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**REPUBLIC OF KENYA**

**THE JUDICIARY**

**PERFORMANCE MANAGEMENT & MEASUREMENT UNDERSTANDING**

**BETWEEN**

**THE PRINCIPAL JUDGE, HIGH COURT**

**AND**

**THE PRESIDING JUDGE, XXXXXXXXX HIGH COURT**

**FOR THE PERIOD**

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

© **SEPTEMBER, 2021**



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## PERFORMANCE MANAGEMENT & MEASUREMENT UNDERSTANDING

This Performance Management and Measurement Understanding, (hereinafter referred to as “***the Understanding***”), is entered into between the **Principal Judge of the High Court** (hereinafter referred to as “***the Principal Judge***”), an office established under Article 165(2) of the Constitution of Kenya, of the one part, **AND** the **Presiding Judge of XXXXXX High Court** of the other part. The Understanding applies to the Principal Judge and the Presiding Judge, **XXXXXX High Court** 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 will 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.”
4. The Key Result Areas (KRAs) as specified by the Strategic Plan are;
5. Enhanced Access to Justice
6. Expeditious Delivery of Justice
7. Growth of Jurisprudence and Knowledge Management
8. Improved Governance and Transformative Leadership
9. Improved Human Capital Management and Organizational Development
10. Modernized Registry Operations for Operational Efficiency
11. Enhanced Public Confidence, Awareness and Image of Judiciary
12. Resource Mobilization, Utilization and Stakeholder Engagement
13. The priority areas as specified by the Sustaining Judiciary Transformation (2017-2021) blue print are;
14. Access to justice
15. Clearance of case backlog
16. Integrity, fight against corruption and re-organization of judiciary complaints handling mechanisms
17. Restructuring and strengthening the office of the judiciary ombudsperson
18. Judiciary digital strategy.
19. Leadership and governance
20. The Judiciary is committed to improving its performance in the dispensation of justice in accordance with the Constitution;
21. The Court exercises its mandate and such other responsibilities as conferred by Article 165 of the Constitution;
22. 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
23. 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 Principal Judge**

The Constitution of Kenya Article 165(2) (3) and (6) establishes the High Court and creates the office of the Principal Judge. The Judicial Service Act and High Court Organization and Administration Act sets out its jurisdictional mandates and provides for the following:-

1. Supervisory jurisdiction over the subordinate courts or any other person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
2. Responsible to the Chief Justice for overall administration and management of the court, ensuring orderly and prompt conduct of the business of the court and the constitution of benches of two or more judges in consultation with the chief justice and gives the Principal Judge oversight over Presiding Judges.
3. Implement and promote measures to maintain the integrity of the registry and work of each court station or division – to include case management, automation of records and business process, protection and sharing of information and promotion of the use of the information communication technology.
4. Will, upon consultation with the Commission, oversee the implementation of a performance management system of the judges of the court in discharge of their mandate, in accordance with the provisions of the Constitution, High Court Act and any other law.

For purposes of effective implementation of a performance management system, the Principal Judge in consultation with the Chief Registrar will 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, XXXX High Court**

Section 7(1) (2) and (3) of the High Court Act, provides that a presiding judge, whether of a station or division, will be responsible to the Principal Judge for the following: -

1. Implementation of strategic and policy guidelines
2. Discharge administrative functions in consultation with principal judge
3. General management and distribution of business before the court among judges in court station or a division
4. Facilitation of the efficient functioning of the Station or Division
5. Facilitation of linkages and effective communication between court and court users.
6. Facilitation of the use of effective information communication technology in respect of a Station or Division
7. Presiding judge will be the chair person and convener of the Court Users Committee in the station.
8. Supervision of all subordinate courts, tribunals and other bodies falling within the regions designated under section 12(3) of the Act to be under Station or Division
9. Coordination of public relations and promotion of good will of the court

The presiding Judge will 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 will submit, monthly, termly and annual performance reports to the Principal Judge and/or his/her designated representative;
2. The reports will 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 will act in good faith and take into account any extenuating and exogenous circumstances occurring in the performance period.

