



THE REPUBLIC OF KENYA

LAWS OF KENYA

**THE SUPREME COURT (GENERAL)
PRACTICE DIRECTIONS, 2020 ACT**

NO. 9586 OF 2020

2020

Published by the National Council for Law Reporting
with the Authority of the Attorney-General

www.kenyalaw.org

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SUPREME COURT (GENERAL) PRACTICE DIRECTIONS, 2020

[Date of commencement: 20th November, 2020.]

PURSUANT to rule 64 of the Supreme Court Rules, 2020, the Chief Justice and President of the Supreme Court issues the Supreme Court (General) Practice Directions set out in the Schedule hereto, to be observed by and binding upon parties to the proceedings.

[Gazette Notice 9586 of 2020.]

Schedule

PART A – PRELIMINARY

1. These Practice Directions may be cited as the Supreme Court (General) Practice Directions, 2020.
2. In these Practise Directions, unless the context otherwise requires—
"Court" means the Supreme Court;
"Registry" means the Registry of the Supreme Court; and
"Rules" means the Supreme Court Rules, 2020.

PART B – THE REGISTRY OF THE SUPREME COURT

3. The Registry of the Court is situated on the Ground Floor, Room 8, of the Supreme Court Building, along City Hall Way, Nairobi.
4. The contacts of the Registry are as follows—
Supreme Court Registry
P.O. Box 30041 — 00100, Nairobi.
Telephone number: (020) 2221221 or 0774749527.
E-mail: supremeregistry@court.go.ke or
supremecourtkenya@gmail.com
Website: www.judiciary.go.ke
5. The Registry shall be open from 8.30 a.m. to 5.00 p.m. on Mondays to Fridays.
6. The Registry is open every day except—
 - (a) Saturdays and Sundays;
 - (b) public holidays; and
 - (c) such other days as the Chief Justice may direct.

PART B – FILING GENERALLY

7. All documents filed in the Court shall be prepared and filed in accordance with rules 12 and 13 of the Rules.
8. The outer cover of all documents and pleadings filed in the Court shall be colour-coded based on the party who is filing as follows—
 - (a) the cover of all documents by the petitioner shall be in blue;

- (b) the cover of all documents by the respondent shall be in green; and
- (c) the cover of all documents by the amicus, interested parties and interveners shall be in red.

9. Pleadings and documents filed in Court shall be contained in separate volumes, where applicable.

10. A volume of any document shall be bound in book form, printed on one side of the paper, and shall not exceed one hundred and fifty pages in length.

11. The pages of each document shall be consecutively numbered, on the top right-hand corner and every tenth line of each document shall be numbered in sequence, on the right-hand margin.

12. Each document shall be double-spaced, font-size 12, and template, Times New Roman font-type, with margins of no less than 3.0 centimeters on the left, 2.0 Centimeters on top and bottom and 1.5 Centimeters on the right.

13. In accordance with rule 12 of the Rules, a party shall file a complete record of appeal in electronic form as well as in hard copy.

14. Documents filed electronically shall be in 'Portable Document Format' (PDF) and shall match what is contained in the hard copy document.

15. The default display view of all documents filed electronically shall be 100 percent.

16. In all pleadings filed in Court, parties shall include their e-mail, physical addresses, mobile telephone numbers and landline numbers where applicable to facilitate communication by the Registry.

PART C – SUBMISSIONS GENERALLY

17. Written submissions shall be in the following form—

- (a) contained in one volume only, whose length shall be as follows—
 - (i) in appeals arising from the Court of Appeal decisions, submissions shall not exceed fifteen pages; and
 - (ii) in matters where the Supreme Court has original jurisdiction, submissions shall not exceed thirty pages;
- (b) on A4 paper, double line-spaced, font size 12, and Times New Roman font type;
- (c) contained in a separate volume from the list and bundle of authorities and any annexures to it;
- (d) contain a summarized chronology of relevant events, including any previous Court history;
- (e) be set out in numbered paragraphs;
- (j) not include extensive quotations from documents or authorities;
- (g) divided into sub-headings, on the specific issues being addressed.

18. Where written submissions relate to an appeal, the submissions shall, in addition to the requirements under paragraph 17—

- (a) refer to the grounds of appeal being urged and indicate if any grounds are being abandoned or canvassed together;

- (b) identify any error said to have been made by the Court or Tribunal being appealed from, and the basis in principle or authority for that contention; and
- (c) cross-reference to the relevant pages or passages in the record of appeal.

19. Written submissions shall not raise or address any new issue, ground or point of law not contained in the pleadings filed before the Court.

20. A party may waive the right to make oral submissions, where written submissions have been filed.

21. Before the commencement of any hearing, the Court shall set out timelines for making oral submissions by each party and the parties shall adhere to the prescribed timelines.

22. If either party is abandoning any point taken in the lower courts, this should be made explicit in their submissions.

PART D – APPLICATIONS GENERALLY

23. All applications to the Court shall be determined by way of written submissions.

24. Interlocutory applications shall be served within seven days of filing.

25. Responses to the interlocutory applications shall be filed and served within seven days of receipt of service.

26. The applicant in the interlocutory application shall file and serve a rejoinder, if any, within seven days of receipt of service of the response.

