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THE EMPLOYMENT AND LABOUR RELATIONS COURT ACT

*(Cap. 234B)*

THE EMPLOYMENT AND LABOUR RELATIONS COURT (PROCEDURE) RULES, 2024

ARRANGEMENT OF REGULATIONS

*Rule*

## THE EMPLOYMENT AND LABOUR RELATIONS COURT ACT

*(Cap. 234B)*

IN EXERCISE of the powers conferred by section 27 of the Employment and Labour Relations Court Act, the Chief Justice makes the following Rules—

## THE EMPLOYMENT AND LABOUR RELATIONS COURT (PROCEDURE) RULES, 2024

### PART I—PRELIMINARY PROVISIONS

Citation.

1. These Rules may be cited as the Employment and Labour Relations Court (Procedure) Rules, 2024.

Interpretation.

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

"appeal" means an appeal made to the Court by any party against an award, order, decision or decree of the Registrar of Trade Unions, Cabinet Secretary, Director of Occupational Safety and Health, Subordinate Court, local tribunal or commission or any other body as may be prescribed under any written law, and includes a cross appeal;

"appellant" means a person who initiates an appeal

"Central Planning Monitoring Unit" means, the unit of the Ministry for the time being in charge of matters relating to labour responsible for analyzing economic trends, undertaking investigations of economic disputes and advising the Court accordingly;

"claim" includes any claim, complaint, application, reference, motion or labour dispute referred to the Court by a party for adjudication under any written law;

"claimant" means a party who files a claim with the Court under any written law;

"Court" means the Employment and Labour Relations Court and includes a judge of the Court;

"economic dispute" means a dispute or difference, or an apprehended dispute or difference, between employers and employees, between employers and trade unions, or between an employers' organization and employees or trade unions, concerning any economic or compensatory matter and includes disputes regarding negotiations of collective agreements, salary, basic pay, allowances and terms and conditions of service;

"open court" includes physical courtroom and virtual court proceedings;

"party" means a person, trade union, employer, employer's organization or any corporate body directly involved or affected by an appeal or claim to which the Court has taken cognizance or who is a party to a collective agreement referred to the Court for registration;

"pleading" includes the statements in writing of the claim or demand of an applicant, petition, judicial review application, and the

defence by a respondent thereto, the reply of an applicant to any defence or a counterclaim of a respondent;

"registry" means any office designated by the Court for the purpose of filing pleadings under these Rules;

"respondent" means a person against whom a suit has been instituted in the Court or who replies to any proceedings in Court;

"statement of claim" means a memorandum of claim filed in Court by a party as prescribed under these Rules;

"suit" means a claim, petition, application for judicial review, appeal or any proceedings before the Court for determination; and

"summons" means a notice requiring a party or witness to appear before the Court or to call upon a person to attend court.

Sittings of the Court.

3. The Court may sit in any station established by the Chief Justice in consultation with the Principal Judge or, such place as the Court may order if circumstances of the case warrant it.

Divisions of the Court.

4. The Chief Justice may, where the workload and number of judges in a station permit, establish any of the following divisions of the Court—

(a) the claims and labour relations division which shall handle ordinary actions, trade disputes, registration of collective bargaining agreements and miscellaneous applications

(b) the judicial review and labour rights division which shall handle constitutional petitions for enforcement of fundamental rights and freedoms as well as other relevant provisions of the Constitution and to deal with lone judicial review applications;

(c) the appeals division which shall handle appeals made to the Court; and

(d) any other division as the Chief Justice may determine.

Sub-registries and circuit courts.

5. (1) The Chief Justice may establish a sub-registry of the Court or a circuit court for reasonable, equitable and progressive access to justice in any part of the Country.

(2) For purposes of sub-rule (1), the Chief Justice may designate a Judge responsible for a sub-registry or a circuit court.

## PART II—SUITS

Place of suing and hearing.

6. (1) Proceedings before the Court shall be instituted at the Court's registry or sub-registry with respect to the county where—

(a) the claimant, petitioner or applicant, at the time of commencement of the proceedings, actually and voluntarily resides or carries on business or personally works for gain; or

(b) the cause of action, wholly or in part, arises

(2) The Court may, on its own motion or upon application, for recorded reasons, transfer any proceeding to the most convenient court station for hearing and determination.

Institution of claims.

