
THE EAST AFRICAN COMMUNITY
STATUTORY INSTRUMENTS SUPPLEMENT

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THE EAST AFRICAN COURT OF JUSTICE RULES
OF PROCEDURE 2019

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**THE TREATY FOR THE ESTABLISHMENT OF THE
EAST AFRICAN COMMUNITY**

THE EAST AFRICAN COURT OF JUSTICE

RULES OF PROCEDURE

**(Made under Article 42(1) of the Treaty for the Establishment
of the East African Community)**

IN EXERCISE of the powers conferred on the East African Court of Justice by Article 42(1) of the Treaty for the Establishment of the East African Community, the Court makes the following Rules of Procedure.

PART A

SECTION I

Preliminary Provisions

Citation
and
commence-
ment.

1. These Rules may be cited as the East African Court of Justice Rules of Procedure, 2019 , and shall come into force on a date appointed by the President by notice in the Gazette.

Interpre-
tation.

2. 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;

“Counsel to the Community” means the Counsel to the Community provided for by Article 69 of the Treaty;

“Court” means the East African Court of Justice established by Article 9 of the Treaty;

“decree” means the formal expression of an adjudication, which, so far as regards the Division of 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” means 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 being 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 or reference issued by the Court in accordance with sub-rule (1) of rule 28 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 before the Court 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 in accordance with Article 24(4) of the Treaty;

“Principal Judge” means Principal Judge of the Court as designated in accordance with Article 24(5) of the Treaty;

“Registrar” means the Registrar of the Court 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;

“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 in accordance with Article 24(4) of the Treaty.

Computation
of time.

3. (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, Saturdays and Sundays;
- (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.

(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.

SECTION II GENERAL POWERS OF THE COURT

Inherent
powers of
the Court.

4. 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.

Extension of
time

5. 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.

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.

Consolidation and stay of proceedings.

SECTION III 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.

Powers of the Registrar.

(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.

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

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

Delegation of Registrar's Powers.

(2) Every Deputy 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—

Registry and sub-registries 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.

(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.

Registers.

10. (1) There shall be kept in the Registry and in the sub-registries, 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.

(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.

SECTION IV DOCUMENTS

Preparation
of
documents

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.

(2) The pages of every document shall be numbered consecutively and shall be bound in book form.

(3) In all pleadings and all documents annexed thereto, every tenth line on each page shall be indicated on the right hand side.

(4) Every pleading shall be divided into paragraphs numbered consecutively, each allegation being so far as appropriate contained in a separate paragraph.

(5) Dates, sums and other numbers shall be expressed in figures and not words.

(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.

(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.

12. The Registrar may reject any document or pleading which does not comply with the requirements of rule 11,25, 26, 32, 33, 55 or 59.

Rejection of documents.

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.

Documents lodged out of time.

(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.

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 12:00 a.m. to 11:59 p.m.

Hours of lodging documents

Change of
address for
service.

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 the change in the registry and serving copies of the notice on all persons who have been served with the previous address.

Modes of
service of
documents

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.

(2) A document may be served on the party's advocate, recognized agent or representative.

(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.

(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.

(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.

(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 where that person is held for service on that person.

(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) Notwithstanding other means of service provided in this rule, service may be effected electronically by email, using the addresses provided by the parties with a copy to the Court or by using other means approved by the Court.

(9) For purposes of sub-rule (8), a delivery status report shall be deemed as proof of service.

17. (1) The serving officer or a party to a case before the Court, shall in all cases in which a document has been served, swear an affidavit of service stating the time of service 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.

Return of service.

Examination of serving officer.

(2) The affidavit of service shall be in accordance with Form 2 in the Second Schedule with such modifications as circumstances may require.

18. (1) Where an allegation is made to the Court that a document has not been properly served, the Court may, on oath, examine the serving officer or a party to the case before the Court or cause him or her to be examined by a competent Court of a Partner State, and may make such further inquiry as the Court thinks fit.

Examination of serving officer.

(2) After the examination under sub-rule (1) the Court may declare that the document has been duly served or order such service as it thinks fit.

SECTION V

APPEARANCE AND REPRESENTATION

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

Appearance and Representation

(2) The recognized agent of a party by whom such appearances, Applications or acts may be made or done is a person

holding a power of attorney authorizing that person to make or do such appearances, applications or acts on behalf of the party.

