFICER
EAST AFRICA LAW SOCIETY

AUGUST 2020

TABLE OF CONTENTS

FOREWARD.....	i
ACKNOWLEDGMENTS.....	ii
EXECUTIVE SUMMARY.....	iii
ABBREVIATIONS, ACCRONYMNS & KEY WORDS AND PHRASES.....	1
1 Legal, Policy and Institutional Framework of the East African Court of Justice.....	2
1.1 Introduction.....	2
1.2 The Legal and Institutional Framework Governing the Operations of the East African Court of Justice.....	2
1.3 Mandate/ Role of the East African Court of Justice.....	2
1.4 Structure and Composition of the East African Court of Justice.....	3
1.5 Jurisdiction of the East African Court of Justice.....	3
1.6 Relationship between the East Africa Court of Justice and National Courts.....	3
2. Admissibility Requirements.....	4
2.1 Locus Standi.....	4
2.2 Exhaustion of Local Remedies.....	4
2.3 Timelines for Lodging Cases.....	4
2.4 Filing Fees.....	5
2.5 Remedies.....	5
3. The Trial at the East Africa Court of Justice.....	5
3.1 Place of the Trial.....	5
3.2 Open Court Proceedings.....	5
3.3 Conduct of Trials by Electronic Means.....	5
3.4 Description of Pleadings.....	6
4. Procedure for Filing and Consideration by the Court.....	6
4.1 Quorum of the Court.....	6
4.2 Applications Before a Single Judge.....	6
4.3 Right to Begin.....	6
4.4 Adjournments.....	6
4.5 Consequences of Non - Attendance of the Parties.....	7
4.6 Witnesses and Experts.....	7
4.7 Amicus Curiae Briefs.....	7
5. Judgment and Sentence.....	7
5.1 Delivery of Judgment.....	7
5.2 Contents of an Order.....	8
5.3 Execution and Enforcement of Judgments, Orders and Decisions.....	8

5.4 Amendments of the Court’s Judgments and Orders.....	8
6. Appeals and Revision.....	8
6.1 When May a Decision Be Appealed?.....	8
6.2 Process for Instituting/ commencing an Appeal.....	10
6.3 Circumstances in Which Decisions May Be Revised.....	11
ANNEXTURE ONE.....	13

PART 2
THE EAST AFRICAN COURT OF JUSTICE RULES OF PROCEDURE 2018
RULES OF COURT

PART A

Section I: General.....	17
Section II: Registrar and Registry.....	19
Section III: Documents.....	20
Section IV: Appearance and Representation.....	21
Section V: Court Sessions, Vacation and Holidays.....	22

PART B: INSTITUTION OF PROCEEDINGS IN THE FIRST INSTANCE DIVISION

Section VI: Pleadings.....	22
Section VII: Amendment of Pleadings.....	26
Section VIII: Applications.....	27
Section IX: Third Party, Intervention and Amicus Curiae Procedure.....	28
Section X: Withdrawal and Discontinuance.....	30
Section XI: Pre-trial Proceedings.....	30
Section XII Witnesses.....	31
Section XIII: Proceedings.....	32
Section XIV: Judgment and Orders.....	35

PART C: PROCEEDINGS IN APPELLATE DIVISION

Section XV: Appeals to The Appellate Division.....	36
Section XVI: Institution of Appeals.....	37
Section XVII: Hearing of Appeals.....	41
Section XVIII: Advisory Opinion.....	41
Section XIX: Case Stated.....	41

PART C: PROCEEDINGS IN APPELLATE DIVISION

Section XX: Costs.....	44
------------------------	----

PART E: MISCELLANEOUS PROVISIONS

Section XXI: Places and Dates of Court Sessions, Case Management and Recording System and Transition Provision.....	45
---	----

SCHEDULES AND FORMS

First Schedule: Judicial Oath of the Deputy Registrar..... 47

Second Schedule: Forms..... 48

Third Schedule: Taxation of Costs..... 58

Forth Schedule: Notice of Motion..... 65

Fifth Schedule: Guidelines for Mediation..... 66

Sixth Schedule: Procedure for a reference for preliminary ruling..... 67

Seventh Schedule: Forms..... 68

Eighth Schedule: Taxation of Costs..... 81

GUIDELINES FOR VIDEO CONFERENCE PROCEEDINGS..... 84

ABBREVIATIONS, ACRONYMS & KEY WORDS AND PHRASES

EAC	East Africa Community
EACJ	East African Court of Justice
EALA	East African Legislative Assembly
KEY WORDS AND PHRASES	
“Advocate”	means an advocate who is entitled to appear before a superior Court of any of the Partner States;
“Agent”	means a person who is duly appointed by a party to act for or in his or her behalf;
“Amicus curiae”	means a person who is not a party to a proceeding in the Court but who petitions the Court or is invited by the Court to file a brief in the proceeding because he has an interest in the subject-matter;
“Appellant”	means a party appealing from a decision, decree or order of the First Instance Division;
“Appellate Division”	means the Appellate Division of the Court provided for under Article 23 of the Treaty;
“Assistant Registrar”	means an officer of the Court performing duties of the Registrar or Deputy Registrar as may be assigned to him or her from time to time;
“Counsel to the Community”	means the Counsel to the Community provided for under Article 69 of the Treaty;
“Court”	means the East African Court of Justice established under the Treaty and includes a single Judge exercising any power vested in that Judge sitting alone;
“Decree”	means the formal expression of an adjudication, which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to any of the matters in controversy in the case and may be either preliminary or final;
“Deputy Principal Judge”	means the Deputy Principal Judge of the Court as designated under Article 24(5) of the Treaty;
“Deputy Registrar”	means the Deputy Registrar of the Court;
“First Instance Division”	means the First Instance Division of the Court provided for under Article 23 of the Treaty;
“Gazette”	means the East African Community Gazette;
“Intervener”	means a Partner State, the Secretary General or a resident of a Partner State not a party to a case before the Court that is permitted to intervene in a case under Article 40 of the Treaty;
“Judge”	means a Judge of the Court serving on the First Instance Division or the Appellate Division;
“Judgment”	includes any decision, ruling or order made by the Court;
“Legal representative”	is a person who in law represents the interests of the estate of the deceased party, and where a party sues or is sued in a representative character, the person on whom the estate revolves on the death of the party so suing or sued;
“National Court”	means a Court of competent jurisdiction in a Partner State;
“National day”	means such a day as designated by a Partner State;
“Notification”	means a notice of claim issued by the Court in accordance with sub-rule (1) of Rule 27 of these Rules;
“Official holiday”	includes the national days of the Partner States as well as New Year’s Day, Idd el Fitr, Idd el Haj, Good Friday, Easter Monday, Labour Day, Christmas, Boxing Day and the EAC day;
“Order”	means the formal expression of any decision of the Court which is not a decree;
“Party”	means any person who is appearing in any proceedings either as an appellant, applicant, claimant, respondent, third party or intervener;
“Pleading”	means any document lodged by or on behalf of a party relating to a matter before the Court in which the party sets forth or responds to allegations, claims, denials or defences;
“President”	means the President of the Court as designated under Article 24(4) of the Treaty;
“Principal Judge”	means Principal Judge of the Court as designated under Article 24(5) of the Treaty;
“Registrar”	means the Registrar of the Court as appointed under Article 45 of the Treaty;
“Registry”	means the Court registry or sub-registry;
“Representative”	means a person that is empowered to stand or act for another;
“Respondent”	in relation to an application, claim or reference, includes any person on whom a notice of motion or a copy of the statement of claim or reference has been served, and in relation to an appeal includes any person on whom an appeal or cross-appeal has been served;
“Rules”	means these Rules as may from time to time be amended;
“Statement of Claim”	means a party’s written statement seeking the Court’s determination of a dispute between the Community and an employee;
“Statement of Reference”	means a party’s written statement seeking the Court’s determination of a reference brought before it under Articles 28, 29 and 30 of the Treaty;
“Treaty”	means the Treaty for the Establishment of the East African Community;
“Vice-President”	means the Vice-President of the Court as designated under Article 24(4) of the Treaty.

1. LEGAL, POLICY AND INSTITUTIONAL FRAMEWORK OF THE EAST AFRICAN COURT OF JUSTICE

1.1 Introduction

The East African Court of Justice is one of the organs of the East African Community established under Article 9 of the Treaty for the Establishment of the East African Community.

The Court as currently constituted is different from the defunct East African Court of Appeal in terms of composition and jurisdiction. It is an international court unlike the defunct East African Court of Appeal which handled only appeals from national courts.

The Court's major responsibility is to ensure the adherence to law in the interpretation and application of and compliance with the Treaty.

Following its inauguration by the Summit and the swearing in of Judges and the Registrar on 30th November 2001, the East African Court of Justice became operational. The operations of the Court during the transitional period are ad hoc until the Council of Ministers determines that there is enough business to make it fully operational. This means that judges are not required to permanently reside in Arusha where the temporary seat of the Court is located, but they only convene to conduct the business of the Court when the need to do so arises.

The Court under its current operational framework has limited jurisdiction which is restricted to the interpretation and application of the Treaty.¹ Article 27 of The Treaty confirms this, and further states that the Court shall have other original, appellate, human rights and other jurisdiction as may be determined by the Council. This is yet to be done.

1.2 The Legal and Institutional Framework Governing the Operations of the East African Court of Justice

The Legal and Institutional framework governing the operations of the East African Court of Justice is largely drawn from the Treaty for the Establishment of the East African Community. It is the Treaty that establishes the Court as one of its organs (Article 9); provides for its structures/ composition (article 24); mandate (article 23 and 27) and other incidental issues thereto.

The main legal instruments that govern/ regulate the operations of the East African Court of Justice include the following:

a) The Treaty for the Establishment of the East African Community

The East African Court of Justice is established under Article 9 of the Treaty for the Establishment of the East African Community as one of the organs and institutions of the Community. The Court's major responsibility is to ensure the adherence to law in the interpretation and application of and compliance with the Treaty.² Thus, it is established as the main organ for resolution of disputes concerning the Treaty.

b) The East African Court of Justice Rules of Procedure, 2018

The East African Court of Justice Rules of Procedure are promulgated under powers provided in article 42 of the Treaty for the establishment of the East African Community. The Rules have one hundred and thirty five sections in total (excluding the schedules and forms that are attached at the back of the Rules. The Rules deal with a number of issues such as the Registry; Preparation, lodging, time of lodging, amendment, modes of service of documents; they also deal with appearance and representation, court vacation and holidays, institution of proceedings at the Court, written proceedings, third party interventions; amendment of pleadings; withdrawal and discontinuance; oral proceedings; judgment and orders; Appellate processes; Costs and fees etc.

c) The East African Court of Justice Arbitration Rules, 2012

The East African Court of Justice Arbitration Rules, 2012 are promulgated under the powers provided in article 42 of the Treaty for the establishment of the East African Community. The Rules apply to all arbitration proceedings under article 32 of the Treaty. The parties to the arbitration are at liberty to modify or waive the application of the Rules. Generally the rules deal with composition and the process of the arbitral proceedings; conduct of the proceedings i.e disclosure, challenge of arbitrator, replacement of an arbitrator, place, time and mode of hearing etc. The Rules also deal with the decision making process as well as the arbitral award.

1.3 Mandate/ Role of the East African Court of Justice

The East African Court of Justice (EACJ) is established under Chapter 8 of the Treaty Establishing the EAC. Its major responsibility is to ensure adherence to law in the interpretation and application and compliance with the Treaty.³ Under article 23(2) and (3) of the Treaty, it is provided that the EACJ shall consist of the first instance division and an Appellate division. The first instance division shall have jurisdiction to hear and determine, at first instance, subject to a right of appeal to the appellate division under article 35A, any matter before the Court in accordance with the Treaty.

¹ See Article 23. However, there have been suggestions to grant the EACJ Criminal law jurisdiction

² See Article 27

³ Article 23 of the Treaty Establishing the EAC

1.4 Structure and Composition of the East African Court of Justice

The composition of the court is limited to fifteen judges, three from each member state of the community.⁴ The Judges are appointed by the Summit⁵ from among sitting judges of any National courts of judicature or from jurists of recognized competence. The Registrar is appointed by the Council of Ministers.⁶ The President and the Vice President are also appointed by the Summit from the Judges of the Court.⁷ The Court may employ such other staff (such as the Principal Judge and the Deputy Principal Judge) to enable it to perform its functions.⁸ The court is supposed to exemplify a fair and trustworthy judicial institution. The judges are appointed for a five year term and they must be persons of impartiality and independence.⁹

1.5 Jurisdiction of the East African Court of Justice

The jurisdiction of the Court is found under article 27 of the Treaty which provides that;

- i. The Court shall have jurisdiction over interpretation and application of the Treaty;
- ii. Article 27(2) of the Treaty provides that the Court shall have such other original, appellate, human rights and other jurisdiction as will be determined by the Council;
- iii. Under Article 21 of the Treaty, the Court has jurisdiction to hear and determine disputes between the Community and its employees that arise out of the terms and conditions of employment of the Community employees;
- iv. Under Article 32, the Court has jurisdiction to hear and determine any matter in a contract containing an arbitration clause which confers jurisdiction upon the Community or any of its institutions (jurisdiction in arbitration of commercial contracts or agreements);
- v. Under article 129 of the Treaty, the Court has jurisdiction on formulation of a business and business related dispute settlement mechanism;

Further, the EAC Treaty imposes a number of obligations upon the member states ranging from trade liberalization, financial co-operation, co-operation in transport and communication, energy, industrial development, science and technology through health and environmental matters,¹⁰ which are bound to bring to the fore a lot of litigation before the Court.¹¹

Also, the Summit, the Council or a Partner State may request the Court to give an advisory opinion regarding a question of law arising from the Treaty and which affects the Community.¹²

The Court will at an appropriate time in the future, be granted extended jurisdiction over other subject matters (whether original, appellate, human rights, or any other kind of jurisdiction). Such extension will require decision(s) of the Council of Ministers of the Community. On 30th November, 2013, the Summit of the EAC Head of States approved the Council of Ministers' decision to extend the Courts jurisdiction to include matters of trade, investment and EAC Monetary Union. To this end, the Partner States of the Community will need to agree a Protocol to operationalize the extended jurisdiction.

1.6 Relationship between the East Africa Court of Justice and National Courts

One of the unique aspects of the Court's jurisdiction is to hear and determine cases referred to it for preliminary ruling by the national courts. This is one of the rare opportunities where national courts, at all levels, are given a chance to interact with an international court through litigation. When faced with a case requiring the application or the interpretation of the Treaty or any other East African Community law, the national courts are required to refer the matters to the EACJ for preliminary rulings.¹³

Article 33(1) of the Treaty provides that disputes to which the Community is a party shall not be excluded from the jurisdiction of the national courts of partner states. However, that very provision at Article 33(2) gives precedence to the EACJ over national courts on decisions of the Court on the interpretation and application of the Treaty. The challenge with this provision is that it does not provide what would happen if a constitutional question should arise as regards a decision emanating from the Court because the EACJ does not entertain appeals from the national courts.

Where there is concurrent jurisdiction as contemplated in article 33 of the Treaty, the EACJ also lacks superiority over national courts of the member states.¹⁴ This same challenge was also witnessed in the defunct East African Court of Appeal. There is also lack of clear provisions that entrench the position of the Community law and the court against those of the member states will not only put the court at collision path with the member state's courts but will also lead to uncertainty as to the law to be applied and a multiplicity of interpretations to a single treaty provision.¹⁵

⁴ Currently, the court has a total of 11 judges. 5 judges in the Appellate division and 6 judges in the first instance division. (For a full list of the profiles of all the sitting judges, see: <http://eacj.org/?page_id=1135>

⁵ Article 24 of the Treaty

⁶ Article 45 of the Treaty

⁷ Article 24 (4)

⁸ *Ibid*

⁹ Article 24 (1)

¹⁰ Chapter Two of the Treaty

¹¹ A list of the decisions ever delivered by the court can be accessed on this link: <http://eacj.org/?page_id=2414>

¹² Article 36

¹³ Article 34

¹⁴ See *Okunda and Another v Republic* (1970).

¹⁵ See for example comments by Brown, L. N. And Jacobs, F. G. (2000), "The Court of Justice of the European Communities," 5th Edition, Sweet and Maxwell, London, 285

2. ADMISSIBILITY REQUIERMENTS

2.1 Locus Standi

This refers to the capacity to bring actions or to appear in court. It therefore refers to the Institution of suits before the East African Court of Justice. The Treaty for the establishment of the EAC provides that cases can only be instituted at the EACJ in the following manner:

(a) Partner States: A Partner State may make a reference to the Court: If it considers that another Partner State or an organ or an institution of the Community has failed to fulfill an obligation or has infringed a provision of the Treaty, may refer the matter to the Court. A State may also seek the Court to determine the legality of any Act, regulation, directive decision or action on the ground that it is ultra vires or unlawful or infringes the provisions of the Treaty.¹⁶

(b) Secretary General: If a Partner State fails to fulfil its obligation under the Treaty, the Secretary General may refer the matter to the Court¹⁷

(c) Reference by Legal and Natural Persons: A legal or natural person resident in any of the Partner States may challenge the legality of any Act, regulation, directive, decision or action of a Partner State or an institution of the Community on the grounds that it infringes the provisions of the Treaty.¹⁸

(d) Reference by national courts: where national courts refers to the Court for preliminary ruling question of Treaty interpretation or determination of legality of a Community law or action.¹⁹

2.1.2 Persons who may appear or be represented before the Court:

There are several ways in which a person or entity may appear before the Court. It all depends on the nature of the person who is appearing or being represented . Accordingly.²⁰

a) A party to any proceedings in the Court may appear in person or by an agent and may be represented by an advocate. The advocate must be one who is entitled to practice before the superior court of any partner state.²¹

b)The Counsel to the Community is entitled to appear in any matter where the community or any of its institutions is a party, or where the Counsel thinks that such appearance is desirable.²²

c) A corporation or company may either or be represented by its director, manager or secretary, who is appointed by resolution under the seal of the corporation or the company. It may also be represented by an Advocate.²³

d) A person under legal disability may appear by a guardian ad litem (i.e a representative who has been appointed just for the complaint or trial); or by the next friend, as the case may be. The person may also be represented by an advocate.²⁴

2.2 Exhaustion of Local Remedies

Under International law, the doctrine of exhaustion of local remedies states that, "a State should be given the opportunity to redress an alleged wrong within the framework of its own domestic legal system before the international responsibility can be called into question at [the] international level."²⁵

There is no requirement that applications exhaust domestic remedies as a condition before bringing an application to the Court.²⁶ The reason for this position is based on the principle of enhancing a "people-centred and market driven co-operation" as enshrined in Article 7(1) of the EAC - Treaty.²⁷

2.3 Timelines for lodging cases

Article 30(2) of the Treaty provides that cases ought to be lodged within two months of the decision or action complained of. Rule 12 of the EACJ Rules provides that the Registrar may reject any document or pleadings which does not comply

¹⁶ Article 28

¹⁷ Article 29

¹⁸ Article 30

¹⁹ Article 34

²⁰ Article 37

²¹ Article 37 and Rule 17 (1)

²² Rule 17 (2)

²³ Rule 17 (3)

²⁴ Rule 17 (4)

²⁵ A. A. Cancado Trindade, "The Application of The Rule Of Exhaustion Of Local Remedies In Interna- Tional Law" (1983); Jost Delbrück, "The Exhaustion of Local Remedies Rule and the International Protection of Human Rights: A Plea for a Contextual Approach, in Des Menschen Recht Zwischen Freiheit Und Verantwortung 213, 217 (Jürgen-Jekewitz et al. eds., 1989).

²⁶ See *AG of Rwanda v Plaxeda Rugumba* (2012), para 39; Also see *Anyang' Nyong'o v AG of Kenya* (Ref No. 1 of 2006), p. 21

²⁷ The East African Law Society v AG of Kenya

with Rules 11, 24, 25, 31, 32, 54 or 58.²⁸ However, the Registrar shall not reject any document or pleading on the ground that it is lodged out of time but shall mark it as, “lodged out of time” and inform the person lodging it accordingly.²⁹

Rule 14 of the EACJ Rules provides for the hours for lodging documents and provides that, unless the President directs otherwise, the registry and all sub-registries of the Court shall be open for the receipt of documents lodged under the provisions of these Rules between 8:30 a.m. to 5:00 p.m. of each working day provided where the filing is electronic it shall be between 12:00a.m. to 11:59p.m.

2.4 Filing Fees

Filing pleadings at the Court is free. The initial filing fees were scrapped off.³⁰ This move is aimed at facilitating access to justice to all in the region. However, Costs in any proceedings follow the event (i.e. the losing party pays the winning party the expenses incurred by the winning party to prosecute or defend the case), unless the Court finds that the expenses have been incurred improperly or without reasonable cause. In that event, the Court may call on the advocate by whom these costs have been incurred to show cause why such costs should not be borne by the advocate personally. Alternatively, the Court may order each party to bear its own costs - especially where the suit raised important issues of general public interest.

2.5 Remedies

The Court primarily issues declarations as to whether particular acts or pieces of legislation infringe rights or provisions of the EAC Treaty. It has also recommended specific amendments to legislation to bring it in conformity with the Treaty, which also contemplates the Court making financial awards.

3. THE TRIAL AT THE EAST AFRICA COURT OF JUSTICE

3.1 Place of the Trial

Trials take place at the seat of the Court in Arusha, Tanzania unless the judges decide whether to hold the sittings of the court elsewhere. All the proceedings of the court, including the pronouncement of the Court’s decision are held in open court.³¹ However, for sufficient cause, the court may order the proceedings to be held *in camera*, though recorded, are not published.³² Proceedings *in camera* are exceptional to the general rule and practice requiring cases to be heard in open court, where any member of the public can attend.

Applications heard by a single judge may be held *in chambers* (judges’ private office) or in open court (public) as the judge deems fit.

