

SPECIAL ISSUE

49

Kenya Gazette Supplement No. 7

14th February, 2020

(Legislative Supplement No. 5)

LEGAL NOTICE NO. 6

THE SUPREME COURT ACT

(No. 7 of 2011)

THE SUPREME COURT RULES, 2020

ARRANGEMENT OF RULES

Rules

PART I—PRELIMINARY

1. Citation.
2. Interpretation.
3. Scope and objectives.

PART II—ADMINISTRATION OF THE COURT

4. Duties of the President..
5. Duty Judge.
6. Role of the Registrar.
7. Sittings of the Court.
8. Language of the Court.
9. Sealing of Court documents.
10. Registry.
11. Maintenance of the Register.

PART III—CASE MANAGEMENT

12. Filing of documents.
13. Form of documents.
14. Hours of filing documents.
15. Computation and extension of time.
16. Service and transmission of documents.
17. Further pleadings.
18. Representation in Court.
19. Participation of friends of the Court.
20. Assignment of advocate by Court.
21. Test case.

- 22. Scheduling conference.
- 23. List and bundle of authorities.
- 24. Interested parties.

PART IV — CONDUCT OF PROCEEDINGS

- 25. Hearing in Court.
- 26. Admission of additional evidence.
- 27. Withdrawal of proceedings.
- 28. Judgment.
- 29. Decrees and Orders.
- 30. Execution.

PART V — APPLICATIONS

- 31. Interlocutory applications.
- 32. Urgent applications.
- 33. Application for certification.
- 34. Non-attendance at the hearing of applications.
- 35. Abatement of applications.

PART VI — APPEALS

- 36. Notice of Appeal.
- 37. Service of Notice of Appeal.
- 38. Institution of an appeal.
- 39. Form of Petition of Appeal.
- 40. Content of a record of appeal from the Court of Appeal.
- 41. Content of a record of Appeal from other Courts or Tribunals.
- 42. Response to Petition of Appeal.
- 43. Abatement of appeals.
- 44. Death of respondent before service of notice.
- 45. Address for service.
- 46. Default in instituting appeal.
- 47. Notice of cross-appeal.
- 48. Notice of grounds for affirming decision and service.
- 49. Withdrawal of cross-appeal or notice of grounds for affirming decision.

PART VII — ADVISORY OPINIONS

- 50. Reference for an Advisory Opinion.

51. Participants in a reference.

52. Notice of reference.

53. Determining a reference.

**PART VIII—PETITION ON DECLARATION OF STATE OF
EMERGENCY**

54. Filing petition.

55. Service and hearing of a petition.

PART IX—CONTEMPT OF COURT

56. Contempt in the face of the Court.

57. Cognizance of contempt in other cases.

58. Penalty for contempt.

PART X—FEES AND COSTS

59. Assessment of fees payable.

60. Taxation of costs.

61. Costs improperly incurred.

62. Reference on taxation.

63. Waiver of Court fees.

PART XI — GENERAL PROVISIONS

64. Practice Directions.

65. Effect of non-compliance with the Rules.

66. Disposal of records.

67. Revocation of L.N. 123 of 2012.

68. Review of Rules.

SCHEDULES

THE CONSTITUTION OF KENYA

THE SUPREME COURT ACT

(No. 7 of 2011)

IN EXERCISE of the powers conferred by Article 163(8) of the Constitution and section 31 of the Supreme Court Act, 2011, the Supreme Court makes the following Rules—

THE SUPREME COURT RULES, 2020

1. These Rules may be cited as the Supreme Court Rules, 2020. Citation.

2. In these Rules, unless the context otherwise requires— Interpretation.

“Act” means the Supreme Court Act;

“Appeal” includes an intended appeal from the Court of Appeal or any other court or tribunal exercising original jurisdiction;

“bench” means a judge or any number of judges as may be constituted by the President of the Court in connection with any proceeding;

“Court” has the meaning assigned to it under section 2 of the Act;

“duty judge” means a judge of the Court assigned to conduct preliminary procedures during their time on duty;

“electronic media” means any type of device that stores and allows distribution or use of electronic information;

“guardian in the matter” means a person appointed as such, to defend a minor, or a person with a disability, in a matter;

“interested party” means a person who has an identifiable stake or legal interest or duty in the proceedings, who may be prejudiced if not joined, but is not an original party to the proceedings;

“party” includes a petitioner, respondent, interested party or an applicant;

“Petition” has the meaning assigned to it under the Act;

“preliminary procedures” means presentation made before a single judge, a two-judge bench, or the Registrar, on a matter preparatory in nature;

“President” means the President of the Supreme Court;

“proceedings” means presentation made before the Court under Article 163(2) of the Constitution, for final determination on a matter;

“reference” means an application to the Court for an Advisory Opinion;

“Registrar” has the meaning assigned to it under section 2 of the Act; and

“Registry” has the meaning assigned to it under section 2 of the Act.

3. (1) These Rules apply to proceedings under the Court's jurisdiction and includes petitions, references and applications. Scope and objectives.

(2) The overriding objective of these Rules is to ensure that the Court is accessible, fair and efficient.

(3) The Court may use appropriate technology in its proceedings and operations.

(4) The Court shall interpret and apply these Rules without undue regard to technicalities and procedure.

(5) Nothing in these Rules shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders or give directions as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

PART II—ADMINISTRATION OF THE COURT

4. The duties of the President shall include—

Duties of the President.

- (a) coordination of the activities of the Court;
- (b) constitution of a bench to hear and determine any matter filed before the Court;
- (c) determination of the sittings of the Court and the matters to be disposed of at such sittings; and
- (d) determination of the period of vacation of the Court.

(2) The President may delegate the duties under sub rule (1) to the Vice-President of the Court.