7. (1) A person who wishes to refer a dispute to the Court under any written law shall file a statement of claim setting out—

(a) the name, physical and postal address, e-mail address, telephone number and full particulars of the claimant, respondent or any other party to the dispute;

(b) the facts and grounds of the claim specifying issues which are alleged to have been violated, infringed, breached or not observed;

(c) in the case of a labour dispute, the rights of the employees not granted or to be granted, any other employment benefits sought and the terms of collective bargaining agreement on which the jurisdiction of the Court is being invoked;

(d) any principle, policy, convention, law, employment and labour relations issue or practice to be relied upon;

(e) a statement on whether there have been no previous or pending suit between the same parties over the same subject matter; and

(f) the order or relief sought.

(2) Where the physical, postal or email address or telephone number of the respondent or other party are not known, the Claimant shall disclose that fact in the statement of claim.

(3) A statement of claim filed under sub-rule (1) shall be accompanied by—

(a) an affidavit verifying the correctness of the facts in the statement of claim;

(b) a list of witnesses;

(c) a witness statement; and

(d) a list and copies of the documents relied upon which shall be chronologically arranged, flagged and paginated.

(4) The witness statements shall contain sufficient details so that—

(a) the witness adopts the statement as the sufficient evidence-in-chief at the hearing; and

(b) thereafter, only minimal highlighting and production of documents may be required before the witness can be cross-examined.

(5) The witness statement filed under sub-rule (1) shall make sequential reference to the documents by their page numbers.

(6) Any additional documents filed under this Rule shall be properly bound, chronologically arranged, flagged and paginated.

(7) When filing any document in a pending case, each party shall ensure the correct citation of the case and correct names of the parties are given.

Statement of claim pursuant to the Labour Relations Act. Cap. 233.

8. (1) Where a labour dispute is referred to the Court in accordance with the provisions of the Labour Relations Act—

(a) the statement of claim shall be signed by the authorized representative of the party referring the labour dispute to the Court; or

(b) where the labour dispute has been the subject of conciliation, the statement of claim shall be accompanied by—

(i) a report by the conciliator, if any, which shall not be binding upon the Court, stating the position of the parties on the dispute, and the findings and recommendations of the conciliator; and

(ii) a certificate of conciliation issued by the conciliator under section 69(a) of the Labour Relations Act.

(2) Where the labour dispute has been the subject of conciliation and the conciliator has not issued a certificate, the statement of claim shall be accompanied by an affidavit sworn by the claimant or by the representative of that claimant attesting to the reasons why the conciliator has not issued a certificate of conciliation.

(3) Where conciliation has not taken place, the statement of claim shall be accompanied by an affidavit sworn by the claimant or by the representative of the claimant attesting to the reasons why conciliation has not taken place.

Statement of Claim Issued other than under the Labour Relations. Cap. 233.

9. Where a claim is filed in the Court other than a reference under the Labour Relations Act under rule 8, the statement of claim shall—

(a) be signed by the claimant or by the advocate of that claimant; or

(b) if the claimant is a body corporate, be signed by an authorized officer of the body corporate or its advocate.

Institution of petitions and judicial review proceedings. Sub. Leg.

10. (1) Any person who wishes to institute a petition shall do so in accordance with the Constitution of Kenya (Protection of Rights and Fundamental Freedoms and Enforcement of the Constitution) Practice and Procedure Rules.

Cap. 26. Sub. Leg.

(2) Any person who wishes to institute judicial review proceedings shall do so in accordance with sections 8 and 9 of the Law Reform Act and Order 53 of the Civil Procedure Rules.

(3) Notwithstanding anything contained in this rule, a person may seek the enforcement of any constitutional right and freedom or any constitutional provision in a statement of claim or other suit filed before the Court.

## PART III—APPEALS

Appeals.

11. (1) An appellant shall, before filing a memorandum of appeal, request in writing from the court, person or body whose decision is under appeal, copies of the proceedings, any documentary evidence relied on and a copy of the judgment, ruling, decision, order, decree or award appealed against.

(2) A person who makes a request under sub-rule (1) shall bear the costs of the preparation of the documents.

Time for filing appeals.

12. (1) Where a written law provides for an appeal to the Court, an appellant shall file a memorandum of appeal with the Court within the time specified under that written law.

(2) Where an appeal is from a magistrate's court or where no period of appeal is specified in the written law referred to in sub-rule (1), the appeal shall be filed within thirty days from the date the decision is delivered.

Service of memorandum of appeal.

