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GAZETTE NOTICE No. 5176

THE CIVIL PROCEDURE ACT

(Cap. 21)

ESTABLISHMENT

TAKE NOTICE that the Chief Justice/President, Supreme Court of Kenya has established Migori High Court, with supervisory jurisdiction over Migori, Rongo and Kehancha Magistrates Courts, with effect from 1st August, 2014.

Dated the 17th July, 2014.

WILLY MUTUNGA,
Chief Justice/President, Supreme Court of Kenya.

GAZETTE NOTICE No. 5177

THE CIVIL PROCEDURE ACT

(Cap. 21)

ESTABLISHMENT

TAKE NOTICE that the Chief Justice/President, Supreme Court of Kenya has established Naivasha High Court, with supervisory jurisdiction over Naivasha, Narok and Engineer Magistrates Courts, with effect from 1st August, 2014.

Dated the 17th July, 2014.

WILLY MUTUNGA,
Chief Justice/President, Supreme Court of Kenya.

GAZETTE NOTICE No. 5178

THE CONSTITUTION OF KENYA **THE ENVIRONMENT AND LAND COURT ACT** (No. 19 of 2011)

PRACTICE DIRECTIONS ON PROCEEDINGS IN THE ENVIRONMENT AND LAND COURTS, AND ON PROCEEDINGS RELATING TO THE ENVIRONMENT AND THE USE AND OCCUPATION OF, AND TITLE TO LAND AND PROCEEDINGS IN OTHER COURTS.

IN EXERCISE of the powers conferred by the Sixth Schedule Part 5 Section 22 and Article 161 (2) (a) of the Constitution of Kenya

2010, and in pursuance of Section 24, Sections 30 (1) and (2) of the Environment and Land Court Act (No. 19 of 2011) of the Laws of Kenya as read with Section 31 of the Act and Section 5 (1) and 2 (c) of the Judicial Service Act (No. 1 of 2011), the Chief Justice makes the following practice directions following the establishment of the Environment and Land Courts.

The Overriding Objective of Proceedings in the Environment and Land Court

1. In the exercise of its authority and Jurisdiction, the Environment and Land Court shall at all stages of any trial be guided by Article 159 of the Constitution, Sections 1A and 1B of the Civil Procedure Act and Section 3 of the Environment and Land Court Act No. 19, 2011 so as to facilitate:

- (a) Just;
- (b) Expeditious;
- (c) Proportionate; and
- (d) Accessible resolution of disputes.

Jurisdiction in matters relating to the Environment and the use and Occupation of, and Title to Land.

2. All proceedings relating to the environment and the use and occupation of, and title to land pending before the Court of Appeal shall continue to be heard and determined by the same court.
3. All pending judgments and rulings relating to the environment and the use and occupation of, and title to land pending before the High court shall be delivered by the same court.
4. All part-heard cases relating to the environment and the use and occupation of, and title to land pending before the High Court shall continue to be heard and determined by the same court.
5. All cases relating to environment and the use and occupation of, and title to land which have hitherto been filed at the High Court and where hearing in relation thereto are yet to commence shall be transferred to the Environment and Land Court as directed by a judge.
6. All cases touching on inheritance, succession and distribution of land under the Law of Succession Act, Cap. 160 Laws of Kenya shall continue to be filed and heard by the High Court or the Magistrates Courts of competent jurisdiction.
7. All proceedings which were pending before the Magistrates Court, having been transferred thereto from the now defunct District Land

Disputes Tribunals, shall continue to heard and determined by the same courts.

8. Magistrates Courts shall continue to hear and determine all cases relating to the environment and the use and occupation of, and title to land (whether pending or new) in which the courts have the requisite pecuniary jurisdiction.
9. All cases under the Landlord and Tenants (Shops, Hotels & Catering Establishments) Act Cap. 301 Laws of Kenya shall continue to be filed in and determined by the Business Premises Tribunal.
10. All cases under the Rent Restriction Act, Cap. 296 Laws of Kenya shall continue to be filed in and determined by the Rent Tribunal.
11. All disputes under the Valuation of Rating Act, Cap. 266 Laws of Kenya shall continue to be filed in and determined by the Resident Magistrates Courts of competent jurisdiction.
12. The National Environment Tribunal shall continue to hear and determine environmental matters in which the Tribunal has jurisdiction as conferred by the Environment Management and Co-ordination Act, (No. 8 of 1999).
13. Appeals from the Magistrates Courts and Tribunals in the foregoing paragraphs 6 to 12 shall lie in the Environment and Land Court pursuant to Section 13 (4) of the Environment and Land Court Act.
14. All new cases relating to the environment and the use and occupation of, and title to land not falling under paragraph 8 above shall be filed in the nearest Environment and Land Court for hearing and determination by the said court and must be within the purview of the jurisdiction conferred upon the Environment and Land Court with particular regard to the jurisdictional limitations set under Article 162(2) (b) of the Constitution and Section 13 of the Environment and Land Court Act No. 19, 2011.
15. Where a matter has been wrongly filed at the Environment and Land Court Registry, the practice directions notably: - Practice Directions Relating to the Filing of Suits, Applications and References in Proper Court (Gazette Notice No. 1756/2009) shall apply, and the matter shall be directed for filing in the appropriate court(s) in tandem with those practice directions.