Rule 64 (2) of the EACJ Rules provides that the Court when fixing the date and place for opening of the oral proceedings or postponing the opening or continuance of such proceedings ought to have regard to the following:

- (a) the need to hold the hearing without unnecessary delay;
- (b) any special circumstances, including the urgency of the case or other cases on the list of cases;
- (c) the views expressed by the parties and the convenience of such place to the parties, their advocates and witnesses; and the need to administer substantive justice without undue regard to technicalities.

3.2 Open Court Proceedings

Rule 69 (1) of the EACJ Rules provides that All proceedings of the Court, including the pronouncement of the decision of the Court, shall be held in open court:- provided that on application by any party or on its own motion the Court may, for sufficient cause, order the proceedings to be held *in camera* which proceedings shall be recorded.

3.3 Conduct of Trials by Electronic Means

Rule 64 (3) provides that in appropriate cases the Court may conduct trials by electronic means. In such cases, the court may order that any hearing be conducted in whole or in part by means of a telephone conference call, video conferencing or any other form of electronic communication.

²⁸ See the attached Rules of the EACJ at Annexure 1.

²⁹ Rule 13 (1) EACJ Rules

³⁰ The payment of Court fees was abolished by the Court in November, 2012

³¹ Rule 60 (1)

³² Rule 59 (2)

3.4 Description of Pleadings

Rule 24 (1) of the EACJ Rules provides that a statement of reference should state:

- (a) the name, designation, address and where applicable the residence of the applicant;
- (b) the name, designation, address and where applicable the residence of the respondent;
- (c) the subject-matter of the reference and a summary of the points of law on which the reference is based;
- (d) where appropriate, the nature of any evidence to be offered in support; and
- (e) the relief sought by the applicant.

Rule 36(1) of the EACJ Rules provides for Annexures to pleadings which ought to be certified copies of any relevant document in support of the contentions contained in the pleading. A list of all documents annexed to the pleadings should also be furnished at the time the pleading is filed.³³

Rule 44 provides that all pleadings ought to be signed by the party or his advocate. Rule 45 provides for verification of pleadings while Rule 46 provides for circumstances in which pleadings may be struck out. Rules 47 to 50 deal with amendment to pleadings.

4. PROCEDURE FOR FILING AND CONSIDERATION BY THE COURT

4.1 Quorum of the Court

The quorum of the Court shall be three (3) or five (5) Judges, one of whom shall be the Principal Judge or Deputy Principal Judge:- provided that having regard to the public importance of the matter or to any conflict or other complexity in the law applicable, the Principal Judge or on application by any party, the Court may direct such matter to be heard and determined by a full bench.

4.2 Applications Before a Single Judge

The following interlocutory matters may be dealt with and determined by single Judge:-

- (a) applications for extension of time prescribed by these Rules or by the Court;
- (b) applications for an order for substituted service;
- (c) applications for examining a serving officer;
- (d) applications for leave to amend pleadings; and
- (e) applications for leave to lodge one or more supplementary affidavits under rules 51(6) and 53(2)

A party dissatisfied with a decision of a single Judge may, apply informally to the Judge at the time when the decision is given or by writing to the Registrar within seven (7) days after the decision of the Judge to have it varied, discharged or reversed by a Full Court.³⁴ At the hearing by the Full Court of an application previously decided by a single judge, no additional evidence shall be allowed.³⁵

4.3 Right to Begin

Rule 71 (1) provides that the claimant shall have the right to begin unless the respondent admits the facts alleged by the claimant and contends that either in point of law or on some additional facts alleged by the respondent the claimant is not entitled to any part of the relief he or she seeks, in which case the respondent shall have the right to begin. Rule 71 (2) provides that where there are several issues, and there is a dispute as to which party is to begin, the Court shall direct the party on which the greater burden of proof lies to begin.

4.4 Adjournments

Adjournments of cases are discouraged unless it is absolutely necessary. Without strict control, adjournments can be the cause of delay of justice. It is against this background that the hearing of cases continues from day to day until the end, unless the court finds it necessary to adjourn for reasons to be recorded.³⁶

³³ Rule 36(3)

³⁴ Rule 68 (3)

³⁵ Rule 68 (4)

³⁶ Rule 75 (1)

4.5 Consequences of Non - Attendance of the Parties

If all the parties or any of them fail to appear at the hearing, the court may proceed to dispose of the case in one of the following ways:

- i. Dismiss the claim or application - where neither party appears;³⁷
- ii. Dismiss the claim or application, but proceed with the Respondent's counter claim where only the Respondent but not the Claimant/ Applicant appears; ³⁸
- iii. Proceed with the case, but dismiss the counter claim where only the Claimant/ Applicant (but not the Respondent) appears;³⁹
- iv. Proceed to determine the dispute or dispute forthwith even if a party fails to produce evidence or to cause the attendance of its witnesses, or to perform any other act necessary to further the progress of the case;
- v. The above dismissals may subsequently be set aside and the status quo restored, if the court is satisfied, upon application, that the absent party was prevented by sufficient cause from appearing. ⁴¹

4.6 Witnesses and Experts

Rule 65(1) of the EACJ Rules provides the right to summon witnesses or to issue summons to any persons whose attendance is required either to give evidence or to produce documents. Rule 65 (2) provides that every witness summons should specify the time and place of attendance, and whether the attendance is required for the purpose of giving evidence or to produce a document, or for both purposes and should as well describe with reasonable accuracy the document required.

The Court may on its own motion summon any person to give evidence or to produce any document if in its opinion such evidence or document is essential for the just determination of any matter before it. ⁴² Rule 65 (4) provides that where a person summoned to give evidence or produce a document fails to appear or refuses to give evidence or to produce the document the Court may in its discretion impose upon the witness a pecuniary penalty not exceeding USD 2000.⁴³

4.7 Amicus Curiae Briefs

Rule 59 (1) of the EACJ Rules provides that at any stage of the proceedings, the Court may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to submit in writing any observation on any issue that the Court deems appropriate. Rule 59 (2) provides that for the purposes of sub-rule(1) above, leave to appear as amicus curiae may be granted by the President or Principal Judge, as the case may be upon request in writing detailing therein that person's interest in the matter.

5. JUDGMENT AND SENTENCE

5.1 Delivery of Judgment

Judgment is normally delivered within 60 days from the conclusion of the hearing. ⁴⁴ The court may give its judgment forthwith at the close of the hearing of the case; or subsequently on notice to the parties. ⁴⁵ Occasionally, the Court may deliver only the decision of the Court and leave reasons for the judgment to be given on a later date. Such a date is notified by the Registrar to the Parties. This normally happens when the time is too short for a comprehensive reasoned judgment, especially where an injunction or court decision is urgently required to avoid an empty decree.⁴⁶

Except for an order of a single judge, the Court gives one judgment signed by the judges who participated in the case. A judge dissenting is not required to sign the judgment, and may write a dissenting judgment.⁴⁷

³⁷ Rule 70

³⁸ Rule 61(2)

³⁹ Rule 61 (3)

⁴⁰ Rule 66(3)

⁴¹ Rule 61(2), 93), (4) & (6)

⁴² Rule 65(3)

⁴³ Rule 65 (4)

⁴⁴ Rule 68 (1)

⁴⁵ Rule 68 (2)

⁴⁶ Rule 68 (3)

⁴⁷ Rule 68 (4)

Judgments of the Court (including dissenting judgments) are sealed with the seal of the Court and deposited in the Registry. The Registrar provides the parties with certified copies of the judgment.⁴⁸

5.2 Contents of an Order

Decisions of the Court are embodied in an order. The order is dated with the date the decision was delivered; contains particulars of the case (e.g the parties, their lawyers/ agents, the facts, the issues for determination etc) and specifies clearly the decisions reached and the reliefs granted.⁴⁹

5.3 Execution and Enforcement of Judgments, Orders and Decisions

A Party wishing to execute an Order of the Court applies for an execution order using the standard Form 9 of the Second Schedule to the Court Rules⁵⁰ Execution of a judgment of the Court which imposes a pecuniary obligation on a person, is governed by the Rules of civil procedure in the Partner State in which the execution is to take place.⁵¹

The order for execution is appended to the copy of the judgment and verified by the Registrar. Thereupon, the party in whose favour execution is to take place, may initiate execution proceedings in the Partner State.⁵²

The Partner State's procedures determine who will be used to effect the recovery of the property.

5.4 Amendments of the Court's Judgments and Orders

The Court has the power to correct clerical or mathematical mistakes in its Judgments and Orders either on its own or upon application by any of the Parties or other interested persons.⁵³

6. APPEALS AND REVISION

6.1 When May A Decision Be Appealed?

An appeal from the judgment or any order of the First Instance Division shall lie to the Appellate Division on:

- points of law;
- grounds of lack of jurisdiction; or
- procedural irregularity.⁵⁴

A person desiring to appeal to the Appellate Division lodges a written notice in duplicate in the registry of the First Instance Division.⁵⁵

The notice should:

- be lodged within 30 days of the decision appealed against;⁵⁶
- state whether it is intended to appeal against the whole or only part of the decision;
- where it is intended to appeal against part only of the decision, specify the part complained of;
- state the address for service of the Appellant, and the names and addresses of all persons intended to be served with copies of the notice.⁵⁷

When an appeal lies only with leave or on a certificate that a point of law is involved, it is not necessary to obtain the leave or the certificate before lodging the notice of appeal.⁵⁸ Where it is intended to appeal against a decree or order, it is not necessary that the decree or order be extracted before lodging a notice of appeal.⁵⁹ A notice of appeal is made using standard Form B of the Seventh Schedule to the Court's Rules and is signed by the Appellant.⁶⁰

There are several steps to take into account when a party decides to appeal the Court's judgment. They include;

⁴⁸ Rule 68 (5)

⁴⁹ Rule 68 (5) and 69

⁵⁰ Rule 74(1)

⁵¹ Rule 74(2)

⁵² Rule 74(3)

⁵³ Rule 70

⁵⁴ Article 35A of the Treaty and Rule 77

⁵⁵ Rule 78 (1)

⁵⁶ Rule 78 (2)

⁵⁷ Rule 78 (3)

⁵⁸ Rule 78 (4)

⁵⁹ Rule 78 (5)

⁶⁰ Rule 78 (5)

i. Raising Preliminary objections in the Appellate division

A Respondent who intends to raise a preliminary objection to an appeal must give 7 days' written notice to the other parties of the grounds of that objection. The notice is given to the Court 7 days before the scheduling conference, and is served on all the parties to the appeal.⁶¹

ii. Presentations of the arguments in writing

A party to an appeal need not appear in person or by an advocate at the hearing of the appeal. He may opt to lodge (i.e file) in the appropriate Registry a written statement of his arguments supporting or opposing the appeal or the cross appeal, if any. Moreover, he must before or within 7 days after lodging his statement serve a copy of it on all the other Parties appearing in person or separately represented.⁶²

Such statement is accorded the same consideration as is given to oral arguments made at the hearing.⁶³

Every such statement is lodged:-

- By an Appellant, within 14 days after lodging his memorandum of appeal;
- By a Respondent, within 30 days after service on him of the memorandum and record of appeal.⁶⁴

iii. Filing a supplementary statement of appeal/ presentation of arguments in writing

An appellant who has lodged a statement may, if served with a notice of cross appeal; lodge a supplementary statement of his arguments opposing the cross appeal.⁶⁵ A party who lodges a statement cannot address the court at the hearing of the appeal except with leave of the Court.⁶⁶

iv. Scheduling Conference in the Appellate Division

A scheduling conference is held in the Appellate Division within 14 days after the close of pleadings or such other period as the President may direct. The purpose of the conference is to ascertain:

- points of agreement and disagreement between the Parties;
- whether legal arguments shall be written or oral, or both;
- the estimated length of the hearing; and
- any other matters the court deems necessary.

If the matter is to proceed to hearing, the Court fixes the hearing date.⁶⁷ Where all the parties opt to present their arguments in writing, the Court fixes the time for the parties to file their respective written arguments. The Court may also fix the date on which the parties shall appear before a full court to handle any other matter the court thinks necessary.⁶⁸

v. Hearing Notice

The Registrar gives all parties to an appeal at least 14 days' notice of the hearing date of an appeal; but it is not necessary to give that notice to any party with whose consent the hearing date was fixed.⁶⁹

vi. Quorum in the Appellate Division

The quorum in the appellate division is three judges, one of whom shall be the President or the Vice President. However, having regard to public importance of the matter in issue or to any conflict or other complexity in the applicable law, the President, or the Court may direct such matter to be heard and determined by the full bench of the Division.⁷⁰

The following *interlocutory* (i.e intervening) matters may be handled and determined by a single judge of the appellate division:

- application to extend any time prescribed by the Court Rules;
- application to extend the validity of a notification;
- application for substituted service;
- application for leave to amend a party's pleadings
- application for examining a serving officer;
- scheduling a conference.⁷¹

⁶¹ Rule 98

⁶² Rule 100 (1)

⁶³ Rule 106 (d)

⁶⁴ Rule 100 (2)

⁶⁵ Rule 100 (3)

⁶⁶ Rule 100 (4)

⁶⁷ Rule 99 (2)

⁶⁸ Rule 99 (3)

⁶⁹ Rule 101

⁷⁰ Rule 102

⁷¹ Rule 102 (2)

vii. Open Court hearings

Appeals are heard in open court – with the public allowed access (court space permitting and so long as the public observes orderly Court conduct).⁷² The presiding judge may, in exceptional circumstances direct that the public or any particular person or category of persons be excluded or removed from the Court. Nothing in all this prejudices the inherent power of the Court to hear proceedings *in camera*.⁷³

viii. Arguments at the hearing

Except with the Court's leave, at the hearing of an appeal –

- a party cannot argue that the decision of the First Instance Division should be reversed or varied on any other ground – except on the grounds specified in the memorandum of appeal or in a notice of cross appeal;⁷⁴
- a party cannot support the decision of the Court of the First Instance Division on any ground not relied on by that Court or specified in the notice given;⁷⁵
- a respondent cannot raise any objection to the competence of the appeal which might have been raised by application (under Rule 81 of the Court's Rules) to strike out the notice of appeal.⁷⁶

The Court does not allow appeal or cross appeal;

- on any ground not set forth in the memorandum of appeal or notice of cross appeal; or
- without affording the Respondent, or any person who in relation to that ground should have been made by a Respondent or the Appellant, as the case may be, an opportunity of being heard on that ground.⁷⁷

The arguments contained in a statement lodged with the court by a party who opts not to appear in person or by an advocate receive the same consideration as is afforded oral arguments advanced at the hearing of the appeal.⁷⁸

ix. Judgment on Appeal

The Appellate Division pronounces its judgment in open court, at the conclusion of the hearing or on a subsequent date notified by the Registrar to all parties to the appeal.⁷⁹

The judgment may be pronounced notwithstanding the absence of all or any of the judges who composed the Division. The judgment of any judge not present may be read by a judge or by the Registrar.⁸⁰ The Registrar sends a certified copy of the judgment to the First Instance Division.⁸⁰

6.2 Process for Instituting/ commencing an Appeal

The process of instituting an appeal in the Appellate Division of the EACJ by a person who is dissatisfied with a decision, order, or judgment of the First Instance Division, is governed by the Rules of Procedure of the EACJ (see current version of those Rules: dated 11 April 2013):

- (1) First, and foremost, you need to have a copy of the 'unsatisfactory' decision of the First Instance Division. You or your lawyers, will get one from the Registry of the EACJ (immediately or soon after the delivery of the decision –
- (2) If your dissatisfaction involves simple (non complex) matters – such as mere correction of arithmetical mistakes or accidental slips or omissions in the judgment, you may apply to the same Court to have appropriate corrections made in that judgment.⁸²
- (3) If your dissatisfaction is more substantial, requiring substantive review of the Court's judgment on the grounds – for instance of fraud, or obvious error, or discovery of "new" and "important" evidence (which could not be produced at the time of the judgment), then you or your lawyers may apply to the same First Instance Division to rehear your case afresh.⁸³
- (4) If your dissatisfaction is even more fundamental than (2) or (3) above, you may appeal the decision/judgment of the First Instance Division to the Appellate Division. But, you may do so only if that decision/judgment involves:

⁷² Rule 105 (1)

⁷³ Rule 105(3)

⁷⁴ Rule 106 (a)

⁷⁵ Rule 106 (a)

⁷⁶ Rule 106(b)

⁷⁷ Rule 106 (c)

⁷⁸ Rule 106 (d)

⁷⁹ Rule 109 (1)

⁸⁰ Rule 109 (2)

⁸¹ Rule 109 (3)

⁸² Rule 70

⁸³ Rule 72

- errors of law;
- lack of jurisdiction; or
- procedural irregularity.⁸⁴

(5) To prosecute your appeal successfully, you will be required to follow the following procedure:

- lodge (*i.e. file*) in the Registry of the Appellate Division, a written statement (called "Notice of Appeal") - using Form B of the Seventh Schedule to the Court's Rules of Procedure (copies available at the Court Registry). You are allowed **30 days** (from the date of the unsatisfactory decision/judgment) to lodge the Notice - in duplicate⁸⁵. If you run out of time, you may apply to the Court for extension of time;⁸⁶
- serve (*i.e. avail*) copies of your Notice of Appeal to all persons directly affected by the appeal. You must do so:
 - within **14 days** from the day that you filed the Notice in the Registry; and
 - file in the Registry an affidavit (*i.e. sworn statement of evidence*) of your hearing served all the other persons.⁸⁷
- if you are served a Notice of Appeal, you must within **14 days** lodge in the Appellate Registry a written statement of your address; serve it to the Appellant; and file in the Registry an affidavit of your having served the Appellant - use standard Form D of the Seventh Schedule to the Court's Rules of Procedure (copies available at the Court Registry);⁸⁸
- any person served with a Notice of Appeal may apply to the Court to strike out that Notice of Appeal (or the Appeal itself), if some essential step in the proceedings has been omitted, or has not been taken timeously;⁸⁹
- After effecting all the above, you will need to formally institute the Appeal itself. This is done under Rule 86 and 119 by lodging in the Appellate Registry:
 - five copies of the Memorandum of Appeal;
 - five copies of the Record of Appeal; and
 - security for the costs of the Appeal.

The prescribed time for instituting the Appeal is **30 days** from the date of filing your Notice of Appeal.⁹⁰ If you lodge the Notice of Appeal, but then fail to institute the substantive appeal within the prescribed time of **30 days**, you shall be deemed to have withdrawn your Notice of Appeal; and you may be liable to pay the costs (*i.e. expenses*) of to whom you served the Notice of Appeal;⁹¹

The Memorandum of Appeal [see Form C of the Seventh Schedule to the Court's Rules] is a concise statement of:

- the grounds (*i.e. reasons*) for your objection to the 'wrong' decision appealed; and
- the remedy or relief you wish the Court to order;⁹²

The Record of Appeal contains copies of the documents used during the proceedings, hearing and judgment of your case in the First Instance Division - notably, the following:

- the pleadings;
- the affidavits and all other documents of evidence used at the hearing;
- the judgment or order;
- the decree;
- the notice of appeal;
- the record of the proceedings of the First Instance;⁹³
- you must serve copies of your Memorandum of Appeal and Record of Appeal on the Respondents within 7 days after instituting the appeal;⁹⁴

⁸⁴ Article 35 A and Rule 77

⁸⁵ Rule 78

⁸⁶ Rule 82A

⁸⁷ Rule 79

⁸⁸ Rule 80

⁸⁹ Rule 81

⁹⁰ Rule 86

⁹¹ Rule 82

⁹² Rule 87

⁹³ Rule 88

⁹⁴ Rule 89

- if you are a Respondent, you may file in the Court [4 copies of] a Supplementary Record of Appeal if you feel that the Appellant's own Record of Appeal is defective or deficient for your side of the case. You must serve copies of your Supplementary Record on the Appellant and all the other Respondents.⁹⁵ Similarly, the Appellant too may file a Supplementary Record of Appeal and on all the Respondents.

6.3 Circumstances in Which Decisions May Be Revised

A party may apply to the Court to review its judgments or order.⁹⁷ The application for review should be based on the ground:

- that the party has discovered some new and important matter or evidence which was not within the Party's knowledge, or could not be produced, at the time of the judgment or order; or
- Of some mistake, fraud or error apparent (i.e obvious) on the face of the record.⁹⁸

An application for review of a judgment under Article 35 of the Treaty is made in accordance with Rule 72 of the Court Rules.

A Party, who desires to obtain a review of the judgment or order, may apply to the Court for such review on the following grounds:

- discovery of some new and important matter or evidence which, after the exercise of due diligence, was not within the Party's knowledge or could not be produced at the time of the judgment or order; or
- on account of some mistake, fraud or error apparent on the face of the record.⁹⁹

The Court grants an application for review only where the Applicant proves the grounds relied upon to the satisfaction of the Court.¹⁰⁰

When an application for review is granted, the Court may re-hear the case or make such other order as it thinks fit. A decision of the Court on an application for review is final.¹⁰¹

⁹⁵ Rule 90

⁹⁶ Rule 90 (3)

⁹⁷ Rule 72)

⁹⁸ Rule 72 (2)

⁹⁹ Rule 72 (2)

¹⁰⁰ Rule 72 (3)

¹⁰¹ Rule 72 (4) & (5)

ANNEXTURE ONE

THE EAST AFRICAN COURT OF JUSTICE RULES OF PROCEDURE 2019

The background features a large, abstract geometric design. It consists of several overlapping shapes in shades of blue and teal. A large, light blue shape is on the left, pointing towards the center. A darker blue shape is in the upper right, pointing towards the center. A teal shape is in the lower right, pointing towards the center. The bottom of the page is white.

