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**REPUBLIC OF KENYA**

**THE JUDICIARY**

**PERFORMANCE MANAGEMENT & MEASUREMENT UNDERSTANDING**

**BETWEEN**

**THE PRESIDENT, COURT OF APPEAL**

**AND**

**THE PRESIDING JUDGE, COURT OF APPEAL AT XXXXXXXXXX**

**FOR THE PERIOD**

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

© **SEPTEMBER, 2021**



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## PERFORMANCE MANAGEMENT & MEASUREMENT UNDERSTANDING

## PERFORMANCE MANAGEMENT & MEASUREMENT UNDERSTANDING

This Performance Management and Measurement Understanding, (hereinafter referred to as “***the Understanding***”), is entered into between the **President of the Court of Appeal (**hereinafter referred to as “***President of the Court of Appeal”***), an office established under Article 165(2) of the Constitution of Kenya, of the one part, **AND** the **Presiding Judge,** **Court** **of Appeal at XXXXXXX** of the other part, an office established under Section 8 of the Court of Appeal Organization and Administration Act, 2015. The Understanding applies to **the President of the Court of Appeal** and the **Presiding Judge,** **Court** **of Appeal at XXXXXXX** together with their assignees and successors.

**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 is 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 165 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 courts in the judicial region.

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

**Part I: Commitments and Obligations of the President of the Court of Appeal**

The Constitution of Kenya Article 164(1), (2) establishes the Court of Appeal and creates the office of the President of the Court of Appeal. The Judicial Service Act 2011 and Court of Appeal Organization and Administration Act, 2015 sets out its jurisdictional mandates and provides for the following: -

1. Is the head of the Court and oversees proper management and administration of the Court;
2. Be responsible for the allocation of cases and the constitution of benches, including ordinary and extraordinary benches, of the Court;
3. In consultation with the Chief Registrar, be responsible for giving general directions for the administration of the Court.
4. Shall, upon consultation with the Chief Justice;
5. Issue practice directions on conduct of litigation in the Court;
6. Develop guidelines that ensure the expeditious disposal of cases;
7. Approve leave and absence from duty of a judge;
8. Determine the location of the sittings of the Court; and
9. Maintain of the honour and dignity of the Court.

For purposes of effective implementation of a performance management system, the President of the Court of Appeal, in consultation with the Chief Registrar shall facilitate provision of requisite financial and human resources to the court as specified in the Court’s annual budget and work plans.

**Part II: Commitments and Responsibilities of the Presiding Judge,** **Court** **of Appeal at XXXXXXX**

Sections 8 (a) (b), 29 (1), 31and 32 of Court of Appeal Organization and Administration Act, 2015, provides that a presiding judge, whether of a station or division, shall be responsible to President of the Court of Appeal for the following: -

1. Exercise powers vested in the President of the Court of Appeal with necessary modifications and shall be responsible to the President of the Court;
2. Supervise the administration of the Court in that station;
3. Ssupervisee the business of the Court in that station
4. Implements and promote measures to ensure integrity of the registry and the work of each court station or division including; case management; automation of records and business processes of the Court; protection and sharing of information; and the promotion of the use of information communication technology
5. shall upon consultation with the Commission oversee the implementation of a performance management system comprising of performance contracting appraisal and evaluation of the judges of the Court in the discharge of their mandate, in accordance with the provisions of the Constitution, this Act and of other law.
6. Monitor the compliance with the Judicial Code of Conduct by judges and judicial officers.
7. Coordination of public relations and promotion of good will of the court

The presiding Judge shall ensure achievement of the agreed targets in the PMMU based on the timelines specified in schedule 1 hereto.

**Part III: Monitoring and Evaluation**

1. The Court shall submit, monthly, termly and annual performance reports to the President of the Court of Appeal and/or his/her designated representative;
2. The reports shall be accurate, timely and submitted in the specified reporting formats for purpose of monitoring progress of performance and for annual evaluation.