Filing of Pleadings, Witness Statements, and Documents

16. Parties are enjoined to **comply** with the requirements, time limits and deadlines when filing Pleadings, Witness Statements, and Documents as set out under the Civil Procedures Rules 2010. In particular:
 - (a) All appropriate pleadings and relevant forms **must** be filed in respect of all cases. These shall include the Summons to Enter an Appearance, List and Bundle of Documents and Witness Statements signed by witnesses. As much as possible parties are enjoined in their pleadings to indicate the value of the property in dispute.
 - (b) Summons to Enter an Appearance shall be signed by the Environment and Land Court Deputy Registrar and released back to the parties within 24 hours of filing.
 - (c) Witness Statements shall contain sufficient details so that:
 - (i) The witness will adopt his/her statement as his/her evidence-in-chief; and
 - (ii) Thereafter only minimal highlighting and production of documents (in examination-in-chief) may be required before the witness can be cross-examined.
 - (d) In cases where documents are sought to be produced and relied on, the Bundle of Documents shall be chronologically arranged and sequentially paginated. All copies of documents contained in the Bundle of Documents must be clearly legible.
 - (e) As much as possible, Witness Statements shall make sequential reference to the documents by their pages to make it easy for the court and other parties to follow and to understand the case.
17. Applications under Order 49 of the Civil Procedure Rules, 2010 shall indicate a large "R" on the top right-hand corner of the application for the ease of allocations.

18. When filing any documents, parties must ensure the correct citation of the case, the date the case is fixed for hearing (if a date has already been fixed) and the correct names of the parties are given to facilitate easy retrieval of the court file and appropriate filing.

19. All pleadings filed in court shall contain the postal address(es), the e-mail address(es) and mobile telephone number(s) of either:

- (a) The firm of advocates on record; or
- (b) The individual advocate handling the matter; or
- (c) Where parties are not represented by an advocate, the postal, e-mail and telephone contacts of the individual litigant.

The said postal, e-mail address (es) and mobile telephone number(s) shall be appended at the end of each pleading/documents/submissions at the 'Drawn & Filed By' section.

Certificates of Urgency and Mentions

20. In all matters brought under certificate of urgency:

- (a) The urgency must be self-evident in the certificate, or the grounds.
- (b) The Judge shall have discretion to grant interim orders or give directions in chambers on the basis of the pleadings and documents in support of the same without hearing counsel or party in the matter.
- (c) The Judge shall have discretion on whether to hear counsel or a party orally at the ex-parte stage.
- (d) In order to facilitate expeditious extraction of orders relating to urgent applications, the applying advocate/party may prepare draft orders in soft copies when coming to court. The Court will approve the draft with or without amendments and have a fair one executed and sealed shortly after grant of the orders sought.

21. In the absence of a Judge in the station, all interlocutory applications of an urgent nature shall be placed before a Deputy Registrar in the station who will have the discretion to grant interim orders pending the listing of the application before the Judge for further directions/orders or hearing.

22. In ex-parte applications before the Judge/ Deputy Registrar, discretion shall be exercised to hear or not hear an advocate/party. However the Judge or Deputy Registrar in appropriate matters may require a party to address him/her on the application before granting any orders. In such matters the Judge or Deputy Registrar shall allocate a time or a very near date for the party to argue the application.

23. As mentions of cases take a lot of valuable time for the matters scheduled for full hearings or hearings of applications and submissions, the Judge shall discourage mentions and only those matters that merit such mentions e.g. to record consents and/or to take ruling/judgment dates upon filing submissions shall be granted.

24. Where a party seeks to mention a matter before a Judge/Deputy Registrar, a letter shall be written to the Deputy Registrar clearly setting out the reasons for the mention, and the Deputy Registrar shall exercise his/her discretion whether or not to grant the mention, or give other appropriate directions.

