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LAW SOCIETY OF KENYA
CERTIFIED CONTINUING LEGAL EDUCATION COURSE

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DEVELOPMENTS IN KENYAN JURISPRUDENCE IN 2010: LANDMARK CASE LAW, THE COURT OF APPEAL RULES 2010 AND THE CIVIL PROCEDURE RULES 2010

AN OVERVIEW OF THE CIVIL PROCEDURE RULES, 2010 & THE COURT OF APPEAL RULES, 2010.

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AN OVERVIEW OF THE CIVIL PROCEDURE RULES, 2010 & THE COURT OF APPEAL RULES, 2010.



1. The New Civil Procedure Rules 2010 were Gazetted on 17th September 2010 and are expected to come into force 90 days from the date of publication in the Kenya gazette on 17th December 2010, while the Court of Appeal Rules published on 24th September 2010 shall be effected on 24th December 2010.
2. The Rules have been distilled and developed by the Rules committee from representations and memoranda received between the year 2003 and 2009 from stakeholders, especially, the Law Society of Kenya, the Judiciary, and members of the public. This was in exercise of the mandate donated by Section 81 of Cap 21 Laws of Kenya and Section 5 of the Appellate Jurisdiction Act, Cap 9 Laws of Kenya.
3. The committee comprises ;
 - (a) 2 Judges of Court of Appeal
 - (b) 2 Judges of the High Court,
 - (c) The Attorney General
 - (d) 2 Advocates, one nominated by the Law Society of Kenya (LSK) and the other by Mombasa Law Society.
4. As currently constituted , the committee is composed of;
 - Hon.Justice RSC Omolo, Court of Appeal, Chairman
 - Hon. Justice Philip Waki ,Court of Appeal, Deputy chairman;
 - Hon.Lady Justice Kalpana Rawal , High Court,
 - Hon.Lady Justice Jeanne Gacheche , High court;
 - The Honourable Attorney General represented by Ms Muthoni Kimani, senior Deputy Solicitor General;
 - Mr. George Vincent Odunga , Advocate, Law Society of Kenya;
 - Mr. Wamuti Ndegwa, Advocate, Mombasa Law Society.
 - Ms Winfridah B Mokaya, Principal Magistrate is Secretary to the committee.
- 5.Other former members of the Committee since it was reconstituted in 2003 were:
 - Hon. Justice J. G. Nyamu
 - Mrs. Grace Nzioka
 - Mr. Joram Abuodha

- Mrs. Pamela M. Tutui
- Mr. Abdi Kadir Lorot.
- Mr. James K’Owade, Advocate(deceased)

6. The New Rules have far reaching consequences on the practice of Civil litigation in this country, the main objective being to improve service delivery by empowering the courts to narrow down issues for determination, as well as set time lines within which activities relating to litigation in courts have to be undertaken.

The Rules deliberately depart from the traditional adversarial system of litigation where the courts played the role of the neutral bystander and impartial arbiter who must not descend into the arena of conflict. This same trend obtains in other Jurisdictions in the Commonwealth, such as Britain, Australia, India, where courts continue to find innovative approaches aimed at efficacy, effectiveness and relevance.

7. The Rules committee had plans for sensitizing all Judicial Officers, (Hon Judges and Magistrates), paralegal staff and other stakeholders on the rules before they came into force, but that objective was hampered by lack of funds to conduct training sessions.. Nevertheless, the Transitional provisions under Order 54 CPR 2010 give direction on how matters are to proceed after the effective date.

8. The following are the highlights of the Civil Procedure Rules, 2010 flagged out by Mr. G.V. Odunga, a member of the Rules Committee which acts as a quick guide in understanding what changes have taken place so far under the New Rules.