5. The President shall appoint a duty judge who shall—

Duty judge.

- (a) hear and determine applications for certification of urgent matters; and
- (b) any other matter as may be provided for under the Act.

6. (1) The role of the Registrar is—

Role of the Registrar.

- (a) to schedule matters filed before the Court for a scheduling conference;
- (b) to decline pleadings that are not in accordance with the Constitution, the Act, these Rules, or the Court's practice directions for filings;
- (c) to impose sanctions or order costs against a party who fails to comply with directions of the Court;
- (d) to fix matters for hearing in consultation with the President; and
- (e) to give notice of any directions in any matter approved by the Court.

(2) Any party aggrieved by a decision of the Registrar made under this rule may apply for a review to a single judge.

(3) A determination by the single judge on the decision of the Registrar shall be final.

7. (1) The Court shall have three sittings in a year.

Sittings of the court.

(2) The sittings of the Court referred to under sub rule (1) shall be as follows—

- (a) from the 14th January to the second Wednesday before Good Friday;
- (b) from the first Wednesday after Easter Week to the 31st July; and
- (c) from the 16th September to the 20th December.

8. (1) The language of the Court is English.

Language of the Court.

(2) A party who intends to address the Court in any language other than the language of the Court shall give the Registrar a seven-day notice before the date of the hearing.

9. The Registrar shall sign and seal with the seal of the Court any summons, warrant, order, notice or other formal document issued by the Court.

Sealing of Court documents.

10. (1) The Registry shall be located at Nairobi.

Registry.

(2) The President may from time to time establish sub-registries of the Court.

(3) The working hours of the Registry are from 8.30 a.m. to 5.00 p.m.

11. (1) The Registrar shall maintain a register of all documents lodged in the registry.

Maintenance of the register.

(2) A register shall contain particulars of documents including—

- (a) the sequencing of the application;
- (b) (in the case of an appeal), the file number of the proceedings in the lower court;
- (c) the names of the parties; and
- (d) the date when any action is required to be taken.

PART III—CASE MANAGEMENT

12. (1) Pleadings and any other document filed in the Court shall be in both printed and electronic form.

Filing of documents.

(2) A party filing any document shall ensure consistency in the printed and the electronic formats.

(3) In case of any inconsistency between the hard copy and soft copy, the hard copy shall prevail.

(4) Where a document is lodged in a sub-registry, the deputy registrar receiving the same shall transmit it to the Registry.

13. (1) A document prepared for use in Court shall conform to practice directions issued by the President. Form of documents.
- (2) The pages of every document in an application or appeal shall—
- (a) be numbered consecutively; and
 - (b) have every tenth line of each page indicated on the margin of the right side of the sheet.
- (3) The documents lodged to institute an appeal shall be bound in book form, in volumes secured under cover of durable paper, with proper title appearing on the cover.
- (4) The Court may limit the number of pages of any set of documents to be filed.
- (5) Despite this rule, the Court may, where necessary, vary the requirements relating to filing of documents.
14. (1) Parties shall file or present documents in the registry during working hours. Hours of filing documents.
- (2) Despite sub-rule (1), the President may specify other times when parties may file or present documents in the registry.
15. (1) The computation of time for any action under these Rules shall be in accordance with— Computation and extension of time.
- (a) any timeline provided for under the Constitution;
 - (b) section 57 of the Interpretations and General Provisions Act;
 - (c) any directions of the Court. Cap. 2.
- (2) The Court may extend the time limited by these Rules or by any decision of the Court.
16. (1) Where a document is required to be served upon a person under these Rules, service may be effected— Service and transmission of documents.
- (a) personally by hand;
 - (b) through a licensed courier service-provider approved by the Court;
 - (c) by electronic means in accordance with the practice directions;
 - (d) by registered post;
 - (e) on a person entitled to appear on that person's behalf; or
 - (f) in such other manner as the Registrar may direct.
- (2) The attestation of service shall be by way of an affidavit of service, which shall specify the details of the person served, and the place, date, time and mode of service.
- (3) Despite sub-rule (2), the Court may admit oral evidence of service.

17. (1) A party may only file further pleadings or affidavits with the leave of the Court, and with the consent of the other party.

Further pleadings.

(2) An application for leave under this rule may be made orally.

(3) Any pleadings, affidavits or other documents filed under this rule shall be served in accordance with these Rules.

18. (1) A party may in any proceedings —

Representation in Court.

(a) appear in person;

(b) be represented by an advocate; or

(c) with the leave of the Court, be assisted by any other person chosen by the party.

(2) An association, a corporate body or group of persons may be represented in a proceeding by an advocate, a director, manager or secretary appointed in writing, in accordance with a duly-made resolution, which shall be filed in Court.

(3) Where a child or a person with disability is involved, the Court may appoint a guardian in the matter, or a next friend, for the purpose of lodging an appeal or a petition, and the Court may, at any time and for sufficient reason, remove or substitute the appointed guardian or next friend.

(4) A party may remove or substitute a representative at any stage of the proceedings.

(5) A party seeking to remove, substitute, nominate or otherwise change a representative, shall lodge with the Registrar a notice of change, and serve the notice upon other parties to the proceedings.

(6) An advocate may at any stage in the proceedings apply to the Court to cease acting for a party.

(7) An advocate who applies to cease acting, shall serve the application upon the other party or parties involved.

19. (1) The Court may on its own motion, or at the request of any party, permit a person with particular expertise to appear in any matter as a friend of the Court.

Participation of friends of the Court.

(2) The Court shall before admitting a person as a friend of the court, consider—

(a) proven expertise of the person;

(b) independence and impartiality of the person; or

(c) the public interest.

(3) Any fees or expenses incurred by a person appointed by the Court as a friend of the court on its own motion, shall be paid out of the Judiciary Fund, in accordance with a scale determined by the President.