Pre-Trial Directions

25. After the close of pleadings, there shall be full compliance with Order 11 of the Civil Procedure Rules, 2010 regarding Pre-trial Directions and Conferences, and parties shall write to the Deputy Registrar requesting that the matter be listed for pre-trial directions and/or conferences. At this stage in order to expedite the trial process preliminary issues can be resolved before a Case Manager/ Deputy Registrar as the case may be.

26. The trial Judge shall determine the number of pre-trial conferences that may be necessary depending on the nature of the case.

27. Once pre-trial directions are issued by a Judge, every party shall be bound to adhere to the same. The Judge shall only grant a party one extension to comply, failing which the Judge may direct the case be fixed for trial or may make other appropriate orders as the

circumstances of the matter may demand to enable the ends of justice to be met.

28. In addition to the matters contained in Order 11, Rule 3 of the Civil Procedure Rules, 2010, the following are the orders/directions that may be issued by a Judge during a pre-trial conference:

- (a) The issuance of appropriate Orders and directions to ensure parties comply and take pre-trial conferences seriously as they constitute a vital stage in the overall case management and the efficient administration of justice.
- (b) The issuance of an Order striking out pleadings or imposing costs or similar sanctions due to non-compliance with pre-trial directions and other timelines.
- (c) The issuance of Directions on the number of conferences to be held before trial.
- (d) The issuance of summons for witnesses to attend court to testify and/or produce documents, and for the filing of Witness Statements in respect of such witnesses.
- (e) The issuance of an Order requiring the filing of more comprehensive Witnesses Statements;
- (f) The issuance of an Order that the parties agree and narrow down issues for trial.
- (g) Taking of all objections to the production of specific documents, where notice has been issued to the other party, thereafter, objections on the production of any document shall not be entertained at the main hearing;
- (h) The issuance of Directions that a matter shall be determined through filed witness statement(s) and bundle of documents;
- (i) Alternatively, the issuance of Directions to determine and fix the number of witnesses to testify at the trial;
- (j) The issuance of an Order that the matter to be referred for arbitration or make such other orders for meditation and negotiation (as may be appropriate in the circumstances of the case) to ensure the expeditious disposal of the matter.
- (k) Where appropriate, the issuance of conservatory orders or maintenance of status quo until a matter is fully and finally determined.
- (l) The Judge shall have the discretion to give any further orders and/or directions as the ends of justice may require.

29. No hearing date shall be given at the registry until all pre-trial directions have been given and complied with, and the Judge has certified the case as ready for hearing during the said pre-trial hearing.

30. Call-overs in the Environment and Land Courts are hereby abolished.

Conduct of Hearings

31. Three days before any hearing, whether of an application or a full hearing, parties must ensure all documents are properly filed and that proper service has been effected.

32. During the inter-partes hearing of any interlocutory application, where appropriate, parties are encouraged to agree to maintain *status quo*. If they cannot agree, after considering the nature of the case or hearing both sides the Judge shall exercise discretion to order for *status quo* pending the hearing and determination of the suit bearing in mind the overriding interests of justice.

33. In order to expedite trial:

- (a) The Judge shall encourage parties to proceed by way of written submissions in regard to all interlocutory applications. Oral submissions shall be permitted only in exceptional cases.
- (b) Parties shall submit written submissions that summarize their argument, and which do not exceed 10 pages (unless the Judge certifies the matter as complex and parties are granted leave to file lengthy submissions owing to the nature of the case). In all cases the submissions shall be paginated. Hard copies of all cited cases **must** accompany the submissions.

(c) Where parties have filed written submissions and wish to highlight the same, the Judge shall be at liberty to allocate and cap the time for every party.

34. At the full trial, parties shall restrict themselves to the narrowed down issues for determination as directed by the Judge during the pre-trial conference.

35. Where parties at any stage compromise a matter or intimate a settlement outside court, they shall file consent signed by all parties in the matter settling the same. If no settlement is reached, the matter shall be set down for hearing. In all cases, the filed consent shall require the approval and adoption by the court.

36. To enable a Judge expedite delivery of rulings and judgments, parties are encouraged to:

- (a) Send to the court and the other parties in the suit (where parties have furnished their mail address (es) soft copies (in Microsoft word or editable PDF format) of their pleadings, affidavits and submissions and list of authorities, using the court email address furnished for the purpose.
- (b) In all such cases, the case number, the names of parties and the Judge dealing with the matter must be stated.

Cause Lists

37. The cause list shall be prepared by the presiding Environment and Land Court Judge weekly in advance and posted on the internet by 1.00 p.m. every Friday. Additions may be done by way of a supplementary cause list. There will however be a cause list generated for each day denoting what cases are before which Judge or Deputy Registrar.