(3) A recognized agent shall file a notice of appointment with the Court.

(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 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 practicing certificate or document that he or she is entitled to appear before a superior Court of a Partner State.

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

Death of a party

20. (1) 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.

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

(3) 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 or claimant.

21. (1) A party may, change their advocate and shall within seven (7) days of the change, lodge with the Registrar notice of the change of advocate.

Change of
advocates.

(2) The notice of change of advocate shall be served on on each party to the proceedings.

(3) When there is a change of advocate, or where 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.

(4) 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.

(5) 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.

22. (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 the agent, advocate or representative is using his rights for purposes other than those for which they were granted, it shall inform the person concerned.

Exclusion
from
proceedings.

(2) 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.

(3) 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.

(4) The order of the Court excluding an advocate or agent from proceedings shall have immediate effect.

(5) 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 VI COURT VACATIONS AND HOLIDAYS

Court
vacations.

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

(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 bills 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.

Holidays.

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

PART B PROCEEDINGS IN THE FIRST INSTANCE DIVISION SECTION VII PLEADINGS

References.

25. (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 reliefs sought by the applicant.

(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.

26. (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.

Disputes
between the
Community
and its
employees

(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.

Representative action.

27. (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.

Notification of statement of claim/reference.

28. (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.

Transmission of notification.

29. (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.

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

Validity of
notification.

(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.

(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.

Substituted
service.

31. (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.

Response to
reference.

32. (1) The respondent shall within forty-five (45) days after being served with a notification of the reference file and serve upon the applicant a response stating:—

- (a) the name and address of the respondent;
- (b) concise statement of facts and law relied on;
- (c) the nature of evidence in support where appropriate; and
- (d) the 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.

(3) The reply shall not repeat the party's contentions but shall be directed to bringing out the issues that still divide them.

33. (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. Defence and counter-claim.

(2) A statement of defence shall state:—

- (a) the name and address of the respondent;
- (b) concise statement of facts and law relied on;
- (c) the nature of any evidence in support where appropriate; and
- (d) the order sought by the respondent.

(3) A respondent who desires to make a counter-claim shall add it to the statement of defence.

(4) 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.

34. The address for service referred to under rules 25,26,32 and 33 shall contain the following particulars:— Particulars of address for service.

- (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.

Facts not
evidence to
be pleaded.

35. (1) Subject to the provisions of this Rule and Rules 38, 39 and 40, 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.

Matters to be
specifically
pleaded.

36. (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:—

- (a) particulars of any misrepresentation, fraud, negligence, breach of trust, wilful default or undue influence on which the party pleading relies; and
- (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.

(2) A party shall plead every matter which:—

- (a) is alleged to make the pleading of the opposite party not maintainable; or
- (b) if not specifically pleaded, would take the opposite party by surprise; or
- (c) raises issues of fact not arising out of the preceding pleading.

(3) Subject to Rules 43 and 48, 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.

37. (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. Annexures
to pleadings.

(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.

(3) A list of all documents annexed to a pleading shall be furnished at the time the pleading is filed.

38. (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. Departure.

(2) Sub-rule (1) shall not prejudice the right of a party to amend or apply for leave to amend any previous pleading.

39. (1) A party may by its pleading raise a point of preliminary objection. Preliminary
Objections.

(2) Where a respondent intends to raise a preliminary objection he shall, before the Scheduling Conference provided for under Rule 63, give 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.

(3) Nothing in sub-rule (2) shall prevent the Court for sufficient reason from entertaining a preliminary objection otherwise raised.

40. (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. Further
and better
particulars.

(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.

Admissions
and denials.

41. (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.

(2) A denial may be made either by specific denial or by a statement of non-admission and either expressly or by necessary implication.

(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.

Denials by
joinder of
issues.

42. (1) If there is no reply to a response or defence, there is a joinder of issues.

(2) Subject to sub-rule (3):—

- (a) there is, at the close of pleadings, a joinder of issues on the pleading last filed; and
- (b) a party may, in his or her pleading, expressly join issue on the immediately preceding pleading.

(3) There can be no joinder of issues on an application, claim or counter-claim.

(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.

Closure of
pleadings.

43. 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.

44. (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.

No filing
after close of
pleadings.

(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.

(3) 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.

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

(5) 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.