(4) An application to be admitted as an *amicus* or a friend of the Court shall be done within 7 days upon filing of a response in any proceedings before the Court.

20. (1) The President may, in the interest of justice, assign an advocate to represent a party.

Assignment of
advocate by court

(2) The fees and expenses of an advocate assigned, by virtue of sub-rule (1), may be paid out of the Judiciary Fund, on a scale determined by the President.

21. The Court may, upon application by any party or on its own motion, where satisfied that the issues involved in any two or more proceedings are similar, order that the proceedings be—

Test case.

(a) consolidated, on such terms as the Court may determine; or

(b) determined as a test case, and there be a stay in all steps in the other matters until the test suit is determined, or shall have failed to be determined or to be a real trial of the issues.

22. (1) A party shall, within seven days after the close of pleadings, fill in and submit to the Registrar a scheduling questionnaire set out in Form A of the First Schedule.

Scheduling
conference.

(2) The Registrar shall, within three days of receiving the filled-in questionnaire, convene a scheduling conference to—

(a) ascertain the contested and the agreed issues;

(b) resolve the question whether the parties can reach a settlement out of Court;

(c) confirm the form of evidence to be adduced by the parties, and the number of witnesses parties will call;

(d) receive proposals and give directions on the—

(i) proposed time-frame for oral submissions; and

(ii) filing of written submissions, lists and bundles of authorities, by parties;

(e) confirm whether the parties' pleadings conform with these Rules and with the practice directions; and

(f) (where the question of the jurisdiction of the Court is raised by a party), refer the matter to the President for determination.

(3) The Presiding Judge shall, within seven days after the Registrar certifies that the parties have complied with the directions made at the scheduling conference, convene a pre-trial conference, to determine preliminary matters including —

(a) whether to allow any friend of the Court, or interested party in the proceedings; and

(b) any other matter requiring determination such as may have been raised at the scheduling conference.

23. (1) A party shall file and serve any list of authorities in respect of which reliance is sought before scheduling conference before the Registrar.

List and bundle of
authorities.

(2) The list of authorities shall contain summarized analysis of each of the listed authorities, specifying the rule of law bearing upon the decision, its relevance, and its applicability to the matter before Court.

(3) A party may file written submissions in addition to, or in place of, oral submissions.

(4) A judgment and ruling of the Court shall not be annexed as part of the bundle of authorities.

24. (1) A person may, within seven days of filing a response in any proceedings, apply for leave to be joined as an interested party. Interested parties.

(2) An application under sub-rule (1) shall include—

- (a) a description of the interested party;
- (b) a depiction of such prejudice as the interested party would suffer if the intervention was denied; and
- (c) the grounds or submissions to be advanced by the interested party, their relevance to the proceedings, and their departures from the standpoint of the parties.

(3) An application under this rule shall be determined on the basis of written submissions.

PART IV— CONDUCT OF PROCEEDINGS

25. (1) The Registrar shall, unless the Court certifies the matter as urgent, give parties to the proceedings a notice of not less than fourteen days, ahead of hearing date. Hearing in Court.

(2) Proceedings may be conducted in open court or in chambers, as the Court may direct.

(3) The Registrar shall only certify for a hearing a matter that has complied with the Act and these Rules.

(4) The Court may prescribe the time allowed for making oral presentations, address by the parties, their advocates or other recognized representatives.

26. (1) The Court may call or admit additional evidence in any proceedings. Admission of additional evidence.

(2) A party seeking to adduce additional evidence shall make a formal application to the Court.

(3) In any appeal from a decision of the Court of Appeal, or from a court or tribunal exercising original jurisdiction, the Court may—

- (a) call for or receive any record on any matter connected with the proceedings;
- (b) re-appraise evidence and draw any inferences of fact;
- (c) take additional evidence; or
- (d) direct the trial court or the Registrar to take additional evidence.

(4) Where the Court takes additional evidence either orally or by affidavit, the Court may allow any witness to be cross-examined.

(5) Where the Court directs the trial court to take additional evidence, the trial court shall certify such evidence to the Court, with a statement of its opinion on the credibility of any witness adducing such evidence.

(6) Where evidence is taken by the Registrar, the Registrar shall give statements of opinion on the credibility of the witness.

(7) A party to an appeal is entitled to be present when additional evidence is being taken.

27. (1) A party may, with the leave of the Court, withdraw the proceedings at any time before the delivery of judgment. Withdrawal of proceedings.

(2) The Court may make an order as to costs, following such withdrawal of proceedings.

28. (1) The Court shall deliver a ruling, judgment or advisory opinion within ninety days from the last day of hearing. Judgment.

(2) The Court may issue its decision, while reserving the reasons for such decision to a later date.

(3) Where the Court reserves the reasons for a decision, any judge of the Court may deliver the reasons on a determined date.

(4) An Advisory Opinion shall be delivered in open court, and issued in writing.

(5) The Court may review any of its decisions in any circumstance which the Court considers meritorious, exceptional, and in the public interest, either on the Court's own motion, or upon application by a party.

(6) Pursuant to section 21(4) of the Act, a party may apply for formal correction of a judgment, ruling or order, through a Form B set out in the First Schedule.

29. (1) Except for an Advisory Opinion, a decision of the Court on any proceedings shall be in form of a decree or an order, as may be appropriate. Decrees and orders.

(2) A decree of the Court shall be as set out in Form C of the First Schedule.

(3) An Order of the Court shall be as set out in Form D of the First Schedule.

(4) Any party may, within fourteen days from the date of judgment or ruling, prepare a draft order and submit it for the approval of the other party and who shall, within seven days of receiving the draft order—

- (a) approve it, with or without any changes; or
- (b) reject it.

