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**REPUBLIC OF KENYA**

**THE JUDICIARY**

**PERFORMANCE MANAGEMENT & MEASUREMENT UNDERSTANDING**

**BETWEEN**

**THE PRINCIPAL JUDGE, EMPLOYMENT AND LABOUR RELATIONS COURT**

**AND**

**THE PRESIDING JUDGE, EMPLOYMENT AND LABOUR RELATIONS COURT AT XXXXXXXXXX**

**FOR THE PERIOD**

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

**©SEPTEMBER, 2021**



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## Performance Management and Measurement Understanding for the Resident Judge, Employment and Labour Relations Court

## PERFORMANCE MANAGEMENT & MEASUREMENT UNDERSTANDING

This Performance Management and Measurement Understanding, (hereinafter referred to as “***the Understanding***”), is entered into between the **Principal Judge, Employment and Labour Relations Court (**hereinafter referred to as “***Principal Judge , Employment and Labour Relations Court”***), a court established under Article 165 (2) of the Constitution of Kenya, of the one part, **AND** the **Presiding Judge,** **Employment and Labour Relations Court at XXXXXX** of the other part, an office established under Section 5 (1) (a) of the , Employment and Labour Relations Court Act, 2011.The Understanding applies to **the Principal Judge, Employment and Labour Relations Court** and the **Presiding Judge,** **Employment and Labour Relations Court 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 as specified in the Strategic Plan is to“deliver justice fairly, impartially and expeditiously, promote equal access to justice, and advance local jurisprudence by upholding the rule of law”;

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 Principal Judge, Employment and Labour Relations Court**

The Constitution of Kenya Article 162(2) (a) establishes the Employment and Labour Relations Court while Article 165 (2) creates the office Principal Judge, Employment and Labour Relations Court. The Judicial Service Act 2011 and the, Employment and Labour Relations Court Act, 2011 sets out its jurisdictional mandates and provides that the Principal Judge:-

1. Is the head of the Court and oversees proper management and administration of the Court;
2. Shall have supervisory powers over the Court
3. Be responsible for the allocation of cases
4. In consultation with the Chief Justice, be responsible for giving general directions for the administration of the Court.

For purposes of effective implementation of a performance management system, the Principal Judge, Employment and Labour Relations Court, 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,** **Employment and Labour Relations Court at XXXXXX**

1. The Court exercises its mandate and such other responsibilities as conferred by Article 162 (1) and (2)(a) of the Constitution and the provisions of the Employment and Labour Relations Court Act, 2011;
2. 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 Principal Judge Employment and Labour Relations Court 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. Lady Justice Maureen Onyango**