(6) 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.

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

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

Pleadings to
be signed.

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 where it was signed.

Verification
of pleadings.

46. 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.

Striking out
pleadings.

47. (1) The Court may, on application of any party, strike out 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 VIII **AMENDMENT OF PLEADINGS**

General
power to
amend.

48. 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.

Amendment
of
documents.

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

50. (1) A party that amends its pleading under paragraph (a) or (b) of Rule 48, 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.

Amendment
without
leave.

(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.

51. (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.

Amendment
with leave.

(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.

SECTION IX APPLICATIONS

Applica-
tions.

52. (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) This rule shall not apply to:—

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

53. (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.

Service of
Notice of
Motion.

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

54. (1) Any person served with a notice of motion or 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.

Affidavits in
reply.

(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.

**SECTION X
THIRD PARTY, INTERVENTION AND AMICUS CURIAE
PROCEDURE**

Notice to
third party.

55. (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.

56. (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 or 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.

Filing and
serving
Third Party
defence.

(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.

(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 for sufficient reason to set aside or vary any judgment passed under this Rule upon such terms as may seem just.

Third Party
directions.

57. 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.

Cross
claims.

58. (1) A respondent who desires to claim against a co-respondent:—

- (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:—

may, without leave of the Court, issue and serve on such other person a notice making such claim or specifying such question or issue.

(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.

(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.

59. (1) An application for leave to intervene under Article 40 of the Treaty shall be by notice of motion.

Applications
for
intervention.

(2) An application under sub-rule (1) shall contain:—

- (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.

(3) The applicant shall serve on each party who shall, within fourteen (14) days, file and serve a response.

(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.

(5) The The intervener shall accept the case as it is at the time of intervention.

(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.

Amicus curiae.

60. (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 Partner State, organization or person to submit in writing any observation on any issue that the Court deems appropriate.

(2) For the purposes of sub-rule(1), 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 XI WITHDRAWAL AND DISCONTINUANCE

Withdrawal and discontinuance.

61. (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.

Compromise.

62. 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.

**SECTION XI
PRE-TRIAL PROCEEDINGS**

63. (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:—

Scheduling
Conference.

- (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 in sub-rule (1) before the date fixed for the Scheduling Conference and shall file and serve the same as appropriate.

(3) Where the parties cannot agree on all or some of the matters 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 the hearing.

(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.

Recourse to
alternative
dispute
resolution.

64. (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.

65. (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.

Fixing the date and place of oral proceedings.

(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.

SECTION XIII WITNESSES

Summoning
witnesses.

66. (1) Any party in a claim or reference may apply to the Court for summons to any person whose attendance is required 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.

(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.

67. (1) A party calling a witness shall be responsible for the witness's expenses. Expenses of witnesses.

(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 of such person as aforesaid.

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

68. (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. Commission to examine witnesses.

(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.

SECTION XIV PROCEEDINGS

Quorum of
the Court.

69. (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.

(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 52(6) and 54(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.

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

Proceedings
to be held in
open court.

Provided that on application by any party or on its own motion the Court may, for sufficient reason, 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 69 may be heard in chambers or in open court as the judge may deem fit.

Hearing and
consequence
of non-
attendance.

71. (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.

(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 it fit to adjourn the hearing:—

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 it fit to adjourn the hearing:—

Provided that where the claim, reference or application so proceeds or the counter-claim is so 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.

(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.

72. (1) The claimant shall have the right to begin unless the respondent admits the facts alleged by the claimant and contends that either on 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.

Right to begin.

(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.

73. (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.

Statement and production of evidence.

(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.

(3) A party may present its legal arguments in writing.

74. A witness shall before giving evidence take an oath or affirmation in accordance with Form 8 in the Second Schedule.

Evidence to be given on oath or affirmation.

Taking and recording of evidence.

75. (1) The evidence of every witness shall be given orally in open court in the language of the Court and shall be recorded 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.

(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.

(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.

(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:-

- (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.

(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.

Hearing and adjournments.

76. (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.

(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 71.

(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.

77. (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.

List of authorities and copies of judgments to be referred to.

(2) The list and its annexures shall be in eight (8) copies, and shall be lodged at least seven (7) days before the hearing:-

Provided that a supplementary list and copies of authorities may, when necessary, be produced at the time of the hearing.

78. 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.

