

SPECIAL ISSUE



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GAZETTE NOTICE No. 5213

AWARD OF ORDERS, DECORATIONS AND MEDALS MADARAK DAY, 1ST JUNE, 2017

IN RECOGNITION of distinguished and outstanding services rendered to the nation in various capacities and responsibilities, I, Uhuru Muigai Kenyatta, President of the Republic of Kenya and Commander-in-Chief of the Defence Forces confer Awards and Honours to the following persons—

The Order of the Burning Spear

(a) The First Class: Chief of the Order of the Burning Spear (C.B.S.)

1. Kanyuira Gerald Gikonyo
2. Irungu Joseph Wairagu
3. Amb. Saleh Mohamud Ali
4. Hon. Eng. Rege James Gordon Kwanya .

(b) The Second Class: Elder of the Order of the Burning Spear (E.B.S.)

1. Brig. Lokia Fredrick Ekidor
2. Prof. Mukras Mohamed Suleiman
3. Hon. Leshoomo Maison
4. Kabugi Thayu Kamau

(c) The Third Class: Moran of the Order of the Burning Spear (M.B.S.)

1. Amb. Leshore Cleland
2. Amb. Maikara Joseph Kaunda
3. Busena Aggrey Mudembei
4. Eng. Tanui John Kipchumba Komen
5. Dr. Dulu Thomas Daido
6. Kariuki George Wambugu
7. Muriithi Beatrice Wairimu
8. Eng. Wanjiru Esther Wanjiku
9. Eng. Syengo Stephen Philip
10. Chen Fenjian
11. Chen Yun
12. Zhang Min
13. Liu Guangyuan
14. Liu Xianfa

The Order of the Grand Warrior of Kenya (OGW)

1. Maina Gikonyo
2. Dr. Othieno Ojou Joseph

3. Barre Mohamed Muhumed
4. Tikolo Kentice Libutsuli
5. Odhiambo Magoma Cecilia Anastasia
6. Kiome Rachel Kendi
7. Gathiong'o Susan Wanjiku
8. Ritesh Baroti
9. Chepkemai Lily Bridget
10. Munge Allan Gathirwa
11. Karanja James Michugu

The Silver Star (S.S.) of Kenya

1. Cp Loboche Silas Ekidor (Posthumus)
2. Sgt Osman Abdi Mohamed
3. Pte Ndirangu George Muthinji (Posthumus)

Head of State's Commendation

Civilian Division

1. Kabeu Juliet Wambui
2. Waithera Anne Wanjiku
3. Mwakio Lizzy Mkanjala
4. Nzuve Serah Ndunge
5. Mmosi Paulo Amunala

UHURU KENYATTA,
President.

GAZETTE NOTICE No. 5214

HIGH COURT OF KENYA

FAMILY AND COMMERCIAL AND TAX DIVISION, NAIROBI

PRACTICE DIRECTION ON MEDIATION

(Issued pursuant to provisions of Article 159 of the Constitution of Kenya and Section 59B (1) (a), (b) and (c) of the Civil Procedure Act (2010) in relation to Mediation)

1. General

(a) This Practice Direction is issued for the purposes of encouraging parties to arrive at an amicable settlement without going through or completing a trial or appeal. The benefit of settlement by way of mediation is that it is accepted by the parties, expeditious and it is final.

(b) This practice direction shall apply to all Civil actions filed in the Commercial and Family Divisions of the High Court at Milimani Law Courts, Nairobi.

(c) In this Practice Direction, unless the context otherwise requires;

“civil action” means a civil proceeding commenced in any manner prescribed by law save where otherwise provided by the Court.

“court” means the Commercial and/or Family Divisions of the High Court of Kenya at Milimani Law Courts, Nairobi;

“MAC” means the Mediation Accreditation Committee;

“mediation” means an informal and non-adversarial process where an impartial mediator encourages and facilitates resolution of a dispute between two or more parties, but does not include attempts made by a judge to settle a dispute within the course of judicial proceedings related thereto;

“Mediation Deputy Registrar” means a designated deputy registrar in the court assigned to handle mediation cases;

“Mediation Registrar” means the person appointed by the Chief Justice under Section 59A (3) of the Civil Procedure Act;

“mediator” means an impartial third party appointed to conduct a mediation;

“screening” means the process by which the Mediation Deputy Registrar or the Court reviews civil actions for suitability for mediation or otherwise;

2. Referral to mediation

(a) Every civil action instituted in Court shall be subjected to mandatory screening by the Mediation Deputy Registrar and those found suitable may be referred to mediation.