RULES OF COURT

PART A

SECTION I: GENERAL	Rule 1. Citation and commencement 2. Case Management 3. Interpretation 4. Computation of time 5. Extension of time 6. Consolidation and stay of proceedings
SECTION II: REGISTRAR AND REGISTRY	7. Powers of the Registrar 8. Deputy and Assistant Registrars and Oath of Office 9. Registry and sub-registries 10. Maintenance of registers
SECTION III: DOCUMENTS	11. Preparation of documents 12. Rejection of documents 13. Documents lodged out of time 14. Hours of lodging documents 15. Change of address for service 16. Modes of service of documents 17. Return of service 18. Examination of serving officer
SECTION IV: APPEARANCE AND REPRESENTATION	19. Appearance and Representation 20. Change of advocate 21. Exclusion from proceedings
SECTION V: COURTSSESSIONS, VACATION AND HOLIDAYS	22. Courtsessions and vacations 23. Holidays

PART B: INSTITUTION OF PROCEEDINGS IN THE FIRST INSTANCE DIVISION

SECTION VI: PLEADINGS	24. References 25. Disputes between the Community and its employees 26. Representative action 27. Notification of statement of claim/reference 28. Transmission of notification 29. Validity of Notification 30. Substituted service 31. Response to reference 32. Defence and counter-claim 33. Particulars of address for service 34. Facts not evidence to be pleaded 35. Matters to be specifically pleaded 36. Annexures to pleadings 37. Departure 38. Preliminary Objections 39. Further and better Particulars 40. Admissions and denials 41. Denials by joinder of issues 42. Closure of pleadings 43. No filing after close of pleadings 44. Pleadings to be signed 45. Verification of pleadings 46. Striking out pleadings
SECTION VII: AMENDMENT OF PLEADINGS	47. General power to amend 48. Amendment of documents 49. Amendment without leave 50. Amendment with leave

SECTION VIII: APPLICATIONS	<ul style="list-style-type: none"> 51. Applications 52. Service of Notice of Motion 53. Affidavits in reply
SECTION IX: THIRD PARTY, INTERVENTION AND AMICUS CURIAE PROCEDURE	<ul style="list-style-type: none"> 54. Notice to third party 55. Filing and serving Third Party defence 56. Third Party directions 57. Cross claims 58. Applications for intervention 59. Amicus curiae
SECTION X: WITHDRAWAL AND DISCONTINUANCE	<ul style="list-style-type: none"> 60. Withdrawal and discontinuance 61. Compromise
SECTION XI: PRE-TRIAL PROCEEDINGS	<ul style="list-style-type: none"> 62. Scheduling conference 63. Recourse to alternative dispute resolution 64. Fixing the date and place of oral proceedings
SECTION XII WITNESSES	<ul style="list-style-type: none"> 65. Summoning witnesses 66. Expenses of witnesses 67. Commission to examine witnesses
SECTION XIII: PROCEEDINGS	<ul style="list-style-type: none"> 68. Quorum of the Court 69. Proceedings to be held in open Court 70. Hearing and consequence of non-attendance 71. Right to begin 72. Statement and production of evidence 73. Evidence to be given on Oath or affirmation 74. Taking and recording of evidence 75. Hearing and adjournments 76. List of authorities and copies of judgments to be referred to 77. Court deliberations
SECTION XIV: JUDGMENT AND ORDERS	<ul style="list-style-type: none"> 78. Pronouncement and contents of judgment 79. Embodiment and signing of decrees or orders 80. Correction of judgments and orders 81. Interpretation of judgments, rulings and orders 82. Review of judgment 83. Interim orders and directions 84. Execution of judgments
PART C: PROCEEDINGS IN APPELLATE DIVISION	
SECTION XV: APPEALS TO THE APPELLATE DIVISION	<ul style="list-style-type: none"> 85. Appeals to the Appellate Division 86. Stay of proceedings and of execution
SECTION XV: INSTITUTION OF APPEALS	<ul style="list-style-type: none"> 87. Grounds of appeal 88. Notice of Appeal 89. Service of notice of appeal 90. Respondent to give address for service 91. Application to strike out notice of appeal or appeal 92. Effect of failure to institute appeal 93. Where Notice of Appeal is lodged out of time 94. Form of application to Court 95. Supporting documents 96. Institution of appeals 97. Contents of memorandum of appeal 98. Contents of record of appeal 99. Service of memorandum and record of appeal 100. Amendment of record of appeal 101. Supplementary record 102. Notice of cross-appeal 103. Notice of grounds for affirming decision 104. Service of notice of cross-appeal or notice of grounds for affirming decision 105. Withdrawal of appeal 106. Rights of respondent when appeal is withdrawn 107. Withdrawal of cross-appeal or of grounds for affirming decision

	108. Death of party to appeal
SECTION XVII: HEARING OF APPEALS	109. Preliminary objection 110. Scheduling conference 111. Presentation of arguments in writing 112. Hearing Notice 113. Quorum in the Appellate Division 114. List of authorities and copies of Judgment to be referred 115. Hearing in open Court 116. Arguments at hearing 117. Non-appearance 118. Order of addresses 119. Judgment 120. General power of the Court 121. Certified copies 122. Interpretation of Court judgments 123. Review 124. Publication of judgements
SECTION XVIII: ADVISORY OPINION	125. Advisory opinion of the Court
SECTION XIX: CASE STATED	126. Preliminary rulings
PART D: COSTS	
SECTION XX: COSTS	127. Costs 128. Assessment of costs 129. Taxation of costs 130. Reference on taxation 131. Security for costs
PART E: MISCELLANEOUS PROVISIONS	
SECTION XXI: PLACES AND DATES OF COURT SESSIONS, CASE MANAGEMENT AND RECORDING SYSTEM AND TRANSITION PROVISION	132. Places and dates of Court sessions 133. Use of technology in Court proceedings 134. Electronic exchange of documents 135. Transitional provision
SCHEDULES AND FORMS	
FIRST SCHEDULE: JUDICIAL OATH OF THE DEPUTY REGISTRAR	
SECOND SCHEDULE: FORMS	Form 1: Notification Form 2: Affidavit of Service Form 3: Affidavit Form 4: Substituted Service by Advertisement Form 5: Third Party Notice Form 6: Notice of Date of Hearing Form 7: Summons to Witness Form 8: Oath or Affirmation Form 9: Execution of Judgments
THIRD SCHEDULE: TAXATION OF COSTS	
FORTH SCHEDULE: NOTICE OF MOTION	
FIFTH SCHEDULE: GUIDELINES FOR MEDIATION	
SIXTH SCHEDULE: PROCEDURE FOR A REFERENCE FOR PRELIMINARY RULING	
SEVENTH SCHEDULE: FORMS	Form A: Notice of Motion Form B: Notice of Appeal Form C: Memorandum of Appeal Form D: Notice of Address for Service Form E: Notice of Cross-Appeal Form F: Notice of Grounds for Affirming the Decision Form G: Certificate of Taxation of Costs
EIGHTH SCHEDULE: TAXATION OF COSTS	- Taxation of Costs - Scale of Costs

THE TREATY FOR THE ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY, 1999

THE EAST AFRICAN COURT OF JUSTICE RULES OF PROCEDURE

RULES OF THE COURT (MADE UNDER ARTICLE 42)

In the exercise of the powers conferred on the East African Court of Justice by Article 42 of the Treaty for the Establishment of the East African Community, the Court hereby makes the following revised rules of procedure.

PART A

SECTION I GENERAL

1.	(1) These Rules may be cited as "The East African Court of Justice Rules of Procedure, 2018" and shall come into force on such date as the President may appoint by notice in the Gazette. (2) Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders or give such directions as may be necessary for the ends of justice or to prevent abuse of the process of the Court.	Citation and commencement Inherent powers of the Court
2.	In conducting its business the Court may use Case Management Systems which may include the application of information technology.	Case Management System
3.	In these Rules words and expressions shall have the meanings assigned to them respectively in the Treaty, and unless the context otherwise requires:- "Advocate" means an advocate who is entitled to appear before a superior Court of any of the Partner States; "Agent" means a person who is duly appointed by a party to act for or in his or her behalf; "Amicus curiae" means a person who is not a party to a proceeding in the Court but who petitions the Court or is invited by the Court to file a brief in the proceeding because he has an interest in the subject-matter; "Appellant" means a party appealing from a decision, decree or order of the First Instance Division; "Appellate Division" means the Appellate Division of the Court provided for under Article 23 of the Treaty; "Assistant Registrar" means an officer of the Court performing duties of the Registrar or Deputy Registrar as may be assigned to him or her from time to time; "Counsel to the Community" means the Counsel to the Community provided for under Article 69 of the Treaty; "Court" means the East African Court of Justice established under the Treaty and includes a single Judge exercising any power vested in that Judge sitting alone; "Decree" means the formal expression of an adjudication, which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to any of the matters in controversy in the case and may be either preliminary or final; "Deputy Principal Judge" means the Deputy Principal Judge of the Court as designated under Article 24(5) of the Treaty; "Deputy Registrar" means the Deputy Registrar of the Court;	Interpretation

"First Instance Division" means the First Instance Division of the Court provided for under Article 23 of the Treaty;

"Gazette" means the East African Community Gazette;

"Intervener" means a Partner State, the Secretary General or a resident of a Partner State not a party to a case before the Court that is permitted to intervene in a case under Article 40 of the Treaty;

"Judge" means a Judge of the Court serving on the First Instance Division or the Appellate Division;

"Judgment" includes any decision, ruling or order made by the Court;

"Legal representative" is a person who in law represents the interests of the estate of the deceased party, and where a party sues or is sued in a representative character, the person on whom the estate revolves on the death of the party so suing or sued;

"National Court" means a Court of competent jurisdiction in a Partner State;

"National day" means such a day as designated by a Partner State;

"Notification" means a notice of claim issued by the Court in accordance with sub-rule (1) of Rule 27 of these Rules;

"Official holiday" includes the national days of the Partner States as well as New Year's Day, Idd el Fitr, Idd el Haj, Good Friday, Easter Monday, Labour Day, Christmas, Boxing Day and the EAC day;

"Order" means the formal expression of any decision of the Court which is not a decree;

"Party" means any person who is appearing in any proceedings either as an appellant, applicant, claimant, respondent, third party or intervener;

"Pleading" means any document lodged by or on behalf of a party relating to a matter before the Court in which the party sets forth or responds to allegations, claims, denials or defences;

"President" means the President of the Court as designated under Article 24(4) of the Treaty;

"Principal Judge" means Principal Judge of the Court as designated under Article 24(5) of the Treaty;

"Registrar" means the Registrar of the Court as appointed under Article 45 of the Treaty;

"Registry" means the Court registry or sub-registry;

"Representative" means a person that is empowered to stand or act for another;

"Respondent" in relation to an application, claim or reference, includes any person on whom a notice of motion or a copy of the statement of claim or reference has been served, and in relation to an appeal includes any person on whom an appeal or cross-appeal has been served;

"Rules" means these Rules as may from time to time be amended;

"Statement of Claim" means a party's written statement seeking the Court's determination of a dispute between the Community and an employee;

"Statement of Reference" means a party's written statement seeking the Court's determination of a reference brought before it under Articles 28, 29 and 30 of the Treaty;

"Treaty" means the Treaty for the Establishment of the East African Community;

"Vice-President" means the Vice-President of the Court as designated under Article 24(4) of the Treaty.

Computation of time

4. (1) Any period of time fixed by the Treaty, these Rules or by any order of the Court for doing any act shall be reckoned as follows:-

(a) where a period is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the period in question; and the period shall end with the expiry of the last day of the period;

(b) periods shall include official holidays, Sundays and Saturdays;

(c) periods shall not be suspended during the Court vacations;

(d) if a period would otherwise end on a Saturday, Sunday or an official holiday, it shall be extended until the end of the first following working day.

Extension of time

(2) For purposes of this Rule a declared public holiday in the Partner State shall be an official holiday in respect of that Partner State.

5. A Division of the Court may, for sufficient reason, extend the time limited by these Rules or by any decision of itself for the doing of any act authorised or required by these Rules, whether before or after the expiration of such time and whether before or after the doing of the act, and any reference in these Rules to any such time shall be construed as a reference to such time as so extended.

Consolidation and stay of proceedings

6. The Court may for sufficient reason order any two or more matters to be consolidated on such terms as it thinks just or may order them to be heard at the same time or one immediately after the other or may order any of them to be stayed until the determination of any other of them.

Powers of the Registrar

SECTION II REGISTRAR AND REGISTRY

7. (1) The Registrar shall be responsible for the acceptance and custody of all Court documents and for effecting service as provided for by these Rules.

(2) The Registrar shall have custody of the seal of the Court and shall be responsible for the records and the publications of the Court.

(3) The Registrar shall assist the Judges in all their official functions.

Deputy and Assistant Registrars

(4) The Registrar shall be responsible for all administrative work, management of staff and for the accounts and financial administration in accordance with the applicable Financial Rules and Regulations.

Delegation of Registrar's powers

8. (1) There shall be such number of Deputy and Assistant Registrars of the Court as the President may deem fit to establish.

Oath of Office

(2) The Registrar may delegate to the Deputy or Assistant Registrars any of his powers or functions under the provisions of these Rules.

Registry and sub-registries of the Court

(3) Every Deputy and Assistant Registrar shall, before embarking on his or her functions, take an oath of office set forth in the First Schedule of these Rules.

9. (1) The Registry of the Court shall be situate at the seat of the Court:-

Provided that where the Court is sitting or about to sit in any place other than the seat of the Court, then, for the purposes of any matter to be heard in that place, the Registry shall be deemed to be situate in that other place.

Maintenance of registers

(2) There shall be sub-registries of the Court at such places in the Partner States as the President may from time to time direct.

10. (1) There shall be kept in the Registry and in the sub-registries under the responsibility of the Registrar, registers in which all matters shall be entered.

(2) There shall be kept separate registers each for claims, references, advisory opinions, applications, preliminary rulings, arbitration, references on taxation, notices of appeal and appeals.

(3) All matters entered in the register shall be numbered serially for each succeeding year.

Consultation of the Registers, Judgments and Orders

(4) Whenever any document is lodged in the Registry or in a sub-registry in accordance with these Rules, the Registrar or other officer authorised by the Registrar, as the case may be, shall forthwith endorse the original showing the date and time when it is lodged and if a party so requests shall similarly endorse any copy submitted for that purpose.

(5) Entries in the register and endorsements made as provided for in sub-rule (4) shall be deemed authentic.

(6) The parties may inspect the registers, documents, record of proceedings, and any expert's report at the Registry, and obtain copies at their own expense provided that any other person having an interest in any matter before the Court may on payment of the appropriate fee inspect the register, documents, record of proceedings and expert's report and obtain copies of pleadings and certified copies of judgments and orders.

Preparation of documents

SECTION III DOCUMENTS

<p>11. (1) All documents prepared for use in the Court shall be in the official language of the Court, on paper of durable quality, clear and easily legible and may be produced electronically or by printing, lithography, stencil, duplicating, photography, xerography, typewriting or any combination of these media.</p> <p>(2) The pages of every document shall be numbered consecutively and shall be bound in book form.</p> <p>(3) In all pleadings and all documents annexed thereto, the tenth line of each page shall be indicated on the right hand side.</p> <p>(4) Every pleading shall be divided into paragraphs numbered consecutively, each allegation being so far as appropriate contained in a separate paragraph.</p> <p>(5) Dates, sums and other numbers shall be expressed in figures and not words.</p> <p>(6) Every pleading lodged in the Court shall indicate the address of service of the party making it and be signed by that party or by the party's advocate or a person entitled under Rule 19 to represent the party.</p> <p>(7) Any document submitted to the Court that has been translated from a language other than the official language of the Court shall be accompanied by a certificate of translation.</p>	<p>Rejecting documents</p> <p>Document lodged out of time</p> <p>Hours of lodging documents</p> <p>Change of address for service</p>
<p>12. The Registrar may reject any document or pleading which does not comply with the requirements of Rules 11, 24, 25, 31, 32, 54 or 58.</p>	<p>Mode of service of documents</p>
<p>13. (1) The Registrar shall not reject any document or pleading on the ground that it is lodged out of time but shall mark it "Lodged out of time" and inform the person lodging it accordingly.</p> <p>(2) When a document or pleading is accepted out of time at a sub-registry, the receiving officer shall inform the Registrar of that fact promptly.</p>	
<p>14. Unless the President directs otherwise, the registry and all sub-registries of the Court shall be open for the receipt of documents lodged under the provisions of these Rules between 8:30 a.m. to 5:00 p.m. of each working day provided where the filing is electronic it shall be between 12:00a.m. to 11:59p.m.</p>	
<p>15. A person who has given an address for service may, at any time, change his or her address for service by lodging a notice of such change in the registry and serving copies of the notice on all persons who have been served with the previous address.</p>	
<p>16. (1) Where in these Rules, a document is required to be served on any person service of the document shall be made by tendering to that person the original thereof and requiring him or her to endorse the duplicate thereof acknowledging service and where the Court is satisfied that the person refused to endorse the document, it may declare that the document was duly served.</p> <p>(2) A document may be served on the party's advocate, recognized agent and/or representative.</p> <p>(3) Service on the Government of a Partner State shall be effected by delivering or tendering the document to the Attorney General of the Partner State or an officer authorized to accept service on behalf of the Attorney General.</p> <p>(4) Service on the Community shall be effected by delivering or tendering the document to the Secretary General of the Community or an officer authorized to accept service on behalf of the Secretary General.</p> <p>(5) Service on a body corporate shall be effected by delivering or tendering the document to the Chief Executive Officer, Director, General Manager or Company Secretary, or an officer authorized to accept service in that behalf.</p> <p>(6) Service on a person who is confined in prison, if unrepresented, the original and a copy of the summons shall be delivered or sent to the officer in-charge of the prison for service on that person.</p>	<p>Return of service</p> <p>Examination of serving officer</p>

(7) Service on a member of the armed forces of any of the Partner States shall be effected by sending the original and copy of the summons to his commanding officer.

(8) (a) Notwithstanding other means of service herein, service may also be effected electronically by way of e-mail or other means approved by the Court using the addresses previously given by the parties.

(b) A copy of that service shall be simultaneously copied to the Court.

(c) For avoidance of doubt, a delivery status report shall be deemed as proof of service.

Appearance and representation

17. The serving officer, or a party to a case before the Court in all cases in which a document has been served, shall swear an affidavit of service stating the time when and the manner in which the document was served and the name and address of the person (if any) who identified the person served and witnessed the service. The affidavit of service shall be in accordance with Form 2 of the Second Schedule of these Rules with such modifications as circumstances may require.

18. On any allegation that a document has not been properly served, the Court may examine the serving officer or a party to a case before the Court on oath or cause him or her to be examined by a competent Court of a Partner State, and may make such further inquiry as it thinks fit; and shall either declare that the document has been duly served or order such service as it thinks fit.

SECTION IV APPEARANCE AND REPRESENTATION

19. (1) A party to any proceedings in the Court may appear in person or by an agent and/or an advocate duly appointed to act on his/her behalf.

Death of a party

(2) There cognized agent of parties by whom such appearances, applications, and/or acts may be made or done are persons holding powers of attorney authorizing them to make and/or do such appearances, applications or acts on behalf of such parties.

Change of advocates

(3) Such agents shall for purpose of these Rules file with the Court a notice of appointment.

(4) The Counsel to the Community may appear and represent the Community or any of its institutions in any matter where the Community or any of its institutions is a party or where the Counsel thinks that such appearance is desirable.

(5) A corporation or company may either appear by its director, manager or Company Secretary, who is appointed by a resolution under the seal of the corporation or the company, or may be represented by an advocate.

(6) A person under legal disability may appear by a guardian *ad litem*, or next friend as the case may be and may be represented by an advocate.

(7) (a) The advocate for a party shall file with the Registrar a current practising certificate or document that he or she is entitled to appear before a superior Court of a Partner State.

Exclusion from proceedings

(b) Advocates shall appear before the Court in their national professional attire.

(8) (a) Subject to any law by which any right or cause of action is extinguished by the death of a person, proceedings before the Court shall not abate upon the death of any party.

(b) Where the death of a party occurs during the continuance of proceeding, the court may upon formal application cause his/her legal representative to take over the proceedings.

(c) Where no legal representative is appointed within a reasonable time, the surviving party may, with leave of the Court, proceed *ex parte*, in the case of a deceased respondent or dismiss the matter in the case of a deceased applicant/claimant.

Court sessions and vacations

20. (1) A party may, change its advocate and shall within seven (7) days of the change, lodge with the Registrar notice of the change and shall serve a copy of such notice on each party.

(2) When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, where judgment has been passed, such change or intention to act in person shall not be effected without an order of the Court upon an application with notice to the advocate on record.

Holidays

(3) Where a party to any matter changes his advocate or, having been represented by an advocate, decides to act in person or having acted in person, engages an advocate, he shall, as soon as practicable, lodge in the Registry a notice of change and shall serve a copy of such notice on the other party or on every other party appearing in person or separately represented, as the case may be.

(4) An advocate who desires to cease acting for any party in any matter, shall notify the Registrar in writing of his intention to cease acting, and such advocate shall be deemed to have ceased to act for such party upon the filing of proof of service on the other party.

References

21. (1) If the Court considers that the conduct of an agent, advocate or representative before the Court is incompatible with the dignity of the Court or with the requirements of the proper administration of justice, or that such agent, advocate or representative is using his rights for purposes other than those for which they were granted, it shall inform the person concerned. If the Court informs the competent authorities to whom the person concerned is answerable, a copy of the letter sent to those authorities shall be forwarded to the person concerned.

(2) On the same grounds, the Court may at any time having heard the person concerned, decide to exclude an agent, advocate or representative from the proceedings by order. The order shall have immediate effect.

(3) Where an agent, advocate or representative is excluded from the proceedings, the proceedings shall be suspended for a period fixed by the Court in order to allow the party concerned to appoint another agent or advocate.

SECTION V COURT SESSIONS, VACATIONS AND HOLIDAYS

22. (1) The Court shall have a short and long vacation in every year.

**Disputes between
the Community
and its employees**

(2) The President shall determine and publish in the Gazette the dates of Court vacation at the commencement of each year.

(3) No business shall be conducted during Court vacation, except the delivery of judgment and taxation of bill of costs but the President or Principal Judge may upon an application, which must be accompanied by a certificate of urgency direct that a matter be heard during Court vacation.