**SIGNATORIES**

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

**Hon. Lady Justice Lydia .A. Achode**

Principal Judge,

High Court of Kenya

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

**Hon. Justice XXXXXXXXXX**

Presiding Judge,

XXXX High Court

**Witnessed by:**

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

**Hon Justice XXXXXXXXX**

Judge, XXXXX

AJPMC, Member

**Endorsed by**

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

**Hon. Anne A. Amadi**

Chief Registrar of the Judiciary

**Schedule 1: The High Court’s Targets**

| **Court** | **Matter** | **Recommended Time frame** |
| --- | --- | --- |
| **High Court (Both as an appellate and trial court)** | Certified Urgent Applications | Within **90 days** from the date of filing |
| All applications | Within **180 days** from the date of filing |
| Injunction applications | Hearing within **60 days** from the date of filing  Determination within **30 days** from the date of hearing |
| Hearing and determination of civil and criminal matters | Determination within **360 days** from the date of filing |
| Election petitions | **180 days** from the date of filing |
| Delivery of Judgments and rulings | Within **60 days** from the date of finalisation of the hearing |
| Criminal Revisions and Judicial Review matters | Determination Criminal Revisions within **90 days** and Judicial Review matters within **180 days** from the date of filing |
| Time for dissemination of all decisions to all subordinate courts and to all Judicial Officers | Within **7 days** after delivery of final decision. |

**Schedule 2: Performance Targets Matrix, XXXX X High Court**

| **INDICATORS** | **Unit of measure** | **Weight** | **Baseline**  **2020/2021** | | **Target**  **2021/2022** |
| --- | --- | --- | --- | --- | --- |
| **A.1 EXPEDITIOUS DISPOSAL OF CASES** |  |  | **Actual** | **%** |  |
| 1. Certified Urgent Applications - % of certified urgent applications concluded within 90 days from the date of certification | % | 3 |  |  |  |
| 1. Injunction applications -% of Injunction applications heard and determined within 90 days of filing | % | 3 |  |  |  |
| 1. All other applications (Including Criminal revisions, Ad-litem, rectifications, citations, etc.) -% of all other applications concluded within 90 days from date of filing | % | 3 |  |  |  |
| 1. Hearing & Determination of Constitutional Petitions -% of cases concluded within 180 days from date of filing | % | 4 |  |  |  |
| 1. Hearing & Determination of Judicial Review cases -% of cases concluded within 180 days from date of filing | % | 4 |  |  |  |
| 1. Hearing & determination of Criminal cases -% of cases concluded within 360 days from date of filing | % | 4 |  |  |  |
| 1. Hearing and determination of civil cases including contested Succession causes -% of cases concluded within 360 days from date of filing | % | 4 |  |  |  |
| 1. Hearing and determination of Civil Appeals -% of appeals concluded within 180 days from the receipt of the record of appeal | % | 4 |  |  |  |
| 1. Hearing and determination of Criminal Appeals -% of appeals concluded within 180 days from the receipt of the record of appeal | % | 4 |  |  |  |
| 1. Time for dissemination of all decisions -% of decisions disseminated within 7 days from date of delivery | % | 3 |  |  |  |
| 1. Reduced no. of days spent in remand custody from the “***Date of plea***” to the “***First hearing date*** (where bail has been denied or where the remandees are unable to meet the bail terms) | No. of Days | 4 |  |  |  |
| **SUBTOTAL** |  | **40** |  |  |  |
| **A.2 Court files Integrity** |  |  | **Actual** | % |  |
| 1. Implement the Registry Manual procedures *(New)* | % | 5 |  |  |  |
| 1. Maintain and Update all registers *(New)* | % | 5 |  |  |  |
| **SUBTOTAL** |  | **10** |  |  |  |
| **SUBTOTAL** |  | **50** |  |  |  |
| **B. TRIAL AND DELIVERY DATE CERTAINTY** |  |  | **Actual** | **%** |  |
| 1. Percentage of trials/hearings held when first listed for hearing | % | 3 |  |  |  |
| 1. Percentage of judgments/rulings delivered on the date first scheduled for delivery | % | 2 |  |  |  |
| 1. Adoption of Alternative Dispute Resolutions - % of Filed Cases referred for Alternative Dispute Resolution (ADR/CAM/AJS) | % | 1 |  |  |  |
| 1. Advance communication of adjournments of trials/hearings &date of delivery of judgments /rulings | % | 1 |  |  |  |
| 1. Publish daily cause lists and posting online seven days in advance | % | 1 |  |  |  |
| 1. Delivery of Judgments and rulings -% of judgement/rulings delivered within 60 days of conclusion of the hearing | % | 3 |  |  |  |
| 1. Stakeholder Engagement | Report | 1 |  |  |  |
| 1. Submission of Court proceedings for appealed Matters within 60 days from date of receipt of notice | % | 1 |  |  |  |
| 1. Taxation matters -% of matters concluded within 60 days | % | 1 |  |  |  |
| 1. Decrees and warrants -% decrees and warrants prepared within 4 days | % | 1 |  |  |  |
| **SUBTOTAL** |  | **15** |  |  |  |
| **C. CASE CLEARANCE RATE** |  |  | **Actual** | **%** |  |
| 1. Case clearance rate for Civil Cases | % | 4 |  |  |  |
| 1. Case clearance rate for Criminal Cases | % | 4 |  |  |  |
| **SUBTOTAL** |  | **8** |  |  |  |
| **D. CASE BACKLOG** |  |  | **Actual** | **%** |  |
| 1. Percentage reduction of backlog | % | 5 |  |  |  |
| **SUBTOTAL** |  | **5** |  |  |  |
| **E. COURT PRODUCTIVITY** |  |  | **Actual** | **%** |  |
| 1. Merit Productivity | No. | 7 |  |  |  |
| 1. Other productivity | No. | 3 |  |  |  |
| **SUBTOTAL** |  | **10** |  |  |  |
| **F. MONTHLY COURTS RETURNS** |  |  | **Actual** | **%** |  |
| 1. Submission of Accurate Monthly Court returns | % | 5 |  |  |  |
| **SUBTOTAL** |  | **5** |  |  |  |
| **G. SUPERVISION OF SUBORDINATE COURTS** |  |  | **Actual** | **%** |  |
| 1. Supervision of Subordinate Courts | Report | 2 |  |  |  |
| **SUB-TOTAL** |  | **2** |  |  |  |
| **TOTAL** |  | **100** |  |  |  |