(b) Civil actions shall be screened as follows—

- (i) in the Commercial Division, cases shall be screened upon close of pleadings;
- (ii) in the Family Division, cases shall be screened upon filing of Plaintiff or Petition or other originating process, or at the close of pleadings or at any other appropriate stage as the Court may determine;
- (iii) before a case is set down for hearing the Court may refer any case for mediation;

(c) Pending filing of the Mediator’s report in accordance with paragraph 13 below, the time limits applicable to civil actions under the Civil Procedure Rules shall cease to run.

Provided that nothing in this Practice Direction shall derogate from the jurisdiction of the Court under Section 59B of the Act.

3. Notification of referral to mediation

Where a case is referred to mediation, the Mediation Deputy Registrar shall notify the parties within seven (7) days of completion of screening, that the case has been referred for mediation. The notification shall be in the prescribed Form 1. The parties shall within seven (7) days of receipt of notification file a case summary the prescribed Form 2 annexed hereto.

4. Mediators

(a) Mediation under this Practice Direction shall be conducted by a person registered as a mediator by MAC.

(b) For each case referred to mediation, the Mediation Deputy Registrar shall nominate three qualified mediators from the Register of mediators maintained by MAC, and notify the parties of the names of the nominated mediators.

(c) The parties shall within seven (7) days of receipt of the nominated mediators, state their preference in order of priority, and shall file a notice with the Mediation Deputy Registrar.

(d) The Mediation Deputy Registrar shall within seven (7) days of receipt of the notice, appoint a mediator giving due

consideration to the parties preference; and notify the parties and the notice shall be in prescribed Form 3 annexed hereto.

Provided that parties may by consent select any other mediator from the MAC register within the seven (7) days stipulated in paragraph 4 (b) above.

5. Time limit

Mediation proceedings shall take place and be concluded within sixty (60) days from the date of referral to mediation provided that time may be extended by the Mediation Deputy Registrar, for a further period not exceeding ten (10) days having regard to the number of parties or complexity of issues or with the written consent of the parties, which consent shall be duly filed with the Mediation Deputy Registrar.

6. Commencement of mediation

(a) The appointed mediator shall immediately fix a date for the initial mediation session and shall notify the parties at least seven (7) days before that date. The notice shall be in prescribed Form 4 annexed hereto.

(b) Notice of the place, date and time of the mediation session, shall be served on the parties at the address of service provided in the case summary.

(c) The notice shall also advise parties that the mediation is mandatory.

(d) The appointed mediator shall file a copy of the notice with the Mediation Deputy Registrar.

7. Attendance at the mediation

(a) The parties are required to attend the mediation sessions. They may be accompanied by an Advocate or a representative. Where the party is a corporation, partnership, government agency or entity other than an individual, an officer duly authorized to represent and bind the party shall attend.

(b) The mediator may adjourn a session, where a party fails to attend. Where the session is rescheduled a notice shall be issued to the parties.

(c) The Mediator shall provide guidelines on the process of mediation as appropriate for each referral.

8. Statement of understanding

At the commencement of the mediation session, the mediator shall read and explain to the parties, the rules of engagement set out in the prescribed Form 5 and shall require the parties to sign the form.

9. Non-compliance

(a) If a party fails to comply with any of the mediator’s directions or consistently fails to attend mediation sessions, the mediator shall file a certificate of non-compliance in the prescribed Form 6 with the Mediation Deputy Registrar, who shall then refer the matter back to the Court.

(b) The court may:

(i) order that the parties attend further mediation sessions on such terms as the court considers appropriate; or

(ii) strike out the pleadings of the non-complying party, unless the party satisfies the court that there was reasonable excuse for the non-compliance and that striking out the party’s pleadings will be inequitable;

(iii) order that the defaulting party pays costs to be assessed and determined by the Court;

(iv) Make any other orders as the Court deems fit.

10. Confidentiality and Inadmissibility

(a) All communication during mediation including the mediator’s notes shall be deemed to be confidential and shall not be admissible in evidence in any current or subsequent litigation or proceedings.