23. The official holidays of the Community shall be the official holidays of the Court.

**Representative
action**

PART B INSTITUTION OF PROCEEDINGS IN THE FIRST INSTANCE DIVISION

SECTION VI

PLEADINGS

24. (1) A reference by a Partner State, the Secretary General or any person under Articles 28, 29, 30 respectively of the Treaty shall be instituted by lodging in the Court a statement of reference.

(2) A statement of reference under sub-rule (1) shall state:-

(a) the name, designation, address and where applicable the residence of the applicant;

(b) the name, designation, address and where applicable the residence of the respondent;

(c) the subject-matter of the reference and a summary of the points of law on which the reference is based;

(d) where appropriate, the nature of any evidence to be offered in support; and

(e) the relief sought by the applicant.

**Notification of
statement of
claim/reference**

**Transmission of
notification**

(3) Where the reference seeks to challenge the legality of an Act, regulation, directive, decision or action, the statement of reference shall be accompanied by an affidavit.

(4) Where the reference is made by a body corporate the statement of reference shall be accompanied by documentary evidence of the existence in law of that body corporate.

(5) The Applicant shall serve on every respondent named in the reference, and where applicable on the Secretary General, a notification of the reference and a copy of the statement of reference and shall file, in the appropriate Registry the affidavit of service within seven (7) days of the date of service.

25. (1) A claim for determination of a dispute between the Community and its employees under Article 31 of the Treaty shall be instituted by presenting to the Court a statement of claim.

(2) A statement of claim shall state:-

(a) the name, designation, address and where applicable the residence of the claimant;

(b) the designation, name, address and where applicable the residence of the respondent;

(c) a concise statement of facts on which the claim is based and of the law applicable; and

(d) the orders sought.

Validity of Notification

26. (1) Where numerous persons have the same interest in any claim or reference, the proceedings may be commenced and, unless the Court orders otherwise, continued by or against any one or more of them or on behalf of or of the benefit of the persons so interested.

(2) The parties shall in such cases give notice of such claim or reference to all such persons either by personal service or where from the number of persons or any other cause such service is not reasonably practicable by public advertisement as the Court in each case may direct.

(3) Any person on whose behalf or for whose interest a claim or reference is instituted or defended may apply to the Court to be made a party in such case.

27. (1) Upon the filing of a claim or reference, the Registrar shall issue a notification in accordance with Form 1 of the Second Schedule requiring the respondent to file a statement of defence or response.

(2) A notification shall be signed by the Registrar or an officer authorized by the Registrar in that behalf and shall be sealed with the seal of the Court.

(3) A notification shall be accompanied by a copy of the statement of claim or reference.

Response to reference

28. (1) Where the Court has issued a notification to a respondent, it may be delivered for service:-

(a) to a sub-registry of the Court established in accordance with sub-rule 2 of Rule 9;

(b) to any person for the time being duly authorised by the Court or by the High Court or a Court of equivalent jurisdiction of a Partner State to effect service;

(c) to an advocate; or

(d) to the High Court or a Court of equivalent jurisdiction in the Partner State where the respondent resides with the request to effect the service.

(2) A national Court to which a request for service of notification is sent under sub-rule (1) (d) may upon receipt thereof proceed as if the notification had been issued by such national Court, and shall then return the notification to the Court, together with the record if any of its proceedings with regard thereto.

(3) No objection may be made to the service of a notification on the ground that the person who served the notification either was not authorized so to do or exceeded or failed to comply with his or her authority in any way.

Defence and counter-claim

29. (1) A notification shall be valid for a period of three (3) months from the date of issue.

(2) Where a notification has not been served on a respondent the Registrar may by request extend the period of validity of the notification from time to time if satisfied it is just to do so.

Particulars of address for service

(3) An application for an extension order under sub-rule (2) shall be supported by an affidavit setting out the attempts to serve and their result, and the extension may be made without the advocate or claimant appearing in person.

(4) Where after expiry of six (6) months from the issue of notification no application for extension of notification has been made under sub-rule (2) the Court may without notice dismiss the claim or reference.

Facts not evidence to be pleaded

- 30.** (1) Where the Court is satisfied that for any reason the notification cannot be served in accordance with any of the preceding Rules, the Court may, on application, direct the notification to be served by affixing a copy thereof in some conspicuous place in the Court premises, and also upon some conspicuous part of the premises, if any, in which the respondent is known to have last resided or carried on business or worked for gain, or by advertisement in newspapers or in such other manner as the Court thinks fit.
- (2) Substituted service under sub-rule (1) shall be as effectual as if service had been made on the respondent personally.
- (3) Unless otherwise directed, where substituted service of notification is by advertisement, the advertisement shall be in accordance with Form 4 in the Second Schedule with such variations as the circumstances require.

Matters to be specifically pleaded

- 31.** (1) The respondent shall within forty-five (45) days after being served with a notification of the reference or statement of claim file and serve upon the applicant a response stating the:-
- (a) name and address of the respondent;
 - (b) concise statement of facts and law relied on;
 - (c) nature of evidence in support where appropriate; and
 - (d) reliefs sought by the respondent.

(2) Within forty-five (45) days after service under sub-rule (1) the applicant may file and serve upon the respondent a reply to the response. A reply shall not repeat the party's contentions but shall be directed to bringing out the issues that still divide them.

Annexures to pleadings

- 32.** (1) Within 30 days after being served with notification of the statement of claim, the respondent shall file a statement of defence with or without a counter-claim and serve a copy of it on the claimant.
- (2) A Statement of Defence shall state the:-
- (a) name and address of the respondent;
 - (b) concise statement of facts and law relied on;
 - (c) nature of any evidence in support where appropriate; and
 - (d) order sought by the respondent.
- (3) A respondent who desires to make a counter-claim shall add it to the statement of defence. A counter-claim shall contain:-
- (a) an admission or denial of the facts stated in the claim;
 - (b) any additional facts if necessary and the law relied on; and
 - (c) the order sought.

Departure

Preliminary Objections

Further and better Particulars

- 33.** The address for service referred to under Rules 24,25,31 and 32above shall contain the following particulars:-
- (a) the full names of the parties and their advocates, if any;
 - (b) the description of the place of residence of the parties including the street name, e-mail address, fax number, telephone number and post office box.

Admissions and denials

- 34.** (1) Subject to the provisions of this Rule and Rules 37, 38 and 39, every pleading shall contain a concise statement of material facts upon which the party's claim or defence is based not the evidence by which those facts are to be proved.
- (2) Without prejudice to sub-rule (1), the effect of any document or the purport of any conversation referred to in the pleading shall, if material, be briefly stated, but the precise words of the document or conversation shall not be stated, except in so far as those words are themselves material.
- (3) A party need not plead any fact if it is presumed by law to be true or the burden of disproving it lies on the other party, unless the other party has specifically denied that fact.

Denials by joinder of issues

<p>35. (1) Every pleading shall contain the necessary particulars of any claim, defence or other matter pleaded and without prejudice to the generality of the foregoing shall include:-</p> <p>(a) particulars of any misrepresentation, fraud, negligence, breach of trust, wilful default or undue influence on which the party pleading relies; and</p> <p>(b) where a party pleading alleges any condition of the mind of any person, such as disorder or disability of mind, malice, fraudulent intention or other condition of the mind except knowledge, particulars of the facts on which the party relies.</p> <p>(2) A party shall plead every matter which:-</p> <p>(a) is alleged to make the pleading of the opposite party not maintainable; or</p> <p>(b) if not specifically pleaded, would take the opposite party by surprise; or</p> <p>(c) raises issues of fact not arising out of the preceding pleading.</p> <p>(3) Subject to Rules 42 and 47, a party may in any pleading plead any matter which has arisen at any time, whether before or since the filing of the reference or statement of claim.</p>	<p>Closure of pleadings</p> <p>No filing after close of pleadings</p>
<p>36. (1) There shall be annexed to the original of every pleading certified copies of any relevant document in support of the contentions contained in the pleading.</p> <p>(2) If only parts of the documents are relevant, only such certified extracts as are necessary for the purpose of the pleading in question or for identifying the document need be annexed.</p> <p>(3) A list of all documents annexed to a pleading shall be furnished at the time the pleading is filed.</p>	<p>Pleadings to be signed</p>
<p>37. (1) No party may, in any pleading, make an allegation of fact, or raise any new ground of claim, inconsistent with that party's previous pleading in the same case.</p> <p>(2) Sub-rule (1) shall not prejudice the right of a party to amend or apply for leave to amend any previous pleading.</p>	<p>Verification of pleadings</p>
<p>38. (1) A party may by its pleading raise a point of preliminary objection.</p> <p>(2) Where a respondent intends to raise a preliminary objection he shall, before the Scheduling Conference under Rule 62 of these Rules, give a not less than seven (7) days written notice of the preliminary objection to the Court and to the other parties stating specifically the nature and grounds of that objection.</p> <p>(3) Nothing in sub rule (2) shall prevent the Court for sufficient reason from entertaining a preliminary objection otherwise raised.</p>	<p>Striking out pleadings</p>
<p>39. (1) The Court may order a party to supply to any other party further and better particulars of any application, claim, defence or other matter stated in its pleading, and the order may be made on such terms as the Court thinks just.</p> <p>(2) An order under this Rule shall not be made before the filing of the defence unless the order is necessary or desirable to enable the respondent to plead or for some other special reason.</p>	<p>General power to amend</p>
<p>40. (1) Any allegation of fact made by a party in a pleading shall be deemed to be admitted by the opposite party unless it is denied by the opposing party in the pleading.</p> <p>(2) A denial may be made either by specific denial or by a statement of non-admission and either expressly or by necessary implication.</p> <p>(3) Every allegation of fact made in a pleading which is not admitted by the opposite party shall be specifically denied by that party; and a general denial or a general statement of non-admission of such allegation shall not be a sufficient denial.</p>	<p>Amendment of documents</p>
<p>41. (1) If there is no reply to a response or defence, there is a joinder of issues.</p> <p>(2) Subject to sub-rule (3):-</p> <p>(a) there is, at the close of pleadings, a joinder of issues on the pleading last filed; and</p> <p>(b) a party may, in his or her pleading, expressly join issue on the immediately preceding pleading.</p> <p>(3) There can be no joinder of issues on an application, claim or counter-claim.</p>	<p>Amendment without leave</p> <p>Amendment with leave</p>

(4) A joinder of issues operates as a denial of every material, allegation of fact made in the pleading in question except what is stated to be admitted.

42. The pleadings, in any case, shall be closed fourteen (14) days after service of the reply, or, if no reply is served, fifteen (15) days after service of the response or defence or the defence to a counterclaim.

43. (1) After the close of the written proceedings, no further documents may be filed to the Court by either party except with leave of the Court.

(2) The party desiring to produce a document after closure of pleadings shall deposit, at the registry, the original or a certified copy thereof and shall be responsible for serving a copy thereof to the other party and shall file a return of service in the registry. The other party shall be held to have given its consent if it does not lodge an objection to the production of the document within seven (7) days of service.

(3) In the event of objection, the Court may, after hearing the parties, authorize production of the document if it considers production necessary.

(4) If a new document is produced under this Rule, the other party shall have an opportunity of commenting upon it and of submitting documents in support of its comments.

(5) No party may, during the oral proceedings, refer to the contents of any document which was not produced as part of the written proceedings or in accordance with this Rule.

(6) The application of this Rule shall not in itself constitute a ground for delaying the opening or the course of the oral proceedings.

44. Every pleading shall be signed by the party or his advocate, if any:-

provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleadings, it may be signed by any person duly authorized by him to sign the same or to institute the proceeding or defend on his behalf and shall state the date on which and the place it was signed.

Applications

Ex parte orders

45. Every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the claim or reference.

46. (1) The Court may, on application of any party, strikeout or expunge all or part of a pleading or other document, with or without leave to amend, on the ground that the pleading or other document:-

(a) may prejudice or delay the fair trial of the case; or

(b) is scandalous, frivolous or vexatious; or

(c) is an abuse of the process of the Court.

(2) An application under this Rule shall state concisely the grounds on which it is made.

SECTION VII

AMENDMENT OF PLEADINGS

47. For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any pleading, a party may amend its pleading:-

(a) without leave of the Court, before the close of pleadings;

(b) with the consent of all parties, and where a person is to be added or substituted as a party, that person's consent; or

(c) with leave of the Court.

48. (1) A party entitled or given leave to amend a pleading may amend the original document itself or lodge an amended version of the document.

(2) The amendment shall be by:-

(a) striking through the words or figures to be deleted in red while they remain legible; and/or

(b) writing the words or figures to be added in red and underlining the same.

**Service of
Notice of
motion
Affidavits in
reply**

- 49.** (1) A party that amends its pleading under paragraph (a) or (b) of Rule 47, shall lodge the original of the amended version of the pleading in the registry, and shall forthwith serve a copy thereof on every other party.
- (2) Where a party is served with an amended pleading, after it has filed its answer it may, without leave of the Court, amend its own answer to the pleading which is being amended, and shall lodge it in the registry within fourteen (14) days after being so served.
- 50.** (1) The Court may, at any stage of the proceedings, allow any party to amend its pleadings in such manner as it may direct and on such terms as to costs or otherwise as may be just.
- (2) The Court may, in the following circumstances, grant such leave to amend notwithstanding that any relevant period of limitation current at the date of instituting the case has expired, if it thinks it is just so to do:-
- (a) where the amendment is to correct the name of a party even if it has the effect of substituting a new party, if the Court is satisfied that the mistake sought to be corrected was a genuine mistake;
- (b) where the amendment is to alter the capacity in which the party is or is made party to the proceedings, if the altered capacity is one which that party could have been or been made party at the institution of the proceedings; or
- (c) where the amendment adds or substitutes a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed by the party seeking leave in the same case.
- (3) Whenever a formal application is made to the Court for leave to amend any pleading, the amendment for which leave is sought shall be set out in writing, lodged with the Registrar and served on the opposite party before the hearing of the application.
- (4) Where the Court grants leave for the amendment of any pleading, the amendment shall be made or be lodged within the time specified by the Court and if no time is so specified then within fourteen (14) days of the granting of leave.
- (5) A party amending a pleading shall highlight any words or figures added to the original.
- (6) Every pleading and other document amended under this Part shall be endorsed with the date of the amendment and either the date of the order allowing the amendment or, if made without leave, the number of the Rule in pursuance of which the amendment was made.

Notice to third party

Filing and serving 3rd party defence

SECTION VIII

APPLICATIONS

- 51.** (1) Subject to sub-rule (4) of this Rule, all applications to the Court shall be by notice of motion, which shall state the grounds of the application.
- (2) No application shall be heard without notice to the parties affected by the application:-
- Provided, however, that if the Court is satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable injustice, may hear the application and make any *ex parte* order upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court deems just.
- (3) Upon making an *ex parte* order the Court shall set down the application for hearing inter partes within thirty (30) days of the *ex parte* order.
- (4) A notice of motion shall be substantially in the format provided in the Fourth Schedule.
- (5) Every formal application to the Court shall be supported by one or more affidavits of the applicant or of some other person or persons having knowledge of the facts, in accordance with Form 3 of the Second Schedule.
- (6) An applicant may, with the leave of the Court or with the consent of the other party, lodge one or more supplementary affidavits.
- (7) The provisions of this rule shall not apply to:-
- (a) applications made in the course of a hearing, which may be made informally; or

Default by third party

Third party directions

Cross claims

(b) applications made by consent of all parties, which may be made by a letter.

(8) The Court may on application by the applicant for sufficient reason before the hearing, grant leave for amendment of the notice of motion on such terms as it deems fit.

52. (1) The applicant shall serve the notice of motion and copies of all affidavits on all affected parties not less than fourteen (14) days before the hearing.

(2) Rules 16, 17 and 18 shall apply with necessary modifications to service of notice of motion.

53. (1) Any person served with a notice of motion amended notice of motion under Rule 52 may lodge one or more affidavits in reply in not less than seven (7) days before the day of hearing and shall as soon as practicable serve a copy or copies thereof on the applicant.

(2) Any such person may, with the leave of the Court or with the consent of the applicant, lodge one or more supplementary affidavits in accordance with Form 3 of the Second Schedule.

Application for intervention

SECTION IX

THIRD PARTY, INTERVENTION AND AMICUS CURIAE PROCEDURE

54. (1) Where a respondent claims as against any other person not already a party to the claim or reference (hereinafter called the third party):-

(a) any contribution or indemnity; or

(b) any relief or remedy relating to or connected with the original subject-matter of the claim or reference and substantially the same as some relief or remedy claimed by the applicant or claimant; or

(c) that any question or issue relating to or connected with the said subject-matter is substantially the same question or issue arising between the claimant and the respondent and should properly be determined not only as between the applicant or claimant and the respondent but also as between the applicant or claimant and respondent and the third party or between any or either of them (the respondent) he/she may, with leave of the Court, issue a notice (hereinafter called a third party notice) to that effect.

(2) The application for leave to issue third party notice shall be made ex parte by notice of motion supported by one or more affidavits.

(3) A copy of such third party notice shall be filed and served on the third party in accordance with the Rules relating to the service of a notification.

(4) The notice shall state the nature and grounds of the claim or reference and shall, unless otherwise ordered by the Court, be filed within the time limited for filing the response, and shall be in accordance with Form 5 in the Second Schedule with such variations as circumstances require and the same third party notice shall be served with a copy of the claim or reference.

(5) A third party who has as against another person a claim referred to in sub-rule (1) may similarly apply to the Court for leave to issue a notice to such other person. The provisions of the preceding sub-rules shall also apply and the expressions "third party notice" and "third party" shall respectively apply to include every notice so issued and every person served with such notice.

(6) The provisions of sub-rule (4) shall also apply to any subsequent person made a party to the claim or reference.

Amicus Curiae

Withdrawal and discontinuance

Compromise

55. (1) A third party intending to dispute a claim or reference shall, within thirty (30) days after being served with the third party notice, file and serve upon the applicant/claimant and respondent a statement of defence stating if it disputes the original claim by the claimant or applicant or its own liability to the party who issued the third party notice or both.

(2) A third party who does not file a response or defence within the prescribed period, shall be deemed to admit the validity of the reference or claim against the respondent and its own liability to contribute or indemnify the respondent as the case may be to the extent claimed in the third party notice.

Scheduling Conference

(3) Where a third party makes default in filing a response or defence, or in delivering any pleading and the respondent giving the notice suffers judgment by default, such respondent shall be entitled, after causing satisfaction of the judgment against himself to be entered upon the record, to judgment against the third party to the extent claimed in the third party notice. The Court may upon the application of the respondent pass such judgment against the third party before such respondent has satisfied the judgment against him or her:

Provided that it shall be lawful for the Court on sufficient cause shown to set aside or vary any judgment passed under this Rule upon such terms as may seem just.

<p>56. Where a third party files a response or defence pursuant to the third-party notice, the Court shall on application of an applicant or claimant, or respondent or third party or on its own motion fix a date for the giving of directions and the Court may on such a date, if satisfied that there is a proper question to be tried as to the liability of the third party, order the question of such liability as between the third party and the respondent giving the notice, to be tried in such manner, at or after the trial of the case, as the Court may direct; and, if not so satisfied, may pass such judgment or make such order as the nature of the case may require.</p>	<p>Where parties fail to agree</p> <p>Framing of issues</p>
<p>57. (1) A respondent who desires to claim against a co-respondent:-</p> <ul style="list-style-type: none">(a) to be entitled to contribution or indemnity; or(b) to be entitled to any relief or remedy relating to or connected with the original subject-matter of the action which is substantially the same as some relief or remedy claimed by the claimant; or(c) that any question or issue relating to or connected with the said subject-matter is substantially the same as some question or issue arising between the claimant and the respondent and should properly be determined not only as between the claimant and the respondent but as between the claimant and the respondent and such other person or between any or either of them:- <p>may, without leave of the Court, issue and serve on such other person a notice making such claim or specifying such question or issue.</p> <p>(2) The determination of such claim, question or issue shall follow the same procedure as if such other person were a third party under this Part.</p> <p>(3) Nothing contained in this Rule shall operate or be construed so as to prejudice the rights of the claimant against any respondent to the action.</p>	<p>Powers to amend and strike out issues</p> <p>Recourse to Alternative Dispute Resolution</p>
<p>58. (1) An application for leave to intervene under Article 40 of the treaty shall be by notice of motion.</p> <p>(2) An application under sub-rule (1) shall contain:-</p> <ul style="list-style-type: none">(a) a description of the parties;(b) the name and address of the intervener as required under rule 33;(c) a description of the claim or reference;(d) the order in respect of which the intervener is applying for leave to intervene; and(e) a statement of the intervener's interest in the result of the case. <p>(3) The applicant shall serve on each party who shall, within fourteen (14) days, file and serve a response.</p> <p>(4) If the Court is satisfied that the application is justified, it shall allow the intervention and fix a time within which the intervener may submit a statement of intervention and the Registrar shall supply to the intervener copies of the pleadings.</p> <p>(5) The intervener shall accept the case as it is at the time of intervention.</p> <p>(6) Where a request to intervene is granted, the decision of the Court in respect of the dispute or reference shall be binding upon the intervener in respect of the intervention.</p>	<p>Fixing the date and place for oral proceedings</p>
<p>59. (1) At any stage of the proceedings, the Court may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to submit in writing any observation on any issue that the Court deems appropriate.</p>	<p>Trial by electronic means</p>

(2) For the purposes of sub-rule(1) above, leave to appear as *amicus curiae* may be granted by the President or Principal Judge, as the case may be upon request in writing detailing therein that person's interest in the matter.

SECTION X

WITHDRAWAL AND DISCONTINUANCE

60. (1) An applicant or a claimant may discontinue its reference, claim or application against all or any of the respondents or may withdraw any part of the application, reference or claim; and the respondent may in similar manner discontinue or withdraw its counter-claim:-

(a) without leave of the Court at any time before a date for opening oral proceedings is fixed, by lodging in the registry a notice to that effect and serving a copy thereof on all the respondents; or

(b) with leave of the Court or with written consent of all parties after a date for opening oral proceedings has been fixed.