1. The removal of the Roman letters (e.g. Order XLIII) and replacement with numerical letters (Order e.g. 53).
2. Removal of Chamber Summons in most cases as a procedure for making applications. The applications under the Civil Procedure will henceforth be by way of Notice of Motion. Obviously, in practice the distinction between Notice of Motion and Chamber Summons has become a mere technicality. However, the Rules Committee has reserved the use of Chamber Summons in the following circumstances:
 - (a). Under O1 rule 10 (substitution and addition of parties)
 - (b). O 1 rule 14 (addition, striking out, substitution of plaintiff or defendant)
 - (c). O 1 rule 15 (leave to issue third party notice)

- (d). O1 rule 18 (deeming of liability to the defendant by a defaulting third party if Govt)
- (e). O1 rule 19 (judgement against defaulting third party)
- (f). O1 rule 20 (leave to enter judgement against govt third party)
- (g). O1 rule 22 (third party directions)
- (h) O2 rule 1(3) (an order that no further information is required by the defendant from the plaintiff to enable the defendant file a defence)
- (i). O7 rule 16(3) (an order for costs where a new ground of defence has arisen which has been confessed by the plaintiff)
- (j). O9 rule 13(1) (order for withdrawal of an advocate who has ceased to act)
- (k). O15 rule 15(2) (order for security for attendance by a person summoned to give evidence)
- (l). O19 rule 9 (applications relating to affidavits)
- (m). O27 rule 2(3) (order for disallowance of costs where the defendant makes payment into court)
- (n). O27 rule 2(4) (approval of terms of settlement in a defamation suit).
- (o). O29 rule 4(2) (order restraining a j/d from receiving money owed to him by govt and directing that payment be made to d/h or receiver.)
- (p). O32 rule 12(5) (by a minor on attaining majority)
- (r). O34 rule 1 (institution of interpleader proceedings in a pending suit)
- (s). O37 rule 5 applications relating to removal of caveats in a pending suit.
- (t). O42 rule 35(1) (dismissal of appeals for want of prosecution)

(u). O 52 rule 6(1) (charging orders under the Advocates Act)

(v). O 52 rule 7(1)(a) (enforcement of undertakings by advocates in a pending suit).

3. As a result of the introduction of a new Order 11 and the need to do away with the “A’s” in Orders VIA, IXA, and XXXIIA, Consolidation of Order III with IV, deletion of Order X and XII, the numbering of the Orders has been altered e.g. “Affidavits” will now be Order 19, “Injunctions” Order 40 etc.
4. There has been the amalgamation of Orders which should appear under one Order instead of two Orders (e.g. Orders II (Frame of Suit) and IV (Institution of Suits) now appear as Order 3 (Frame and Institution of Suits). Issue of Summons which was formerly under Order IV has been combined with Order V and now appear as Order 5 (Issue and Service of Summons).
5. There is a systematic arrangement of Orders to allow for sequential flow. Pleadings are drawn before summons are issued and therefore Order VI which dealt with pleadings generally has been brought forward and renamed order 2. It is followed immediately by Plaints as Order 4 (formerly Order VII) and Issue and service of Summons as Order 5. Appearance then follows as Order 6 and not IX followed by Defence and Counterclaim as Order 7 as opposed to Order VIII. Pleadings can then be amended under Order 8 rather than Order VIA. Thereafter comes follows the Consequences for Non-Appearance and Failure to Serve as Order 10 (formerly Order IXA). Note that 6A’s etc have been done away with.
6. There is an introduction of a new Order as Order 11 (Pre-Trial Directions and Conferences). This Order applies to all claims other than small claims as defined under Order 3(1). The aim is to deal with preliminary issues well in advance so that the trial once commenced must proceed on a day to day basis without unnecessary interruptions. Time allocation is dealt with at this stage.
7. At this stage the following actions are undertaken:
 - a. the court ensures that documents have been exchanged;
 - b. court fees have been paid in full;
 - c. that the defendant has filed list of witnesses and statements
 - d. the affidavit verifying the counterclaim and copies of the documents to be relied on have been filed as required under Order 7 rule 5