Court deliberations.

SECTION XV JUDGMENTS AND ORDERS

79. (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 directs otherwise.

Pronouncement and contents of judgment

(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.

(4) Sub-rule (3) shall apply to an order other than one made by a single judge.

(5) 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.

(6) 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.

(7) 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.

(8) The Registrar shall provide the parties with certified copies of the judgment.

80. (1) Every decision of the Court shall be embodied in a decree or an order.

Embodiment and signing of decrees or orders.

(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.

81. (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.

Correction of judgments and orders.

(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).

82. A party may apply to the Court for the interpretation of the judgment, ruling or order.

Interpretation of judgments, rulings and orders.

83. (1) An application for review of a judgment under Article 35 of the Treaty shall be made in accordance with this Rule.

Review of judgment.

(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.

(3) The Court shall grant an application for review only where the party making the application under sub-rule (2) proves the allegations relied 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.

Interim
orders and
directions.

84. (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 reason 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.

Execution of
judgments.

85. (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 favor execution is to take place, may initiate execution proceedings.

PART C PROCEEDINGS IN THE APPELLATE DIVISION

SECTION XVI APPEALS TO AND APPLICATIONS IN THE APPELLATE DIVISION

86. A party aggrieved by a judgment of the First Instance Division of the Court may appeal to the Appellate Division on the following grounds—

Appeals to
the Appellate
Division.

- (a) point of law;
- (b) lack of jurisdiction; or
- (c) procedural irregularity.

87. (1) An appeal shall not operate as a stay of proceedings or 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.

Stay of
proceedings
and of
execution.

(2) Where an application is made for stay of execution of a decree or order before the expiration of the time allowed for appealing therefrom, the Court may on sufficient reason 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 Appellate Division may make an *ex-parte* order for stay of execution pending the hearing of the application.

SECTION XVII

INSTITUTION OF APPEALS

Notice of
appeal.

88. (1) Any person who desires to appeal from the judgment or order of the First Instance Division shall lodge a written notice of appeal 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 34, 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.

(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:—

Service of notice of appeal.

- (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:—

Respondent to give address for service.

- (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.

Application to strike out notice of appeal or appeal.

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.

Effect of failure to institute appeal.

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 person 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 prescribed 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.

Where notice of appeal is lodged out of time.

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.

Form of applications to the Court / Appellate Division.

(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 to this Rules.

Supporting documents.

(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:—

Institution of appeals.

- (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 retained proof of that service.

Contents of memorandum of appeal.

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.

Contents of record of appeal.

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

- (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.

(2) The documents mentioned in sub-rule (1) shall be bound in the order in which they are specified in that sub-rule and documents produced in evidence shall be put in the 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.

(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.

Service of memorandum and record of appeal.

(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.

Amendment
of record of
appeal.

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.

Supple-
mentary
record of
appeal.

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.

Notice of
cross-appeal.

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.

(2) A notice given by a respondent under this Rule shall state the names and addresses of all other 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 Division shall give notice to that effect, specifying the grounds for his contention.

Notice of grounds for affirming decision.

(2) A notice given by the respondent under this Rule shall state the names and addresses of all other 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.

Service of notice of cross-appeal or notice of grounds for affirming decision.

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.

Withdrawal of appeal.

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.

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.

Rights of respondent when appeal is withdrawn.

(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.

107. (1) A respondent who has given notice of cross-appeal or notice of grounds for affirming the decision of the First Instance Division may withdraw it at any time before the appeal is called on for hearing by lodging in the appropriate registry a written notice to that effect, signed by him or on his behalf.

Withdrawal of cross-appeal or of grounds for affirming decision.

(2) The respondent shall, before or as soon as practicable after lodging the notice of withdrawal, serve a copy of it on the appellant(s) and copies of it on all other respondents who were served with the notice of cross-appeal or notice of grounds for affirming the decision, as the case may be.

108. (1) An appeal shall not abate on the death of the appellant or the respondent but the Court shall, on the application of any interested person, cause the legal representative of the deceased to be made a party in the place of the deceased.

Death of party to appeal.

(2) An appeal shall not be incompetent by reason only that the respondent was dead at the time when it was instituted but the Court shall on the application of any interested person cause the legal representative of the deceased to be made a party in the place of the deceased

(4) An appeal shall not be instituted in the name of a person who is dead or has ceased to exist but may be instituted in the name of his or its legal representative.