(2) The parties may agree in writing the terms of any such withdrawal or discontinuance and lodge such agreement in the registry and in the absence of such agreement the Court may make such orders as to costs or the filing of any other application, claim or reference or otherwise as the Court considers just.

Summoning witnesses

61. Where it is proved to the satisfaction of the Court that a dispute or reference has been adjusted wholly or in part by any lawful agreement or compromise, the Court shall, on the application of any party, direct that such agreement, compromise or satisfaction be recorded and shall enter judgment accordingly.

Expenses of witnesses

SECTION XI

PRE-TRIAL PROCEEDINGS

62. (1) The Court shall, within fourteen (14) days after the close of pleadings or such other period as the Principal Judge may direct, hold a Scheduling Conference to ascertain:-

(a) points of agreement and disagreement;

(b) the possibility of mediation, conciliation or any other form of settlement;

(c) whether evidence is to be oral or by affidavit and the time limit within which such affidavits are to be filed and served;

(d) whether legal arguments shall be written, oral, or both;

(e) consolidation of references, claims and/or applications;

(f) the estimated length of the hearing; and

(g) any other matters as the Court may deem necessary.

(2) Before the Scheduling Conference, the parties shall as much as possible exchange any documents that are to be used and agree on all matters listed above before the date fixed for Scheduling Conference and shall file and serve the same as appropriate.

(3) Where the parties cannot agree on all or some of the matter listed under sub-rule (2) above, each party may file its own memorandum of issues.

(4) At the scheduling conference the Court shall after reviewing the pleadings and after such examination of the parties as may appear necessary, ascertain upon which material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the decision of the case appears to depend.

(5) (a) The Court may at any stage before passing a decree amend the issues or frame additional issues on such terms as it thinks fit and all such amendments or additional issues as may be necessary for determining the matter in controversy between the parties shall be so made or amended.

(b) The Court may also at any stage before passing a decree strike out any issue that appears to it to be wrongly framed or introduced.

(6) If the matter is to proceed to hearing the Court shall fix the date for commencement of hearing.

Commission to examine witnesses

(7) In any case where there is no need for evidence and all parties opt to present legal arguments in writing, the Court shall prescribe the time within which the parties shall file their respective written legal arguments and may fix the date on which the parties shall appear before a bench of three or five judges to deal with any other matter the Court thinks necessary.

Quorum of the Court

63. (1) If the case has prospects for settlement, the Court shall direct that the case proceeds to mediation or other form of settlement.

(2) Mediation or any other form of settlement shall be conducted by the Judge who presides over a Scheduling Conference and shall be in accordance with guidelines set out in the Fifth Schedule.

(3) The mediation or any other form of settlement shall be completed within twenty one (21) days after commencement; provided that the mediator may extend the time for a period not exceeding fifteen (15) days on application by the parties, showing sufficient reasons for the extension.

(4) Where mediation or other form of settlement succeeds, the Court shall record the settlement order.

(5) Where the mediation or other form of settlement fails, the matter shall proceed to trial.

Applications before a single judge

Reference from a single Judge

64. (1) The Court shall, wherever possible, fix the date and place for the opening of the oral proceedings to take place within a period not exceeding six (6) months from the close of pleadings unless the Court is satisfied that there is adequate justification for deciding otherwise.

(2) The Court shall, when fixing the date and place for the opening of the oral proceedings or postponing the opening or continuance of such proceedings, have regard to:-

(a) the need to hold the hearing without unnecessary delay;

(b) any special circumstances, including the urgency of the case or other cases on the list of cases;

(c) the views expressed by the parties and the convenience of such place to the parties, their advocates and witnesses; and

(d) the need to administer substantive justice without undue regard to technicalities.

(3) In appropriate cases the Court may order that any hearing be conducted in whole or in part by means of a telephone conference call, video conferencing or any other form of electronic communication.

(4) The Court may give directions to facilitate the conduct of the hearing by the use of electronic or digital means of communication or storage or retrieval of information or any other technology it considers appropriate.

(5) After the date for opening of oral proceedings is fixed, the Registrar shall issue a notice of hearing stating the date and place of hearing, and cause it to be served on the parties.

(6) A notice of hearing under this Rule shall be in accordance with Form 6 in the Second Schedule.

Proceedings to be held in open court

Applications before single Judge

Hearing and consequence of non-attendance

SECTION XII

WITNESSES

65. (1) Any party in a claim or reference may obtain on application to the Court, summons to any person whose attendance is required either to give evidence or to produce documents.

(2) Every witness summons shall specify the time and place of attendance, and whether the attendance is required for the purpose of giving evidence or to produce a document, or for both purposes and shall as well describe with reasonable accuracy the document required.

(3) The Court may on its own motion summon any person to give evidence or to produce any document if in its opinion such evidence or document is essential for the just determination of any matter before it.

Right to begin

(4) Where a person summoned to give evidence or produce a document fails to appear or refuses to give evidence or to produce the document the Court may in its discretion impose upon the witness a pecuniary penalty not exceeding USD 2000.

(5) A penalty imposed under this Rule shall be enforceable as an order in accordance with Article 44 of the Treaty.

(6) Summons under this Rule shall be in accordance with Form 7 in the Second Schedule and shall be served in the manner prescribed for service of notification.

Statement and production of evidence

66. (1) A party calling a witness shall be responsible for the witness's expenses.

(2) A party applying for witness summons shall, before the summons is issued, pay into Court such sum of money as appears to the Registrar to be sufficient to defray the travelling and other expenses of the person so summoned to give evidence and the necessary subsistence allowance.

(3) In the case of any person summoned by the Court to give evidence as an expert, the Registrar may allow reasonable remuneration for the time spent both in giving evidence and in performing any work on the case.

(4) Where it is proved to the satisfaction of the Registrar that the money deposited into Court to cover such expenses or reasonable remuneration is insufficient, the Registrar may require the party who applied for the summons to pay such further sums which appears to be necessary on that account.

(5) In case of default in payment of further sum under sub-rule (4), the Court may order such sum to be levied by attachment and sale of the movable property of the defaulting party; or it may discharge the person summoned without requiring him or her to give evidence; or may both order such levy and discharge such person as aforesaid

(6) The expenses of the witness appearing before the Court under sub-rule 3 of this rule shall be borne by the Court.

Evidence to be given on oath or affirmation

Taking and recording of evidence

Any particular question and answer may be taken down

Questions objected to and allowed by the Court

Endorsement of documents

67. (1) The Court may on its own motion or on application supported by an affidavit of any party or the witness to be examined issue a commission or letter of request for the examination, on interrogatories or otherwise, of any person resident within the limits of its jurisdiction who is from sickness or infirmity unable to attend.

(2) The Court may issue a commission for the examination of:-

(a) any person resident beyond the local limits of its jurisdiction;

(b) any person who is about to leave such limits before the date on which he or she is required to be examined in Court; and

(c) any civil or military officer of a Government of any Partner State, or any servant of the Community who in the opinion of the Court cannot attend without detriment to the public service.

(3) Where application is made for issue of a commission or letter of request for the examination of a person residing outside the jurisdiction of the Court, the Court must be satisfied that the evidence of such person is necessary, before issuing such commission or letter of request.

(4) Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court, and the commission and the return thereto and the evidence taken under it shall form part of the record of the proceedings.

(5) Before issuing any commission, the Court may order such sum as it thinks reasonable for the expenses of the commission, to be paid into the Court within a fixed time by the party at whose instance or for whose benefit the commission is issued.

Interpretation of evidence

Hearing and adjournments

List of authorities and copies of judgment to be referred to

SECTION XIII

PROCEEDINGS

68. (1) The quorum of the Court shall be three (3) or five (5) Judges, one of whom shall be the Principal Judge or Deputy Principal Judge:-

provided that having regard to the public importance of the matter or to any conflict or other complexity in the law applicable, the Principal Judge or on application by any party, the Court may direct such matter to be heard and determined by a full bench.

Court deliberations

(2) The following interlocutory matters may be dealt with and determined by a single Judge:-

- (a)** applications for extension of time prescribed by these Rules or by the Court;
- (b)** applications for an order for substituted service;
- (c)** applications for examining a serving officer;
- (d)** applications for leave to amend pleadings; and
- (e)** applications for leave to lodge one or more supplementary affidavits under rules 51(6) and 53(2).

(3) A party dissatisfied with a decision of a single Judge may, apply informally to the Judge at the time when the decision is given or by writing to the Registrar within seven (7) days after the decision of the Judge to have it varied, discharged or reversed by a Full Court.

(4) At the hearing by the Full Court of an application previously decided by a single judge, no additional evidence shall be allowed.

69. (1) All proceedings of the Court, including the pronouncement of the decision of the Court, shall be held in open court:-

provided that on application by any party or on its own motion the Court may, for sufficient cause, order the proceedings to be held in camera which proceedings shall be recorded.

(2) Applications before a single judge under sub-rule (2) of Rule 68 may be heard in chambers or in open court as the judge may deem fit.

Sealing of judgments

70. (1) If on the day fixed for hearing, neither party attends, the Court may dismiss the claim, reference or application or make such other order as it thinks fit.

Embodiment and signing of decrees or orders

(2) If on the day fixed for hearing the claimant or applicant does not appear and the respondent appears, the claim, reference or application may be dismissed and any counter-claim may proceed, unless the Court sees fit to adjourn the hearing:-

Corrections of judgments, decrees and orders

provided that where the claim, reference or application is so dismissed or a counterclaim so proceeds, the Court may, on application by the claimant or applicant, restore the claim, reference or the application for hearing and may re-hear the counter-claim, if satisfied that the claimant or applicant was prevented by sufficient cause from appearing.

(3) If on the day fixed for hearing the respondent does not appear and the claimant or applicant appears, the hearing may proceed in the absence of the respondent and any counter-claim may be dismissed unless the Court sees fit to adjourn the hearing:-

Interpretation of judgments, rulings or orders

provided that where the claim, reference or application so proceeds and/or the counter-claim is dismissed the Court may on the application of the respondent re-hear the claim, reference or application or restore the counter-claim for hearing if satisfied that the respondent was prevented by sufficient cause from appearing.

(4) Any ex parte judgment or order made under sub-rule (2) or (3) shall be set aside when the Court orders that a claim, reference, counter-claim or application be restored for hearing or be re-heard.

Review of judgment

(5) Where under sub-rule (2) or (3) a claim, reference, counter-claim or application is dismissed and an application for its restoration is disallowed, no fresh claim, reference, counter-claim or application may be brought upon the same cause of action.

(6) An application for restoration under sub-rule (2) or 3 shall be made within thirty (30) days of the decision of the Court or when the applicant became aware of the decision.

71. (1) The claimant shall have the right to begin unless the respondent Admits the facts alleged by the claimant and contends that either in point of law or on some additional facts alleged by the respondent the claimant is not entitled to any part of the relief he or she seeks, in which case the respondent shall have the right to begin.

Interim orders and directions

(2) Where there are several issues, and there is a dispute as to which party is to begin, the Court shall direct the party on which the greater burden of proof lies to begin.

<p>72. (1) At the hearing the party having the right to begin shall state its case and produce evidence in support of the issues which it is bound to prove and thereafter the other party shall then state its case and produce evidence, and may then address the Court generally on the case. The party beginning may reply.</p> <p>(2) Where, after the party beginning has produced its evidence the other party does not produce any evidence, the party beginning shall address the Court first on the case, and the other party shall then address the Court in reply. The Court may then allow the party beginning to comment on a new point raised in the address by the other party.</p> <p>(3) A party may present its legal arguments in writing.</p>	<p>Execution of judgments</p>
<p>73. A witness shall before giving evidence take an oath or affirmation in accordance with Form 8 in the Second Schedule.</p>	
<p>74. (1) The evidence of every witness shall be given orally in open court in the language of the Court and not in the form of question and answer but in a narrative by the official Court recorder and the record of each hearing shall be signed by the presiding judge and kept and maintained by the Registrar.</p> <p>(2) The Court may, on its own motion or application by any party take down any particular question and answer or any objection to any question if there appears to be any special reason for doing so.</p> <p>(3) Where any question put to a witness is objected to by a party or his advocate and the Court allows the same to be put, it shall take down the question, the answer, the objection and the name of the person making it together with the decision of the Court thereon.</p> <p>(4) Where documentary evidence is admitted there shall be endorsed by the Presiding Judge in every document as far as it is practicable the following particulars:-</p> <ul style="list-style-type: none"> (a) the number and title of the case; (b) the name of the person producing the document; (c) the date on which the document was produced; and (d) its identification number or letters. <p>(5) A witness who does not understand the language of the Court shall testify in the language understood by him or her and such language shall be interpreted into the language of the Court by a person proved to the satisfaction of the Court to be conversant with both languages after being sworn or affirmed.</p>	<p>Appeals to the Appellate Division</p> <p>Stay of proceedings and of Execution</p>
<p>75. (1) Hearing of evidence shall continue from day to day until all the witnesses in attendance have been examined unless the Court finds it necessary to adjourn for reasons to be recorded.</p> <p>(2) Where, on any day to which the hearing is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the case in one of the modes set out in Rule 70.</p> <p>(3) Where any party to whom time has been granted fails to produce evidence or to cause the attendance of its witness, or to perform any other act necessary to the further progress of the case, the Court may, notwithstanding such failure, proceed to determine the application, claim or reference forthwith.</p>	<p>Grounds of appeal</p>
<p>76. (1) A party who intends at the hearing to rely on any judgment in a decided case or to quote from any book shall lodge with the Registrar, a list containing the citations of such judgments, titles, authors and editions of such books and shall serve a copy of such list on the other party or on the other parties separately represented and shall annex to the list electronically produced copies of such judgments and relevant parts of the books. The party shall serve on each other party separately represented a copy of the list and annexures.</p> <p>(2) The list and its annexures shall be in eight (8) copies, and shall be lodged at least seven (7) days before the hearing:-</p> <p>provided that a supplementary list and copies of authorities may, when necessary, be produced at the time of the hearing.</p>	<p>Notice of Appeal</p>
<p>77. At the close of the hearing the Court shall, unless judgment is delivered forthwith, adjourn for its deliberation which in all cases shall be held in camera and shall remain confidential.</p>	<p>Service of notice of appeal</p>

SECTION XIV

JUDGMENTS AND ORDERS

- 78.** (1) Judgment shall be delivered in open court at once or within sixty (60) days from the conclusion of the hearing except where the court is unable to do so or direct otherwise.
- (2) The Court may, in any particular case, direct that only its decision and not the reasons for it shall be delivered in Court and the reasons for judgment shall be given on a date to be notified by the Registrar to the parties.
- (3) One judgment shall be given as the judgment of the Court and shall be signed by the judges who participated in it, but a judge who dissents shall not be required to sign the judgment and may, in his discretion, write a dissenting judgment. The same applies to an order other than one made by a single judge.
- (4) The judgment of the Court shall contain:-
- (a) the date on which it is read;
 - (b) the names of the judges participating in it;
 - (c) the names of the parties;
 - (d) the names of the advocates and agents of the parties;
 - (e) a concise statement of the facts;
 - (f) the points for determination;
 - (g) the decision arrived at;
 - (h) the reasons for such decision; and
 - (i) the operative part of the judgment, including the decision as to costs.
- (5) Such judgment may be pronounced notwithstanding the absence of the Judges who heard the matter in the first instance or any of them and the judgment of any judge not present may be read by another Judge or the Registrar.
- (6) The judgment of the Court and the dissenting judgment if any, shall be sealed with the seal of the Court and shall be deposited in the registry. The Registrar shall provide the parties with certified copies of the judgment.
- Respondent to give address for service**
- Application to strike out notice of appeal or appeal**
- 79.** (1) Every decision of the Court shall be embodied in a decree or an order.
- (2) A decree or an order referred to in sub-rule (1) shall be signed, sealed and dated by the Registrar as of the date the decision was delivered and shall contain particulars of the case and specify clearly the relief granted or other determination of the case including costs.
- Effect of failure to institute appeal**
- 80.** (1) Clerical or arithmetical mistakes in any judgment of the Court or any error arising in it from accidental slip or omission, may at any time whether before or after the judgment has been embodied in a decree or an order be corrected by the Court either of its own motion or on the application of any of the parties so as to give effect to what the intention of the Court was when judgment was given.
- (2) A decree or an order of the Court may at any time be corrected by the Court either of its own motion or on the application by any interested person if it does not correspond with the judgment it purports to embody or, where the judgment has been corrected under sub rule (1) with the judgment corrected.
- (3) Every party shall be given an opportunity to be heard before the Court makes corrections under sub rule (1) or (2).
- Where Notice of Appeal is lodged out of time**
- Form of application to Court**
- 81.** A party may apply to the Court for the interpretation of the Judgment, ruling or order.
- Supporting documents**
- 82.** (1) An application for review of a judgment under Article 35 of the Treaty shall be made in accordance with this Rule.
- (2) A party who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within its knowledge or could not be produced by it at the time when the judgment was passed or the order made, or on account of some mistake, fraud or error apparent on the face of the record, or because an injustice has been done, desires to obtain a review of the judgment or order, may apply to the Court for review of the judgment without unreasonable delay.
- Institution of appeals**

(3) The Court shall grant an application for review only where the party making the application under sub-rule (2) proves the allegations re-lied upon to the satisfaction of the Court.

(4) When an application for review is granted, the Court may re-hear the case or make such other order as it thinks fit.

(5) Subject to the parties' right of appeal a decision made by the Court on an application for review shall be final.

83. (1) Pursuant to the provisions of Article 39 of the Treaty, the Court may in any case before it upon application supported by affidavit, issue interim orders or directions which it considers necessary and desirable upon such terms as it deems fit.

(2) The Court on application of any party may grant an *ex-parte* interim order if satisfied that it is just to do so and upon granting an *ex-parte* interim order it shall fix a date within a period not exceeding thirty (30) days for the hearing of the application *inter-partes*.

(3) An *ex-parte* order under sub-rule (2) shall be granted only once and shall not be extended.

(4) The Court may for sufficient cause discharge, vary or set aside an interim order granted under sub-rule (1) or sub-rule (2) on application of any party.

(5) A person who disobeys or breaches any terms of an interim order shall be cited for contempt of Court.

Contents of memorandum of appeal

84. (1) A party who wishes to execute a decree or order of the Court in accordance with Article 44 of the Treaty shall make an application for an execution order in accordance with Form 9 in the Second Schedule.

(2) Where a judgment of the Court imposes a pecuniary obligation on a person its execution shall be governed by the Rules of civil procedure in the Partner State in which the execution is to take place.

(3) The order for execution shall be appended to the copy of the judgment verified by the Registrar and thereupon, the party in whose favour execution is to take place, may initiate execution proceedings.

Contents of record of appeal

PART C

PROCEEDINGS IN THE APPELLATE DIVISION

SECTION XV

APPEALS TO THE APPELLATE DIVISION

85. A party aggrieved by the judgment of the Court may appeal therefrom as provided in article 35 A of the Treaty to the Court's Appellate Division.

86. (1) An appeal shall not operate as a stay of proceedings of the decree or order appealed from except so far as the Court may order, nor shall execution of a decree or order be stayed by reason only of an appeal having been preferred from the decree or order; but the Court may for sufficient cause order stay of execution of such decree or order.

(2) Where an application is made for stay of execution of a decree or order before the expiration of the time allowed for appealing there from, the Court may on sufficient cause being shown order the execution be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court is satisfied:-

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) Notwithstanding anything contained in sub-rule (3), a single Judge of the Court may make an *ex-parte* order for stay of execution pending the hearing of the application.

Service of memorandum and record of appeal

Amendment of record of appeal

SECTION XVI

INSTITUTION OF APPEALS

- 87.** Appeals to the Appellate Division shall lie on:- **Supplementary record**
- (a) points of law;
 - (b) grounds of lack of jurisdiction; and/ or
 - (c) procedural irregularity.
- 88.** (1) Any person who desires to appeal shall lodge a written notice in duplicate in the registry of the Appellate Division.
- (2) Every notice of appeal shall, subject to the provisions of Rule 92 be so lodged within thirty (30) days of the date of the decision against which it is desired to appeal.
- (3) Every notice of appeal shall state whether it is intended to appeal against the whole or part only of the decision and where it is intended to appeal against part only of the decision, shall specify the part complained of, shall state the address for service of the appellant and the names and addresses as required by rule 33, of all persons intended to be served with copies of the notice.
- (4) Where it is intended to appeal against a decree or order, it shall not be necessary that a decree or order be extracted before lodging a notice of appeal. **Notice of cross-appeal**
- (5) A notice of appeal shall be in the format provided for in Form B in the Seventh Schedule to these Rules and shall be signed by or on behalf of the appellant.
- 89.** (1) A party intending to appeal shall, within fourteen (14) days after lodging a notice of appeal:- **Notice of grounds for affirming decision**
- (a) serve copies of it on all persons who seem to him to be directly affected by the appeal; but the Court may, on an ex parte application, direct that service need not be effected on any person who took no part in the proceedings in the First Instance Division; and
 - (b) file in the Registry an affidavit of service.
- (2) Where any person required to be served with a copy of a notice of appeal gave any address for service in or in connection with the proceedings in the First Instance Division, and has not subsequently given any other address for service, the copy of the notice of appeal may be served on him at that address, notwithstanding that it may be that of an advocate who has not been retained for the purpose of an appeal.
- (3) A notice of appeal shall not be incompetent by reason only that the person on whom it is intended to be served was deceased at the time the notice was lodged but the copy shall be served as soon as practicable on the legal representative of the deceased.
- 90.** (1) Every person on whom a notice of appeal is served shall, within fourteen (14) days after service on him of the notice of appeal:- **Service of notice of cross-appeal or notice of grounds for affirming decision**
- (a) lodge in the appropriate registry and serve on the intended appellant notice of a full and sufficient address for service;
 - (b) serve a copy of the notice of address for service on every other person named in the notice of appeal as a person intended to be served; and
 - (c) file in the Registry an affidavit of service.
- (2) A notice of address for service shall be in the format provided In Form D in the Seventh Schedule to these Rules and shall be signed by or on behalf of the person lodging it.
- (3) The lodging and service of an address for service shall not operate or be construed as an admission that the appeal is competent or as a waiver of any irregularity.
- 91.** A person on whom a notice of appeal has been served may at any time, either before or after the institution of the appeal, apply to the Court to strike out the notice or the appeal, as the case may be on the ground that no appeal lies or that some essential step in the proceedings has not been taken or has not been taken within the prescribed time.
- 92.** If a party who has lodged a notice of appeal fails to institute an appeal within the prescribed time:-

(a) he shall be deemed to have withdrawn his notice of appeal and shall, unless the Court orders otherwise, be liable to pay the costs of any persons on whom the notice of appeal was served arising from that failure to institute the appeal; and

(b) any person on whom the notice of appeal was served shall be entitled to give notice of appeal notwithstanding that the pre-scribed time has expired, if he does so with fourteen days of the date by which the party who lodged the previous notice of appeal should have instituted his appeal.