- e. issues are identified;
 - f. timetable for hearing is made;
 - g. consolidation of suits, if necessary is done;
 - h. change of track is dealt with
 - i. test suits are identified;
 - j. filing of particulars is done
 - k. interlocutory applications are disposed of
 - l. admission of statements is undertaken
 - m. discovery, inspection, interrogatories are done
 - n. issuance of commissions is done
 - o. Alternative Dispute Resolution mechanisms are explored and resorted to
 - p. striking out of pleadings can also be done at this stage
 - q. and the time table for hearing can be amended.
8. What then is the timetable for this? Once pleadings are closed under Order 2 rule 3, the parties are supposed to complete, file and serve pre-trial questionnaire appearing in Appendix B. Within 30 days after close of the pleadings the court convenes a **Case Conference**.
- a. Parties are expected to make sure that they have filed the pre-trial questionnaire before the court convenes a Case Conference.
 - b. After the Case Conference, a Case Conference Order in terms of Appendix C is made.
 - c. Within 60 days of Case Conference in case of fast track cases and 90 days in multi-track cases, the court convenes a settlement conference. This is meant to explore avenues for settlement of either the issues or the suit.
 - d. 7 days before the settlement conference, parties are to prepare and exchange a **Settlement Conference Brief** which contains summary of the facts including issues and admissions, summary of the law to be relied upon, final list of witnesses and statements and expert reports and relevant portions of the documents to be relied upon.
 - e. 30 days before the hearing, a **Trial Conference** is to be convened by the court to plan trial time, explore expeditious ways of introducing evidence, amend pleadings, deal with admissions, allow adduction of affidavit evidence, make orders for commissions, expert evidence, ADR etc.
 - f. At the end of Trial Conference the parties sign a memorandum in Appendix E and the court proceeds to make orders necessary for the conduct of the suit. The Parties are

bound by the memorandum signed herein unless the court decides otherwise.

- g. In the meantime and at least 10 days before the trial, parties are expected to have completed, filed and exchanged trial conference questionnaire form in Appendix D.
- h. To implement this order the Chief Justice is empowered to appoint such **Case Management Judges and Case Managers** as he may deem necessary. It is important to note that the failure to adhere to the provisions of this order may invite sanctions and penalties.

These are the various changes introduced in the Rules.

- A. Under **Order 1 rule 8** the requirement for leave in representative suits has been done away with; under **Order 1 rule 15** the time limited for applying for third party notice is now 14 days after close of pleadings.
- B. **Order 3 rule 1** introduces case-track system (small claims, fast track and multi-track) and how the tracks are to be determined. The tracks are to be indicated on the heading of the claim.
- C. All suits must under **Order 3 rule 2** be accompanied by verifying affidavit, list of witnesses, statements of witnesses save for experts and copies of documents including demand notice. The witness statements may under the proviso to this rule with leave of the court be furnished at least **15** days before the trial conference.
- D. **Order 4 rule 1(4)** one plaintiff is authorised to swear a verifying affidavit on behalf of the others and in case of a corporation by its officer authorised under the seal. Similar provisions apply to counterclaims.
- E. **Order 5 rule 1(1)** the summons must now be signed and sealed within 30 days from the date of filing of the suit and shall be collected within 30 days of issue or notification whichever is later, failing which the suit abates.
- F. **Order 5 rule 3(b)(iii)** (in case of corporations) and **5(1)(e)** summons may now be served by licensed couriers.
- G. **Order 5 rule 12** it is now an express requirement that for service to be made on agents or adult member of the family, a reasonable number of attempts must have been made.

- H. **Order 5** rule 18 now requires service on prisoners to be effected on them in the presence of the officer in charge and not to be sent to the officer for service.
 - I. **Order 6** rule 2(3) appearance is to be served within seven days of appearance and affidavit of service filed.
 - J. **Order 6** rule 6 provides that documents may either be delivered by hand or by approved licensed courier service provider (these are only documents under this order). If a dispute arises as delivery, a certificate of posting or other form of proof of service is to be filed.
 - K. **Order 7** rule 1 the period for service of defence is extended from 7 days to 14 days but affidavit of service must be filed.
 - L. The defence is to be accompanied by verifying affidavit (where there is a counterclaim), list of witnesses and statements and copies of documents. Again leave of the court may be obtained to have the statements furnished at least 15 days prior to Trial Conference. Service of documents under this order is provided in rule 20.
 - M. **Order 9** rule 2(a) appearance by holders of power of attorney is subject to approval by the court.
 - N. **Order 9** rule 9 it is now permissible to record a consent allowing an incoming advocate to come on record while rule 9 allows for combination of prayers for leave to come on record together with stay in the same application save that the former is to be disposed of first.
 - O. **Rule 12** of the order now caters for situations where an advocate is unable to act in the matter for any other reason;
 - P. **Order 10** rule 3 failure to serve either a memorandum of appearance or defence within the prescribed time may lead to any of those documents being struck out either by the court or on application hence the necessity to file affidavit of service.
- Note, however, that a defence may be treated as appearance under Order 6 rule 3 if it contains the necessary particulars.
- Q. Due to the introduction of **Order 11, Orders X** (Interrogatories, Discovery & Inspection) and **XI** (Consolidation of Suits) have been **deleted**.