(5) Where the parties approve the draft, it shall be submitted to the Registrar who shall, if satisfied that it is properly drawn, certify the Order accordingly.

(6) Where parties do not agree on the content of the Order, any judge who sat at the hearing shall settle the terms of the Order.

30. (1) The Registrar shall certify every decision of the Court for transmission to the High Court for execution. Execution.

(2) An order or a decree of the Court may be enforced as if it were an order of the High Court.

PART V—APPLICATIONS

31. (1) Every interlocutory application to the Court shall be filed together with written submissions and shall be determined by way of written submissions. Interlocutory applications.

(2) An interlocutory application shall not be originated before a petition of appeal or a reference is filed with the Court.

(3) An interlocutory application together with written submissions shall be served within seven days of filing.

(4) A response to the interlocutory application together with written submissions shall be filed and served within seven days.

(5) The applicant, upon service of the response, shall file a rejoinder which may include supplementary submissions within seven days.

(6) An interlocutory application shall be by way of a Notice of Motion.

32. (1) A party seeking to have an application heard on a priority basis shall file the application— Urgent applications.

(a) accompanied by a certificate of urgency; and

(b) supported by an affidavit attesting to the urgency.

(2) An application shall be placed before the duty judge who may grant or decline to certify the matter as urgent.

33. (1) An application for certification shall, in the first instance, be made in the court from which the appeal originates. Application for certification.

(2) Where the Court of Appeal has certified or has declined to certify a matter as one of general public importance, an aggrieved party may apply to the Court for review, within fourteen days.

(3) An application under this rule shall be by way of originating motion as set out in Form E of the First Schedule.

(4) Upon filing an application under this rule—

(a) the applicant shall serve the application within seven days;

(b) all responses shall be filed and served within fourteen days of service; and

- (c) upon service of a response, the applicant shall file and serve any rejoinder within seven days.

(5) An application for certification shall—

- (a) only be limited to the parties in the original cause; and
- (b) be determined on the basis of written submissions.

34. (1) If, on the date fixed for the hearing of an application —

Non-attendance at
hearing of
application.

- (a) neither party attends the hearing, the application may be dismissed; or
- (b) where either the applicant or the respondent does not attend court, the Court may proceed as it deems fit.

(2) A party who, for a sufficient cause, did not attend court and is aggrieved by the decision of the Court under sub-rule (1), may apply to the Court to have the application heard afresh.

(3) The Court, in the case of sub-rule (2), shall consider a request for a fresh determination, and may set aside or vary the decision made:

Provided that the party shall demonstrate sufficient cause for non-attendance

(4) Where, in a criminal matter, the applicant does not attend court by reason of being in custody, but is represented by an advocate, the application shall be heard in the absence of the applicant:

Provided that the Court may direct that the applicant shall be presented in court for the hearing.

35. (1) An application in a criminal appeal shall abate where the applicant is the State, on the death of the respondent, and in any other case, on the death of the applicant.

Abatement of
applications.

(2) An application in a civil appeal shall not abate on the death of any party, but the Court may, on the application of an interested person, cause the legal representative of the deceased to be made a party in place of the deceased.

(3) If no application is made within twelve months from the date of death, the application shall abate.

(4) A legal representative of a deceased party or any other interested person may apply for an order to revive an application which has abated.

(5) The Court shall, if it is proved that an applicant was prevented by sufficient cause from continuing with the application, revive the application on such terms as to costs, or otherwise, as the Court may deem fit.

PART VI—APPEALS

36. (1) A person who intends to make an appeal to the Court shall file a notice of appeal within fourteen days from the date of judgment or ruling which is the subject of appeal.

Notice of Appeal.

(2) The notice of appeal shall be—

- (a) in Form F set out in the First Schedule;
- (b) filed at the first instance with the Registrar of the court, or with the tribunal from which an appeal originates.

(3) Upon filing of the notice of appeal, the petitioner shall transmit a copy of the notice to the Registrar.

(4) In lodging an appeal on a matter of general public importance, it shall not be mandatory to obtain such certification before filing the notice of appeal.

37. (1) A petitioner shall, within seven days of lodging a notice of appeal, serve transmitted copies of the notice upon all persons directly affected by the appeal.

Service of notice of appeal.

(2) A person upon whom a notice of appeal is served shall—

- (a) within fourteen days of receiving the notice, file in the registry a notice of address for service, which shall contain that person's contact detail, including telephone numbers and email address, and shall serve the intended appellant with copies of the notice; and
- (b) within a further fourteen days, shall serve a copy of the notice of address for service on every other person named in the notice of appeal.

(3) Where a party cannot serve a petition or a response to a petition, or cannot make any other service under these Rules, the party may apply in writing to the Court for an order of substituted service.

38. (1) An appeal to the Court shall be filed within—

Institution of appeal.

- (a) thirty days of the date of filing the notice of appeal, where the appeal is as of right; or
- (b) thirty days after the grant of certification, where such certification is required.

(2) The requirement for instituting an appeal include—

- (a) a petition of appeal;
- (b) a record of appeal; and
- (c) the prescribed fee.

39. (1) A petition of appeal shall be as set out in Form G of the First Schedule.

Form of Petition of an appeal.

(2) The petition shall contain—

- (a) a concise statement of the facts relied upon;
- (b) a summary of the grounds for the petition;
- (c) a concise presentation of arguments supporting each of the grounds of the petition;

- (d) the relief sought in the petition and any directions sought pursuant to these Rules; and
- (e) a schedule listing all the documents annexed to the petition.

40. (1) For the purpose of instituting an appeal from a Court of Appeal decision, the record of appeal shall entail—

Content of a record of Appeals from the Court of Appeal.