93. A party who intends to lodge in the Court an application for extension of time to appeal shall first lodge a notice of appeal in the Appellate Division, which shall be stamped "lodged out of time".

94. (1) Subject to the provisions of sub-rule (3) of this rule and to any other rule allowing informal applications, all applications to the Court shall be by a notice of motion, which shall state the grounds of the application.

(2) A notice of motion shall be in the format provided for in Form A in the Seventh Schedule to these Rules and shall be signed by or on behalf of the applicant.

(3) The provisions of this Rule shall not apply:-

(a) to applications made in the course of hearing which may be made informally; or

(b) to applications made by consent of all parties which may be made informally by letter.

95. (1) Every formal application to the Court shall be supported by one or more affidavits of the applicant or of some other person having knowledge of the facts in accordance with Form 3 of the Second Schedule.

(2) An applicant may, with the leave of the Court or with the consent of the other party, lodge one or more supplementary affidavits, and an application for such leave may be made informally.

96. (1) Subject to the provisions of Rule 131, an appeal shall be instituted by lodging in the appropriate registry, within thirty (30) days of the date when the notice of appeal was lodged:-

(a) a memorandum of appeal, in eight (8) copies;

(b) the record of appeal, in eight (8) copies; and

(c) payment of Five hundred United States Dollars (500 USD) as security for costs of the appeal.

(2) Notwithstanding sub-rule (1) above where an application for a copy of the proceedings in the First Instance Division has been made within thirty (30) days of the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted be excluded such time as may be certified by the Registrar as having been required for the preparation by the Registrar and collection of that copy by the appellant.

(3) The intended appellant shall collect the proceedings applied for under sub-rule (2) above within seven (7) days after being notified by the Court that they are ready for collection.

(4) An appellant shall not be entitled to rely on sub-rule (2) unless his application for the copy of the proceedings was in writing and a copy of it was served on the respondent, and the appellant has re-tained proof of that service.

97. (1) A memorandum of appeal shall set forth concisely and under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against, specifying the points which are alleged to have been wrongly decided, and the nature of the order which it is proposed to ask the Court to make.

(2) The grounds of objection shall be numbered consecutively.

(3) A memorandum of appeal shall be in the format provided in Form C in the Seventh Schedule to these Rules and signed by or on behalf of the appellant.

98. (1) The record of appeal shall, subject to the provisions of sub-rule(3), contain copies of the following documents:-

Rights of respondent when appeal is withdrawn

Withdrawal of cross appeal or of grounds for affirming decision

Death of a party to appeal

Preliminary objection

Scheduling conference

- (a) an index of all the documents in the record with the numbers of the pages at which they appear;
- (b) a statement showing the address for service of the appellant and the address for service furnished by the respondent and, as regards any respondent who has not furnished an address for service as required by Rule 33, his last known address and proof of service on him of the notice of appeal;
- (c) the pleadings;
- (d) the affidavits read and all documents put in evidence at the hearing, or, if such documents are not in the official language, their certified translations;
- (e) the judgment or ruling;
- (f) the decree or order;
- (g) the notice of appeal;
- (h) the record of proceedings; and
- (i) 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, save that the copies referred to in paragraphs, (c) and (d) shall exclude copies of any documents or any of their parts that are not relevant to the matters in controversy in the appeal.

Presentation of arguments in writing

(2) The documents mentioned in sub-rule (1) shall be bound in the order in which they are specified there in that sub-rule and documents produced in evidence shall be put in order of the dates they bear or, where they are undated, the dates when they are believed to have been made, without regard to the order in which they were produced in evidence; but an affidavit filed in support of a notice of motion shall be bound immediately following the notice.

Hearing Notice

(3) Each copy of the record of appeal shall be certified to be correct by the appellant or by any person entitled under Rule 19 to appear on his behalf.

99. (1) The appellant shall, within seven (7) days after lodging the memorandum and the record of appeal in the appropriate registry, serve copies of them on each respondent who has complied with the requirements of Rule 90.

(2) The appellant shall also serve copies of the memorandum of appeal and the record of appeal on such other parties to the original proceedings as the Court may at any time on application or of its own motion direct and within such time as the Court may prescribe.

Quorum in the Appellate Division

100. The Court may at any time before the Scheduling Conference allow amendment of the record of appeal on such terms as to costs as it thinks fit.

101. (1) If a Respondent is of opinion that the record of appeal is defective or insufficient for the purposes of his case, he may lodge in the registry before the Scheduling Conference eight (8) copies of a supplementary record of appeal containing copies of any further documents or any additional parts of documents which are, in his opinion, required for the proper determination of the appeal.

(2) The respondent shall as soon as practicable after lodging a supplementary record of appeal, serve copies of it on the appellants and on each other respondent who has complied with the requirements of Rule 33.

(3) An appellant may at any time before the Scheduling Conference lodge in the registry eight (8) copies of a supplementary record of appeal and shall as soon as practicable after doing so serve copies of it on every respondent who has complied with requirements of Rule 90.

(4) A supplementary record of appeal may be lodged to cure defects in the original record of appeal due to want of compliance with Rule 98 of these Rules.

(5) A supplementary record of appeal shall be prepared as nearly as may be in the same manner as the record of appeal

Reference from a decision of a single Judge

List of authorities and copies of Judgment to be referred

102. (1) A respondent who desires to contend at the hearing of the appeal that the decision of the First Instance Division or any part of it should be varied or reversed, either in any event or in the event of the appeal being allowed in whole or in part, shall give notice of a cross-appeal to that effect, specifying the grounds of his contention and the nature of the order which he proposes to ask the Court to make.

Hearing in open Court

(2) A notice given by a respondent under this Rule shall state the names and addresses of any persons intended to be served with copies of the notice and shall be lodged in eight (8) copies in the appropriate registry not more than thirty (30) days after service on the respondent of the memorandum of appeal and the record of appeal.

(3) A notice of cross-appeal shall be in the form provided in Form E in the Seventh Schedule to these Rules and shall be signed by or on behalf of the respondent.

103. (1) A respondent who desires to contend on an appeal that the decision of the First Instance Division should be affirmed on grounds other than or additional to those relied upon by that Court shall give notice to that effect, specifying the grounds for his contention.

(2) A notice given by the respondent under this Rule shall state the names and addresses of any persons intended to be served with copies of the notice and shall be lodged in eight (8) copies in the appropriate registry not more than thirty (30) days after service on the respondent of the memorandum of appeal and the record of appeal.

(3) A notice of grounds for affirming a decision shall be in the format provided for in Form F in the Seventh Schedule to these Rules and shall be signed by or on behalf of the respondent.

(4) A respondent who desires to contend at the hearing of the appeal that part of the decision of the First Instance Division should be varied or reversed and that part of that decision should be affirmed on grounds other than or additional to those relied upon by that Division may include both contentions in a notice of cross-appeal under Rule 102 and shall not be required to give notice also under this Rule.

(5) The provisions of sub-rules (1), (2) and (3) of this Rule shall apply *mutatis mutandis* to an appellant who desires to contend in opposition to a cross-appeal that the decision of the First Instance Division should be affirmed on grounds other than or additional to those relied on by that Division.

Arguments at hearing

104. (1) A respondent who has cross-appealed or contends that a decision of the First Instance Division should be affirmed on grounds other than those relied on by that Division shall, within seven (7) days after lodging his notice of cross-appeal or notice of grounds for affirming the decision, as the case may be, serve a copy of it on all other persons directly affected by the cross-appeal or by the appeal, as the case may be.

(2) The respondent shall also serve copies of the notice of cross-appeal or notice of grounds for affirming the decision, as the case may be, on such other parties to the original proceedings as that Court may, at any time, on application or of its own motion, direct and within such time as the Court may prescribe.

105. (1) An appellant may at any time after instituting his appeal and before the appeal is called on for hearing lodge in the appropriate registry a written notice that he does not intend further to prosecute the appeal.

(2) The appellant shall, within seven (7) days after lodging the notice of withdrawal, serve copies of it on each respondent who has complied with the requirements of Rule 90.

(3) If all the parties to the appeal consent to the withdrawal of the appeal, the appellant may lodge in the registry the document or documents signifying the consent of the parties and thereupon the Registrar shall mark the appeal as withdrawn.

(4) If all the parties to the appeal do not consent to the withdrawal of the appeal, the appeal shall stand dismissed with costs, except as against any party who has consented, unless the Court, on the application of the appellant, otherwise orders.

(5) An application under sub-rule (4) of this Rule shall be made within fourteen (14) days after the lodging of the notice of withdrawal.

Order of addresses

106. (1) If an appeal is withdrawn under Rule 105(3) of these Rules after notice of cross-appeal has been given, the respondent who gave the notice may withdraw it within fourteen (14) days after the service on him of the notice of withdrawal.

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

(3) If an appeal is withdrawn under Rule 105 of these Rules within fourteen (14) days after the date when the appeal was instituted, any respondent who has not lodged a notice of cross-appeal is entitled to give notice of appeal notwithstanding that the time prescribed by Rule 88 of these Rules has expired, if he does so within fourteen (14) days after the date when the appellant's notice of withdrawal was served on him.

Judgment

General powers of the Court

Certified copies

Interpretation of Court judgments

(b) by a respondent, within thirty (30) days of service on him of the memorandum and record of appeal.

(3) An appellant who has lodged a statement under sub-rule(1), may, if served with a notice of cross-appeal, lodge a supplementary statement of his arguments in opposition to it.

(4) No party who has lodged a statement under this Rule shall, except with leave of the Court, address the Court at the hearing of the appeal.

**Reference on
taxation**

Security for costs

112. (1) The Registrar shall give all parties to an appeal not less than fourteen (14) days' notice of the date fixed for the hearing of an appeal; but it shall not be necessary to give that notice to any party with whose consent the date for the hearing was fixed.

(2) A notice of hearing under this rule shall be in accordance with Form 6 in the Second Schedule.

113. (1) The quorum in the Appellate Division shall be three Judges, one of whom shall be the President or Vice-President:-

Provided that having regard to the public importance of the matter or to any conflict or other complexity in the law applicable, the President or on application by any party, the Court may direct such matter to be heard and determined by a full bench of the Court.

(2) The following applications may be dealt with and determined by a single judge:-

(a) applications for extension of time prescribed by these Rules or order of the Court;

(b) applications for an order for substituted service;

(c) applications for examining serving officer; and/or

(d) applications for leave to amend the Record of Appeal.

(3) A party dissatisfied with a decision of a single judge may for sufficient reasons, apply within seven (7) days after a decision of the judge to have the order, direction or decision varied, discharged or reversed by a full bench.

(4) At the hearing by the full bench of an application previously decided by a single judge, no additional evidence shall be adduced.

**Places and dates
of Court sessions**

**Use of technology
in Court
proceedings**

114. (1) A party who intends, at the hearing of any application or appeal, to rely on the judgment in any reported case or to quote from any book shall lodge with the Registrar, a list and copies of cases with their citations and the names, authors and editions of the book or books, and shall serve a copy of that list on the other party or on each other party appearing in person or separately represented, as the case may be; but a supplementary list may, when necessary, be produced at the time of the hearing.

(2) The list shall be in eight (8) copies, except in the case of an application to be heard by a single Judge, when it shall be in duplicate and shall be lodged at least seven (7) days before the application or appeal is due to be heard.

(3) A party who intends, at the hearing of any application or appeal, to rely on the judgment in any unreported case shall, at or before the hearing, produce a certified or photostat copy of that judgment and, except in the case of an application to be heard by a single judge, two other copies of it for the use of the Court, and in every case, one copy for the use of the other party, or each other party appearing in person or separately represented, as the case may be.

**Electronic
exchange of Court
documents**

115. (1) Every appeal shall be heard in open Court, to which all members of the public shall have access so far as space in the Court permits and so long as they conduct themselves in an orderly manner, subject to sub-rules (2) and (3) below.

(2) The Presiding Judge may, if, in exceptional circumstances, he is satisfied that the interests of justice so require, direct that the public or any particular person or category of persons be excluded or removed from the Court in which an appeal is being heard.

(3) Nothing in this Rule shall be construed so as to prejudice other inherent powers of the Court to hear proceedings in camera or as prescribed under rule 64 (4) & (5) of these rules.

**Transitional
provision**

116. At the hearing of an appeal:-

(a) no party shall, without the leave of the Court, argue that the decision of the First Instance Division should be reversed or varied except on grounds specified in the memorandum of appeal or in a notice of cross-appeal, or support the decision of that Division on any ground not relied on by that Division or specified in a notice given under Rule 103 of these Rules;

(b) a respondent shall not, without leave of the Court, raise any objection to the competence of the appeal which might have been raised by application under Rule 91 of these Rules;

(c) the Court shall not allow an appeal or cross-appeal on any ground not set forth in the memorandum of appeal or notice of cross-appeal, without affording the respondent, or any person who in relation to that ground should have been made a respondent, or the appellant, as the case may be, an opportunity of being heard on that ground; and

(d) at the hearing of an appeal, the arguments contained in any statement lodged under Rule 111 of these Rules shall receive the same consideration as if they had been advanced orally at the hearing.

117. (1) If on any day fixed for the hearing of an appeal, the appellant does not appear, the appeal may be dismissed and any cross-appeal may proceed, unless the Court deems it fit to adjourn the hearing.

(2) Where an appeal has been so dismissed under sub-rule (1) of this Rule or any cross-appeal has been allowed, the appellant may apply to the Appellate Division to restore the appeal for hearing or to re-hear the cross-appeal, if he can show that he was prevented by any sufficient cause from appearing when the appeal or cross-appeal was called on for hearing.

(3) If the appellant appears and the respondent fails to appear on the day the appeal is fixed for hearing, the appeal shall proceed in the absence of the respondent and any cross-appeal may be dismissed, unless the Court deems it fit to adjourn the hearing.

(4) Where an appeal has been allowed or a cross-appeal dismissed in the absence of the appellant or respondent, the appellant or respondent may apply to the Court to re-hear the appeal or to restore the cross-appeal for hearing, if the party can show that he was prevented by any sufficient cause from appearing when the matter was called for hearing.

(5) An application for restoration under the proviso to sub-rule (2) or (4) of this Rule shall be made within thirty (30) days of the decision of the Court, or in the case of a party who should have been served with a notice of the hearing but was not served, within thirty (30) days of his first hearing of that decision.

(6) For the purposes of this Rule, a party who has lodged a statement under the provisions of Rule 111 shall be taken to have appeared.

118. (1) The Court shall, at the hearing of an application or appeal hear the applicant or appellant first then the respondent, and then the applicant or appellant.

(2) At the hearing of an appeal where notice of cross-appeal has been given, the Court shall ordinarily hear the appellant first on the appeal, then the respondent on the appeal and on the cross-appeal, then the appellant in reply on the cross-appeal.

(3) The Court may dismiss but shall not allow any preliminary objection, application, appeal or cross-appeal without affording the opposing party an opportunity to be heard.

(4) After hearing the opposing party, the Court may allow but shall not dismiss any preliminary objection, application, appeal or cross-appeal without giving the objector, applicant, appellant or cross-appellant an opportunity to reply.

(5) The provisions of this Rule shall apply where notice of grounds for affirming the decision has been given, in the same way in all respects as where notice of cross-appeal has been given.

119. (1) The judgment of the Court shall be pronounced in open Court, either on the hearing date or at any subsequent time, of which notice shall be given by the Registrar to the parties to the appeal or applications.

(2) Such judgment may be pronounced notwithstanding the absence of the Judges who composed the Court or any of them, and the judgment of any Judge not present may be read by another Judge or by the Registrar.

120. The Court may in dealing with any appeal, confirm, reverse or vary the judgment of the First Instance Division or remit the proceedings to it with such instructions as may be appropriate or order a new trial where it is manifest that a miscarriage of justice has occurred and to make any incidental or consequential orders including orders as to costs.

121. A certified copy of the judgment shall be sent by the Registrar to the First Instance Division.

- 122.** A party may apply to the Court for the interpretation of the Judgment, ruling or order.
- 123.** An application for review of a judgment under Article 35 of the Treaty shall be *mutatis mutandis* in accordance with rule 77 of these rules.
- 124.** Judgments of the Court may be published in law reports.

SECTION XVIII:

ADVISORY OPINION

- 125.** (1) A request for an advisory opinion under Article 36 of the Treaty shall be lodged in the Appellate Division and shall contain an exact statement of the question upon which an opinion is required and shall be accompanied by all relevant documents likely to be of assistance to the Court.
- (2) Upon receipt of the request under sub-rule (1), the Registrar shall immediately give notice of the request to all the Partner States and the Secretary General.
- (3) The Court may identify any person likely to furnish information on the question and shall direct the Registrar to give notice of the request to such person.
- (4) The Registrar shall in the notice given under sub-rules (2) and (3) invite the Partner States, Secretary General and such other person to present written statements on the questions within the limit stated in the notice.
- (5) Upon receiving written statements, the Registrar shall send a copy of each such written statement to the parties mentioned in sub-rule (4) for comments if any.
- (6) The Court shall decide whether oral proceedings shall be held and if so shall fix the date for such proceedings and shall invite the parties mentioned in sub-rule (4) to make oral representations.
- (7) The provisions of sub-rules (4) and (5) of Rule 78 shall apply to advisory opinion proceedings under this rule with necessary modifications.
- (8) The Court shall deliver its advisory opinions in open Court prior, notice having been given to the Partner States and to the Secretary General.

SECTION XIX

CASE STATED

- 126.** (1) A request by a national Court or tribunal of a Partner State concerning the interpretation or applications of the provisions of the Treaty or the validity of any regulation, directive, decision or action of the Community pursuant to Article 34 of the Treaty shall be lodged in the Court by way of a case stated, in accordance with the procedure set forth in the Sixth Schedule of these Rules.
- (2) A case stated shall specify the question raised and the issues to be determined.
- (3) The Court as soon as it has reached a decision shall communicate it to the national Court or tribunal concerned.

PART D

SECTION XX

COSTS

- 127.** (1) Costs in any proceedings shall follow the event unless the Court shall for good reasons otherwise order.
- (2) If it appears to the Court that costs have been incurred improperly or without reasonable cause by reason of any misconduct or default of the party and or advocate, the Court may call on the advocate by whom such costs have been so incurred to show cause why such costs should not be borne by the advocate personally, and thereupon may make such order as the justice of the case requires.
- 128.** (1) When the Court makes an order for costs it may assess the same or direct the costs to be taxed and any order in which amount is not assessed, shall operate as a direction that the costs be taxed.

(2) For the purpose of execution for costs, a certificate of taxation and the order directing taxation shall be appended to the execution order.

129. (1) The Registrar shall be the taxing officer with power to tax the costs of or arising out of any application, claim or reference as between parties.

(2) The remuneration of an advocate by the client shall be by agreement between them but where there is no such agreement either of the parties may refer the matter to the Registrar for taxation.

(3) The costs shall be taxed in accordance with the Rules and the scales set out in the Third Schedule for the First Instance Division and Eighth Schedule for the Appellate Division.

130. (1) Any person who is dissatisfied with a decision of the taxing officer shall by notice of motion apply, within fourteen (14) days to have the matter referred to a bench of three (3) or five (5) Judges, whose decision shall be final.

(2) The provisions of these rules relating to Scheduling Conference, lodging of notices of preliminary objections, list of authorities, appearances and hearing of appeals, shall apply *muta-tis mutandis* to this rule.

131. (1) The Court may, either on the application of any respondent or on its own motion, order the claimant or claimants within time fixed by it to give security for the payment of all costs incurred or likely to be incurred by the respondent:-

Provided that where the claimant is a Partner State, the Secretary General, or any of the institutions of the Community, no security for costs shall be required.

(2) Where security for costs has been deposited in Court, the Registrar may pay out the same either by consent of the parties or in conformity with the decision of the Court.

PART E

MISCELLANEOUS PROVISIONS

SECTION XXI:

PLACES AND DATES OF COURT SESSIONS

132. (1) The sittings of the Court shall be at the Seat of the Court provided that the Court may, if it considers it desirable, direct that all or part of the proceedings in any case shall be held at a place other than the Seat of the Court on such days as the President or Principal Judge may direct.

(2) The sittings of the Court and the matters to be disposed of at the sittings shall be advertised in such manner as the President or Principal Judge may direct, but the Court may at any sitting dispose of any matter or business which has not been previously advertised or notified.

CASE MANAGEMENT AND RECORDING SYSTEM

133. The Court and Parties in every judicial proceeding should as much as is possible use technology to expedite proceedings and make them more efficient and effective. Such technology includes:-

(1) an e-filing system for filing and service of documents electronically;

(2) digital display devices;

(3) real time transcript devices;

(4) video and/or audio conferencing; or

(5) any other technology approved by the Court.

134. (1) Parties may by agreement consider using technology for purposes of information exchange and at trial.

(2) In preparing a case for trial the parties are specifically encouraged to:-

(a) exchange electronic versions of documents such as pleadings and statements;

(b) consider the use of electronic data at trial in accordance with the Court's requirements;

(c) serve documents electronically through e-mail, instant messaging applications and any other widely used electronic communication service

(3) Where a party serves any pleading or document by electronic means he shall file an affidavit of service explaining the mode of service.