Alternative Dispute Resolution

38. In the interest of avoiding unnecessary costs and delay, the Court may on its own motion or with the agreement or request of the parties direct that the dispute be resolved by the appropriate Alternative Dispute Resolution mechanism including conciliation, mediation, arbitration and traditional dispute resolution mechanisms in accordance with Article 159 of the Constitution and Section 20 of the Environment and Land Court Act, 2011.

39. The Court when referring any dispute to mediation shall apply Sections 59 B to 59 D of the Civil Procedure Act.

Appeals from Subordinate Courts and Local Tribunals

40. All appeals from subordinate courts and local tribunals shall be filed within a period of thirty days from the date of the decree or order appealed against in matters in respect of disputes following within the jurisdiction set out in Section 13 (2) of the Environment and Land Court Act, 2011.

41. The court shall adopt and apply Part VIII of the Civil Procedure Act and Order 42 of the Civil Procedure Rules in determining appeals within the jurisdiction set out in Section 13 (2) of the Environment and Land Court Act, 2011.

42. All appeals shall be in form of a Record of Appeal that shall include the following:

- (a) An index of all documents in the record with the number of pages at which they appear.
- (b) The Memorandum of Appeal and all documents required under Order 42 Rule 13 of the Civil Procedure Rules.
- (c) Copies of all documents shall be legible and every page numbered at the foot of the page so as to leave the top right hand corner for numbering of any Record of Appeal to the Court of Appeal. The numbering should be legible on all copies of the bundle.
- (d) Parties are encouraged to use a numbering machine for consistency a

Sanctions

43. Non-compliance with relevant Civil Procedure Rules, orders and or directions issued by a Judge, shall attract sanctions including but not limited to imposition of costs, fines, striking out of pleadings, the dismissal of a suit and/or meting out punishment prescribed in the Environment and Land Court Act or any other Statute as the

court may deem fit bearing in mind the overriding interests of justice.

These practice directions supersede the directions dated 9th November, 2012 and published *vide* Gazette Notice No 16268.

Dated the 25th July, 2014.

WILLY MUTUNGA,
Chief Justice/President Supreme Court of Kenya.

GAZETTE NOTICE NO. 5179

THE CONSTITUTION OF KENYA

THE JUDICATURE ACT

(Cap. 8)

THE CIVIL PROCEDURE ACT

(Cap. 21)

PRACTICE DIRECTIONS RELATING TO CASE MANAGEMENT IN THE
COMMERCIAL AND ADMIRALTY DIVISION
OF THE HIGH COURT AT NAIROBI

IN EXERCISE of the powers under Article 161 (2) (a) and Article 165 (6) of the Constitution of Kenya, in pursuance of Section 10 of the Judicature Act, Chapter 8 of the Laws of Kenya which makes provisions for the Chief Justice to make rules of court for regulating the practice and procedure in the High Court and the Civil Procedure Act, Chapter 21 of the Laws of Kenya, and the Civil Procedure Rules, 2010, the Chief Justice makes the following practice directions in the interest of effective case management for the expeditious disposal of cases of a commercial nature, commenced by Plaintiff or Originating Summons which are proceeding to hearing in the Commercial and Admiralty Division of the High Court of Kenya at Nairobi.

1. It is hereby ordered pursuant to Order 11 Rule 1 of the Civil Procedure Rules, 2010 that all suits commenced by Plaintiff or Originating Summons and proceeding to hearing in the Commercial & Admiralty Division of the High Court in Nairobi are exempt from Order 11 of the Civil Procedure Rules, 2010.
2. On close of the pleadings any party may file the Case Management Checklist [appendix A to this Practice Direction].
3. The party filing the Case Management Checklist shall complete page 1 of the Checklist with:
 - (a) The name and details of all parties.
 - (b) The name of the firm of Advocates appearing for each party together with the address details including telephone number and e-mail address. If any party is appearing in person, then this shall be stated together with the address details.
 - (c) The details of all pleadings which have been filed with the date on which each pleading was filed to assist the Court in identifying the relevant pleadings. If any pleading has been amended then details of the original and amended pleadings should be inserted.
 - (d) The details of all Bundles of Documents and List of Witnesses and the statements of such witnesses which have been filed.
4. The party filing the Case Management Checklist shall within 7 days of filing, serve the Case Management Checklist on all other parties to the suit and shall write to all other parties, with a copy to the Court, inviting those other parties to meet at the Commercial Division Registry with a view to fixing a date for the Case Management Conference. If any party is not present when the date for the Case Management Conference is fixed, the party filing the Case Management Checklist shall forthwith serve on such parties a hearing notice giving notice of the date and time fixed for the Case Management Conference.
5. Case Management Conference shall be heard on Fridays.
6. At least 7 days before the date fixed for the Case Management Conference each party shall file and serve on all other parties the Case Management Request indicating what orders or directions

that party will request at the Case Management Conference [appendix B to this Practice Direction].

