## 





**REPUBLIC OF KENYA**

**THE JUDICIARY**

**PERFORMANCE MANAGEMENT & MEASUREMENT UNDERSTANDING**

**BETWEEN**

**THE CHIEF JUSTICE OF KENYA**

**AND**

**THE SUPREME COURT OF KENYA**

**FOR THE PERIOD**

**1ST JULY 2021 TO 30TH JUNE 2022**

© **SEPTEMBER, 2021**



[

## PERFORMANCE MANAGEMENT & MEASUREMENT UNDERSTANDING

This Performance Management and Measurement Understanding, (hereinafter referred to as “***the Understanding***”), is entered into between the **Judiciary of the Republic of Kenya** ( herein referred to as **“the Judiciary**”), represented by the **Chief Justice of the Republic of Kenya** , an office established under article 161(2) of the constitution of Kenya, of the one part , AND **The Supreme Court of the Republic of Kenya,** A Court established under article 163(1) of the constitution , (herein referred to as “**The Court**” ) represented by the **Deputy Chief Justice of the Republic of Kenya**, an office established under article 161 (2,b) 0f the Constitution of Kenya, of the other part.

**Whereas:**

1. The Constitution of Kenya states that judicial authority is derived from the people and vests in the Courts and Tribunals established thereunder, and stipulates, *interalia*, that justice shall be done to all irrespective of status and without undue delay;
2. The Vision of the Judiciary as specified in the Judiciary Strategic Plan, (herein after referred to as “the Strategic Plan)”, is to be “An independent institution of excellence in the delivery of justice to all”;
3. The mission of the judiciary as specified in the Strategic Plan is to “To administer justice in a fair, timely, accountable and accessible manner, uphold the rule of law, advance indigenous jurisprudence and protect the constitution.”

The Key Result Areas (KRAs) as specified by the Strategic Plan are;

1. Enhanced Access to Justice
2. Expeditious Delivery of Justice
3. Growth of Jurisprudence and Knowledge Management
4. Improved Governance and Transformative Leadership
5. Improved Human Capital Management and Organizational Development
6. Modernized Registry Operations for Operational Efficiency
7. Enhanced Public Confidence, Awareness and Image of Judiciary
8. Resource Mobilization, Utilization and Stakeholder Engagement
9. The priority areas as specified by the Sustaining Judiciary Transformation (SJT) blue print are;
10. Access to justice
11. Clearance of case backlog
12. Integrity, fight corruption and re-organization of judiciary complaints handling mechanisms
13. Restructuring and strengthening the office of the judiciary ombudsperson
14. Judiciary digital strategy.
15. Leadership and governance
16. The Judiciary is committed to improving its performance in the dispensation of justice in accordance with the Constitution;
17. The Court exercises its mandate and such other responsibilities as conferred by Article 163 of the Constitution;
18. The purpose of this Understanding is to enhance accountability for results by focusing on delivery of the mandate of the Judiciary and forms the basis for continuous improvement for the transformation of the Judiciary; and
19. This Understanding establishes a framework for clear performance objectives, goals and targets for the court.

**NOW THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS;**

**PART1: COMMITMENT AND OBLIGATIONS OF THE JUDICIARY**

To facilitate the court, the judiciary shall ensure;

1. Timely provision of requisite financial resources as specified in the court’s annual budget and work plans;
2. Timely provision of adequate human resources including but not limited to, judges, secretaries, legal researchers and registry staff;
3. Timely provision of adequate infrastructure, supplies and services as specified in the annual procurement plan; and
4. Formulation and implementation of appropriate policies and regulations.

**PART II; COMMITMENTS AND RESPONSIBILITIES OF THE SUPREME COURT**

1. The court shall exercise its mandate and such other responsibilities as conferred by article 163 of the Constitution;
2. The President of the Court shall;
3. Ensure achievement of the agreed courts target as specified in schedule 1 hereto and
4. Strive to achieve the measures and negotiated targets as specified in Schedule 2 hereto.

**PART III; MONITORING AND EVALUATION**

1. The court shall submit, monthly, termly and annual performance reports, based on the performance indicators and targets in the matrix attached hereto, to the Chief Justice and or his/hers designated representative;
2. The reports shall be accurate, timely and submitted in the specified reporting formats for the purposes of monitoring progress of performance and for annual evaluation.

**PART IV: DURATION OF THE PERFOMANCE MANAGEMENT AND MEASUREMENT UNDERSTANDING**

The Understanding will run for a period of 12 months, from **1st July, 2021 to 30thJune, 2022**

**PROVIDED ALWAYS** that all parties hereto shall act in good faith and take into account any extenuating and exogenous circumstances occurring in the performance period.