**Part IV: Duration of the Performance 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**

**Signed: .......................................... Date……..………………**

**Hon. Mr. Justice Daniel K. Musinga**

President,

Court of Appeal of Kenya

**Signed: ........................................... Date……..………………**

**Hon. Justice XXXXXXXXXX**

Presiding Judge,

Court of Appeal at XXXX

**Witnessed by:**

**Signed: ........................................... Date……..………..………**

**Hon Justice .........**

Judge, .............

AJPMC, Member

**Endorsed by**

**Signed: ........................................... Date……..………..………**

**Hon. Anne A. Amadi**

Chief Registrar of the Judiciary

**Schedule 1: The Court of Appeal’s Targets**

| **Court** | **Matter** | **Recommended Time frame** |
| --- | --- | --- |
| **Court of Appeal** | Interlocutory Applications | Determination within **30 days** from the date of filing |
| Criminal and Civil Appeals | Determination within **180 days** from the date of filing |
| Election petition appeals | **180** days from the date of filing |
| Time for dissemination of all decisions to all courts and to all Judges and magistrates | Within **7 days** after delivery of final decision |
| * The Court to determine an average of xxxx cases a year * Each bench to handle a minimum of xxxxx cases in a week | | |

**Schedule 2: Performance Targets Matrix, Court of Appeal at XXXXX**

| **INDICATORS** | **Unit of measure** | **Weight** | **Baseline**  **2020/2021** | | **Target**  **2021/2022** |
| --- | --- | --- | --- | --- | --- |
| 1. **EXPEDITIOUS DISPOSAL OF CASES** |  |  | **Actual** | % |  |
| 1. Interlocutory Applications concluded (Single judge applications, Certified Urgent applications, 3 judge applications/reviews, Certification Applications of appeals to the Supreme Court) -% of applications concluded within 30 days from date of filing | % | 10 |  |  |  |
| 1. Criminal Appeals-% of appeals concluded within 180 days from date of receipt of records of Appeal | % | 15 |  |  |  |
| 1. Civil Appeals-% of appeals concluded within 180 days from date of receipt of records of Appeal | % | 15 |  |  |  |
| 1. Election Petitions Appeals -% of appeals concluded within 180 days from date of filing | % | - |  |  |  |
| 1. Time for dissemination of all decisions -% of decisions disseminated within 7 days from date of delivery | % | 5 |  |  |  |
| 1. No. of cases to be determined per year | No. | 5 |  |  |  |
| **SUBTOTAL** |  | **50** |  |  |  |
| 1. **TRIAL AND DELIVERY DATE CERTAINTY** |  |  |  |  |  |
| 1. Percentage of appeals/applications heard when first listed for hearing | % | 4 |  |  |  |
| 1. Percentage of judgements/rulings delivered on the date first scheduled for delivery | % | 4 |  |  |  |
| 1. Advance communication of adjournments of hearings &date of delivery of judgements/rulings | % | 2 |  |  |  |
| 1. Percentage of judgments and rulings rendered within 60 days after close of submissions | % | 6 |  |  |  |
| 1. Publish daily cause lists and posting online seven days in advance | % | 2 |  |  |  |
| 1. Stakeholder Engagement | **Report** | 2 |  |  |  |
| **SUBTOTAL** |  | **20** |  |  |  |
| 1. **CASE CLEARANCE RATE** |  |  |  |  |  |
| 1. Case clearance rate for Civil Cases | % | **5** |  |  |  |
| 1. Case clearance rate for Criminal Cases | % | **5** |  |  |  |
| **SUBTOTAL** |  | **10** |  |  |  |
| 1. **CASE BACKLOG** |  |  |  |  |  |
| 1. Percentage reduction of backlog | % | 5 |  |  |  |
| **SUBTOTAL** |  | **5** |  |  |  |
| 1. **COURT PRODUCTIVITY** |  |  |  |  |  |
| 1. Merit Productivity | No | **7** |  |  |  |
| 1. Other Productivity | No | **3** |  |  |  |
| **SUBTOTAL** |  | **10** |  |  |  |
| 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. Interlocutory Applications**