- (a) a certificate, if any, certifying the matter as of general public importance;
- (b) the judgment or ruling of the Court of Appeal being appealed from;
- (c) a judgment or ruling of the High Court or a court of equal status; and
- (d) the relevant pleadings required to determine the appeal.

(2) A ruling under sub rule (1)(b) is relevant only if it relates to the determination of a substantive matter, and shall not include a ruling on an application of less gravity.

(3) The court may, on the application of any party, direct certain documents to be excluded from the record, and an application for such exclusion may be made orally.

(4) Where a document is omitted from the record of appeal under this rule, the appellant may within fifteen days of lodging the record of appeal, without leave, include the document in a supplementary record of appeal.

41. (1) The record of appeal from a court or tribunal exercising original jurisdiction shall contain—

Content of a record of Appeal from other courts or tribunals.

- (a) an index of the documents in the record, with a numbering of the pages on which they appear;
- (b) the notice of appeal;
- (c) the certificate, if any, certifying the matter to be of general public importance;
- (d) a statement showing the address for service of the appellant, including telephone numbers and email address;
- (e) the address for service furnished by the respondent, and as regards any respondent who has not furnished an address for service, the address and proof of service upon the respondent in the notice of appeal;
- (f) pleadings;
- (g) the record of proceedings;
- (h) the trial judge's notes at the hearing;
- (i) the transcript of any shorthand notes taken at the trial;
- (j) the affidavits read, and all documents of evidence at the hearing, or, if such documents are not in the English language, certified translations thereof;

- (k) the judgment or ruling;
- (l) the certified decree or order; and
- (m) such other documents, if any, as may be necessary for the proper determination of the appeal, including any interlocutory proceedings which may be directly relevant.

42. (1) Unless otherwise directed by the Court, a respondent shall file grounds of objection, an affidavit, or both, within fourteen days of service of the petition.

Response to
petition of appeal.

(2) The petitioner shall file and serve a rejoinder within seven days of being served with the response.

(3) Pleadings shall close seven days after the lapse of time for the filing of a rejoinder.

43. (1) An appeal in a criminal appeal shall abate where the appellant is the State, on the death of the respondent, and in any other case, on the death of the appellant.

Abatement of
appeals.

(2) An appeal in a civil appeal shall not abate on the death of any party, but the Court may, on the application of an interested person, cause the legal representative of the deceased to be made a party in place of the deceased.

(3) If no application is made within twelve months from the date of death, the appeal shall abate.

(4) A legal representative of a deceased party or any other interested person may apply for an order to revive an appeal which has abated.

(5) The Court shall, if it is proved that an applicant was prevented by sufficient cause from continuing with the application, revive the appeal on such terms as to costs, or otherwise, as the Court may deem fit.

44. A notice of appeal shall be served, as soon as practicable, upon the legal representative, where the person upon whom it was to be served is deceased.

Death of
respondent before
service of notice.

45. A person upon whom a notice of appeal is served shall, within fourteen days after service of the notice of appeal, lodge in the registry and serve on the appellant and every other person named in the notice—

Address for
service.

- (a) an address for service; and
- (b) a notice of address for service, as set out in Form H of the First Schedule

46. (1) Where a party has lodged a notice of appeal, but fails to institute the appeal within the prescribed time, the notice of Appeal shall be deemed to have been withdrawn, and the Court may on its own motion, or on application by any party, make such orders as may be necessary.

Default in
instituting appeal.

(2) The party in default shall be liable to pay the costs arising, to any person upon whom the notice of appeal was served.

47. (1) A respondent who intends to cross-appeal shall specify the grounds of contention, and the nature of the relief that the respondent seeks from the Court.

Notice of cross-appeal.

(2) The respondent shall—

- (a) provide contact details including the names, postal address, telephone number and email address of any persons intended to be served with the notice; and
- (b) lodge eight copies of the memorandum of appeal and record of appeal in the registry within thirty days of service upon the respondent, or not less than thirty days before the hearing of the appeal, whichever is the later.

(3) An application or notice to cross-appeal shall be as set out in Form I of the First Schedule.

(4) In a criminal appeal, the Registrar of the court or tribunal from which an appeal originates shall prepare the record of appeal, and cause copies to be served upon the parties and to the Registrar.

48. (1) A respondent who contends on an appeal that a decision of a court or tribunal should be affirmed on grounds other than, or additional to those relied upon by the court, shall give notice in the terms set out in Form J of the First Schedule, specifying the grounds of the contention.

Notice of grounds for affirming decision and service.

(2) A respondent intending to contend at the hearing of the appeal that part of the decision of the court should be varied or reversed, and another part be affirmed on grounds other than, or additional to those relied upon by that court, may include both such contentions in a notice of cross-appeal, and shall not be required to give further notice.

(3) Sub-rules (1) and (2) shall apply, with necessary modifications, to an appellant who desires to contend in opposition to a cross-appeal, that the decision of a court or tribunal should be affirmed on grounds other than, or additional to those relied on by that court.

(4) A notice under this rule shall be served upon other parties within seven days of filing.

49. (1) Where an appeal is withdrawn after notice of cross-appeal is given, the respondent who gave the notice may withdraw it within fourteen days of receiving the notice of withdrawal.

Withdrawal of notice of cross-appeal, or notice of grounds for affirming decision.

(2) If an appeal is not so withdrawn, the cross-appeal shall proceed to hearing, and the provisions of these Rules shall apply as if the cross-appellant were an appellant and the appellant a respondent.

(3) Where an appeal is withdrawn within fourteen days from the date when it was instituted, any respondent who has not lodged a notice of cross-appeal shall be entitled to give notice of appeal despite the expiry of time, except where the respondent gives the notice within fourteen days from the date when the appellant's notice of withdrawal was received.