**SIGNATORIES**

**……………………………………………….. Date……………............**

**HON LADY JUSTICE MARTHA KOOME, EBS**

Chief Justice & President, Supreme Court of Kenya

**SIGNED:**

**……………………………………………… Date…………………..**

**HON. LADY JUSTICE PHILOMENA. M MWILU, MGH**

Deputy Chief Justice/ Vice President, Supreme Court of Kenya

**WITNESSED BY;**

**……………………………………. Date……………………..**

**HON LADY JUSTICE AGNES MURGOR**

Judge of Appeal

AJPMC, Chairperson

**ENDORSED BY;**

**……………………………………. Date……………………..**

**HON ANNE A. AMADI**

Chief Registrar of the Judiciary

**PART V: SCHEDULE 1. THE SUPREME COURT’S TARGET**

|  |  |
| --- | --- |
| **MATTER** | **RECOMMENDED TIME FRAME** |
| Hearing and determination of Presidential election petitions | Within **14 days** from date of hearing |
| Hearing and determination of general applications | Within **60 days** from the date of close of hearing |
| Delivery of advisory opinions | Within **90 days** from the date of close of hearing |
| Petitions on validity of state of emergency | Within **14 days** from the date of filing |
| Hearing and determination of petitions and appeals from the court of appeal | Within **90 days** from the date of close of hearing |
| Time for dissemination of all decisions to all judges and magistrates | Within **7 days** after delivery of the decision |

**SCHEDULE 2: PERFORMANCE TARGETS MATRIX, SUPREME COURT.**

| **INDICATORS** | **Unit of measure** | **Weight** | **Baseline**  **2020/2021** | | **Target**  **2021/2022** |
| --- | --- | --- | --- | --- | --- |
| 1. **EXPEDITIOUS DISPOSAL OF CASES** |  |  | **Actual** | % |  |
| 1. Hearing and determination of Presidential Election petitions within 14days from date of filing | Days | - |  | - | - |
| 1. Delivery of full judgments within 21 days (where the court reserves reasons for its decisions) | Days | 10 |  |  |  |
| 1. Hearing and determination of general applications   -% of cases concluded within 60 days from date of close of hearing | % | 10 |  |  |  |
| 1. Advisory opinion -% of references concluded within 90 days from the close of hearing | % | 10 |  |  |  |
| 1. Hearing and determination of appeals from the Court of Appeal-% of appeals concluded within 90 days from close of hearing | % | 15 |  |  |  |
| 1. Time for dissemination of all decisions -% of decisions disseminated within 7days from date of delivery | % | 10 |  |  |  |
| 1. Improve Access to justice | % | 5 |  |  |  |
| **SUBTOTAL** |  | **60** |  |  |  |
| 1. **TRIAL AND DELIVERY DATE CERTAINTY** |  |  | **Actual** | % |  |
| 1. Percentage of trials held when first listed for hearing | % | 5 |  |  |  |
| 1. Percentage of judgment/ rulings delivered on the date when first scheduled for delivery | % | 5 |  |  |  |
| 1. Advance communication of adjournment of hearings dates and delivery of Judgment | % | 4 |  |  |  |
| 1. Percentage of Judgment/ rulings rendered within 90 days after close of submission | % | 5 |  |  |  |
| 1. Publishing of daily cause lists | % | 1 |  |  |  |
| **SUBTOTAL** |  | **20** |  |  |  |
| 1. **CASE CLEARANCE RATE** |  |  |  |  |  |
| 1. Case clearance rate | % | **5** |  |  |  |
| **SUBTOTAL** |  | **5** |  |  |  |
| 1. **CASE BACKLOG** |  |  |  |  |  |
| 1. Percentage reduction of backlog | % | **5** |  |  |  |
| **SUBTOTAL** |  | **5** |  |  |  |
| 1. **COURT PRODUCTIVITY** |  |  |  |  |  |
| 1. Merit Productivity | No | **3** |  |  |  |
| 1. Other Productivity | No | **2** |  |  |  |
| **SUBTOTAL** |  | **5** |  |  |  |
| 1. **MONTHLY COURTS RETURNS** |  |  |  |  |  |
| 1. Submission of accurate monthly court returns | % | **5** |  |  |  |
| **SUB-TOTAL** |  | **5** |  |  |  |
| **TOTAL** |  | **100** |  |  |  |