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

**A.1 EXPEDITIOUS DISPOSAL OF CASES**

**1. Certified Urgent Applications**

1. Applications filed will be placed before the Judge immediately for verification as to whether they are urgent or not.
2. Applications will be heard and concluded within 90 days from date they are certified urgent
3. The court will ensure that there is strict compliance with order 11 CPR.
4. The court will introduce registers for purposes of tracking of applications.
5. The court will ensure that all Urgent Applications are captured in the DCRT/CTS

**2. Injunction Applications**

1. Applications filed will be placed before the Judge immediately for verification as to whether they are urgent or not.
2. The Court will ensure that Injunction applications are heard and concluded within 60 days of filing
3. The court will ensure that there is strict compliance with order 11 CPR.
4. The court will introduce registers for purposes of tracking of applications.
5. The court will ensure that all Injunction Applications are captured in the CTS/DCRT

**3. All other applications (Including Ad-litem, criminal revisions, rectifications, citations, etc.)**

1. Applications filed will be placed before the Judge immediately for verification as to whether they are urgent or not.
2. Applications will be heard concluded within 90 days of filing
3. The court will ensure that there is strict compliance with order 11 CPR.
4. The court will introduce registers for purposes of tracking of applications.
5. The court will ensure that all other Applications are captured in the CTS/DCRT

**4. Hearing & Determination of Constitutional Petitions**

1. The Court will ensure that Constitutional Petition cases are heard and concluded within 180 days of filing
2. The court will ensure that all Constitutional Petition cases are captured in the CTS/DCRT
3. **Hearing & Determination of Judicial Review cases.**
4. The Court will ensure that Judicial Review cases are heard and concluded within 180 days of filing
5. The court will ensure that all Judicial Review cases are captured in the CTS/DCRT

1. **Hearing & determination of Criminal cases.**
2. The court will hear and determine criminal cases within 360 days.
3. The court will not grant unnecessary adjournments.
4. The court will ensure that all criminal cases are captured in the CTS/DCRT
5. **Hearing and determination of Civil Cases including contested Succession causes**
6. The court will hear and determine civil cases within 360 days.
7. The court will not grant unnecessary adjournments.
8. The court will ensure that all civil cases are captured in the CTS/DCRT
9. **Hearing and determination of Civil Appeals**
10. Ensure compliance with Order 42 of the Civil Procedure Rules giving of Directions;
11. Give a limited period for filing of Submission i.e within 7 days by the Appellant and a similar period by the Respondent.
12. The DR to call for the files immediately after delivery of judgment for purposes of preparation of record of appeal.
13. Registry to ensure record of appeal is proper and placed before the judge for admission without delay.
14. The secretaries to type court proceedings without delay
15. **Hearing and determination of Criminal Appeal**s
16. The DR to call for the files immediately after delivery of judgment for purposes of preparation of record of appeal.
17. Registry to ensure record of appeal is proper and placed before the judge for admission without delay.
18. The secretaries to type court proceedings without delay
19. **Time for dissemination of all decisions**
20. The court will ensure that all decisions are disseminated to the respective authorities and parties within 7 days from the date of delivery
21. The court will introduce registers for purposes of tracking all decisions made and disseminated
22. **Reduced no. of days spent in remand custody from the “Date of plea” to the “First hearing date** *(where bail has been denied or where the remandees are unable to meet the bail terms***)**
23. The court will give priority to people in custody.
24. The court will give reasonable bond terms.
25. The court will request for pre-bail reports.
26. The court in conjunction with the prisons will prepare a report on the number of days remandees are held in custody where bail has been denied or where they are unable to meet bail terms.