R. **Order XII** (Admissions) and **XIV** (Settlement of Issues and Determination of Suit on Issues of Law or on Issues Agreed Upon) **have been substantially reduced.**

S. Since no adjournment is contemplated once the memorandum under Order 11 rule 7(4)(1) is signed the word “**Adjournment**” has been **deleted** from Order 17 (formerly Order XVI). Standing over matters generally or “**SOG**” is nolonger allowed and the court when granting an adjournment, if at all, **must fix a date for further action in court.**

Since the Court will be in control of the proceedings, the provisions by the parties to apply for **dismissal for want of prosecution nolonger exists** and failure to comply with directions given under this order may lead to dismissal of the suit.

- T. **Order 18** rule 2 now gives the court the power to determine the mode of production of evidence and also provides for limitation of time addresses by the parties (submissions) while rule 4 introduces the use of technology in recording evidence.
- U. **Order 19** deals with affidavits and under rule 18 thereof specifically out laws technical or formal objections.
- V. **Order 20** (Application for an Account) now allows a defendant with a counterclaim to apply for account and empowers the court to order payment after accounts are taken.
- W. **Order 21** rule 1, judgements must now be delivered within **60 days** from the date of conclusion of the trial failure to do which reasons **therefore must be forwarded to the Chief Justice** and a date immediately fixed.; Under rule 8(5) the procedure for preparation of decrees either in the High Court or Subordinate Courts is now **harmonised** by importing the current High Court procedure to subordinate courts.
- X. Objection proceedings are now under **Order 22** rule **50** under which **stay of execution is no longer automatic** on the lodging of the notice and to expedite objection proceedings the notice must be lodged together with application and supporting affidavit, which must be served within 7 days on all the parties.

The court on receipt of the notice and application is empowered to order stay **but not for more than 14** days. The attaching creditor is to be notified to intimate whether he intends to proceed within 7 days. If he intends to proceed the intimation is likewise to be accompanied by a replying affidavit and the application is to be dealt with expeditiously.

These provisions are meant to expedite the objection proceedings and to prevent abuse of the process of court normally associated with the said proceedings.

- Y. Since **Order 24** (formerly Order XXIIA has nothing to do with marriage of parties, the word “marriage” has been deleted from the title; a proviso has, however, been added to rule 3(2) to provide for extension of time to apply for joining of legal representative of the plaintiffs.
- Z. **Order 29** rule 2(2) (formerly Order XXVIII rule 2(2), apart from the amendments necessitated by the rearrangement of the Rules, Order 40 (injunctions) has been added to bring the Rules into conformity with the Provisions of the Government Proceedings Act (Cap 40).
- AA. **Order 36** (currently Order 35) has been amended in rule 1(1) to provide that applications for summary judgement be **made after appearance** entered but **before defence is filed**. This is to avoid late applications for summary judgements.

Ideally applications for summary judgements should never be dismissed if the application falls within the four corners of the Order i.e. the prayers sought are the kind of prayers that can be subject of a summary judgement application. What the court should do is either grant conditional or unconditional leave to defend. Where, however, the application does not fall within the four corners of the Order or the applicant knew the defendant’s contention entitled him to unconditional leave to defend the court may dismiss the application with costs to be paid forthwith.

The defendant is now required to show by affidavit or oral evidence that leave to defend should be given. The word “otherwise” has been deleted.

- BB. Under originating summons **Order 37** (formerly Order XXXVI) rule 3E has been deleted as being contrary to the provisions of the Children Act.

Rule 8A which provides for fixing of the cause directions by parties has been amended. The court is now enjoined to list the OS for directions within 30 days and rule 9 has been amended to the effect that the issue whether or not the OS should be disposed of by oral evidence is to be decided at the time of directions and not, as in the current rules, on the hearing of the summons. Where directions are that the matter be heard by way viva voce evidence the provisions of Order 11 come into play.

CC. **Injunctions** is now under **Order 40** and under rule 3 applications for punishment for breach of injunctions can now be made in the same suit.

