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**REPUBLIC OF KENYA**

**THE JUDICIARY**

**PERFORMANCE MANAGEMENT & MEASUREMENT UNDERSTANDING**

**BETWEEN**

**THE PRESIDNG JUDGE XXXXXXXXXXXXXXX HIGH COURT**

**AND**

**THE KADHI, XXXXXXX KADHI 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 **Presiding Judge XXXXX High Court** (hereinafter referred to as “***the Presiding Judge***”), of the one part, **AND** the **Kadhi, XXXXXXX Kadhi Court** of the other part. The Understanding applies to the **Presiding Judge** and **Kadhi,** 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 there under, 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.”
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 the Judicial Service Act;
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.
23. This Understanding establishes a framework for clear performance objectives, goals and targets for the Court.

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

**Part I: Commitments and Obligations of the Presiding Judge, on behalf of the Judiciary**

1. 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-ssupervision 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.
2. The Presiding Judge in consultation with the Chief Registrar will facilitate provision of requisite financial and human resources as specified in the Court’s annual budget and work plans.
3. Oversee the implementation of a performance management system of the magistrate’s and Kadhis’ Courts in discharge of their mandate, in accordance with the provisions of the Constitution, Magistrates Court Act and any other law.
4. Promote data management systems that ensure accuracy and consistency to include automation of DCRT, protection and sharing of data.
5. Oversee the functionality of the Court Users Committees, Leadership Management Committees in the magistrate’s courts

**Part II: Commitments and Responsibilities of Kadhi's Court**

1. The Court shall exercise its mandate and such other responsibilities as conferred by the Kadhis Court Act, Chapter 11 of the Laws of Kenya; the Civil Procedure Act, Chapter 21 of the Laws of Kenya and other enabling laws that are in consonance with Islamic Laws.
2. The Kadhi shall:
3. Ensure achievement of the negotiated and agreed Court’s targets; and
4. In consultation with the Head of Station, ensure preparation and implementation of annual work plan.

**Part III: Monitoring and Evaluation**

1. The Court shall submit, monthly, quarterly, and annual performance and statistical reports to the Presiding Judge 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 ***1stJuly 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. Justice XXXXXXX**

Presiding Judge,

XXXXXX High Court

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

**Hon. XXXXXXXXXX**

Kadhi ,

XXXX Kadhis Court

**Witnessed by:**

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

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

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

AJPMC, Member

**Endorsed by**

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

**Hon. Anne A. Amadi**

Chief Registrar of the Judiciary

**Schedule 1. Kadhi’s Courts’ Targets**

|  |  |
| --- | --- |
| **Matter** | **Recommended Time frame** |
| 1. Certified Urgent Applications | * Within 30 days from the date of filing |
| 1. All applications | * Within 180 days from the date of filing |
| 1. Injunction applications | * Hearing within 60 days from the date of filing * Determination 30 days from the date of hearing |
| 1. Hearing and determination of marriage, divorce, succession, matters of personal status and any matter incidental within its exclusive jurisdiction. | * Determination within 360 days from the date of filing |
| 1. Delivery of judgments/rulings/Advisory Opinions | * Determination within60 days from the date of finalization of hearing |

**SCHEDULE 2: PERFORMANCE TARGETS MATRIX, XXXXXXX KADHI'S COURTS**

| **INDICATORS** | **Unit of measure** | **Weight** | **Baseline**  **2020/2021** | | **Target**  **2021/2022** |
| --- | --- | --- | --- | --- | --- |
| 1. **EXPEDITIOUS DISPOSAL OF CASES** |  |  | **Actual** | **%** |  |
| 1. Certified Urgent Applications -% of applications concluded within 30 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 -% of other applications including registration of marriages concluded within 180 days of filing | % | 5 |  |  |  |
| 1. Hearing and determination of matrimonial, divorce, succession and matters of personal status -% of cases concluded within 360 days of filing | % | 15 |  |  |  |
| 1. Percentage of judgments/rulings delivered on the date first scheduled for delivery | % | 5 |  |  |  |
| 1. Delivery of judgments/rulings / advisory opinions -% of judgments and rulings delivered within 60 days of conclusion of the hearing | % | 15 |  |  |  |
| 1. Adoption of Alternative Dispute Resolutions - % of Filed Cases referred for Alternative Dispute Resolution (ADR/CAM/AJS) | % | 4 |  |  |  |
| 1. Case Clearance Rate | % | 15 |  |  |  |
| 1. Percentage reduction of backlog | % | 5 |  |  |  |
| 1. Merit Productivity | No. | 7 |  |  |  |
| 1. Other Productivity | No. | 3 |  |  |  |
| **SUBTOTAL** |  | **80** |  |  |  |
| **B. TRIAL AND DELIVERY DATE CERTAINTY** |  |  | **Actual** | **%** |  |
| 1. Advance communication of adjournments of trials & hearings and date of judgment of delivery of judgments/rulings | % | 3 |  |  |  |
| 1. Percentage of trial/hearings held when first cause listed | % | 3 |  |  |  |
| 1. Recording and signing of court proceedings | % | 3 |  |  |  |
| 1. Submission of Court proceedings for appealed Matters within 60 days from date of receipt of notice | % | 3 |  |  |  |
| 1. Publish daily cause lists and posting on the notice board/online - seven days in advance | % | 3 |  |  |  |
| **SUBTOTAL** |  | **15** |  |  |  |
| 1. **MONTHLY COURTS RETURNS** |  |  | **Actual** | **%** |  |
| 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. Certified Urgent Application**