7. The Case Management Request shall state briefly the nature of the order or directions requested with any necessary documents attached e.g. draft amended pleading; request for particulars; request for interrogatories.
8. If any party requires an order or direction which has not been provided for in the Case Management Request then the party shall use the "12. Other Applications" box. This will include third party notices; third party directions; directions on notices between co-defendants; directions on an Originating Summons.
9. At the Case Management Conference the Judge will complete the Case Management Checklist and give all necessary directions for the expeditious and fair hearing of the suit. For this purpose the Judge will expect the advocate who appears on the Case Management Conference to be the advocate having the conduct of the suit or an advocate familiar with all aspects of the suit and fully instructed to deal with all matters which may arise on the Case Management Conference, so as to avoid unnecessary adjournments.
10. The Judge will record any directions given or orders made on the Case Management Checklist and will inform the parties present in Court of such directions and orders.
11. Where appropriate the Judge will give a time for compliance with such directions or orders and will fix a further date for the Case Management Conference with a view to recording compliance; or where appropriate making a specific "Unless Order" imposing a time for compliance and stating that unless compliance is achieved by the specified time the Judge will make such orders as are necessary and just, including striking out where appropriate.
12. In the interest of avoiding unnecessary costs and delay the Judges in the Division wish to encourage parties to consider Alternative Dispute Resolution – conciliation, mediation and arbitration. This is question 5 in the Case Management Checklist and will be considered by the Court before moving on to the other questions in the Case Management Checklist.
13. Bundles of Documents:
 - (a) All bundles of documents filed will have every page numbered and all documents will be indexed. It is recommended that numbering be at the foot of the page so as to leave the top right hand corner for numbering of any Record of Appeal to the Court of Appeal. The numbering should be legible and the same on all copies of the bundle.
 - (b) Normally bundles should be prepared containing all documents arranged chronologically, but where the advocate having the conduct of the matter is of the opinion that for the purposes of clarity it is desirable to arrange documents in separate categories [e.g. securities; reports; opinions; correspondence; pleadings in another case] then the documents may be so arranged either in separate bundles or with dividers in the same bundle, but all documents in each category shall be in chronological order with every page numbered.
 - (c) Parties should endeavor to avoid duplicating documents which are already in an earlier bundle filed by another party, unless there is some particular reason for including a second copy of that document.
14. Statements of Evidence:
 - (a) All statements should identify all documents referred to or relied on by reference to the Bundle in which the documents appear with the relevant page number [eg Plaintiff's Bundle of Documents page 5].
 - (b) It is the practice in the Division that at the hearing each witness will be sworn and then adopt his statement of evidence. Subject to the discretion of the Judge hearing the suit, only minimal highlighting will normally be allowed. Therefore if additional matters arise from subsequent Bundles of

Documents or statements of evidence leave should be obtained at the Case Management Conference for further statements of evidence or bundles to be filed.

15. Applications:

- (a) With the exception of applications for injunctions filed with the filing of the Plaint, all applications should as far as possible be raised and dealt with at the Case Management Conference.
- (b) On hearing any application for an injunction or on the delivery of a ruling on an injunction application, the Judge may proceed to give directions for a Case Management Conference with a view to the speedy resolution of the matters in dispute.
- (c) The affidavit filed in connection with any application may make reference to documents contained in any Bundle of Documents which has been filed and it shall not be necessary to exhibit such documents to the affidavits.
- (d) Any application to strike out pleadings or for judgment on admission shall be made at the Case Management Conference

and may not be made after completion of the Case Management Conference.

16. When the Judge is satisfied that all directions and orders made on the Case Management Checklist have been complied with, the Judge shall complete the certificate at the end of the Checklist. No case may be set down for hearing until the certificate has been signed.

17. This Practice Direction shall apply to all cases pending at the date hereof as well as to all cases filed hereafter. However, if a case has already been confirmed as ready for hearing prior to the date hereof, it shall not be necessary to comply with the provisions of this Practice Direction.

Dated the 25th July, 2014.

WILLY MUTUNGA,
Chief Justice/President Supreme Court of Kenya.