**ANNEX 1. EXPLANATORY NOTES FOR THE PMMU TARGETS**

**A. EXPEDITIOUS DISPOSAL OF CASES**

1. **Hearing & Determination of Presidential Election Petition**
2. The Court will hear and determine Presidential Election petition within 14 days from date of filing
3. The court shall ensure that all Presidential Election petition case is accurately captured in the DCRT
4. **Delivery of full Judgment within 21 days**
5. Where the court reserves the reasons for its decisions it will deliver full Judgment within 21 days
6. **Hearing and determination of general applications**
7. The court will hear and determine xxxx% of all general applications within 60 days from date of filling.
8. The court will determine interlocutory applications on the basis of written submission in accordance to Rule 23 of the Supreme Court Rules 2012.
9. The court will discourage unnecessary delays by engaging parties Concerned.
10. **Advisory Opinion**
11. The Court will conclude the reference within 90 days from the close of submission
12. Petitions on Validity of state of Emergency- The court will hear and Determine petitions on the State of Emergency within 14 days
13. **Hearing and Determination of appeals from the Court of Appeal**
14. The court will hear and determine appeals from Court of Appeal within 90 days
15. The Court will fix all cases with no dates of next activity for hearing immediately
16. The Court will Fast Tract hearing and determination of all cases from Court of Appeal
17. **Time for Dissemination of all decisions**
18. The Court through the office of Registrar will disseminate decisions 100% within 7 days from the date of final decisions to various stakeholders
19. **Improve Access to justice**
20. The Court will facilitate indigent parties the to file cases online and attendance of virtual court sessions by providing the necessary ICT tools and technical support.

**B. TRIAL AND DELIVERY DATE CERTAINTY**

1. **Percentage of trial/hearing held when first listed**
2. The Court will ensure that 100 % of all trials are held when first listed for hearing.
3. **Percentage of judgments/rulings delivered on the date first scheduled for delivery**
4. The court will implement the following to ensure that 100 % of the Judgment/ ruling.
5. The Court will conduct regular case conferences to discuss pending rulings.
6. The registrar will ensure timely typing of Court proceeding.
7. The Court will Monitor case progress from the time of filing to Judgment/ rulings
8. **Advance communication of Adjournments of hearing dates and Delivery of Judgments/rulings**
9. The court will maintain a contacts registers for all advocates on the record and the un-represented parties
10. The Court will communicate any anticipated adjournments within 7 days
11. The Court will communicate any unexpected adjournments as soon as possible before the hearing date.
12. **Percentage of Judgments/ rulings rendered within 90 days after close of hearing**

- The Court will undertake the following to achieve 60 % of this indicator

1. The court shall deliver judgments within 60 days of conclusion of the matter.
2. The court shall introduce registers for purposes of tracking of Judgments and Rulings
3. **Publish of daily cause lists**

The court will publish the daily cause lists seven days in advance

**C.CASE CLEARANCE RATE**

**1. Case clearance rate**

A case clearance of 100% implies that the court is coping with its workload. More than 100% clearance rate indicates that the court is reducing its case backlog while less than 100% means than the court is accumulating more cases.

1. The court will improve on case clearance rate by 75 %
2. Develop and implement practice directions
3. The court shall discourage adjournments
4. The court shall ensure that parties comply with strict time lines set.
5. The court shall engage other stakeholders

**D.** **CASE BACKLOG**

**1. Percentage reduction of backlog**

1. The court shall conduct regular case auditing to determine in- active cases.
2. In order to reduce backlog by 10 %, the court will hear and determine cases aged 1-2years.
3. The court shall give priority to hearing of old cases.

**E. COURT PRODUCTIVITY**

**1. Merit productivity (**cases concluded by way of Judgments and rulings)

1. The court shall discourage adjournments.
2. The court shall ensure that parties comply with strict time lines set.
3. The court shall ensure that both Criminal and civil matters are concluded on time.
4. The court shall ensure that all resolved cases are captured accurately in the DCRT
5. **Other productivity (Dismissals. Mediation, consents & withdrawals)**
6. The court shall encourage entering of consents
7. The court shall conduct audit to identify any dormant and inactive cases
8. It shall implement various initiatives such as service weeks to dispense of with such matters
9. The court shall ensure that all resolved cases are captured accurately in the DCRT

**F.** **MONTHLY COURTS RETURNS**

**1. Submission of accurate monthly court returns**

1. The Court will ensure timely submission of accurate data by the 5th of every month.
2. The Court will validate DCRT data before submission to PMD;
3. The court shall set up Desktop computer for DRCT back up