**A.2. COURT FILE INTEGRITY**.

**1. Implement the registry manual procedures**.

1. The court will implement initiatives to streamline registry operations
2. The Court will introduce and maintain colour coding and indexing of the files.
3. The Court will sensitize registry staff on the registry manual
4. **Maintain and Update all registers**
5. The court will ensure all required registers are introduced
6. The court will maintain and regularly update all registers

**B. TRIAL AND DELIVERY DATE CERTAINTY**

1. **Percentage of trial/hearing held when first listed;**
2. The court will engage stakeholders.
3. The court will discourage unnecessary adjournments.
4. The court will ensure compliance with Order 11 of the CPR.
5. The court will strike out pleadings if need be.
6. The court will ensure that the cause list is realistic.
7. The court will encourage trial date certainty.
8. **Percentage of judgments/rulings delivered on the date first scheduled for delivery.**
9. The court will ensure parties take dates by consent.
10. The court will encourage trial date certainty.
11. The court will discourage unnecessary adjournments.
12. **Adoption of Alternative Dispute Resolutions - % of Filed Cases referred**
13. The Court will open, maintain and regularly update an Alternative Dispute Resolutions Register
14. The court will do mandatory screen to assess relevant cases filed to be referred to Mediation.
15. The Court will monitor the progress of matters referred to the Alternative Dispute Resolutions process and update its records
16. **Advance communication of Adjournments**
17. The court will ensure parties give contacts at the time of filing pleadings.
18. The court will give a notice in advance for any anticipated adjournments.
19. The court will communicate any anticipated adjournment as soon as the reason arises.
20. **Publish daily cause lists and posting online seven days in advance**
21. Identify a person to be in charge of the cause list.
22. The courts will preparation of cause list 7 days in advance.
23. The cause list to be submitted in advance for posting on the Judiciary and National Council for Law Reporting websites
24. The court will keep a file of cause list dully dated and signed
25. **Delivery of Judgments and Rulings**
26. The court will set a day for writing and delivery of judgments and rulings.
27. The court will deliver judgments within 60 days of conclusion of the matter.
28. The court will introduce registers to track of Judgments and Rulings.
29. Update and maintain registers for resolved cases
30. **Stakeholder Engagement**
31. The Court will hold quarterly Court Users Committee/ Bar-Bench meetings (50%)
32. The Court will hold quarterly LMTs/ Staff meetings (20%)
33. The court will come up with a schedule of activities on quarterly basis.(10%)
34. The court will maintain contacts of all stakeholders. (10%)
35. The Court will maintain a file of all signed meeting minutes (10%)
36. **Submission of Court proceedings for appealed Matters within 60 days from date of receipt of notice. The Court will ;**
37. Ensure that all court proceedings are typed
38. Submit typed proceedings for appealed matters within 60 days from the date of receipt of notice
39. **Taxation matters.**
40. The Deputy Registrar will conclude all taxation matters within 60 days from the date of judgment.
41. **Decrees and warrants**
42. The Deputy Registrar will sign all decrees and warrants within 4 days from date of issue.

**C. CASE CLEARANCE RATE**

**1. Civil Case clearance rate.**

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

**2. Criminal Case clearance rate.**

1. The court will discourage adjournments.
2. The court will ensure that parties comply with strict time lines set.
3. The court will encourage entering of consents
4. The court will engage other stakeholders

**D. CASE BACKLOG**

**1. Percentage reduction of backlog.**

1. The court will conduct regular case auditing to determine in- active cases.
2. The court will dismiss dormant cases under Order 17 CPR 2010
3. The court will give priority to hearing of old cases.
4. Encourage ADR
5. Apply order 17 of CPR and 87 (A) of the CPC.

**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 ensure accurate Case Outcomes are captured in the DCRT/CTS
3. The Court will validate DCRT/CTS data before submission to PMD;
4. The court will set up Desktop computer for data back up

**G. SUPERVISION OF SUBORDINATE COURTS**

**1. Supervision of subordinate courts**

1. The court will organize for supervisory visits to the subordinate courts under its jurisdiction**.**
2. The court will endeavor to have frequent meetings with both judicial officers and staff in the subordinate courts under its jurisdiction**.**