(b) The mediator and the parties to any mediation shall treat as confidential information obtained orally or in writing from or about the parties in the mediation and shall not disclose that information unless:

- (i) required by law to disclose;
- (ii) it relates to child abuse, child neglect, defilement, domestic violence or related criminal or illegal purposes.

(c) Neither the mediator nor any person present or appearing at a mediation session may be summoned, compelled or otherwise required to testify or to produce records or notes relating to the mediation in any proceedings before any court of law.

(d) No person present or appearing at a mediation session shall use any electronic device of any nature to record mediation sessions.

(e) Any breach of this provision shall constitute contempt of court.

(f) This provision shall not apply to any settlement arising from mediation.

11. Mediator's Report

Within ten (10) days of conclusion of the mediation, the mediator shall file a mediation report with the Mediation Deputy Registrar in the prescribed Form 7, and provide each of the parties with a copy of the filed mediation report.

12. Agreement

(a) Where there is an agreement resolving some or all of the issues in dispute, such agreement shall be in the prescribed Form 8, duly signed by the parties and shall be filed by any of the parties, with the Mediation Deputy Registrar within ten (10) days of conclusion of the mediation.

(b) Any agreements filed with the Mediation Deputy Registrar shall be adopted by the Court and shall be enforceable as a Judgement or order of court.

13. Additional Mediation

The Court may at any stage of the court proceedings, make an order requiring the parties to participate in additional mediation.

14. No appeal against settlement

No appeal shall lie against a judgment or order of the Court arising from mediation.

15. Immunity

A mediator shall enjoy the same protection and immunity as that granted to judicial officers and judges.

16. Payment of Mediators

Parties shall not pay mediators during the subsistence of this Practice Direction. As an incentive to the parties to embrace mediation as an alternative dispute resolution mechanism, the Judiciary shall facilitate the mediation sessions.

17. Revocation

This Practice Direction revokes Gazette Notice No. 3234 of 2017 extending the applicability of the Mediation (Pilot Project) Rules, 2015 gazetted via Legal Notice No. 197

18. Savings

Any proceeding pending or commenced under the mediation (Pilot Project) Rules 2015 operationalized vide Gazette Notice No. 1890 of 2016 shall be continued and concluded under the mediation (Pilot Project) Rules 2015 and for this purpose shall be treated as if the Gazette Notice extending the applicability of the Rules had not been revoked.

19. Commencement

This Practice Direction will come into operation on 15th May 2017 and shall apply to all cases pending before the Court as well as all cases filed thereafter

ANNEXTURES

FORM No. 1

THE HIGH COURT OF KENYA AT

PLAINTIFF/PETITIONER/APPLICANT

VERSUS

DEFENDANT/RESPONDENT

MEDIATION NO OF

ARISING OUT OF

NOTICE THAT CASE HAS BEEN SCREENED FOR MEDIATION

TO: THE PLAINTIFF AND DEFENDANT

TAKE NOTICE THAT:

1. The above cause has been screened and scheduled for mandatory mediation.
2. You are required to file a case summary in prescribed Form 2 within seven (7) days of receipt of this notice.

Dated atday of2015

DEPUTY REGISTRAR

Copied to the parties (and advocates if represented)

FORM No. 2

General Heading

CASE SUMMARY

(To be provided to the mediator and parties at least 7days before the mediation session)

1. Brief summary of case
2. Issues in dispute

The Plaintiff (or Defendant) state that the following issues are in dispute and remain to be resolved. Issues to be stated briefly and numbered consecutively.

3. Address of service

Name, physical and postal address, email, and telephone number.

Date..... Party's signature.....

FORM No. 3

(General Heading)

NOTICE OF APPOINTMENT OF MEDIATOR

TO: MEDIATOR

(1) I certify that I have consulted the parties and the parties have chosen you to act as the mediator.

(2) Please proceed to immediately fix a date for the mediation session.

Dated atday of2017

MEDIATION DEPUTY REGISTRAR

Copied to the parties (and advocates if represented)

FORM No. 4

(General Heading)

NOTICE BY MEDIATOR

TO:

AND TO:

I have been assigned to conduct the mediation session.