(4) Parties can on request accede to copies of Court documents in an electronic format.

(5) At any time during or after Court proceedings, the Court may deliver any decision electronically, by transmitting a copy of the judgment or ruling to the parties through e-mail, instant messaging applications and/or any other widely used electronic communication service.

135. In all proceedings pending in the Court, preparatory or incidental to, or consequential upon any proceeding in court at the time of the coming into force of these rules, the provisions of these rules shall thereafter apply, without prejudice to the validity of anything previously done:-

Provided that if and so far as it is impracticable in any such proceedings to apply the provisions of these rules, the practice and procedure heretofore shall be followed.

SCHEDULES AND FORMS

FIRST SCHEDULE:

JUDICIAL OATH OF THE DEPUTY/ASSISTANT REGISTRAR

(Rule 8(3))

I,..... do swear/solemnly affirm that I will well and truly serve the East African Community, in the office of Assistant/ Deputy Registrar of the East African Court of Justice and that I will do justice in accordance with the Treaty for the Establishment of the East African Community as by law established and in accordance with the laws and customs of the East African Community without fear or favour, affection or ill will.

So help me God

Signature.....

SWORN/AFFIRMED BEFORE ME, this.....day of20.....

.....
President
East African Court of Justice

SECOND SCHEDULE

FORMS

**FORM 1: NOTIFICATION
(Rule 27 (1))**

IN THE EAST AFRICAN COURT OF JUSTICE - FIRST INSTANCE DIVISION

AT.....

CLAIM/REFERENCE NO.of 20.....

.....Applicant/Claimant

versus

.....Respondent

To:

.....

.....

You are hereby notified that the above named Applicant/Claimant has in-stituted a reference/claim against you, a copy of which is annexed hereto. You are hereby required to file a response or written statement of defence within days from the day of the service hereof. In default whereof the claim/reference will be heard and determined in your absence.

Given under my hand and seal of the Court at..... this day of

..... 20.....

.....

REGISTRAR

**FORM 2: AFFIDAVIT OF SERVICE
(Rule 17)**

**IN THE EAST AFRICAN COURT OF JUSTICE - FIRST INSTANCE
DIVISION/APPELLATE DIVISION ***

AT.....

APPEAL/APPLICATION/CLAIM/REFERENCE * NO.
.....of 20.....

.....Claimant

Versus

.....Respondent

I ofand an advocate/ a process server of the Court / a claimant/applicant/appellant * make oath/affirm and state as follows:

(1) On, 20 at (time) I served the (mention the document) in this case on at (place) by tendering a copy thereof to him/her and requiring his/ her signature on the original.He/She signed/refused to sign the (mention the document). He/She was personally known to me/identified to me by who is known to me.

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

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

(4) The original notification is annexed to this affidavit.

(5) Otherwise specify the manner in which the (mention the document) was served.

.....

Deponent

SWORN/AFFIRMED by the saidat this day
of, 20.....

Before me:.....

Commissioner for Oaths/Notary Public.

*Delete as the case may be

FORM 3: AFFIDAVIT

(Rules 51 (5), 53 (2), and 95 (1))

**IN THE EAST AFRICAN COURT OF JUSTICE - FIRST INSTANCE
DIVISION/APPELLATE DIVISION
AT**

.....

**APPEAL/REFERENCE/APPLICATION/CLAIM
No.**

.....of 20.....

.....Appellant/Applicant/ Claimant*

versus

.....Respondent

I ofaffirm/ make oath
and state as follows:

(1) That.....
.....
.....

(2) That.....
.....
.....

(3) That.....
.....
.....

VERIFICATION

I, do hereby verify that what is
stated above is true to the best of my knowledge, information and belief.

.....

Deponent

SWORN at.....by the saidat..... this
..... day of, 20.....

Before me:.....

Commissioner for Oaths/Notary Public

* Delete as the case may be

FORM 4: SUBSTITUTED SERVICE BY ADVERTISEMENT

(Rule 30 (3))

IN THE EAST AFRICAN COURT OF JUSTICE - FIRST INSTANCE DIVISION

AT.....

CLAIM/REFERENCE *No.....of 20.....

.....Claimant/Applicant

versus

.....Respondent

To.....of

.....

.....

Take notice that a claim/reference * has been filed in the East African Court of Justice at in claim/ reference *No of 20....., in which you are named as respondent. Service of the notification on you has been ordered to be by means of this advertisement. A copy of the notification and the statement of claim/reference *may be obtained from the Court Registry at (postal address of registry/sub-registry).

And further take notice that, unless you file a statement of defence within forty-five (45) days from the date of this advertisement, the claim/ reference* will be heard in your absence.

GIVEN under my hand and the Seal of the Court,at.....
this.....day of20.....

.....

Registrar

*Delete as the case may be

FORM 5: THIRD PARTY NOTICE
(Rule 54 (4))
IN THE EAST AFRICAN COURT OF JUSTICE - FIRST INSTANCE DIVISION

AT.....

CLAIM/REFERENCE * NO.of 20.....

.....Claimant/Aplicant *

versus

.....Respondent

THIRD PARTY NOTICE

(Issued pursuant to the order of the Court dated, 20....)

To: of (address)

.....
.....

Take notice that this action has been brought by the claimant/applicant against the respondent. In it the claimant/applicant claims against the respondent in accordance with the attached statement of claim.

The respondent claims against you (here state nature of claim against third party, for instance "for indemnity", contribution" or "the following relief or remedy" namely") on the grounds that (state the grounds of the claim

1.....

2.....etc

(* And take notice that if you wish to dispute the claimant's claim against the respondent, or the respondent's claim against you, you must file your statement of defence within twenty one (21) days after service of this notice on you, otherwise you will be taken to admit the claimant's claim against the respondent and the respondent's claim against you and you will be bound by any judgment given in the claim/reference *.

Dated atthis..... day of,
20.....

.....
Respondent/Advocate for the Respondent.

Note -(*) Delete this paragraph if the notice is served on a party who has already appeared in the suit.

*Delete as the case may be.

FORM 6: NOTICE OF DATE OF HEARING

(Rule 64(5))

**IN THE EAST AFRICAN COURT OF JUSTICE -FIRST INSTANCE
DIVISION/APPELLATE DIVISION***

AT.....

APPEAL/APPLICATION/CLAIM/REFERENCE *NO.of
20.....

.....Appellant/Applicant/Claimant*

versus

.....Respondent

NOTICE OF DATE OF HEARING

TAKE NOTICE that the above Appeal/Application/Claim/Reference * has been fixed for hearing on..... day of, 20..... at 9:30 a.m. at.....Before Justice(s)..... YOU ARE hereby required to appear in this Court without fail on the said date and you must produce on that day all the documents upon which you intend to rely in support of your case.

Please note that if there is no appearance on your part the Court will proceed to hear the case and make necessary orders your absence notwithstanding.

Given under my hand and Seal of the Court at.....this..... day of.....20.....

.....

Registrar

To Be Served Upon:

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

Note *Delete whichever is inapplicable

**FORM 7: SUMMONS TO WITNESS
(Rule 65 (6))
IN THE EAST AFRICAN COURT OF JUSTICE - FIRST INSTANCE DIVISION**

AT.....
APPLICATION/ CLAIM/REFERENCE *NO.....of
20.....
.....Claimant/Applicant

Versus
.....Respondent

To

WHEREAS your attendance is required to give evidence and/or produce documents described as on behalf of..... the claimant/applicant/respondent in the above stated claim/reference, you are hereby required [personally] to appear before this Court at.....on theday of20....., at 9:30 a.m.....in the forenoon, and/or on such other date or dates to which the case may stand ad-journed, and not to depart without leave of the Court.

If you fail to comply with this order without lawful excuse, you will be subject to the consequences of non-attendance laid down in Rule 65(4) of the East African Court of Justice Rules, 2018.

GIVEN under my hand and the seal of the Court at.....thisday of....., 20

.....
Registrar

NOTICE:- (1) The money for your travel by road/air and other expenses amounting tohas been deposited in Court and will be paid to you by the Registrar when you attend.

To be signed by the person to whom summons is addressed.

I..... hereby acknowledge the receipt of a duplicate of this summons.

Signature Date.....

* Delete as the case may be.

FORM 8: OATH OR AFFIRMATION
(Rule 73)
IN THE EAST AFRICAN COURT OF JUSTICE, FIRST INSTANCE DIVISION

Before giving his evidence, the witness shall take oath or affirm as follows:-

"I..... swear/affirm that I shall tell the truth, the whole truth and nothing but the truth."

FORM 9: EXECUTION OF JUDGMENTS

(Rule 84(1))

IN THE EAST AFRICAN COURT OF JUSTICE FIRST INSTANCE DIVISION

AT:.....

Claim/Reference No.OF.....
.....Applicant/Claimant/

Versus

.....Respondent

I,decree holder, hereby apply for the execution of the decree/ order herein as set forth be-low

Date of decree/order:

Amount with interest due upon the decree/order or other relief granted thereby together with particulars of any cross order:-

	USD	Cts	USD	Cts
Principal			
Interest at....% from....to....			
Less subsequent payment			
Less amount of cross order, if any			
Total or balance			
Costs as in the decree/ Order				
Costs, subsequently incurred				
Further interest at....%p.a from....to....				
TOTAL				

Amount of costs, if any, awarded:-

Against whom to be executed:-

Mode in which the assistance of the Court is required:-

I,declare that what is stated herein is true to the best of my knowledge and belief.

Dated this day of, 20.....

.....

Decree Holder

IN THE EAST AFRICAN COURT OF JUSTICE FIRST INSTANCE DIVISION

THIRD SCHEDULE: TAXATION OF COSTS (Rule 129(3))

1.	In this Schedule, a folio means one hundred words, and a single figure or group of figures up to seven shall count as one word.	Interpretation
2.	<p>(1) Where costs are to be taxed, the advocate for the party to whom the costs were awarded shall lodge his or her bill with the taxing officer and shall, before or within seven (7) days after lodging it, serve a copy of it on the advocate for the party liable to pay it.</p> <p>(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 (21) days after a request in writing therefor by the party liable, or such further time as the Registrar may allow.</p> <p>(3) A bill of costs may not be lodged by an advocate who is not on record.</p>	Lodging and service of bill of costs
3.	<p>(1) A bill of costs shall be instituted and filed in the proceedings and shall be in the form of a bill prepared in five columns as follows:-</p> <p style="margin-left: 20px;">(a) the first or left hand column for the dates of the items;</p> <p style="margin-left: 20px;">(b) the second column for the serial numbers of the items;</p> <p style="margin-left: 20px;">(c) the third column for the particulars of the service charged for;</p> <p style="margin-left: 20px;">(d) the fourth column for the professional or scale charges;</p> <p style="margin-left: 20px;">(e) the fifth column for the taxing officer's deductions.</p> <p>(2) Every bill of costs shall be endorsed with:-</p> <p style="margin-left: 20px;">(a) the name and address of the advocate lodging the same;</p> <p style="margin-left: 20px;">(b) the name and address of every party to be served or his or her advocate;</p> <p style="margin-left: 20px;">(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 and if such certificate is found to be incorrect the item may be disallowed.</p> <p>(3) Every bill of costs shall be endorsed at the end thereof with a form of certificate for signature by the taxing officer certifying the result of the taxation, in accordance with Form G of the Seventh Schedule.</p>	Form of bill
4.	<p>(1) Disbursements shall be shown separately at the foot of the bill of costs.</p> <p>(2) Receipts for the disbursements shall be produced to the taxing officer and copies served to the other party at least fourteen (14) days before taxation.</p>	Disbursements
5.	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 the Court.	Bills not to be altered after lodging
6.	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.	Notice of taxation
7.	The taxing officer shall have power to limit or extend the time for any proceedings before him, and to adjourn the same from time to time and from place to place.	Time and adjournment
8.	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.	Failure to attend taxation
9.	<p>(1) The fee to be allowed for instructions to make, support or oppose any application shall be such sum as the taxing officer shall consider reasonable but shall not be less than US\$ 100.</p> <p>(2) The fee to be allowed for instructions to institute an application, claim or reference or to oppose an application, claim or reference shall be such sum as the taxing officer shall consider reasonable, having regard to the amount involved in the matter, its nature, importance and complexity, the interest of the parties, the other costs to be allowed, the general conduct of the proceedings, the person to bear the costs and all other relevant circumstances.</p>	Quantum of cost

<p>(3) The sum allowed under sub-rule (2) shall include all work necessarily and properly done in connection with the application, claim or reference and not otherwise chargeable including attendances, correspondences, pe-rusals and consulting authorities.</p> <p>(4) Other costs shall, subject to the provisions of Rules 10, 11 and 12 below, be awarded in accordance with the scale set out below.</p>	
<p>10. The fee for drawing a document shall include the preparation of all copies for 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: where there are additional parties, fees may be charged for making the necessary additional copies.</p>	<p>Fee for drawing documents</p>
<p>11. (1) On taxation the taxing officer shall allow such costs, charges and disbursements as shall appear to him or her 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 by payment of special charges or expenses to witnesses or other persons or by other unusual expenses.</p> <p>(2) In taxing the costs of any dispute or reference, the taxing officer shall disallow the costs of any matter improperly included in the record of an application, claim or reference or in any supplementary record of an application, claim or reference.</p>	<p>on of bills of costs</p> <p>Over-riding direction</p>
<p>12. If, after a bill of costs has been taxed, the taxing officer considers that, having regard to all circumstances, the total of the bill before signing the certificate of taxation is excessive, he or she may make such a deduction from the total as will in his/her opinion render the sum reasonable.</p>	
<p>13. If more than one quarter of the profit costs claimed is disallowed on taxation the costs of drawing, filing and serving the bill and attending taxation may be disallowed.</p>	<p>Excessive claims</p>
<p>14. 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 balances.</p>	<p>Set-off of costs</p>
<p>15. (1) Costs of more than one advocate shall not be allowed unless the Court has so directed:-</p> <p>provided that if an advocate has instructed another advocate to appear at the hearing of a matter, the fee paid to the latter, or so much thereof as the taxing officer considers reasonable, may be allowed so long as the total of such fee and the instruction fee allowed in instructing the advocate shall not be greater than it would have been if one advocate only had acted in the matter.</p> <p>(2) Where the Court has directed that the costs of two advocates be allowed:-</p> <p>(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;</p> <p>(b) where the senior advocate is a member of the same firm as the advocate on record, he shall be allowed such fee as would have been allowed in the case of the advocate not a member of that firm; and</p> <p>(c) the advocate on record shall be allowed the usual instruction, hearing and other fees.</p> <p>(3) The fee paid to another advocate by the advocate on record shall be shown as disbursement.</p>	<p>Costs of more than one advocate</p>
<p>16. 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 they 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.</p>	<p>Costs where advocate changed during proceedings</p>
<p>17. 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 he is of the opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed.</p>	<p>Two or more parties</p>
<p>18. In taxing the costs as between party and party or for payment 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 at the taxing officer shall deem fit.</p>	<p>Costs where trustee defend separately</p>

19. The taxing officer shall allow the reasonable expenses of a party who appeared in person at the hearing of an application, claim or reference and those of a witness who gave evidence at any such hearing but shall not allow the ex-penses of any person who may have attended the hearing, unless the Court has so ordered.

**Expenses of
persons attending
hearing**

SCALE OF CHARGES (RULE 9(4)) OF THE THIRD SCHEDULE)

COSTS OF PROCEEDINGS

A - Party and Party Costs

1. Instruction fees

The fee for instructions in applications, claims and references shall be as follows, unless the taxing officer in his or her discretion shall increase or reduce it:

(a) In proceedings in which no defence or other denial of liability is filed, or, in a reference: where the value of the subject matter can be determined from the pleading, judgment or settlement between the parties -

That value exceeds but does not exceed

US\$	US\$	US\$
-	1000	100
5000	5000	150
10000	10000	1680
20000	20000	2800
100000	100000	3840
250000	250000	4140
500000	500000	4440
Over 1000000	1000000	5040
		5040
Plus 1% on the amount over US\$1000000		

(b) In any proceedings or in a reference described in paragraph (a) where a defence or other denial of liability is filed; or to have an issue determined arising out of interpleader or other proceedings before or after the matter: where the value of the subject-matter can be determined from the pleading, judgment or settlement between the parties and:-

That value exceeds US\$	but does not exceed	US\$
-	1000	150
1000	5000	200
5000	10000	1740
10000	20000	3600
20000	100000	6600
100000	250000	12600
250000	500000	15000
500000	1000000	18600
Over 1000000	-	18600
Plus 1% on the amount over US\$1000000		

(b) To defend proceedings where the respondent substantially adopts the defence of another respondent: an instruction fee calculated under subparagraph 1(a).

(c) To defend any other proceedings: an instruction fee calculated under subparagraph 1 (b).

(d) To sue or defend in any case not provided for above: such sum as may be reasonable but not less than 50 US\$.

(d) To institute a reference in any matter 50 US\$.

(e) To counter-claim: fee under subparagraph (a) or (b), as appropriate.

(f) Matters arising during proceedings:-

- (i) to prepare an affidavit - US\$10;
- (ii) to prepare interrogatories or answers thereto - US\$120;
- (iii) to apply for a commission or letters of request for the examination of a witness - US\$60;
- (iv) to prepare a brief for counsel in relation to a commission for examination of a person not residing within East Africa: such sum as may be reasonable but not less than - US\$360;
- (v) to prepare a case stated for the opinion of the Court: such sum as may be reasonable but not less than - US\$120;
- (vi) to present an application for a temporary injunction or similar order:-
 - if unopposed - US\$60;
 - to present or oppose in ordinary cases: such sum as may be reasonable but not less than - US\$120;
 - to present or oppose in cases where the judges shall certify that the matter is complex - US\$600;
- (vii) to present or oppose an application not otherwise provided for, by notice of motion:-
 - where the application is unopposed - US\$30;
 - where the application is opposed, such sum as may be reasonable but not less than US \$50;

Provided that:-

(a) the taxing officer, in the exercise of his or her discretion, shall take into consideration the other fees and allowances to the advocate (if any) in respect of the work which any such allowances applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the general conduct of the proceedings, a direction by the Court, and all other relevant circumstances;

(b) in any case in which a certificate for more than one advocate has been given by the Court, the instruction fee allowed on taxation as between party and party shall be increased by one-third and other charges shall be doubled where requisite.

2. Fees for getting up or preparing for trial

In any case in which a denial of liability is filed or in which issues for trial are joined by the pleadings, a fee for getting up and preparing the case for trial shall be allowed in addition to the instruction fee and shall be not less than one-quarter of the instruction fee allowed on taxation:-

Provided that:-

- (i) this fee be increased as the taxing officer considers reasonable but it does not include any work comprised in the instruction fee;
- (ii) no fee under this paragraph is chargeable until the case has been confirmed for hearing, but an additional sum of not more than 10 per cent of the instruction fee allowed on taxation may, if the Court so directs, be allowed against the party seeking the adjournment in respect of each occasion upon which a confirmed hearing is adjourned;
- (iii) in every case which is not heard the taxing officer must be satisfied that the case has been prepared for trial under this paragraph.

3. Drawing

(a) Concise statement, claim, reference, written statement of defence, interlocutory application, notice of motion, originating notification, affidavit, interrogatories, agreement for compromise, adjournment or satisfaction of suit, or any other pleading not otherwise provided for-

(i) four folios or less US\$3

(ii) in excess of four folios: additional per folio after the first four folios US\$ 1

(b) All other documents (including proofs of witnesses' evidence), so far as necessary: per folio US \$ 1

(c) Bill of costs: per folio US \$ 1

(d) Affidavit or return of service US \$2

Provided that in relation to paragraph (a) (ii), and (b) the taxing officer may direct that the costs of any repetitive or unnecessary matter shall be disallowed.

4. Copies

(a) Of statement of claim, reference, written statement of defence, affidavit, interrogatories, replies to interrogatories, reference, agreement in satisfaction of suit, exhibit, bill of costs and every other document (whether for Court or opposing party) : per folio US \$0.5

(b) The actual cost of copies of Court's notes bespoken from day to day as a case proceeds may be allowed if certified for by the Court.

(c) Printing: actual costs, supported by vouchers of all necessary printing.

(d) Photostat copies: actual costs, supported by vouchers of all necessary photocopying.

(e) All other necessary copies: per folio US \$0.5

5. Correspondence

Letters before action or other necessary letters

US\$1.5

Or per folio

6. Attendances

		Ordinary Scale US\$	Higher Scale US\$
a)	On any necessary application to or formal attendance on the Registrar	10	
b)	At offices of Court or Registrar on routine matters	10	
c)	At Court on any matters on a date fixed by The Court for hearing, when the case cannot be taken, or by advocate for calling over lists	20	
d)	At Court not otherwise provided for:-	20	
	(i) half hour or less	20	
	(ii) one hour	30	
	(iii) half day	40	
	(iv) whole day	50	
e)	Routine telephone calls: each necessary telephone call allowed per three minutes or part thereof	5	
f)	All necessary attendances (including attendance to take minutes of evidence of witness other than party for whom the advocate is appearing) of any nature whatsoever not otherwise provided for: per quarter hour.	20	

7. Perusals

(a) Of pleadings, affidavits, interrogatories and answers thereto, notices to admit, notice of motion in Court, originating notification, or other necessary documents not specifically provided for: per folio US \$ 5

(b) Of notices and other routine documents US \$5

(c) Of necessary letters: per folio US \$5

8. Service

(a) Within three kilometres of the Court or Registry or any sub-registry US \$2

(b) Every additional kilometre over three kilometres, such amount as is reasonable, but not exceeding US \$1 per kilometre.

(c) By post, if authorized US \$0.5

9. Plans, models, etc

Actual costs supported by voucher of all necessary plans, charts, photographs and models.

10. Translators

Actual costs, supported by vouchers of all necessary translations.