Under rule 4(2), **life span** of **ex parte** orders is **14** days which can be extended either by consent of the parties or by a court order but for a period **not exceeding** a further 14 days.

- Under rule 4(3) the consequences of failure to serve pleadings and order on the respondent within 3 days of issue is that the order automatically lapses; applications for injunctions must be disposed of within 60 days unless the court orders otherwise while rulings on applications for injunctions must be delivered within 30 days of the conclusion of the hearing thereof in default of which the court is enjoined to record its reasons for the failure thereof and immediately fix a date for the ruling; a suit in which an interlocutory injunction has been granted has to be disposed of within 12 months otherwise the injunction lapses unless otherwise ordered by the court.

DD. **Appeals** are now under **Order 42** under rule 13 thereof it is now the duty of the appellant to cause the appeal to be listed for direction on notice (currently it is the court that is empowered to do it).

-Rule 13 now provides for the filing of written submissions where a party does not intend to appear at the hearing.

-Current rule 25 has been in conflict with section 69 of the Act which provides that where there is a conflict of opinion between only two judges hearing appeal re-a hearing is to be ordered as opposed to the rule which stipulated that the appeal is to be dismissed.

EE. **Arbitration** is now under **Order 46** and the heading now encompasses other ADR and rule 20 allows for parties to resort to other forms of ADR. If no solution comes from the other forms of ADR the matter is to be disposed off in the normal manner.

FF. **Order XLVI** (now 47) has been amended in rule 5 to dispense with the requirement that suits against the Government be heard at the High Court in the central office.

GG. Applications are now under **Order 51** and applications are to be **by motion in open court** unless otherwise directed.

Under rule 13(3) applications are now to be served with list of authorities not less than 7 days before the hearing.

A party who wishes to oppose the application is now at liberty to file any or all of notice of PO, replying affidavit and grounds of opposition. The same are to be filed with list of authorities not less than 3 days before hearing.

Rule 16 now empowers the court, whether High Court or Subordinate Court, to limit the time for oral submissions but empowers the court to **allow written submissions**.

HH. As a result of deletion of Order 51 (Summons for Directions) Order 53 retains the same number.

-The requirement that a notice to given to the registrar prior to the filing of an application for leave to apply for judicial review has been done away with.

-The Court is now empowered to impose terms in granting leave to apply for judicial review.

- However application for leave, though generally ex parte, may be heard ***inter partes* and the court is now empowered to hear application** for leave ex parte and direct that the limb seeking stay be heard *inter partes* within 7 days.

II. There is a new Order 54 which applies to pending proceedings but does not invalidate previous actions. However where it is impractical to apply these rules, the prior procedure shall be followed. Where there is a problem the Chief Justice is to give guidelines by way of Practice Notes or Directions.

(i) As a result of deletion of Order 51 (Summons for Directions) Order 53 retains the same number.

-The requirement that a notice to given to the registrar prior to the filing of an application for leave to apply for judicial review has been done away with.

-However, the Court is now empowered to impose terms in granting leave to apply for judicial review.

- Whereas application for leave is, generally, ex parte, the same may be heard *inter partes* and the court is now empowered to hear application for leave ex parte and direct that the limb seeking stay be heard *inter partes* within 7 days.

- (ii) There is a new Order 54 which applies these rules to pending proceedings but does not invalidate previous actions. However where it is impractical to apply these rules, the prior procedure shall be followed. Where there is a problem the Chief Justice is to give guidelines by way of Practise Notes or Directions.

The following are the highlights of the Court of Appeal Rules, 2010.

1. Rule 21 has been amended to cater for hearing of appeals in any areas designated by the Chief Justice other than Nairobi and Mombasa.
2. The marginal notes to rule 23(2) should be “withdrawal of an advocate who has ceased to act for a party”.
3. In rule 25 there is an addition of a proviso whose effect is to empower the court to give directions as to the order of addresses.
4. Rule 32(1) stipulates the period for delivery of judgements on appeal as 90 days in default of which reasons are to be recorded.
5. Rule 34(2)(a) and (b) provides for the timelines for preparation of the order arising from appeal. Accordingly, rule 34(2)(c) has been rephrased.
6. In the last line in rule 35(2) the word “supports” should ideally read “purports”. This error is a carry-over from the previous rules.
7. Rule 39(a) needs to be rephrased. It was not amended and therefore it should read as in the former rules.
8. Subrules (2) and (3) of rule 42 were inadvertently omitted.
9. Rule 51 has been amended to provide for revival of abated applications in appropriate cases while a new rule 52 has been introduced to provide for withdrawal of applications.
10. Since there is no provisions for Notice of Appeal from the Subordinate Courts to the High Court, rules 61(4)(v) and 85(2)(vi) have been deleted.