27. An interlocutory application shall not be admitted before a petition or a reference is filed in Court.

28. Interlocutory applications shall be disposed of in the order of filing before the Court, save where the Court directs otherwise.

29. All applications for review of certification shall be determined through written submissions except in such cases as the Court may determine.

30. A determination by the Court under paragraph 29 above shall be in the form annexed to these Practice Directions.

PART E – URGENT APPLICATIONS

31. All urgent applications shall be—

- (a) filed in Court not later than noon on a Court working day;
- (b) accompanied by a certificate of urgency and an affidavit sworn and signed by the Applicant's advocate and setting out the reasons for such urgency.

32. Once filed, the urgent application shall be referred to the Duty Judge, who shall make a determination on the question of urgency within twenty-four hours.

33. The Judge considering an urgent application may conduct an ex parte oral hearing or take a decision based on the pleadings filed.

PART F – PETITIONS

34. Filing of petitions shall be as specified in Part B of these Practice Directions.

35. Written submissions relating to petitions shall be prepared in accordance with in Part C of these Practice Directions.

36. Petitions shall be heard and determined on a first-in, first-out basis, except as may be directed by the President of the Court or in his absence, the Vice President of the Court or in their absence, the most senior Judge.

PART G – ADVISORY OPINIONS

37. In addition to rule 50 of the Rules, a party seeking an advisory opinion shall file a reference, which shall set out—

- (a) the question referred to the Court;
- (b) a concise statement of the background of the matter;
- (c) the legal provisions in issue for clarification; and
- (d) the reason why the opinion is sought.

38. The Court shall determine the parties to participate in the reference.

39. There shall be no interested parties in a reference.

PART H – ORDER OF ARRANGING DOCUMENTS

40. All documents filed in the Court shall be arranged in the following order—

- (a) the petition or application before the Court or any other document invoking the Court's jurisdiction;
- (b) the Judgment or Ruling of the Court of Appeal which is being appealed, or any other tribunal being appealed from;
- (c) the ruling on certification of the Court of Appeal which is being appealed;
- (d) any other ruling or order made by the Court of Appeal relevant to the subject matter;
- (e) Judges' transcripts and proceedings before the Court of Appeal;
- (f) the judgment or ruling of the High Court as well as any other Order or Ruling made by the High Court;
- (g) the proceedings before the High Court and or Judges' transcripts;
- (h) any other order or ruling made by any other Court;
- (i) all pleadings filed in the courts or tribunal below;
- (j) where necessary for understanding the legal issues and the arguments the relevant documents as well as correspond (aces filed in the courts below.

PART I – LIST AND BUNDLES OF AUTHORITIES

41. The list and bundle of authorities shall be filed and served in accordance with rule 23 of the Rules and the Registry shall stamp the list and bundle of authorities to acknowledge receipt.

42. Where the authorities are decisions of the Supreme Court, a party shall only give the full citation and make reference to the relevant paragraphs and exclude the hard copy of the judgment or ruling.

43. Where the authorities are other decisions, the parties shall give the full citation, attach the hard-copy case law and highlight the relevant portion being relied on.

44. Where a party seeks to rely on the Constitution, Statutes, or other legal instruments, such as Treaties, Protocols and Conventions, parties should only give the full citation, as well as an excerpt of the relevant provision.

45. For ease of reference, the bundle of authorities shall be—

- (a) flagged appropriately, indicating the first page of each authority; and
- (b) numerically paginated and chronologically arranged in accordance with the list of authorities.

46. Where applicable, the authorities filed should be divided into categories such as Kenyan case law, foreign cases and academic and other materials.

PART J – WITHDRAWAL OF MATTERS BEFORE COURT

47. In furtherance to rule 27 of the Rules, a party may withdraw a matter at any stage of the proceedings but before delivery of judgement or determination of the Court.

48. A party who wishes to withdraw a matter shall make a formal application to the Court, indicating the reasons for the withdrawal and shall serve the application upon all other parties.

49. Parties may enter into a consent for the withdrawal of a document.

PART K – HEARING DATES

50. Any hearing date shall be allocated by the Court and served on the parties.

51. Appeals raising similar issues shall be heard together or consecutively by the Court or as the Court may direct.

52. The Court may conduct virtual hearings through the use of appropriate technology.

PART L – PRE-TRIAL DIRECTIONS

53. Within seven days after the close of the pleadings, a party shall fill in and submit to the Registrar, a scheduling questionnaire as provided under rule 22 of the Rules.

54. The Registrar shall, within three days of receiving the filled-in questionnaire, convene a scheduling conference for directions under rule 22 of the Rules.

55. The presiding Judge of the Court 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 or not to allow amicus curiae or interested parties to participate in the proceedings before the Court; and
- (b) any matter that requires a determination that was raised at the scheduling conference.
- (c) whether or not to allow amicus curiae or interested parties to participate in the proceedings before the Court; and
- (d) any matter that requires a determination that was raised at the scheduling conference.