11. Execution proceedings

- (a)** Instructions to execute a decree or order and drawing necessary application US \$3
- (b)** Attendance at Court for filing application US \$1
- (c)** Attending Court to peruse order US \$1

B. Advocate and Client Costs

As between advocate and client the minimum fees shall be:-

- (a)** the fees prescribed in A above, increased by one third; or
- (b)** the fees ordered by the Court, increased by one-third; or
- (c)** the fees agreed by the parties in pursuance of the Court's order or judgment therein, increased by one third, as the case may be such increase to include all proper attendances on the client and all necessary correspondence.

FOURTH SCHEDULE: NOTICE OF MOTION

(Rule 51 (4))

IN THE EAST AFRICAN COURT OF JUSTICE- FIRST INSTANCE DIVISION

AT.....

Application No.....of 20.....

(In the matter ofbetween):

.....Applicant
and
.....Respondent

NOTICE OF MOTION

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

And for an order that the costs of and incidental to this application abide the
result of the case.

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

The address of service of the applicant is _____

Signed _____
Advocate for the Applicant/Claimant.

Lodged in the Registry/ Sub-registry at _____ on the _____ day of
_____ 20 _____

Registrar

Drawn and filed by.....

To be served upon.....

FIFTH SCHEDULE: GUIDELINES FOR MEDIATION

(Rule 63 (1))

- 1.** A mediation session shall take place as directed by the mediator under Rule 63 of the Rules of the East African Court of Justice Rules of Procedure 2018.
- 2 . (1)** At least seven (7) days before the mediation session, every party shall prepare a statement and provide a copy thereof to every other party and to the mediator.
 - (2)** The statement shall identify the factual and legal issues in dispute and briefly set out the position and interests of the party making the statement,
 - (3)** The party making the statement shall attach to it any document that the party considers of central importance to the action.
 - (4)** The mediator shall have power to enlarge the time under paragraph 2 (1) hereof and subject to the provisions of Rule 63 (3) of the East African Court of Justice Rules of Procedure 2018, may from time to time adjourn mediation proceedings.
 - (5)** Each party or its representative responsible for making decisions regarding proceedings shall attend the mediation session either personally or with its advocate, if any.
- 3.** All communications at a mediation session and the mediator's notes and records shall be deemed to be without prejudice. The parties or their representatives shall sign an agreement of confidentiality in accordance with form A of Fifth Schedule.
- 4 . (1)** If the agreement settles the case or resolves some of the issues in dispute, the parties and their advocates shall sign the agreement and the Judge mediator shall make an order that the case or the issues as the case may be have been so settled or resolved.
 - (2)** Where the mediator orders that the case has been settled, the order is as good as a Court decree.
 - (3)** In the event the mediation leads to a partial settlement an order will be drawn accordingly and the unresolved issues will go for trial.

SIXTH SCHEDULE: PROCEDURE FOR A REFERENCE FOR PRELIMINARY RULING (Rule 126(1))

- 1.** In the cases governed by Article 34 of the Treaty, the decision of the Court or tribunal of a Partner State which suspends its proceedings and refers a case to the Court shall be notified to the Court by the Court or tribunal concerned.
- 2.** The decision shall then be notified by the Registrar to the parties, the Partner States, the Secretary General and/or to the organ or institution of the Community which adopted the act the validity or interpretation of which is in dispute.
- 3.** Within two (2) months of this notification, the parties, the Partner States, the Secretary General and, where appropriate, the organ or institution which adopted the act the validity or interpretation of which is in dispute, shall be entitled to submit statements of case or written observations to the Court.
- 4.** The statements of case or written observations which have been lodged under paragraph (3) above shall also be served on the parties and the other persons referred to in paragraph (2) above.
- 5.** The date of the hearing shall be notified to the parties and those other persons referred to in paragraph (2) above at the same time as the documents referred to in paragraph (3) are served.
- 6.** As regards the representation and attendance of the parties to the main proceedings in the preliminary ruling procedure, the Court shall take account of the rules of procedure of the national Court or tribunal which made the reference.
- 7.** Where a question referred to the Court for a preliminary ruling is identical to a question on which the Court has already ruled, or where the answer to such a question may be clearly deduced from existing case-law, the Court may, at any time give its decision by reasoned order in which reference is made to its previous judgment or to the relevant case-law.
- 8.** The Court may also give its decision by a reasoned order, after informing the Court or tribunal which referred the question to it, hearing any observations submitted by the persons referred to in paragraph (2) above where the answer to the question referred to the Court for a preliminary ruling admits of no reasonable doubt.
- 9.** Without prejudice to paragraph (7) above, the procedure before the Court in the case of a reference for a preliminary ruling shall also include an oral part.
- 10.** The Court may, at anytime of the procedure request clarification from the national Court that has requested a preliminary ruling.
- 11.** The Registrar shall notify the Court or tribunal that has made the reference, the Partner States, the Secretary General and any interested organ or institution of the Community of the ruling of the Court.

SEVENTH SCHEDULE: FORMS
FORM A: NOTICE OF MOTION
(Rule 94 (2))
IN THE EAST AFRICAN COURT OF JUSTICE - APPELLATE DIVISION
AT.....

Application No.....of 20.....

(In the matter of an Appeal No.....of 20.....)

Between

..... Applicant.

And

..... Respondent

(Appeal from the¹⁰² of the First Instance

Division at(Justice (s)

Dated.....20.....In

Application No.....of 20.....

NOTICE OF MOTION

TAKE NOTICE that on..... theday of
.....20....., at..... o'clock in the morning/afternoon or as
soon thereafter as he can be heard,.....,

Applicant or Advocate for the abovenamed applicant, will move the Court/a
Judge of the Court for an order that

And for an order that the costs of and incidental to this application abide the
result of the said appeal ¹⁰³

The application will be supported by the affidavit
of.....sworn/affirmed at..... on the.....
day of20.....

The address for service of the applicant is.....
.....
.....

Dated at.....this..... day of
20.....

¹⁰² Insert judgment, decree, or order as the case may be

¹⁰³ Insert judgment, decree, or order as the case may be

Signed:.....

Applicant/Advocate for the Applicant

Lodged in the registry aton the

day of....., 20.....

.....

Registrar

Drawn and filed by:-

.....

To be served upon:-

.....

**FORM B: NOTICE OF APPEAL
(Rule 88(5))**

IN THE EAST AFRICAN COURT OF JUSTICE - APPELLATE DIVISION

AT.....
In the matter of an Intended Appeal No.....of 20.....
Between

..... Appellant

And

..... Respondent

(Appeal from the(¹⁰⁴) of the First Instance Division at
.....(Justice (s))

Dated.....20..... In

Reference/Claim/Application * No.....of 20

NOTICE OF APPEAL

TAKE NOTICE thatbeing dissatisfied with the
decision of the First Instance Division of the East African Court of Justice
(Justice (s)given at on the
day of..... 20....., intends to appeal to the Appellate
Division of the Court against the whole of the said decision/such part of the
said decision as decided that:-

- 1.....
- 2.....etc.

The address for service of the appellant is.....
.....
.....

It is intended to serve copies of this notice on

Dated at..... this day of
20.....

Signed.....
Appellant/Advocate for the Appellant

¹⁰⁴ Insert judgment, decree, or order as the case may be

To:

The Registrar of the East African Court of Justice.....

Lodged in the Registry/sub Registry of the East African Court of Justice
at..... this..... day of 20.....

.....

Registrar

Drawn and filed by:-

.....

To be served upon:-

.....

FORM C: MEMORANDUM OF APPEAL

(Rule 97 (3))

IN THE EAST AFRICAN COURT OF JUSTICE - APPELLATE DIVISION

AT.....

Appeal No.....of 20.....

Between

..... Appellant.

And

..... Respondent

(Appeal from the⁽¹⁰⁵⁾ of the First Instance Division at
.....(Justice(s)).....)

Dated.....20..... In

Reference/Claim/Application * Noof 20.....

MEMORANDUM OF APPEAL

....., the above-named appellant appeals to
the Appellate Division against the whole/part (3) of the above-mentioned
decision on the following grounds, namely:-

1.....

2.....

etc.

It is proposed to ask the Court for an order that:-

1.....

2.....etc

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

Signed:.....
Appellant/Advocate for the Appellant.

To: The Honourable Judges of the Appellate Division.

Copies to be served on.....

¹⁰⁵ Insert judgment, decree, or other as the case may be.

Lodged in the Registry atthis.....day of
....., 20.....

.....

Registrar

Drawn and filed by:-

.....

To be served upon:-

.....

FORM D: NOTICE OF ADDRESS FOR SERVICE

(Rule 90(2))

IN THE EAST AFRICAN COURT OF JUSTICE - APPELLATE DIVISION

AT.....

In the matter of an Application/Appeal No.....of
20.....

Between

..... Appellant.

And

..... Respondent

(Appeal from the(1) of the First Instance
Division at..... (Justice (s))

Dated.....20.....

In

Reference/Claim/Application* Noof 20.....

NOTICE OF ADDRESS FOR SERVICE

TAKE NOTICE that the address for service of
.....

Respondent served with notice of appeal,
is.....

.....

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

Signed:.....
Respondent/Advocate for the Respondent

To: The Registrar of the East African Court of Justice
at.....

Copies to be served
on.....

Lodged in the Registry/sub-registry at.....this
..... day of, 20.....

.....
Registrar

Drawn and filed by:-
.....

To be served upon:-
.....

FORM E: NOTICE OF CROSS-APPEAL

(Rule 102 (3))

IN THE EAST AFRICAN COURT OF JUSTICE - APPELLATE DIVISION

AT.....

In the matter of an Appeal No.....of 20.....

Between

..... Appellant.

And

..... Respondent

(Appeal from the(1) of the First Instance Division
at.....(Justice (s))

Dated.....20..... In

Reference/Claim/Application * No.....of 20

NOTICE OF CROSS-APPEAL

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

- 1)
 - 2)
- etc

It is proposed to ask the Court for an order that (1)
.....

It is intended to serve copies of this notice on
.....
.....

Dated at.....this day
of20.....

Signed.....
Respondent/Advocate for the Respondent

To:
The Honourable Judges of the East African Court of Justice,
Appellate Division.

Lodged in the Registry/sub Registry of the East African Court of
Justice.....at..... this..... day of
20....

.....
Registrar

Drawn and filed by:-
.....
To be served upon:-
.....

FORM F: NOTICE OF GROUNDS AFFIRMING DECISION

(RULE 103 (3))

IN THE EAST AFRICAN COURT OF JUSTICE - APPELLATE DIVISION

AT.....

(In the matter of an Appeal No.....of 20.....).

Between

..... Appellant.

And

..... Respondent

(Appeal from the(1) of the First Instance

Division at.....(Justice(s).....)

Dated.....20..... In

Reference/Claim/Application *No.....of 20

.....

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-named decision ought to be affirmed upon grounds other than those relied upon by the First Instance Division namely:-

1)

2)

etc

It is intended to serve copies of this notice on

.....

.....

Dated at.....this day of20.....

Signed.....

Respondent/Advocate for the Respondent

To:
The Honourable Judges of the East African Court of Justice,
Appellate Division.

Lodged in the Registry/sub Registry of the East African Court of
Justice.....at..... this..... day of
20.....

.....
Registrar

Drawn and filed by:-
.....
To be served upon:-
.....

FORM G: CERTIFICATE OF TAXATION OF COSTS

(Rule 3 (3) of the THIRD SCHEDULE - Taxation Rules)

**IN THE EAST AFRICAN COURT OF JUSTICE - FIRST INSTANCE/
APPELLATE DIVISION ***

AT.....

TAXATION CAUSE No.....of 20.....

Between

..... Applicant

And

..... Respondent

CERTIFICATE OF TAXATION OF COSTS

I,....., the Registrar of the East African Court of Justice, hereby certify that the costs payable to.....in pursuance to the judgment/ruling dated.....have been taxed and certified at USD.....

Dated at Arusha this.....day of.....20.....

Issued on theday of

.....

Registrar

Delete as the case may be*

IN THE EAST AFRICAN COURT OF JUSTICE

APPELLATE DIVISION

EIGHTH SCHEDULE: TAXATION OF COSTS

(RULE 129(3))

1.	In this Schedule, a folio means one hundred words, and a single figure or a group of figures up to seven shall count as one word.	Interpretation
2.	<p>(1) Where costs are to be taxed, the advocate for the party to whom the costs were awarded shall lodge his bill with the taxing officer and shall, within seven (7) days after lodging it serve a copy of it on the advocate for the party liable to pay it.</p> <p>(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 (21) days after a request in writing therefor by the party liable or such further time as the Registrar may allow.</p> <p>(3) A bill of costs may not be lodged by an advocate who is not on the record.</p>	Lodging and service of bill of costs
3.	<p>(1) A bill of costs shall be instituted and filed in the proceedings and shall be in form of bills prepared in five columns as follows:-</p> <ul style="list-style-type: none">(a) the first or left hand column for the dates of the items;(b) the second column for the serial number of items;(c) the third column for the particulars of the services charged for;(d) the fourth column for the professional scale charged;(e) the fifth column for the taxing officer's deductions. <p>(2) Every bill of costs shall be endorsed with:-</p> <ul style="list-style-type: none">(a) the name and address of advocate lodging the same;(b) the name and address of every party to be served or his 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, and such certificate if found to be incorrect the item may be disallowed.	Form of bill
4.	<p>(1) Disbursements shall be shown separately at the foot of the bill of costs.</p> <p>(2) Receipts for all disbursements shall be produced to the taxing officer at the time of taxation</p> <p>(3) No disbursement shall be allowed which has not been paid at the time of taxation.</p>	Disbursements
5.	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.	Bills not to be altered after lodging
6.	When a bill of costs as aforesaid has been lodged, the taxing officer shall issue a notice to all parties concerned or their advocates giving the dates, time and place which the bill will be taxed.	Notice of taxation
7.	The taxing officer shall have power to limit or extend the time for any proceeding before him, and to adjourn the same from time to time and from place to place.	Time and adjournment
8.	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.	Failure to attend taxation
9.	<p>(1) The fee to be allowed for instructions to make, support or oppose any application shall be such sum as the taxing officer shall consider reasonable, but shall not be less than USD 100</p> <p>(2) The fee to be allowed for instructions to appeal or 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 interests 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.</p>	Quantum of cost

<p>(3) The sum allowed under sub-paragraph (2) shall include all work necessarily and properly done in connection with the appeal and not otherwise changeable including attendances, correspondences, perusals and consulting authorities.</p> <p>(4) Other costs shall, subject to the provisions of paragraphs 10, 11 and 12 below, be awarded in accordance with the scale set out below.</p>	
<p>10. 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.</p>	Fees for drawing documents
<p>11. (1) On taxation, the taxing officer shall allow such costs, charges and disbursements as shall appear to him to have been reasonably incurred for the attainment of justice but no costs shall be allowed which appears to the taxing officer to have been incurred through overpayment, extravagance, over-caution, negligence or mistake or by payment of special charges or expenses to witnesses or other persons or by other unusual expenses.</p> <p>(2) In taxing the costs of any 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.</p>	Taxation of bills
<p>12 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.</p>	Over-riding discretion
<p>13. 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.</p>	Excessive claims
<p>14. 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.</p>	Set-off of costs
<p>15. (1) Costs of more than one advocate shall not be allowed unless the Court has so directed:-</p> <p>provided that if 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 long as the total of such fee and the instruction fee allowed to instructing the advocate shall not be greater than it would have been if one advocate only had acted in the matter.</p> <p>(2) Where the Court has directed that the costs of two advocates be allowed:-</p> <p>(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;</p> <p>(b) where the senior advocate is a member of the same firm as the advocate on record, he shall be allowed such fee as would have been allowed in the case of the advocate not a member of that firm; and</p> <p>((c)the advocate on record shall be allowed the usual instruction, hearing and other fees.</p> <p>(3) The fee paid to another advocate by the advocate on record shall be shown as disbursement.</p>	
<p>16. 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 same 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.</p>	Cost where advocates changed during proceedings
<p>17. 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 he is of the opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed.</p>	Two or more parties
<p>18. In taxing the costs as between party and party or for payment 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.</p>	Costs where trustees defend desperately

19. The 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 person who may have attended the hearing, unless the Court has so ordered.

Expenses of persons attending hearing

SCALE OF COSTS

		USD	Cts
1.	For instructions to file a notice of appeal.....	50	00
2.	For instructions to act for a respondent:-	10	
	Where an appeal is subsequently instituted.....	60	00
	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.....	100	00
3.	For drawing a notice of motion	30	00
4.	For drawing an affidavit, for each folio or part thereof, exclusive of exhibits.....	10	00
5.	For drawing a notice of appeal.....	15	00
6.	For drawing a notice of address for service.....	10	00
7.	For drawing a memorandum of appeal.....	150	00
8.	For drawing a notice of cross appeal.....	75	00
9.	For drawing a notice of grounds for affirming a decision.....	50	00
10.	For drawing an order for each folio or part thereof.....	10	00
	with a minimum fee of.....	20	00
11.	For drawing a bill of costs, for each folio or part thereof.....	5	00
12.	For drawing any other necessary document to be filed or used in the Court, for each folio or part thereof.....	5	00
13.	For making any necessary copies for each folio or part thereof		
	• For the first copy.....	3	00
	• For each subsequent copy.....	1	00
14.	For attendance at the Registry.....	10	00
15.	For attendance on the Registrar...		
	For the first 15 minutes.....	25	00
	For each subsequent 15 minutes.....	10	00
16.	For attending on a judge in chambers for the first 30 minutes.....	40	00
17.	For attending in Court, where the matter was listed but not reached.....	50	00
18.	For attending in Court on the hearing of any application or appeal:-		
	for the first thirty minutes	75	00
	for each subsequent 30 minutes.....	25	00
19.	For attending in Court to hear judgment.....	25	00

Dated at Arusha on this.....day of.....20.....

.....
President
East African Court of Justice

IN THE EAST AFRICAN COURT OF JUSTICE

APPELLATE DIVISION

GUIDELINES FOR VIDEO CONFERENCE PROCEEDINGS

These guidelines are issued to supplement the provisions of Rules 132 and 133 of the East African Court of Justice Rules of Procedure 2019 and parties are advised to note the following.

1. Proceedings through the video conference shall be like any other court proceedings and parties shall be expected to conduct themselves in the usual manner.
2. Keep the same degree of formality as you would in a physical courtroom.
3. Counsels appearing for video conference hearings shall appear robed in their judicial attires without exception but will be seated. Any counsel not so dressed shall not be afforded audience before the Court.
4. In as much as possible Counsel wishing to rely on any document shall ensure the same was shared by the other party as well as being filed in Court.
5. Please embrace the technology and test the software prior to the hearing, the Court will assist counsels to familiarize with the core features of the system.
6. The system allows sharing of the document you are looking at on the screen but that sharing on the screen shall be coordinated from only one point which will be done by the Court IT staff.
7. Place your microphone on mute when you are not speaking. Avoid shuffling papers and making other distracting background noises. In as much as possible, mute the mic unless you are speaking. This avoids feedback and extraneous noises. The sound of a keyboard can be quite disconcerting and devastate the audio quality for everyone.
8. Working from home and using different software may put great deal of pressure on networks and there may be problems with bandwidth. In those 2 circumstances you may have to turn off the video to save the connection and avoids the disruption of a party dropping out and having to reconnect. All that can be very disruptive. These issues shall be discussed with Court staff prior to commencing the hearing.
9. Counsels shall keep their video on for the duration of the hearing, even when not speaking (this is for the benefit of the other advocates and the judge, however, it also has the added benefit that others will notice immediately if your connection drops off).
10. The Court shall make contact with the Counsels well in advance of the hearing to discuss and confirm the arrangements.
11. In the event there is to be testimony from a witness, the Court shall ensure the witness protocol is settled in advance - where the witness is to link from, with what documents (electronic or paper) and free of distractions and any possibility of coaching by someone from the sidelines. Consideration shall be given on how the witness shall be sworn, and unless the witness is to affirm, whether there is access to an appropriate religious text.
12. Counsel may wish to supply draft skeleton arguments well in advance of the hearing.
13. Consider your working environment to ensure it is appropriate for a Court session.
14. Turn off email and other notifications which might be given on your computer and distract you or others during the proceedings.
15. During the hearing aim to connect to the video call at least 30 minutes before the designated start time.
16. Ensure you are in an environment that shuts out as much noise as possible, has decent lighting, keep a glass of water and any necessary device charger at hand.
17. Bandwidth will have a huge impact on the smooth-running of the hearing. It is important to minimize internet use in your home during the hearing in order to secure the best and most consistent connection.
18. The court will record the hearing. The parties and representatives must not do so unless specifically permitted by the judge.
19. As much as possible try not to interrupt. If there is a need to so, do not simply launch in with your point. Say something to get the judge's attention i.e. "Your honour/ My lord" and then wait for an invitation to speak. Simply speaking over the other person will not work well on video-link.

COMMON CHALLENGES

Some of the current defects of remote hearings include:

- Variable sound quality
- Screens freezing and participants speaking soundlessly into the camera.
- Participants dropping out of the video call altogether. When judges notice such problems, the hearing will usually be stopped and the individual re-invited. Beyond the technological difficulties, however, are the issues which can be pre-empted, managed and in most cases circumvented with adequate preparation:
- Witnesses speaking down into their documents and mumbling.
- The loss of the ease of interactions of actual personal presence.
- The draining nature of spending hours interacting with a screen compared to 'in-person hearings'.
- The fact that the hearing will take longer as people navigate electronic bundles and switch between speakers. Practical tips and solutions of having good software and a stable internet connection will be key to ensuring the smooth progress of any hearing.

Despite the many negative aspects, however, it is hoped that the innovative modes of working and use of technology being utilized now will be for the betterment of the legal profession and administration of justice as a whole in the long run.



For more information about East Africa Law Society, visit our website
(www.ealawsociety.org)

CONTACT INFORMATION

EALS House, Plot No. 310/19, PPF AGM Area, PPF Road off Njiro Road,
P.O. Box 6240, Arusha - Tanzania; Tel: (+255 27) 254 3226/7;
Cell (+255 786) 821010, (+255 786) 836545; (+254 721) 836545
Email: info@ealawsociety.org; ceo@ealawsociety.org;