11. Rule 66(3) allows parties with leave of the court to address the Court at the hearing of the appeal where a party has presented his arguments in writing.
12. Rule 81 now provides for withdrawal of a notice of appeal and notice of cross appeal. However, the marginal notes should read “withdrawal of notice of appeal and notice of cross appeal” since withdrawal of appeals is dealt with by rule 96.
13. Rule 82(2) now provides that the letter bespeaking proceedings be **served** and not just sent.
14. Rule 83 now provides that a court order is required to deem an appeal to have been withdrawn by reason of the failure to institute the same within the stipulated period. Consequently the automatic right to lodge a notice of appeal by any other party entitled to do so within 14 days of the deeming effect has been deleted.
15. Under Rule 84 it is now specifically provided that an application seeking to strike out a notice of appeal must be made within 30 days of service of the notice and not service of the record of appeal.
16. Rule 88 now entitles the appellant to file a supplementary record within 15 days of the record containing documents including “primary documents”. Thereafter the leave of the registrar must be obtained. This right is reserved to the respondent by rule 92. However, rules 88 and 92(3) may, on the face of it, appear to conflict.
17. Rule 99(3) provides for the revival of abated appeals.
18. Rule 100 introduces written submissions.
19. Rule 116 repeals the Court of Appeal Rules for limited cases saved by the transitional provisions of rule 117.
20. Section 3 of the Appellate Jurisdiction Act will have to be amended to comply with the provisions of Article 164(3) which provide for appeals from any other court or tribunal as prescribed by an Act of Parliament to the Court of Appeal.

The foregoing are but a summary of the proposed new rules. The two main objectives of these amendments are to expedite the process of civil litigation and minimise the dismissal of

causes on technicalities in line with the provisions of sections 1A and 1B of the Civil Procedure Act and sections 3A and 3B of the Appellate Jurisdiction Act.

However, it must be noted that the views expressed herein and purely the views of the writer and should not be construed to be the views of the Rules Committee.

CONCLUSION

The Civil Procedure Rules, 2010 obviously requires that the members of the Judiciary take a pro-active approach rather than a laid-back approach that currently prevails. The inability to grasp the provisions of the Civil Procedure is inexcusable on the part of the Judicial Officers. Registries will have to be manned by properly trained staff with proper understanding of the Rules taking into account the fact that unrepresented litigants will require guidance especially with regard to choice of tracks. The appointment of Case Managers is therefore a priority.

Advocates and litigants, on the other hand, must have the rules at their finger-tips right from the time the demand notice is sent out. Trial Conferences and Directions will require strict and almost fanatic adherence to the laid down guidelines. The Advocates must engage the judicial officers in the process not only of adhering to the rules but interpretation of the same to suit the purpose for which the rules are made – Justice. Failure by the Advocates to actively engage in the interpretation of the rules will render the whole process of civil litigation a circus. It is recognised that not all the Rules may be adequate or desirable but the Rules Committee must continuously revisit the same so that the rules do not become an impediment to justice. The Law Society of Kenya must therefore make the necessary recommendations to the Rules Committee as and when the need arises.

Note: Under Article 163(8), the Supreme Court is the body empowered to make Rules for the exercise of its jurisdiction. However, an Act of Parliament may , under clause (9) make further provision for the operation of the Supreme Court.

