



**THE REPUBLIC OF KENYA**

LAWS OF KENYA

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**THE KENYA COMMUNICATIONS (APPEALS) RULES**

NO. 2 OF 2000

Revised and published by the National Council for Law Reporting  
with the authority of the Attorney-General as gazetted by the Government Printer

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Kenya

Kenya Information and Communications Act

## The Kenya Communications (Appeals) Rules

Legal Notice 2 of 2000

Legislation as at 31 December 2022

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FRBR URI: /akn/ke/act/ln/2000/2/eng@2022-12-31

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# KENYA INFORMATION AND COMMUNICATIONS ACT

## THE KENYA COMMUNICATIONS (APPEALS) RULES

### LEGAL NOTICE 2 OF 2000

Published in Kenya Gazette Vol. CII—No. 1 on 7 January 2000

Commenced on 7 January 2000

[Amended by [Kenya Communications \(Appeals\) \(Amendment\) Rules, 2003 \(Legal Notice 176 of 2003\)](#) on 7 November 2003]

[Revised by [24th Annual Supplement \(Legal Notice 221 of 2023\)](#) on 31 December 2022]

#### 1. Citation

These Rules may be cited as the Kenya Communications (Appeals) Rules.

#### 2. Interpretation

In these Rules, unless the context otherwise requires—

"appeal" means an appeal to the Tribunal under any of the provisions of the Act;

"appellant" means a person entering an appeal and the advocate or duly authorized agent of that person;

"Chairperson" means the Chairperson of the Tribunal appointed under section 102 (1) of the Act;

"Director-General" *deleted by L.N. 176/2003, r. 2;*

"memorandum" means a memorandum of appeal presented under rule 4;

"Executive Officer" means the Executive Officer of the Tribunal appointed pursuant to rule 3;

"Principal Secretary" means the Principal Secretary of the Ministry for the time being responsible for communications;

"respondent"—

- (a) in relation to an appeal brought by a licensee who is a party to a dispute determined by the Commission under Regulation 8 of the Kenya Communications Regulations (sub. leg) means any licensee (other than the appellant) who was bound by the determination; or
- (b) in any other case, means the Commission.

[L.N. [175 of 2003](#), r. 2.]

#### 3. Appointment of Executive Officer

- (1) The Principal Secretary shall appoint a person to be the Executive Officer of the Tribunal.
- (2) The Executive Officer shall, in matters relating to appeals to the Tribunal and to the procedure therefor, comply with general or special directions lawfully given by the Chairperson or the Tribunal.
- (3) The appeals shall be filed in the offices of the Appeals Tribunal at Transcom House along Ngong Road, Nairobi.

#### 4. Form and time for lodging an appeal

- (1) An appeal shall be entered by presentation of memorandum of appeal, together with five copies thereof, to the Executive Officer within the period specified in the Act, or, where not specified, within thirty days of notification of the decision appealed against to the appellant in writing:

Provided that where the appellant has made an application under subrule (2) and the Tribunal is satisfied that, owing to absence from his normal place of residence, sickness or other reasonable cause, the appellant was prevented from presenting a memorandum within that period, and that there has been no unreasonable delay on his part, the Tribunal may extend that period notwithstanding that the period has already expired.

- (2) An appellant may, by application in writing—
  - (a) signed by him;
  - (b) supported by an affidavit setting out the reasons for delay; and
  - (c) filed, with five copies, together with the memorandum of appeal apply for leave to file an appeal out of time or;
- (3) The Executive Officer shall give every appeal filed pursuant to paragraph (1) an appeal number and every document filed together with the memorandum or subsequently filed in relation to the appeal shall bear the said number.

[L.N. [176 of 2003](#), r. 3.]

#### 5. Memorandum of appeal

A memorandum shall be signed by the appellant and shall set out concisely, under distinct heads, numbered consecutively, the grounds of appeal without argument or narrative.

#### 6. Statement of facts of appeal

Each copy of a memorandum shall be accompanied by—

- (a) a copy of the decision appealed against; and
- (b) a statement, signed by the appellant, setting out precisely all the facts on which the appeal is based and referring specifically to documentary or other evidence which it is proposed to adduce at the hearing of the appeal, and to which shall be annexed a copy of each document or extract from a document upon which the appellant proposes to rely as evidence at the hearing of the appeal.