13. A memorandum of appeal shall be served upon the respondent within twenty-one days from the date of filing.

Form of memorandum of appeal.

14. A memorandum of appeal shall be in Form 1 as set out in the First Schedule with necessary modification.

Record of appeal.

15. (1) A memorandum of appeal shall be accompanied by a record of appeal comprising a certified copy of pleadings, the proceedings, any documentary evidence relied on, and the judgment, ruling, decision, order, decree or award appealed against.

(2) Where the record of appeal is not filed together with the memorandum of appeal, the appellant shall file the Record within sixty days from the date of delivery of the judgment, ruling, decision, order, decree or award appealed against

(3) Unless the nature of the document renders it impracticable, each document prepared for the record of appeal shall—

(a) contain a table of contents of the record of appeal;

(b) be on foolscap paper of durable quality;

(c) printed on only on one side of the paper;

(d) have a margin of not less than one and a half inches left on the left side of the sheet; and

(e) be paginated consecutively.

(4) The Court may, in addition to or in lieu of a record of appeal, call and rely on the court file or material for the proceedings appealed against in disposal of the appeal.

Supplementary memorandum and record of appeal.

16. The appellant may, with the leave of the Court, file and serve a supplementary memorandum of appeal or a supplementary record of appeal

Cross appeals.

17. (1) The respondent may file and serve a cross appeal by way of a cross memorandum of appeal in Form 1 as set out in the First

Schedule with the necessary modifications, setting out the grounds of the cross appeal.

(2) A cross appeal shall be filed and served within twenty-one days from the date of service of the memorandum of appeal.

Extension of time.

18. The Court may, if circumstances justify, extend the time prescribed for the filing of an appeal or any document relating to an appeal.

Preparations and service of supplementary record of appeal.

19. (1) If a respondent is of the opinion that the record of appeal is defective or insufficient for the purposes of the respondent's case, the respondent may lodge copies of a supplementary record of appeal containing copies of any further documents or any additional parts of documents which are, in the respondent's opinion, required for the proper determination of the appeal

(2) The respondent shall, as soon as practicable possible after lodging a supplementary record of appeal, serve copies of it on the appellant and each other respondent.

(3) An appellant may, at any time, lodge copies of a supplementary record of appeal and, as soon as practicable thereafter, serve copies of it on every respondent.

(4) A supplementary record of appeal shall be prepared as nearly as may be in the same manner as a record of appeal.

Filling submissions on appeal.

20. (1) An appellant may file and serve a memorandum of appeal or record of appeal together with written submissions.

(2) A respondent may file and serve a memorandum of cross appeal together with written submissions on the appeal and cross appeal.

(3) The Court may give directions on filing and service of written submissions as may be appropriate in the circumstances.

Stay of execution in case of appeal.

21. (1) Where an application for stay of execution pending appeal has been lodged, the applicant shall, in the supporting affidavit, declare whether a similar application has been filed in any other court.

(2) An application for stay of execution pending appeal shall be filed in the appeal file.

Hearing of appeals.

22. (1) The Registrar shall fix an appeal for directions on hearing by the Court within sixty days from the date the memorandum of appeal is filed.

(2) Where, on the day fixed for hearing or on any other day to which the hearing may be adjourned to, the appellant does not appear when the appeal is called out for hearing and, in absence of written submissions in support of the appeal, the Court may make an order for dismissal of the appeal.

(3) Where, on the day fixed for hearing, the appellant appears but the respondent fails to appear, the appeal shall proceed in the absence of the respondent and any cross appeal may be dismissed,

unless the Court deems fit to adjourn the hearing and, in such instance, may order the respondent to pay court adjournment fees.

## PART IV—SUITS BY SEVERAL PERSONS

Suits by several persons.

23. (1) A suit may be instituted by one party on behalf of other parties with a similar cause of action.

(2) Where a suit is instituted by one person on behalf of other parties, that person shall, in addition to the statement of claim, file a letter of authority signed by all the other parties:

Provided that in appropriate circumstances, the Court may dispense with this requirement.

(3) The statement of claim shall be accompanied by a schedule of the names of the other claimants in the suit, their addresses, descriptions, and the details of wages due or particulars of any other breaches and reliefs sought by each claimant.

(4) A party may file a suit about a dispute relating to interpretation, formulation or implementation of terms and conditions of service as may be provided in the Constitution, written law, policy, collective bargaining agreement, a contract of service or any other instrument.