**GEORGE VINCENT ODUNGA,
ADVOCATE, MEMBER OF THE RULES COMMITTEE.**

CIVIL PROCEDURE RULES

RE: MONITORING OF ESSENTIAL STEPS IN CIVIL SUIT

ESSENTIAL STEP	PRESCRIBED PERIOD
1. Instructions to file suit. Taking down names of witnesses, their statements and signatures. Compiling and making copies of documents sending demand letter/letter before action	Institution before suit
2. Preparation of plaint, summons to enter appearance	Before instituting suit – 1(2) and (4)

and verifying affidavit and closing of track	
3. Filing plaint together with summons to enter appearance, verifying affidavit signed witness statements, copies of documents and demand letter	O4 rr 1(5) and 2
4. Signing of the summons by the court. Action by Court.	30 days from the date of filing suit O5 & 1(1)
5. Collection of summons.	30 days from the date of issue or date of notification whichever is later – O5 r 6
6. Serving of summons	Within a period of not more than 12 months – O4 & 2(1)
7. Entry of Appearance	Within the time prescribed in the summons but not less than 10 days from date of service O5 r 1(1) and (14)
8. Service of Memorandum of appearance	Within 7 days from the date of appearance – O6 r 2(3)
9. Filling affidavit of service of Memorandum of appearance	O6 r 2(3)
10. Filing application for summary judgement if necessary	After appearance but before defence fixed – O3b r 1
11. Obtaining instructions to defend names of witnesses and written statements and copies of documents	
12. Filing of defence listing names of witnesses and their written statements and copies of documents	Within 14 days after appearance O7 r 1
13. Service of defence	Within 14 days from date of filing O7 r1
14. Filing of affidavit of service of the defence	O7 r1
15. Filing reply to defence	Within 14 days after the last defence served O7 r 17(1)
16. Service of the reply and other subsequent pleadings	Within 7 days from the date of filing – O7 r18(3)
17. Amendments of pleadings	Before close of pleadings – O8 r 1

once without leave	
18.Close of pleadings	Within 14 days after service of the reply or defence or defence to counterclaim, if any – O2 r13
19.Application for Third Party Notice	Within 14 days after close of pleadings – O1 r 15 (1)
20.Appearance by the third party	Within the period specified in the Third party notice O1 r 17
21.Application for third party direction	After third Party appearance – O1 r22
22.Completion, filing and service of pre-trial questionnaire	Within 10 days after the close of pleadings – O11 r 2
23.Convention of a case conference. Action by Court.	Within 30 days after the close of pleadings O11 r 3
24.Issuance of Case Conference Order. Action by Court	At the completion of the case conference O11 r 4
25.Exchange of a settlement conference brief	At least 7 days before settlement conference O11 r 5 (2)
26.Convention of a settlement conference. Action by Court	Within 60 or 90 days in fast track and multi-track cases respectively from the date of case conference O11 r 5(1)
27.Completion, filing and exchange of Trial Conference Questionnaire	At lease 10 days before Trial Conference O11 r 6
28.Convention of Trial Conference. Action by Court.	At least 30 days before the hearing date – O11 r 7
29.Signing of Memorandum	At the conclusion of Trial Conference O11 r 7 (4)(a)
30.Fixing a date for hearing taking note of the fact that no adjournments are allowed except in exceptional cases and matters are not to be Stood Over Generally. Action by Court	At the conclusion of Trial Conference O11 r 7(4)(b)
31.Judgement. Action by Court	Within 60 days from conclusion of the case O21 r 1
32.Execution	Within 1 year after the dates of the decree in O22 r 18

33.Institution of objection Proceedings by Notice, application and affidavit	Within 7 days from the date of filing O22 r 51 (3)
34.Notification to the decree holder to intimate intention to proceed with execution and issuance of stay if court deems fit. Life span of stay of execution, if issued limited to 14 days. Action by Court	O22 r 52
35.Intimation of intention to proceed together with a replying affidavit.	Within 7 days O22 r 52
36.Filing an appeal to the High Court	Within 30 days of the decree appealed from – Sec 79G CPA
37.Filing of Certified copy of decree or Order appealed from.	With the Memorandum of appeal as soon as possible or within the time ordered by the court – O42 r 2
38.Amendment of memorandum of appeal without leave.	Any time before directions are given – O42 r 3 (1)
39.Listing of the appeal for direction by the appellant or is it admission?	Within 30 days of filing the appeal O42 r 11
40.Notification of the applicant of refusal to reject appeal. Action by Court.	O42 r 12
41.Service of Memorandum of appeal	Within 7 days of receipt of notification – O42 r 12
42.Fixing appeal for hearing	On notice served on the parties of not less than 21 days after service of memorandum of appeal – O42 r 13(1) –
43.Objection to Jurisdiction	Before directions are given O42 r 13 (2)
44.Dismissal of appeals from want of prosecution. Action by Court.	Within 1 year after service of memorandum of appeal if appeal not set down for hearing

NOTE: There are time lines stipulated with respect for applications for injunctions and applications generally and judicial review proceedings.