#### 7. Service of Memorandum of appeal

Within four (4) days after the presentation of a memorandum to the Executive Officer a copy thereof and of the statement of facts of the appellant and the documents, annexed thereto, together with any application for leave to file the appeal out of time, shall be served by the appellant upon the respondent.

[L.N. [176 of 2003](#), rr. 4&5.]

#### 8. Statement of facts of the respondent

- (1) The respondent shall, if he does not accept any of the facts of the appellant, within twenty-one (21) days after the service thereof upon him under rule 7, file with the Executive Officer a statement of facts together with five copies thereof, and the provisions of rule 6 (b) shall *mutatis mutandis* apply to the statement of facts.
- (2) At the time of filing a statement of facts pursuant to paragraph (1), the respondent shall serve a copy thereof, together with copies of the documents annexed thereto, upon the appellant.

- (3) If the respondent does not desire to file a statement of facts under this rule, he shall forthwith give written notice to that effect to the Executive Officer and to the appellant, and in that case the respondent shall be deemed at the hearing of the appeal to have accepted the facts set out in the statement of facts of the appellant.

[L.N. [176 of 2003](#), r. 5.]

## 9. Notice and place of hearing

- (1) As soon as may be convenient after receipt by him of the memorandum, the Executive Officer shall notify the Chairperson thereof.
- (2) The Chairperson shall, after the respondent has filed a statement of facts or has notified the Executive Officer that he does not intend to do so, fix a time, date and place for a meeting of the Tribunal for the purpose of hearing the appeal, and the Executive Officer shall cause notice thereof to be served on the appellant and the respondent.
- (3) The Executive Officer shall cause to be supplied to each member of the Tribunal a copy of the notice of the hearing and of all documents received by him from the parties to the appeal.
- (4) Unless the parties to the appeal otherwise agree, each party shall be entitled to not less than seven days' notice of the time, date and place fixed for the bearing of the appeal.

[L.N. [176 of 2003](#), r. 5.]

## 10. Procedure at hearing of appeal

At the hearing of an appeal, the following procedure shall be observed—

- (a) the respondent shall be entitled to be present or be represented;
- (b) the appellant shall state the grounds of his appeal and may support it by any relevant evidence, but, save with the consent of the Tribunal and upon such terms as it may determine, the appellant may not at the hearing rely on a ground of appeal other than a ground stated in the memorandum and may not adduce evidence of facts or documents unless those facts have been referred to in, and copies of those documents have been annexed to, the statement of facts of the appellant;
- (c) at the conclusion of the statement and evidence on behalf of the appellant, the respondent may make submissions supported by relevant evidence, and subparagraph (b) shall *mutatis mutandis* apply to evidence of facts and documents to be adduced by the respondent;
- (d) the appellant shall be entitled to reply but may not raise a new issue or argument;
- (e) the Chairperson or a member of the Tribunal may at any stage of the hearing, ask any questions of the appellant or the respondent or a witness examined at the hearing, which he considers necessary to the determination of the appeal;
- (f) a witness called and examined by either party may be cross examined by the other party to the appeal;
- (g) a witness called and examined by the Tribunal may be cross examined by either party to the appeal;
- (h) the Tribunal may adjourn the hearing of the appeal for the production of further evidence or for other good cause, as it considers necessary, on such terms as it may determine;
- (i) at the conclusion of the hearing of the appeal the Tribunal may, if necessary, adjourn the proceedings and reserve its decision to be delivered on a day to be notified;

- (j) notes of proceedings including submissions and evidence, if any, given by witnesses as far as they are relevant shall be recorded by the Chairperson or, where possible, may also be recorded electronically.

[L.N. [176 of 2003](#), r. 5.]

#### **11. Tribunal to determine own procedure in certain matters**

In matters of procedure not governed by these Rules or the Act, the Tribunal may determine its own procedure.

#### **12. Copies of documents admissible**

Save where the Tribunal in any particular case otherwise directs or where a party to the appeal objects, copies of documents shall be admissible in evidence, but the Tribunal may at any time direct that the original shall be produced notwithstanding that a copy has already been admitted in evidence.

#### **13. Costs**

The Tribunal may make such order as to costs on an appeal as it may determine.