PART VII— ADVISORY OPINIONS

50. (1) The national government, state organ or a county government may make a reference to the Court for an advisory opinion under Article 163(6) of the Constitution. Reference for an advisory opinion.

(2) The reference for an advisory opinion shall—

- (a) be in the form set out in Form K of the First Schedule;
- (b) be signed by a duly-authorised officer;
- (c) specify the questions or issues for determination by the Court; and
- (d) concisely and briefly state the question upon which advice is sought.

51. (1) A person filing a reference may propose that the Court may consider admitting any other person to participate in the reference. Participants in a reference.

(2) Despite sub-rule (1), the Court may on its own motion identify any other person to participate in the reference.

(3) A person who has been admitted as a participant shall file and serve written submission within fourteen days of service of the reference.

(4) The content of the written submissions of an admitted participant shall be in accordance with the directions of the Court.

(5) Any application for joinder as interested party in a reference shall not be allowed.

(6) Where a friend of the court or an expert has been admitted in any proceedings, the Court shall give directions on whether such person shall—

- (a) file written submissions; or
- (b) address the Court orally.

52. Upon filing of a reference, the Registrar shall give—

Notice of reference.

- (a) notice to the applicant to appear before the Court for directions on the persons to be served with notice of such reference; and
- (b) notice of the reference to parties, if any, inviting them to attend the Court for directions regarding the date and mode of hearing.

53. (1) The court may, after giving the parties an opportunity to be heard, reject a reference in whole or in part, if— Determining a reference.

- (a) it is incompetent within the meaning of Article 163(6) of the Constitution;
- (b) the applicant does not represent those who have interest in the opinion;

- (c) the matter in respect of which the reference is made can, in the opinion of the Court, be resolved by the advice of the Attorney-General, and such advice has not been sought;
- (d) it is satisfied that the application is frivolous, or otherwise an abuse of the process of the Court;
- (e) the applicant has failed to comply with any rule, direction or order of the Court; or
- (f) the reference is materially incomplete, or lacking in clarity, and the applicant has failed to remedy the defects as directed by the Court.

(2) The Court shall, within sixty days of the close of hearing, deliver its opinion on the reference, and the Registrar shall publish the decision.

PART VIII—PETITION ON DECLARATION OF STATE OF EMERGENCY

54. (1) A petition maybe filed under Article 58 of the Constitution challenging— Filing a petition.

- (a) the validity of a declaration of state of emergency;
- (b) the validity of an extension of a declaration of state of emergency; and
- (c) any legislation enacted, or any action taken, in consequence of a state of emergency.

(2) The petition shall set out grounds upon which the declaration is challenged, accompanied by a supporting affidavit sworn by the petitioner.

(3) The Court shall issue directions on how to proceed with the petition, including the manner of hearing.

55. (1) A petition filed shall be served within—

Service and hearing of petition.

- (a) three days, for a petition challenging the declaration being made;
- (b) seven days, for a petition challenging grant of extension of a declaration of the state of emergency; or
- (c) seven days, for any action, being taken or the publication in the *Gazette* of the legislation being challenged.

(2) The respondent shall respond to the petition within three days of service, by filing and serving a replying affidavit or response.

(3) The Court shall issue directions on how to proceed with the petition, including the manner of hearing.

PART IX —CONTEMPT OF COURT

56. (1) The Court may cause any person whose conduct before it manifests disobedience, obstruction or contempt, to be detained in custody. Contempt in the face of the Court.

(2) Within twenty-four hours of making an order under sub-rule (1), the Court shall—

- (a) cause the person to be informed in writing of the contempt of Court with which the person is charged; and
- (b) afford that person an opportunity to make a defence to the charge.

(3) Upon taking such evidence as may be necessary or as may be offered by such person, the Court shall proceed to determine the charge and make necessary orders in accordance with the Act.

57. (1) In a case of contempt referred to under section 28(4) of the Act, the Court may take action on its own motion or on an application made by any person.

Cognizance of contempt in other cases.

(2) Any application for contempt filed shall specify the acts of contempt of court the person is charged with.

(3) The applicant shall serve the application for contempt on the respondent within three days of filing.

(4) Where the Court initiates contempt proceedings on its own motion, the accused shall file a response within 14 days of being notified of the intention to commence such proceedings.

(5) The Court shall determine the contempt matter within ninety days from the date of filing the response or where no response is filed, from the date the period of filing of response lapses.

58. The Court may make such order as it may deem fit, in determining a matter of contempt, including issuing an order denying audience to the contemnor for a period not exceeding one year.

Penalty for Contempt.

PART X—FEES AND COSTS

59. (1) Subject to Article 22 of the Constitution and section 11 of the Act, there shall be payable to the Court such fees as specified in the Second Schedule.

Assessment of Fees payable.

(2) Any costs payable by a party shall be—

- (a) assessed by the Court when making its decision; or
- (b) be taxed by the Registrar; or
- (c) determined by consent of the parties.

60. (1) The Registrar has powers to tax costs arising out of any proceedings before the Court, between the parties.

Taxation of costs.

(2) The party-to-party costs shall be taxed in accordance with the scale set out in the Second Schedule.

61. (1) The Court may require an advocate, or a representative of a party upon whom costs have been incurred, to show cause why they should not personally bear such costs, where it appears to the Court that the costs were incurred—

Costs improperly incurred.

- (a) improperly or without reasonable cause;
- (b) on account of any undue delay in the proceedings; or
- (c) due to any misconduct or default on the part of the advocate or other recognized representative.

(2) The Court may make such order as the justice of the case may require.

62. (1) A person who is dissatisfied with a decision of the Registrar in the taxing of costs may refer the matter, within seven days, to a single judge for determination.

Reference on taxation.

(2) The decision of the single judge shall be final.

63. (1) A party may apply to the Court, in any proceedings, to waive payment of court fees.