SECTION XVIII

HEARING OF APPEALS

Preliminary
objections.

109. (1) Where a respondent intends to raise a preliminary objection to an appeal he shall, before the Scheduling Conference under Rule 110 of these Rules, give not less than seven (7) days written notice to the Court and to the other parties to the appeal of the grounds of that objection.

(2) Nothing in sub-rule (1) shall prevent the Court for sufficient reason from entertaining a preliminary objection otherwise raised.

Scheduling
Conference.

110. (1) When the appeal is ready for hearing and before it is scheduled for hearing, the Court shall hold a Scheduling Conference to ascertain:—

- (a) points of agreement and disagreement;
- (b) whether legal arguments shall be written or oral, or both;
- (c) the estimated length of the hearing;
- (d) consolidation of appeals;
- (e) any other matters as the Court may deem necessary.

(2) Before the Scheduling Conference, the parties shall as far as practicable exchange any documents that are to be relied

on in the appeal and agree on all matters listed above before the date fixed for the Scheduling Conference and shall file and serve the same as appropriate.

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

(4) After the Scheduling Conference, if the matter is to proceed to hearing, the Court shall fix the date for commencement of hearing.

(5) In any case where all parties opt to present legal arguments in writing, the Court shall prescribe the time limits within which the parties shall file their respective written legal arguments and may fix the date on which the parties shall appear before a full Court to deal with any other matter the Court thinks necessary.

111. (1) Any party to an appeal who does not intend to appear in person or by advocate at the hearing of the appeal may lodge in the appropriate registry a written statement of his arguments in support of or in opposition to the appeal or the cross-appeal, if any, as the case may be, and shall, before, or within seven (7) days after lodging it, serve a copy of it on the other party or on each other party appearing in person or separately represented.

Presentation
of arguments
in writing.

(2) Every such statement shall be lodged:—

(a) by an appellant, within fourteen (14) days of lodging his memorandum of appeal;

(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.

Hearing
Notice.

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.

Quorum in
the Appellate
Division.

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 a 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.

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.

List of authorities and copies of Judgment to be referred.

(2) The said 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.

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.

Hearing in open court.

(2) The Presiding Judge may, in exceptional circumstances, if 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 conduct proceedings in camera or as prescribed under rule 65 (4) & (5) of these Rules.

Arguments
at hearing.

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.

Non-
appearance.

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 or she was prevented by any sufficient reason 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 reason 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 11 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.

Order of
addresses.

(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.

Judgment.

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

(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.

General powers of the Court.

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 directions 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.

Certified copies.

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

Interpretation of Court judgments.

122. A party may apply to the Court for the interpretation of the Judgment, ruling or order.

Review.

123. An application for review of a judgment under Article 35 of the Treaty shall be *mutatis mutandis* in accordance with rule 83 of these Rules.

Publication of judgements.

124. Judgments of the Court may be published in law reports.

SECTION XIX
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.

Advisory
opinion of
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 79 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 XX
CASE STATED**

Preliminary
rulings.

126. (1) A request by a national court or tribunal of a Partner State concerning the interpretation or application 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 XXI
COSTS**

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.

Assessment
of costs

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 appeal, application, claim or reference as between parties. Taxation of costs.

(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. Reference on taxation.

(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 *mutatis 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:- Security for costs.

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
SECTION XXII**

CASE MANAGEMENT AND RECORDING SYSTEM

Use of
technology
in Court.
proceedings.

132. 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.

Electronic
exchange of
documents.

133. (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.

PART F

SECTION XXIII

MISCELLANEOUS PROVISIONS

PLACES AND DATES OF COURT SESSIONS

134. (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.

Places
and dates
of Court
sessions.

(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.

135. The East African Court of Justice Rules of Procedure, 2013 are hereby revoked.

Transitional
provisions.

136. 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

FIRST SCHEDULE

JUDICIAL OATH OF THE DEPUTY

(Rule 8(2))

I,..... do swear/solemnly affirm that I will well and truly serve the East African Community, in the office of 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

(Rule 28 (1))

NOTIFICATION OF INSTITUTION OF REFERENCE/CLAIM

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 instituted 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

(Rule 17(2))

AFFIDAVIT OF SERVICE

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

AT.....