1. The Court will hear and determine all applications (single judge and full bench applications) within 30 days of filing
2. The court shall introduce registers for purposes of tracking of applications.
3. The court shall ensure that all Interlocutory Applications are accurately captured in the DCRT
4. **Criminal Appeals -% of appeals concluded within 180 days from date of receipt of records of Appeal**
5. The court will endeavor to hear and conclude all criminal appeals
6. The court will hear and determine criminal cases within 180 days from date of filing.
7. The court will not grant unnecessary adjournments.
8. The court will ensure that all Criminal Appeal cases are captured in the DCRT
9. The time frame for determination of criminal appeals will begin after submission of record of appeal documents from High Court

**3. Civil Appeals -% of appeals concluded within 180 days from date of receipt of records of Appeal**

1. The court will endeavor to hear and conclude all Civil Appeals
2. The court will hear and determine criminal cases within 180 days from date of filing.
3. The court will not grant unnecessary adjournments.
4. The court will ensure that all criminal cases are captured in the DCRT
5. The time frame for determination of civill appeals will begin after submission of records of appeal documents from High Court

**4. Election Petitions Appeals**

1. The court will hear and determine Election Petitions Appeals within 180 days.
2. The court shall introduce registers for purposes of tracking of Election Petitions Appeals
3. The court shall ensure that all Election Petition Appeals are captured in the DCRT

**5. Time for dissemination of all decisions**

1. The court shall ensure that all decisions are disseminated to the respective authorities and parties within 7 days from the date of delivery
2. The court shall introduce registers for purposes of tracking all decisions made and disseminated

**6. No. of cases to be determined per year**

1. The court intends to hear and determine about XXXXX cases during the year if filed

**B. TRIAL AND DELIVERY DATE CERTAINTY**

**1. Percentage of appeals/applications heard when first listed for hearing;**

1. The court will strive to hear all appeals and applications are heard when first listed.
2. The court will engage stakeholders.
3. The court will discourage unnecessary adjournments.
4. The court will ensure that the cause list is realistic.
5. The court will encourage trial date certainty.

**2. Percentage of judgments/rulings delivered on the date first scheduled for delivery**

1. The court shall ensure parties take dates by consent.
2. The court shall encourage trial date certainty.
3. The court shall discourage unnecessary adjournments.
4. The court will render all judgments and rulings within 30 days of finalization of the hearing
5. **Advance communication of adjournments of hearings &date of delivery of judgements/rulings**
6. The court will uupdate contact details of advocates and litigants acting in person every year.
7. The court will communicate any adjournment that is anticipated 7 days in advance.
8. The court will communicate any unexpected adjournment as soon as possible before the hearing date
9. The court will communicate any anticipated adjournment as soon as the reason arises.
10. **Percentage of judgments and rulings rendered within 60 days after close of submissions**
11. The court shall set a day for writing and delivery of judgments and rulings.
12. The court shall deliver judgments within 60 days of conclusion of the matter.
13. The court shall introduce registers for purposes of tracking of Judgments and Rulings
14. **Publish daily cause lists and posting online seven days in advance.**
15. The court shall set a day for writing and delivery of judgments and rulings.
16. The court shall deliver judgments within 60 days of conclusion of the matter.
17. The court shall introduce registers for purposes of tracking of Judgments and Rulings
18. **Stakeholder Engagement**
19. The Court will hold quarterly Court Users Committee/ Bar-Bench meetings (50%)
20. The Court will hold quarterly LMTs/ Staff meetings (20%)
21. The court will come up with a schedule of activities on quarterly basis.(10%)
22. The court will maintain contacts of all stakeholders. (10%)
23. The Court will maintain a file of all signed meeting minutes (10%)

**C.CASE CLEARANCE RATE**

**1. Case clearance rate for Civil Cases.**

1. The court shall discourage adjournments.
2. The court shall encourage Alternative Dispute Resolution Mechanism (ADR).
3. The court shall ensure that parties comply with strict time lines set.
4. The court shall encourage entering of consents
5. The court shall engage other stakeholders

**2. Case clearance rate for Criminal Cases.**

1. The court shall discourage adjournments.
2. The court shall encourage Alternative Dispute Resolution Mechanism (ADR).
3. The court shall ensure that parties comply with strict time lines set.
4. The court shall encourage entering of consents
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. The court shall dismiss dormant and inactive cases
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