Principal Judge,

Employment and Labour Relations Court of Kenya

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

**Hon. Justice XXXXXXXX**

Presiding Judge

Employment and Labour Relations at XXXXXXX

**Witnessed by:**

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

**Justice XXXXXXXXXXXXXX**

Judge XXXXX

AJPMC,

**Endorsed by**

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

**Hon. Anne A. Amadi**

Chief Registrar of the Judiciary

**Schedule 1: The Employment and Labour Relations Court’s Targets**

| **Court** | **Matter** | **Recommended Time frame** |
| --- | --- | --- |
| **Employment and Labour Relations Court (Both as an appellate and trial court)** | Certified Urgent Applications | Within **90 days** from the date of filing |
| Miscellaneous/ Injunction applications | Hearing within **60 days** from the date of filing  Determination within **30 days** from the date of hearing |
| All other applications | Within **180 days** from the date of filing |
| Hearing and determination of substantive claims | Determination within **360 days** from the date of filing |
| Delivery of Judgments and rulings | Within **60 days** from the date of finalisation of the hearing |
| Judicial Reviews and constitutional petitions | Determination within **360 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, Employment and Labour Relations Court at xxxxxxx**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **INDICATORS** | **Unit of measure** | **Weight** | **Baseline**  **2020/2021** | | **Target**  **2021/2022** |
| **A.1 EXPEDITIOUS DISPOSAL OF CASES** |  |  | **Actual** | **%** |  |
| 1. Certified Urgent Applications -% of applications concluded within 90 days from the date of certification | % | 3 |  |  |  |
| 1. Injunctions Applications -% of Injunctions/ Miscellaneous applications heard and determined within 90 days from the date of filling | % | 5 |  |  |  |
| 1. All other applications -% of applications concluded within 180 days from date of filing | % | 4 |  |  |  |
| 1. Hearing & determination of ELRC Petitions -% of ELRC Petitions concluded within 360 days from date of filing | % | 6 |  |  |  |
| 1. Hearing & determination of ELRC Appeals -% of ELRC Appeals concluded within 180 days from date of filing | % | 4 |  |  |  |
| 1. Hearing & determination of substantive claims   -% of substantive claims determined within 360 days of filing | % | 5 |  |  |  |
| 1. Hearing and determination of ELRC Judicial Reviews -% of ELRC Judicial Reviews concluded within 90 days from date of filing | % | 5 |  |  |  |
| 1. Delivery of Judgments and rulings -% of judgement/rulings delivered within 60 days of conclusion of the hearing | % | 5 |  |  |  |
| 1. Time for dissemination of all decisions -% of decisions disseminated within 7 days from date of delivery | % | 3 |  |  |  |
| **SUB-TOTAL** |  | **40** |  |  |  |
| **A.2 COURT FILES INTEGRITY** |  |  | **Actual** | % |  |
| 1. Implement the Registry Manual procedures | % | 5 |  |  |  |
| 1. Maintain and update all registers | % | 5 |  |  |  |
| **SUB-TOTAL** |  | **10** |  |  |  |
| **SUB-TOTAL** |  | **50** |  |  |  |
| **B. TRIAL AND DELIVERY DATE CERTAINTY** |  |  | **Actual** | % |  |
| 1. Percentage of trials/hearings held when first listed for hearing | % | 4 |  |  |  |
| 1. Percentage of judgements/rulings delivered on the date first scheduled for delivery | % | 4 |  |  |  |
| 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 judgements/rulings | % | 2 |  |  |  |
| 1. Publish daily cause lists and posting online seven days in advance | % | 1 |  |  |  |
| 1. Stakeholder Engagement | Report | 2 |  |  |  |
| 1. Submission of Court proceedings for appealed Matters within 60 days from date of receipt of notice | % | 2 |  |  |  |
| 1. Taxation matters -% of matters concluded within 60 days | % | 2 |  |  |  |
| 1. Decrees and warrants -% decrees and warrants prepared within 4 days | % | 2 |  |  |  |
| **SUB-TOTAL** |  | **20** |  |  |  |
| **C. CASE CLEARANCE RATE** |  |  |  |  |  |
| 1. Case clearance rate | % | 8 |  |  |  |
| **SUB-TOTAL** |  | **8** |  |  |  |
| **D. CASE BACKLOG** |  |  |  |  |  |
| 1. Percentage reduction of backlog | % | 8 |  |  |  |
| **SUB-TOTAL** |  | **8** |  |  |  |
|  |  |  |  |  |  |
| **E. COURT PRODUCTIVITY** |  |  |  |  |  |
| 1. Merit Productivity | No | 7 |  |  |  |
| 1. Other Productivity | No | 3 |  |  |  |
| **SUB-TOTAL** |  | **10** |  |  |  |
| **F. MONTHLY COURTS RETURNS** |  |  |  |  |  |
| 1. Submission of Accurate monthly court returns | % | 4 |  |  |  |
| **SUB-TOTAL** |  | **4** |  |  |  |
| **TOTAL** |  | **100** |  |  |  |