1. Applications filed will be placed before the Kadhi immediately for verification as to whether they are urgent or not.
2. Applications shall be heard concluded within 30 days of filing
3. The court shall ensure that there is strict compliance with order 11 CPR.
4. The court shall introduce registers for purposes of tracking of applications.
5. The court shall ensure that all Urgent Applications are captured in the DCRT

**2. Injunction Applications**

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

**3. All other Applications**

1. Applications filed will be placed before the Kadhi immediately for verification as to whether they are urgent or not.
2. Applications shall be heard concluded within 180 days of filing
3. The court shall ensure that there is strict compliance with order 11 CPR.
4. The court shall introduce registers for purposes of tracking of applications.
5. The court shall ensure that all other Applications are captured in the DCRT

**4. Determination of matrimonial, divorce, succession and matters of personal status**

1. The court will hear and determine matrimonial, divorce, succession and matters of personal status cases within 360 days.
2. The court will not grant unnecessary adjournments.
3. The court will ensure that all cases are captured in the DCRT

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

1. The court will ensure parties take dates by consent.
2. The court will encourage trial date certainty.
3. The court will discourage unnecessary adjournments.
4. **Delivery of Judgments and Rulings.**
5. The court shall set a day for writing and delivery of judgments and rulings.
6. The court shall deliver judgments within 60 days of conclusion of the matter.
7. The court shall introduce registers for purposes of tracking of Judgments and Rulings.
8. **Adoption of Alternative Dispute Resolutions - % of Filed Cases referred**
9. The Court will open, maintain and regularly update an Alternative Dispute Resolutions Register
10. The court will do mandatory screen to assess relevant cases filed to be referred to Mediation.
11. The Court will monitor the progress of matters referred to the Alternative Dispute Resolutions process and update its records
12. **Case clearance rate.**
13. The court shall discourage adjournments.
14. The court shall encourage Alternative Dispute Resolution Mechanism (ADR).
15. The court shall ensure that parties comply with strict time lines set.
16. The court shall encourage entering of consents
17. The court shall engage other stakeholders
18. **Percentage reduction of backlog**.
19. The court shall conduct regular case auditing to determine in- active cases.
20. The court shall dismiss dormant cases.
21. The court shall give priority to hearing of old cases
22. Apply order 17 of CPR and 87 (A) of the CPC.
23. **Merit productivity (**cases concluded by way of Judgments and rulings)
24. The court shall discourage adjournments.
25. The court shall ensure that parties comply with strict time lines set.
26. The court shall ensure that both Criminal and civil matters are concluded on time.
27. The court shall ensure that all resolved cases are captured accurately in the DCRT
28. **Other productivity (Dismissals. Mediation, consents & withdrawals)**
29. The court shall encourage entering of consents
30. The court shall conduct audit to identify any dormant and inactive cases
31. It shall implement various initiatives such as service weeks to dispense of with such matters
32. The court shall ensure that all resolved cases are captured accurately in the DCRT
33. **TRIAL AND DELIVERY DATE CERTAINTY**.
34. **Advance communication of adjournments of trials & hearings and date of judgment of delivery of judgments/rulings**
35. The court will continue preparation of cause list 7 days in advance.
36. The court will ensure parties give contacts at the time of filing pleadings.
37. The court will communicate any anticipated adjournment as soon as the reason arises.
38. **Percentage of pre-trial events held when first listed**
39. The court shall ensure compliance with Order 11 of the CPR
40. The court shall ensure parties take dates by consent.
41. The court shall encourage trial date certainty.
42. The court shall discourage unnecessary adjournments.

**3. Recording and signing of court proceedings**

1. The court will keep a record all court proceedings
2. The court will sign all court proceedings to preserve integrity.
3. The court will endeavour to type all court proceedings

**4. Submission of Court proceedings for appealed Matters within 60 days from date of receipt of notice. The Court will;**

1. Ensure that all court proceedings are typed
2. Submit typed proceedings for appealed matters within 60 days from the date of receipt of notice
3. **Publish daily cause lists and posting on the notice board/online - seven days in advance**
4. Identify a person to be in charge of the cause list.
5. The courts will preparation of cause list 7 days in advance.
6. The cause list to be submitted in advance for posting on the Judiciary and National Council for Law Reporting websites
7. The court will keep a file of cause list dully dated and signed

**C. SUBMISSION OF MONTHLY RETURNS**

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

1. The court will ensure timely submission of accurate data by the 5th of every month.
2. The Court will validate CTS/DCRT data before submission to PMD;
3. The court will keep time lines in data submission
4. The court will ensure that all resolved cases are captured accurately in the CTS/DCRT

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