PART M – ADJOURNMENTS

56. Adjournments of scheduled proceedings shall not be allowed by the Court except in exceptional circumstances.

57. Where a matter is taken out at the instance of the Court, the parties shall be duly notified and the matter shall be given a hearing date on a priority basis.

PART N – SERVICE OF PROCESS

58. A licensed court process server shall effect service of all Court process in accordance with Rule 16 of the Rules.

59. Upon effecting service, the Court process server shall promptly file in Court an affidavit of return of service indicating the following—

- (a) the date and time when service was effected;
- (b) the person upon whom service was effected, and how the person was identified; and
- (c) the place where service was effected and the circumstances of the service.

60. The affidavit of return of service shall have annexed to the original process served, duly signed by the person served.

61. Where the Court process server is unable to effect service, the Court may grant leave for substituted service on the application by a Party.

62. The service of court process may be effected via electronic means and advocates shall provide their e-mail addresses to the Registry for this purpose.

PART O – MISCELLANEOUS

63. All correspondence relating to matters before the Court shall be filed in the Court Registry and shall be responded to promptly.

64. In any proceedings for dismissal for want of prosecution, the Court shall issue a party with a notice to show cause why the application, a reference or an appeal should not be dismissed.

65. If cause is shown to the satisfaction of the Court, it may make such orders as it thinks fit to obtain an expeditious hearing of the appeal.

66. Advocates and Judges shall robe during the hearing of a petition or reference and the delivery of judgments but not for hearing of applications and delivery of rulings.

67. The President of the Court may amend these practice directions from time to time.

PART P – SANCTIONS FOR NON-COMPLIANCE

68. Non-compliance with these Directions shall result in such penalty as the Court may order which penalties may include-

- (a) payment of costs and adjournment fees;
- (b) dismissal of the matter; and
- (c) any other sanction that the Court may impose in its discretion.

Form for an interlocutory ruling (Paragraph 30)

REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
(Coram; xxx)

APPLICATION NO _____

—BETWEEN—

XXXXXXX APPLICANT

— AND —

YYYYYYYYY RESPONDENT

(Being an application for stay of execution/ extension of time to file a notice of appeal/record of appeal/petition of appeal /application to be enjoined as an amicus curiae/interested party/ review of certification/ review of a decision of a single Judge/ against the Ruling and orders of the Court of Appeal (xxx, xxx and xxx JJ.A) delivered on xxx in Civil Appeal No.xxx of 20xxx.)

RULING OF THE COURT

This application is dated xxx and filed on xxx seeking an extension of time to file an appeal out of time against the Judgment and Order of the Court of Appeal in Civil Appeal No. xxx of xxx delivered on xxx. It is brought under the provisions of Rules xxx and xxx of the Supreme Court Rules, 2020.

The application is supported by an affidavit sworn by xxx on xxx who depones that the Court of Appeal delayed in issuing certified proceedings. Through his written submissions filed on xxx, the Applicant urges that the circumstances of this case meet the threshold for grant of extension of time to file an appeal out of time.

In response, the Respondent contends that the delay was inordinate and that the Applicant has not sufficiently demonstrated the steps he took to obtain proceedings, within the time from the Court of Appeal.

Having therefore considered the application and the affidavit in support as well as the written submission of the parties, we find as follows:

(a) The principles for extension of time were laid down in the cases of Nicholas Kiptoo Arap Korir Salat v. Independent Electoral and Boundaries Commission & 7 others S.C. Appl. No. 16 of 2014; [2014], Aviation & Allied Workers Union Kenya v. Kenya Airways Ltd & 3 Others, SC Appl. 50 of 2014 and Hassan Nyanje Charo v. Khatib Mwashetani & 3 Others SC Appl. No. 23 of 2014; [2014] eKLR.

(b) In the case of Executive of Kisumu v County Government of Kisumu & 8 others, SC. Civil Appl. No. 3 of 2016; [2017] eKLR, we emphasized on the need for the Applicant, in an application for extension of time, to satisfactorily declare and explain the whole period of delay to the Court.

(c) The Applicant has satisfactorily explained to the Court the reason for the delay, and the Orders sought would not be prejudicial to the Respondent.

Consequently, by a unanimous decision of this Bench, we make the following orders under section xxxxx of the Supreme Court Act, 2011 and xxxxx of the Supreme Court Rules, 2020.

ORDERS

- (a) The application dated xxx is hereby allowed/dismissed.
(b) Order on costs.

Orders accordingly.

DATED and DELIVERED at NAIROBI this Day of

CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT

DEPUTY CHIEF JUSTICE & VICE-PRESIDENT OF THE SUPREME COURT

JUSTICE OF THE SUPREME COURT

JUSTICE OF THE SUPREME COURT

JUSTICE OF THE SUPREME COURT

JUSTICE OF THE SUPREME COURT

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR

SUPREME COURT OF KENYA

Dated the 16th November, 2020.

DAVID K. MARAGA,

Chief Justice and President of the Supreme Court.