Waiver of court fees.

(2) The Registrar may, where satisfied that a party lacks the means to pay the required fees, permit that the matter be lodged—

(3) In considering a request for waiver of fees, the Registrar shall take into account—

- (a) whether the person has the capacity to pay the costs;
- (b) whether the fees were waived in the preceding court;
- (c) any affidavit of means deposed by the party;
- (d) the objective merit of the case; and
- (e) any practice directions made by the President.

(2) No fee shall be payable in making an application for waiver of fees.

(3) Any expenses arising from waiver of fees shall be a charge on the Judiciary Fund.

PART XI—GENERAL PROVISIONS

64. (1) The President of the Court may issue practice directions for the better carrying out of the provisions of these Rules.

Practice directions.

(2) Where these Rules contain no provision for exercising a right or procedure, the court may adopt any procedure that is not inconsistent with the Act, these Rules or practice directions.

65. (1) Where any provision in these Rules, or any relevant practice direction is not complied with, the Court may issue such directions as may be appropriate, having regard to the gravity of the non-compliance, and generally to the circumstances of the case.

Effect of non-compliance with Rules.

(2) Any direction given under this rule may include the dismissal of the petition, reference or application.

66. The disposal of the records in the custody of the court shall be in accordance with—

Disposal of records.

(a) provisions of the Records Disposal Act; or

Cap. 14

(b) any directions issued by the President.

67. The Supreme Court Rules, 2012 are hereby revoked.

Revocation of
L.N. 123 of 2012.

68. The Court may review these Rules from time to time.

Review of Rules.

FIRST SCHEDULE

FORMS

FORM A

Rule 22(1)

IN THE SUPREME COURT OF KENYA AT NAIROBI

APPLICATION/ PETITION/ REFERENCE No.....of 20.....

BETWEEN

.....PETITIONER
[Name and address of the Advocate]

AND

.....RESPONDENT
[Name and address of the Advocate].....RESPONDENT
[Name and address of the Advocate]

SCHEDULING QUESTIONNAIRE

Question	TICK YES OR NO	REMARKS
1. Have you filed and served all the parties the documents you wish to rely on in Court?		
2. Do you have any interlocutory application (s)?		
3. Are you aware that all interlocutory applications will be determined by way of written submission?		
4. Have you made contact with the other party(ies) in these proceedings with a view to settle the case or to narrow down the issues?		
5. Written Submissions Have you filed written submissions? Do the written submissions comply with the Court's Practice Directions? Length of oral highlighting		
6. Is there any outstanding direction(s) to be complied with?		
7. Have you filed and served your List of Authorities?		
8. Is the Application/ Petition/ Reference ready for hearing? If not state the reason in the remarks.		
9. How much time is required during hearing?		
10. Any other direction for example pending applications?		

Advocate Name

Signed

Date.....

I hereby certify that all matters that are necessary for the preparation of this Application/ Appeal/Reference for hearing have been done and that the Application/ Appeal/Reference may be set down for hearing.

Deputy Registrar.....

Date.....

FORM B

[Rule 28(6)]

In the Supreme Court

Criminal (1) Application No. of, 20..... Civil an intended appeal (1) In the matter of

In the matter of

Criminal/Civil Appeal No. of, 20..... between..... Applicant and.....

Respondent

(Appeal from the.....(2) of the High Court of Kenya/Court of Appeal at (Mr. Justice)

dated, 20....., in

Criminal(1) Application(1) No. of 20

Civil Appeal.

NOTICE OF MOTION

TAKE NOTICE that on the day of, 20, at o'clock in the morning (1) afternoon as soon thereafter as he can be heard, Mr., Advocate for the above-named applicant, will move the Court (1) a judge of the Court for an order that on the grounds that

And for an order that the costs of and incidental to this application abide the result of the said appeal (2).

The application will be supported by the affidavit of

sworn on the day of, 20.....

The address for service of the applicant is

Dated this day of 20

Signed..... Applicant

Advocate for the applicant

Lodged in the Registry on the day of, 20

Registrar

- (1) Delete inappropriate words.
- (2) Insert conviction, sentence, judgement, decree, order or as the case may be.
- (3) Amend as necessary.

FORM C

[Rule 29(2)]

(Heading as in the proceeding form)

DECREE

CLAIM FOR-

- (a)
- (b)
- (c)
- (d)

THIS PETITION COMING UP FOR HEARING ON THE
DAY OF.....and for orders and upon hearing counsel for the and
counsel for

IT IS HEREBY ORDERED THAT-

- 1.
- 2.

GIVEN under my hand and seal of the Court this.....day
of.....ISSUED on.....

Registrar, Supreme Court of Kenya

FORM D

[Rule 29(3)]

(Heading as in the proceeding form)

ORDER

Before.....in Chambers/in Court

Upon hearing.....

and upon reading the affidavit of.....

filed herein on the.....

IT IS ORDERED that.....

and that costs of this application be

dated thisday of

ISSUED on.....

.....

Registrar, Supreme Court of Kenya

FORM E

Rule 33(3)

Motion No.of....., 20.....

Between

.....Applicant

And

.....Respondent

ORIGINATING MOTION

Let.....of.....within.....days

after service of this motion on him/her which is issued on the application of.....

who claims to (state the nature of the claim).....for the

determination of the following questions(state questions).

Dated the.....day of....., 20.....

This motion was taken out by.....of....., advocate

For the above-named.....

Appearance may be effected personally or advocate.

Note. – if the respondent does not enter appearance within the time above-mentioned such order may be made and proceedings taken as the Court may think just and expedient.

FORM F

Rule 36 (2)(a)

(Heading as in proceeding appealed form)

NOTICE OF APPEAL

TAKE NOTICE thatbeing dissatisfied with the decision of.....
(Court or Tribunal) given at.....on the....., day....., 20.....