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

.....Claimant

Versus

.....Respondent

I of
and 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 52(5), 54(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 of
affirm/ 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/AFFIRMED at.....by the said.....
at..... this day of, 20....

Before me:.....
Commissioner for Oaths/Notary Public

*Delete as the case may be

FORM 4

(Rule 31(3))

SUBSTITUTED SERVICE BY ADVERTISEMENT

IN THE EAST AFRICAN COURT OF JUSTICE
FIRST INSTANCE DIVISION

AT

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

.....Claimant/
*Applicant**

versus

.....
Respondent

Toof

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 of 20.....

.....
Registrar

*Delete as the case may be

FORM 5

(Rule 55 (4))

THIRD PARTY NOTICE

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

2etc

(*) 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 65(6))

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 Application/Claim/Reference/Appeal* 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 66(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 ason 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 adjourned, 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.....this day 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.

Signatur..... *Date*.....

*Delete as the case may be.

FORM 8

OATH OR AFFIRMATION OF WITNESS

(Rule 74)

IN THE EAST AFRICAN COURT OF JUSTICE
FIRST-INSTANCE DIVISION

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

FORM 9

EXECUTION OF JUDGMENTS

(Rule 85(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 below

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

*East African Community Court of Justice
Rules of Procedure, 2019.*

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

THIRD SCHEDULE

TAXATION OF COSTS

FIRST INSTANCE DIVISION

(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.

2. (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.

(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.

(3) A bill of costs may not be lodged by an advocate who is not on record.

3. (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:-

- (a) the first or left hand column for the dates of the items;
- (b) the second column for the serial numbers of the items;
- (c) the third column for the particulars of the service charged for;
- (d) the fourth column for the professional or scale charges;
- (e) the fifth column for the taxing officer's deductions.

(2) Every bill of costs shall be endorsed with:-

- (a) the name and address of the advocate lodging the same;
- (b) the name and address of every party to be served or his or her 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 if such certificate is found to be incorrect the item may be disallowed.

(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.

4. (1) Disbursements shall be shown separately at the foot of the bill of costs.

(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.

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.

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.

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.

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.

9. (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.

(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.

(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, perusals and consulting authorities.

(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.

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.

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.

(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.

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.

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.

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.

15. (1) Costs of more than one advocate shall not be allowed unless the Court has so directed—

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.

(2) Where the Court has directed that the costs of two advocates be allowed:—

- (a) where the senior advocate is not a member of the same firm as the advocate on the record, he shall be allowed the fee paid to him, including fees for attending in Court, or so much thereof as the taxing officer shall consider reasonable;
- (b) where the senior advocate is a member of the same firm as the advocate on 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
- (c) the advocate on record shall be allowed the usual instruction, hearing and other fees.

(3) The fee paid to another advocate by the advocate on record shall be shown as disbursement.

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.

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.

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.

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 expenses of any person who may have attended the hearing, unless the Court has so ordered.

**SCALE OF CHARGES
(RULE 9(4)) OF THE THIRDSCHEDULE)**

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

<i>US\$</i>	<i>US\$</i>	<i>US\$</i>
-	1000	100
1000	5000	150
5000	10000	1680
10000	20000	2800
20000	100000	3840
100000	250000	4140
250000	500000	4440
500000	1000000	5040
Over 1000000	-	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:-

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That value exceeds but does not exceed

<i>US\$</i>	<i>US\$</i>	<i>US\$</i>
-	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
	<i>Plus 1% on the amount over US\$1000000</i>	

- (c) To defend proceedings where the respondent substantially adopts the defense of another respondent: an instruction fee calculated under subparagraph 1(a).
- (d) To defend any other proceedings: an instruction fee calculated under subparagraph 1 (b).
- (e) To sue or defend in any case not provided for above: such sum as may be reasonable but not less than 50 US\$.
- (f) To institute a reference in any matter 50 US\$.
- (g) To counter-claim: fee under subparagraph (a) or (b), as appropriate.
- (h) 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, adjustment 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 1

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:-
 - e) half hour or less 20
 - (ii) one hour 30
 - (iii) half day 40
 - (iv) whole day 50
- f) Routine telephone calls: each necessary telephone call allowed per three minutes or part thereof 5
- g) 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. 1.5

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 threekilometres, such amount as is reasonable, butnot exceeding US \$1 per kilometer.
- (c) By post, if authorized US \$0.5

9. Plans, models, etc

Actual costs supported by voucherof all necessary plans, charts,photographsand 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 52(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 64(2))

1. A mediation session shall take place as directed by the mediator under Rule 64.
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 64 (3), 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.
4. The parties or their representatives shall sign an agreement of confidentiality in accordance with form A to this Schedule.
5.
 - (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.