## PART V—FILING PROCEDURES AND SERVICE

Filling procedures.

24. (1) A party shall file pleadings electronically and shall, within seven days of the filing, supply the Court with one hard copy of the pleadings or such number of hard copies as the Court may direct.

(2) Each electronic and hard copy of pleadings shall be in a bundle properly arranged with a table of contents, paginated and appropriately flagged.

(3) A party shall indicate the physical address, postal address, email address and telephone number on all the filed pleadings at the 'Drawn and Filed by' section.

(4) Each advocate filing pleadings on behalf of a party shall indicate the advocate's Law Society of Kenya registration number and the current practicing certificate number.

(5) Each State Counsel who files pleadings on behalf of a party shall indicate his or her the Law Society of Kenya registration number.

(6) The Court shall allocate a case number to each suit at the time of initial filing and that number shall be indicated on every subsequent document filed in the suit.

(7) The claimant shall, after filing a suit, cause it to be served by a qualified process server on the respondent, claimant or the claimant's advocate or other person authorized by the claimant.

(8) Once filed, matters shall be allocated on an automatic basis sequentially to courts in a particular station where more than one Judge sits.

(9) Where suits are allocated under sub-rule (8), the matter shall be handled by the Court to conclusion unless the Court, upon recorded reasons, orders otherwise.

Service of summons.

25. (1) The Court shall issue summons in Form 2 as set out in the First Schedule.

(2) Each claimant, the claimant's advocate or other person authorized by the claimant shall, through a qualified process server, serve the summons issued under sub-rule (1) on the respondent together with the statement of claim.

(3) A summons shall be valid, in the first instance, for a period of six months beginning on the date of its issue, and the Court may extend the validity if satisfied that it is just to do so.

(4) For purposes of sub-rule (3), a summons shall not be extended if twelve months have lapsed from the date of its issue.

(5) Where period of the validity of a summons has lapsed, the suit shall be deemed to have abated and the Court may strike it out with written notice to the claimant.

(6) Any party, the party's advocate or other person authorized in law to act for the party, who files any pleading in response to a suit filed in Court shall serve the pleadings on the claimant through a qualified process server within fourteen days of filing or such other period as may be directed by the Court.

(7) A party shall, upon effecting service of pleadings on any other party, prepare and file in Court an affidavit of service in Form 3 as set out in the First Schedule.

(8) An affidavit of service shall be accompanied by evidence of acknowledgement of receipt of the served document signed by the recipient, respondent, claimant or appellant as the case may be or the persons accepting service on their behalf.

(9) If for any reason the signature of the recipient cannot be secured, the process server shall state so in the affidavit of service.

(10) Where service of pleadings under these Rules is effected through a registered courier, the affidavit of service shall be accompanied by the certificate of mailing.

(11) The Court may effect service on behalf of any party upon request in writing made by the party in Form 4 as set out in the First Schedule and upon payment of the prescribed fee.

Service of summons by electronic mail service.

26. (1) A summons sent by electronic mail service shall be sent to the respondent's last confirmed and used e-mail address.

(2) Service shall be deemed to have been effected when the sender receives a delivery receipt.

(3) A summons shall—

(a) be deemed to have been served on the day which it is sent if

it is sent within the official business hours on a business day in the jurisdiction sent; or

(b) if it is sent outside of business hours and on a day that is not a business day, it shall be deemed to have been served on the business day subsequent.

(4) The Court may effect service upon parties by way of electronic or physical service at the address provided on pleadings.

(5) Where service has been effected by e-mail by the Court, such email or copy of email on record shall be sufficient evidence of service upon a party.

(6) An officer of the court who is duly authorized to effect service shall file an Affidavit of Service attaching the electronic mail service delivery receipt confirming service.

Service of summons by mobile-enabled messaging application.

27. (1) A summons may be sent by mobile-enabled messaging application to the respondent's last known and used telephone number.

(2) A summons shall—

(a) be deemed served on the day which it is sent if it is sent within the official business hours on a business day in the jurisdiction sent; or

(b) if it is sent outside of business hours and on a day that is not a business day, it shall be deemed to have been served on the business day subsequent.

(3) Service shall be deemed to have been effected through a mobile-enabled messaging service when the sender receives a delivery receipt.

(4) An officer of the court who is duly authorized to effect service shall file an Affidavit of Service attaching the delivery receipt confirming service.

Service on a cooperate body.