The mediation session will take place on (date) from (time) to (time) at (place)

Unless the court orders otherwise, you are required to attend this mediation session. If you have a lawyer representing you in this action, he/she is also required to attend.

You are required to file a case summary 7 days before the mediation session.

When you attend the mediation session, you should bring with you any documents that you consider of importance in the action. You should plan to remain throughout the scheduled time. If you need another person's approval before agreeing to a settlement, you should make arrangements before the mediation session to ensure you have ready access to that person throughout the session even outside regular business hours.

YOU MAY BE PENALIZED IF YOU FAIL TO FILE A CASE SUMMARY OR TO

ATTEND THE MEDIATION SESSION.

Date

(Name, Address, Telephone Number and Email of the mediator cc. Deputy Registrar

General Heading

FORM No. 5

STATEMENT OF UNDERSTANDING

My name is I have been assigned to mediate your case. I will serve as a neutral party to help you resolve your dispute. I will not act as an advocate for any party.

This mediation is strictly confidential. No party shall be bound by anything said or done in mediation unless a settlement is reached. If a settlement is reached, it shall be reduced in writing and, once signed, shall be binding upon all parties to the agreement. Each party agrees not to request that, I, the mediator testify against other party, not ask me nor any other party to testify regarding statements made in mediation.

Please sign below to acknowledge that you have read and understood this statement and the mediation rules

Date

.....
Plaintiff	Defendant
.....
Plaintiff's Advocate	Defendant's Advocate
.....
Mediator	Mediator

General Heading

FORM No. 6

CERTIFICATE OF NON COMPLIANCE

TO MEDIATION DEPUTY REGISTRAR

I, the mediator, certify that this certificate of non-compliance is filed on account of:

Date

Name, address, telephone number and email of mediator

General Heading

FORM No. 7

MEDIATOR'S REPORT

TO THE MEDIATION DEPUTY REGISTRAR

I having been designated as the mediator in this action and having conducted mediation between the parties do hereby report that the parties have/have not reached a settlement.

Dated

.....
Mediator's signature

FORM 8

General Heading

MEDIATION SETTLEMENT AGREEMENT

We, the undersigned parties to this action have agreed to settle our dispute/differences as follows:

Date

.....
Plaintiff	Defendant
.....
Plaintiff's Advocate	Defendant's Advocate
.....
Mediator	Mediator

Dated the 8th May 2017.

DAVID K. MARAGA,
Chief Justice & President, Supreme Court of Kenya.

GAZETTE NOTICE NO. 5215

THE EAST AFRICAN COMMUNITY CUSTOMS MANAGEMENT ACT, 2004

CONDITIONS FOR APPOINTMENT OF A FACILITY AS A TRANSIT SHED

PURSUANT to the provisions of Section 12 of the East African Community Customs Management Act, 2004, and Regulation 57 of the East African Community Customs Management Regulations, 2010, the Commissioner of Customs and Border Control prescribes the conditions set out in the schedule hereto as the minimum conditions to be fulfilled by an applicant to operate a Transit Shed and the rules to be observed by existing Transit Sheds.

SCHEDULE

1. (a) Any person seeking to operate a Transit Shed shall apply to the Commissioner in writing and obtain the necessary approval before commencement of such development. No Applicant shall commence any such development without the prior approval of the Commissioner being given.

(b) An existing Transit Shed seeking to make further developments shall apply in writing to the Commissioner and obtain the necessary approval before commencement of any developments.

2. A proposed Transit Shed shall observe the following conditions—

(a) be located in plots of not less than 2.5 hectares, provided that this requirement shall not apply to transit sheds operating within airports or ports and specialized transit sheds licensed to handle bulk cargo;

(b) be located close to a main road or thoroughfare in case of transit sheds handling goods imported by sea;

(c) be located not more than one kilometer from the airport, in the case of transit sheds used for handling of goods imported by air;

(d) be located close to existing customs areas, in the case of transit sheds at frontier ports;

(e) have its entire surface area properly paved and fully compacted with suitable materials, preferably paving blocks;

(f) have its surface area enclosed by a perimeter stone wall of a height of not less than three meters from the ground with an electric fence;

(g) have floodlights installed to light up its entire surface area;