FORM A

CONFIDENTIALITY AGREEMENT

(Paragraph (4))

IN THE EAST AFRICAN COURT OF JUSTICE
FIRST INSTANCE DIVISION

AT.....

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

.....*Applicant/Claimant*

versus

.....*Respondent*

This is an agreement between _____, _____
_____ as participants
and _____, hereinafter “mediator” to
enter into confidential mediation discussions regarding:
_____.

The participants and the mediator understand and agree to the strict confidentiality of their mediation.

Mediation discussions, materials, correspondence, any draft resolutions and any unsigned mediated agreement shall not be admissible in any court of proceeding or other contested proceeding. Any party to this agreement may obtain an injunction to prevent disclosure of any such confidential information in violation of this agreement.

Only an agreement signed by all parties may be so admissible. The participants further agree to not call the mediator to testify concerning the mediation or to provide any materials from the mediation in any court proceeding between the parties. The mediation is considered by the participants and mediator as settlement negotiations.

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The parties further agree that any meetings between the mediator and an individual participant in caucus shall be confidential between that party and the mediator, except to the extent that the participant specifically authorizes the mediator to share information in joint mediation sessions.

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

Participant

Participant

Mediator

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 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 the¹of 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 ²

¹ Insert judgment, decree, or order as the case may be

² Insert judgment, decree, or order as the case may be

*East African Community Court of Justice
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The application will be supported by the affidavit of sworn/affirmed at on the day of 20.....

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

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

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⁽³⁾ 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.

³ Insert judgment, decree, or order as the case may be

*East African Community Court of Justice
Rules of Procedure, 2019.*

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

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

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

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

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⁽⁴⁾ 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.....

⁴ Insert judgment, decree, or other as the case may be.

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

To: The Honourable Judges of the Appellate Division.

Copies to be served on.....

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

*East African Community Court of Justice
Rules of Procedure, 2019.*

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

*East African Community Court of Justice
Rules of Procedure, 2019.*

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))

Interpreta-
tion.

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.

Lodging and
service of
bill of costs.

2. (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.

(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.

(3) A bill of costs may not be lodged by an advocate who is not on the record.

Form of bill.

3. (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—

- (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.

(2) Every bill of costs shall be endorsed with—

- (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.

4. (1) Disbursements shall be shown separately at the foot of the bill of costs. Disbursements.

(2) Receipts for all disbursements shall be produced to the taxing officer at the time of taxation

(3) No disbursement shall be allowed which has not been paid at the time of taxation.

5. 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. (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. Quantum of costs.

(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.

(3) The sum allowed under sub-paragraph (2) shall include all work necessarily and properly done in connection with the appeal and not otherwise chargeable including attendances, correspondences, perusals and consulting authorities.

(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.

Fees for drawing documents.

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.

Taxation of bills.

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.

(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.

Taxation of bills.

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.

Excessive claims.

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.

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.

Set-off of costs

15. (1) Costs of more than one advocate shall not be allowed unless the Court has so directed—

Costs of more than one advocate

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.

(2) Where the Court has directed that the costs of two advocates be allowed—

- (a) where the senior advocate is not a member of the same firm as the advocate on the record, he shall be allowed the fee paid to him, including fees for attending in Court, or so much thereof as the taxing officer shall consider reasonable;
- (b) where the senior advocate is a member of the same firm as the advocate on 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
- (c) the advocate on record shall be allowed the usual instruction, hearing and other fees.

(3) The fee paid to another advocate by the advocate on record shall be shown as disbursement.

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.

Cost where advocates changed during proceedings

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Two or more parties

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.

Costs where trustees defend separately

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.

Expenses of persons attending hearing

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.

SCALE OF COSTS

		USD.	Cts
1.	For instructions to file a notice of appeal.....	50	00
2.	For instructions to act for a respondent:-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

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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 23rd day of July, 2019.

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*President
East African Court of Justice*