COURT OF APPEAL RULES
RE: MONITORING OF ESSENTIAL STEPS IN CIVIL
APPEAL/APPLICATION

1. Giving and lodging Notice of Appeal	Within 14 days of the decision desired to be appealed against	Rule 75(2)
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2. Service of the Notice of Appeal	Before or within 7 days after lodging notice of appeal	Rule 77(1)
3. Application for dispensation of service of Notice of Appeal on persons who took no part in the proceedings in the High Court	Within 7 days from the date of lodging Notice Appeal	Proviso to Rule 77(1)
4. Application for copy of proceedings	Within 30 days of the date of the decision against which it is desired to appeal	Proviso to rule 82(1)
5. Lodging of notice of full and sufficient address for service by respondent served with Notice of Appeal	Within 14 days of service of Notice of Appeal	Rule 79(1)(a)
6. Service of Notice of Address for Service	Within 14 days of lodging the same	Rule 79(1)(b)
7. Institution of Appeal	Within 60 days from the date of the decision against which it is desired to appeal.	Rule 82(1)
8. Service of record of appeal on respondent who has filed and served notice of address for service	Within 7 days of lodging of the Memorandum and Record of Appeal	Rule 90(1)
9. Inclusion by the appellant of documents referred to in Rule 87(1) and (2) in supplementary record without leave	Within 15 days of lodging Record of Appeal	Rule 88
10. Service of Memorandum and Record of Appeal on other parties to the original proceedings	Within such time as directed by the court	Rule 90(2)

11. Filing by the respondent of Notice of Cross-Appeal	Within 30 days of service of the Memorandum and Record of Appeal or at least 30 days before the hearing of the appeal whichever is the later	Rule 93(2)
12. Filing by the respondent of Notice of Grounds for affirming decision	Within 30 days of service of the Memorandum and Record of Appeal or at least 30 days before the hearing of the appeal whichever is the later	Rule 94(2)
13. Filing submissions by appellant who does not intend to appear at the hearing	Within 14 days of filing the Memorandum and Record of Appeal	Rule 100(2)(a)
14. Service of the appellants submissions on respondent	Before or within 7 days of lodging the same	Rule 100(1)
15. Filing submissions by a respondent who does not wish to appear at the hearing of the appeal	Within 30 days of service of the Memorandum and Record of Appeal	Rule 100(2)(b)
16. Service of submissions by respondent on appellant	Before or within 7 days of lodging the same	Rule 100(1)
17. Application for striking out Notice of Appeal	Within 30 days of service of Notice of Appeal	Rule 84
18. Application for striking out Record of Appeal	Within 30 days of service of Record of Appeal	Rule 84
19. Application for substitution of a	Within 12 months from date of death	Rule 99(2)

deceased party to appeal		
20. Notice of hearing of appeal	Not less than 14 days	Rule 101
21. Application for restoration of appeal or cross appeal dismissed or allowed as the case may be for non appearance	Within 30 days of the decision of the Court, or in case of a party who would have been served with the notice of the hearing but was not so served, within 30 days of his first hearing of that decision.	Rule 102(3)
22. Application for reference on taxation from decision of registrar to a judge	Informally at the time of the decision or in writing within 7 days of the decision	Rule 112(3)
23. Application for reference on taxation from decision of a judge to court	Informally at the time of the decision or in writing within 7 days of the decision	Rule 112(5)
24. General application for reference from decision of a single judge to court	Informally at the time of the decision or in writing within 7 days of the decision	Rule 55
25. Application for leave to appeal where appeal lies with leave of superior court	Informally at the time of the decision against which it is desired to appeal is given, or within 14 days of the decision according to the practice of the superior court	Rule 39(a). Note that the correct rule is not clear due to typographical errors. Refer to old rule pursuant to rule 117(a)
26. Application for leave to appeal where appeal lies with leave of the court	Within 14 days of the decision against which it is desired to appeal is given, or according to the practice of the superior court or where	Rule 39(b). Querre: What happens in a case under sub-rule 1 where application to High Court has been refused?)