(h) provide suitable office accommodation for Kenya Revenue Authority officers and other relevant Government agencies including proper sanitation facilities for use by the officers and other authorized users of the facility;

- (i) the office provided shall be installed with computer facilities and such other suitable office equipment for use by the resident Kenya Revenue Authority officers;
- (j) provide computer software that is compatible with that of Kenya Revenue Authority and facilities for electronic tracking of all the goods imported into the shed;
- (k) provide a building, of not less than 3,000 square feet, suitable for use as a customs warehouse;
- (l) provide loading and offloading facilities including sufficient labor for the verification of goods;
- (m) provide cargo inspection facilities and an all-weather verification bay including suitable facilities to accommodate mobile cargo scanning equipment;
- (n) provide appropriate motor vehicle inspection facilities, for transit sheds handling motor vehicles;
- (o) provide a dedicated area for export cargo for Transit Sheds handling export goods; and
- (p) provide surveillance cameras accessible to the Kenya Revenue Authority officers;

3. An application for appointment to operate a Transit Shed shall be made in the prescribed form (Form C.18) and shall be submitted to the Commissioner together with the relevant architectural drawings showing its layout and location in relation to neighboring developments or thoroughfares.

4. A person shall not be qualified for appointment to operate a Transit Shed if that person, or where the applicant is a company, the company or its director(s) have been found to engage in tax fraud related activities.

5. A person shall not be qualified for appointment to operate a Transit Shed if that person, or where the applicant is a company, the company or its director(s) have any outstanding tax liabilities.

6. A person or where the applicant is a company, the company or its directors(s) seeking to operate a new Transit shed within Mombasa county, shall only be allowed upon the satisfaction of the Commissioner that Kenya Ports Authority and the existing transit sheds have no capacity to handle extra cargo.

7. Upon being appointed to operate, a Transit Shed shall execute a security bond to cover the duties on the goods deposited therein as the Commissioner may determine and pay the prescribed fees.

8. (a) Transit Sheds shall apply to the Commissioner, for renewal of their licenses to operate, every three years from the date of appointment and pay a renewal fee of ten thousand dollars, subject to KRA developing a compliance checklist in consultation with the industry.

(b) Transit Sheds operators whose Transit Sheds were gazetted prior to the Publication of this notice shall be required to obtain licenses under these rules by the 31st day of December, 2017.

9. A Transit Shed shall install and maintain a Stock Management System of a standard approved by the Commissioner.

10. A Transit Shed shall submit to the Commissioner, quarterly returns on all goods received into and delivered from the transit shed and the stock of all cargo in the shed at the close of business on the last day of the last month of the quarter. The report shall be submitted on or before the 10th day of the following month immediately following the end of the quarter.

11. A Transit Shed shall permit the Commissioner at all reasonable times, to inspect stocks against records held by the Transit Shed for purposes of reconciliation.

12. An applicant for a new Transit Shed shall, to the satisfaction of the Commissioner, provide adequate parking space consistent with the local county by-laws.

13. A Transit Shed shall procure security protection services from a reputable service provider recommended to the Commissioner by a competent Authority responsible for licensing of security firms..

14. A Transit Shed shall be a non-smoking area and no naked flames or fires shall be lit in the premises and notices to this effect shall be placed in conspicuous places specifying this prohibition.

15. Each Transit Shed shall appoint an officer who jointly with the Customs Officer in charge of the facility and the cargo owner/his Clearing Agent shall oversee cargo verification and jointly sign the verification account with each party maintaining a countersigned copy of the verification account.

16. No Cargo shall be designated to a Transit Shed that fails to meet the regulations prescribed herein or which fails to rectify within 45 days, any breaches to the Regulations or other deficiencies communicated in writing.

17. Transit Sheds that consistently operate below capacity as may be determined by the Commissioner after a fair hearing, may have their appointment revoked in order to allow more effective deployment of Customs staff and other resources, provided that this requirement shall not apply to transit sheds operating within airports and ports and specialized transit sheds licensed to handle bulk cargo.

18. All Transit Sheds gazetted prior to the publication of this notice shall take measures to comply with the provisions of this Notice by the 31st day of December, 2017.

Gazette Notice No. 8791 of 2015 is revoked.

Dated the 29th May, 2017.

J. N. MUSYOKI,
Commissioner of Customs and Border Control.