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

**A.1 EXPEDITIOUS DISPOSAL OF CASES**

1. **Certified Urgent Applications** **concluded within 90 days from the date of certification**
2. Applications filed will be placed before the Judge immediately for verification as to whether they are urgent or not.
3. Applications will be heard concluded within 90 days of filing
4. The court will ensure that there is strict compliance with order 11 CPR.
5. The court will introduce registers for purposes of tracking of applications.
6. The court will ensure that all Urgent Applications are captured in the DCRT
7. **Injunctions Applications** **heard and determined within 90 days from the date of filling**
8. Applications filed will be placed before the Judge immediately for verification as to whether they are urgent or not.
9. The Court will ensure that Injunction applications are heard and concluded within 60 days of filing
10. The court will encourage filing of written submissions and fix a hearing date on a priority basis
11. The court will ensure that there is strict compliance with order 11 CPR.
12. The court will introduce registers for purposes of tracking of applications.
13. The court will ensure that all Injunction Applications are captured in the DCRT
14. **All other applications concluded within 180 days from date of filing**
15. The Court will ensure that Injunction applications are heard and concluded within 180 days of filing
16. The court will endeavour to have all applications to have hearing date fixed at filing and within 30 days from date of filing.
17. The court will encourage filing of written submissions and fix a hearing date on a priority basis
18. The Court will not allow unnecessary adjournments and encourage hearing of substantive suit
19. The court will introduce registers for purposes of tracking of applications.
20. The court will ensure that all Injunction Applications are captured in the DCRT
21. The Court will hold bar-bench meetings to discuss with advocates the need to ensure that the set targets are met. This will include compliance with all directions given by the Court on disposal
22. **Hearing & determination of ELRC Petitions concluded within 360 days from date of filing**
23. The Court will endeavour to conclude ELRC Petitions within 360 days from date of filing:
24. The Court will encourage filing of submissions and authorities before hearing date.
25. **Hearing & determination of ELRC Appeals concluded within 180 days from date of filing**
26. The Court will endeavour to conclude ELRC Appeals within 180 days from date of filing:
27. The Court will fix mention date within 30 days at filing appeals.
28. The Court will encourage filing of submissions and authorities before hearing date.
29. **Hearing & determination of substantive claims**
30. The Court will endeavour to conclude substantive claims determined within 360 days of filing
31. The court will ensure each case filed is assigned a mention date at filing for confirmation of service and further directions.
32. The court will ensure that each case to be allocated time for hearing at the directions stage.
33. The Court will encourage ADR especially statutory conciliation procedures.
34. **Hearing and determination of ELRC Judicial Reviews**
35. The Court will endeavour to conclude ELRC Judicial Reviews concluded within 90 days from date of filing.
36. The Court will fix hearing dates on priority.
37. **Delivery of Judgments and rulings**
38. The Court will endeavour to deliver judgement/rulings within 60 days of conclusion of the hearing.
39. The Court will fix date for delivery of judgement/ruling upon close of submissions.
40. Except in exceptional matters the Court will fix delivery date within 60 days from close of submissions.
41. The Court will be setting aside one day in a week to write judgements where there is no cause list
42. Registers for ruling/judgement to be kept by the judge.
43. The Court will maintain a movement register for Judgment and Rulings
44. The Court will ensure submissions are filed and proceedings are typed
45. **Time for dissemination of all decisions**
46. The Court will ensure that decisions are disseminated within 7 days from date of delivery
47. The Court will send all decisions to KLR within 7 days from delivery
48. The court will introduce registers for purposes of tracking all decisions made and disseminated

**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 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. TRAILS AND DELIVERY CERTAINTY**

1. **Percentage of trial/hearing held when first listed for hearing:**
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 ensure that the cause list is realistic.
6. The court will encourage trial date certainty.
7. **Percentage of judgments/rulings delivered on the date first scheduled for delivery**
8. The court will ensure parties take dates by consent.
9. The court will encourage trial date certainty.
10. The court will discourage unnecessary adjournments.
11. **Adoption of Alternative Dispute Resolutions - % of Filed Cases referred**
12. The Court will open, maintain and regularly update an Alternative Dispute Resolutions Register
13. The court will conduct a mandatory screening to assess relevant cases filed to be referred
14. The Court will monitor the progress of matters referred to the Alternative Dispute Resolutions process and update its records
15. **Advance Communication of Adjournments of trials/hearings and date of delivery of rulings and judgments:**
16. The court will party to give contacts at the time of filing pleadings.
17. The court will communicate any anticipated adjournment as soon as the reason arises.
18. Whenever possible, the court will inform parties of new dates for delivery of judgments/rulings if they are rescheduled or deferred for one reason or another.
19. Judgements or ruling shall always be delivered on a specific date and they shall not be delivered “on notice” unless in exceptional circumstances
20. **Publish daily cause list online.-The Court will;**
21. The Court will identify a person to be in charge of the cause list.
22. The Court will prepare the cause list 7 days in advance.
23. The Court will Submit the cause list 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. **Stakeholder Engagement**
26. The Court will hold quarterly Court Users Committee/ Bar-Bench meetings (50%)
27. The Court will hold quarterly LMTs/ Staff meetings (20%)
28. The court will come up with a schedule of activities on quarterly basis.(10%)
29. The court will maintain contacts of all stakeholders. (10%)
30. The Court will maintain a file of all signed meeting minutes (10%)
31. **Submission of Court proceedings for appealed Matters within 60 days from date of receipt of notice.**
32. The Court will ensure that all court proceedings are typed
33. The Court will Submit typed proceedings for appealed matters within 60 days from the date of receipt of notice
34. **Taxation matters.**
35. The Deputy Registrar will conclude all taxation matters within 60 days from the date of judgment.
36. **Decrees and warrants**
37. The Deputy Registrar will sign all decrees and warrants within 4 days from date of issue.

**C. CASE CLEARANCE RATE**

**1. 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

**D. CASE BACKLOG**

**1. Percentage reduction of backlog**.

1. The court will conduct regular case audit 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

**2. Other productivity (Dismissals. Mediation, consents & withdrawals)**

1. The court shall encourage entering of consents
2. The court shall conduct audit to identify any dormant and inactive cases
3. It shall implement various initiatives such as service weeks to dispense of with such matters
4. 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