Intends to appeal to the Supreme Court against the whole of the said decision or such part of the said decision as decided that.....

The address for service of the appellant is

It is intended to serve copies of this notice on.....

Dated this....., day of, 20

The Registrar of the Supreme Court

Lodged in the(Court or Tribunal) at
thisday of, 20

.....
Registrar

FORM G

Rule 39(1)

In the Supreme Court of Kenya

Petition No.....of 20

Between

..... Petitioner

and

..... Respondent

Appeal from judgment or ruling of(Court of Tribunal)

.....at.....dated the.....day
of....., 20 In Case NO.
.....OF....., 20

PETITION

1. The humble petition of AB is as follows (set out, in consecutive paragraphs the specific issues contended by (each of the) petitioner(s) referring where necessary to the section of the Constitution or any Act of Parliament or decided cases relied upon.)

2. (briefly set out the point of law raised).

3. (briefly set out the facts necessary to enable the Court to properly decide the point of law raised).

4. (set out in summary the grounds for the petition).

5. (set out succinctly presentation of the arguments supporting each of the grounds of the petition).

6. The question or issue for the determination by the Court is (state the question).

7. The relief sought by the petitioner is

DATED this day of 20

Signed.....

Petitioner

..... Advocate for the petitioner

To: The Supreme Court of Kenya

Copies to be served on

.....

.....

Lodged in the Registry at on the day of

.....
Registrar

FORM H

Rule 45

NOTICE OF ADDRESS FOR SERVICE

TAKE NOTICE that the address for service of a respondent served with notice of appeal is.....

Dated this day of 20

Signed

Respondent

..... Advocate
for the Respondent

To:

The Supreme Court of Kenya

Copies to be served on.....

.....

.....

lodged in the Registry/Sub-registry aton theday of.....

.....
Registrar

FORM I

Rule 47(3)

NOTICE OF CROSS-APPEAL

TAKE NOTICE that on the hearing of this appeal the above-named respondent will contend that the above-mentioned decision ought to be varied or reversed to the extent and in the manner and on the grounds hereinafter set out, namely –

1.
.....
2.
.....

It is proposed to ask the Court for an order that

It is intended to serve copies of this notice on

Dated this day of 20.....

Signed

Respondent

..... Advocate for the petitioner

To:

The Supreme Court of Kenya

Copies to be served

on.....

.....

lodged in the Registry/Sub-registry aton theday of.....

.....
Registrar

FORM J

Rule 48(1)

NOTICE OF GROUNDS FOR AFFIRMING THE DECISION

TAKE NOTICE that on the hearing of this appeal,the above-named respondent will contend that the above-mentioned decision ought to be affirmed upon grounds other than those relied upon by the Court of Appeal, namely –

1.
.....
2.
.....

It is intended to serve copies of this notice on

Dated this day of 20.....

Signed Respondent
 Advocate for the Respondent

To:

The Supreme Court of Kenya

Copies to be served on.....

.....

lodged in the Registry/Sub-registry aton theday of.....

.....
 Registrar

FORM K

Rule 50(2)

In the Supreme Court of Kenya

Reference No.....of 20

In the matter of an application by (National Government, State Organ or County Government) for Advisory Opinion under Article 163 (6) of the Constitution

Between

.....Applicant

Whereas

Whereas

Whereas

The Advisory Opinion of the Court is sought on the following issues;

1.

2.

3.

4.

Dated thisday of, 20
Petitioner

Signed

To:

The Supreme Court of Kenya

Copies to be served on.....

.....

.....

lodged in the Registry/Sub-registry aton theday of.....

.....
Registrar

SUPREME COURT RULES, 2012

SECOND SCHEDULE

(Rules 59& 60(2))

FEES

PART 1

FEES IN CONNECTION WITH APPLICATIONS

	ITEM	KSHS.
1.	Upon lodging a notice of motion	800
2.	Upon lodging a notice of motion under certificate of urgency For each subsequent day of hearing or part thereof excluding the first day	1,500 1,500
3.	Upon lodging an affidavit other than an affidavit annexed to a notice of motion	250
4.	Upon giving notice under rule 30	3,000
5.	Filing a notice of objection or address of service	150
6.	Filing annexures (per folio)	20
7.	Filing written submissions	200

PART 2

FEES IN CONNECTION WITH PETITIONS AND REFERENCES

	ITEM	KSHS.
8.	Upon lodging a Petition	3000
9.	Upon lodging a Reference	Nil
10.	Filing a notice of objection or address of service or change of address of service	100
11.	Filing annexures to the petition	20
12.	Filing written submissions	200
13.	Lodging a notice of cross-appeal	3,000
14.	Lodging a notice of grounds for affirming a decision	200
15.	Lodging a notice withdrawing an appeal	200
16.	Filing written submissions	200
17.	Filing a notice of preliminary objection	500
18.	Filing grounds of objection	500
19.	Security for costs	6,000

PART 3

MISCELLANEOUS

	ITEM	KSHS.
20.	For serving a document in addition to all necessary expenses of travel— Where the person to be served resides or has his place of business within the city or town where the registry or sub-registry of Court is situated In any other case	500 1500

21.	For sealing an order	300
22.	For preparing certified copies of a document — For each folio or part thereof For each subsequent copy	20 10
23.	Upon applying to inspect the proceedings, or an application, or appeal that has been determined	300

PART 4

FEES IN CONNECTION WITH THE TAXATION OF COST

	ITEM	KSHS.
24.	Lodging a bill of costs for taxation	750
25.	Applying for the Certificate of the determination of taxation	500
26.	Reference under rule 112	1,000

Dated the 21st January, 2020.

DAVID MARAGA,
Chief Justice/President of the Supreme Court.