28. (1) Service on a corporate body may be effected—

(a) on the secretary, director or any other authorized officer of the corporate body; or

(b) where the process server is unable to find any of the officers of the corporate body mentioned in subparagraph (a), by—

(i) leaving the pleadings at a conspicuous place at the registered office of the corporate body;

(ii) sending the pleadings by registered courier service to the registered office of the corporate body;

(iii) leaving the pleadings at a conspicuous place where the corporate body carries out business;

(iv) sending the pleadings by registered post to the last known postal address of the corporate body if it does not

have a registered office or postal address; or

(v) sending the pleadings by electronic mail to the known e-mail address of the corporate body.

(2) Notwithstanding anything contained in this rule, a party may, with the leave of the Court, effect service of process by any other method.

(3) Upon application, the Court may grant leave for service of summons or pleadings upon a party residing or carrying on business outside the territorial jurisdiction of Kenya.

Response to pleadings.

29. (1) If a party served with a statement of claim intends to respond, the party shall, within twenty-eight days from the date of service (or such shorter time as the Court may direct in urgent matters for reasons given in writing), enter appearance and file and serve a response to the claim.

(2) A respondent's statement of response shall contain—

(a) the respondent's name, telephone number, email address and postal address;

(b) a reply on the issues raised in the statement of claim;

(c) any admission of any statement of facts set out in the statement of claim as the respondent admits, and a denial of any statements made in the suit that the respondent does not admit;

(d) any additional statements of fact which the respondent may wish to make in support of the respondent's reply;

(e) any defence or grounds upon which the respondent may wish to rely;

(f) any principle, policy, convention, law, industrial relations practice or management practice to be relied upon;

(g) a counterclaim; or

(h) any relief that might be sought by the respondent against the claimant.

(3) A party served with a response to any pleading under paragraph (1) may file and serve a reply within seven days of service of the response.

(4) The pleadings in a suit shall close fourteen days after the service of a reply under sub-rule (3) or, where a reply is not filed, fourteen days after service of a response to pleadings under sub-rule (1).

(5) The Court may, on application, extend or reduce the time within which a responding party may respond to a pleading.

Notice to third and subsequent parties.

30. (1) Where a respondent claims as against any other person not already a party to the suit (hereinafter called the "third party")—

(a) that the respondent is entitled to contribution or indemnity; or

(b) that the respondent is entitled to any relief or remedy relating to or connected with the original subject-matter of the suit and substantially the same as some relief or remedy claimed by the claimant; or

(c) that any question or issue relating to or connected with the said subject-matter is substantially the same question or issue arising between the claimant and the respondent and should properly be determined not only as between the claimant and the respondent but as between the claimant and respondent and the third party or between any or either of them,

the respondent shall apply to the Court within fourteen days after the close of pleadings for leave of the Court to issue a notice (hereinafter called a "third-party notice") to that effect, and such leave shall be applied for by summons in chambers *ex parte* supported by affidavit.

(2) A copy of such notice shall be filed and served on the third party according to the rules relating to the service of summons.

(3) The notice shall state the nature and grounds of the claim and shall, unless otherwise ordered by the court, be filed and served within fourteen days of leave.

(4) Where a third party makes as against any person not already a party to the action such a claim as is mentioned in sub-rule (1), the provisions of this rule regulating the rights and procedure as between the respondent and the third party shall apply with the necessary modifications as between the third party and such person, and the Court may give leave to such third party to issue a third party notice, and the preceding rules of this rule shall apply with the necessary modifications, and the expressions "third party notice" and "third party" shall respectively apply to and include every notice so issued and every person served with such notice.

(5) Where a person served with a notice by a third party under sub-rule (4) makes such a claim as is mentioned in sub-rule (1) against another person not already a party to the action, such other person and any subsequent person made a party to the action shall comply with the necessary modifications with the provisions of this rule.

## PART VI—PLEADINGS

Undefended suits and formal proof.

31. (1) Where a respondent has failed to enter appearance or file a defence, the claimant may apply to the Court for directions that the matter proceeds to formal proof as an undefended suit.

(2) Where a respondent has filed a counterclaim and no response has been made by the claimant within the stipulated timelines, the respondent may apply to the Court for directions that the counterclaim proceeds to formal proof as an undefended suit.

Pleadings generally.

32. (1) Each pleading shall contain page numbers and shall be divided into paragraphs numbered consecutively with each allegation being so far as appropriate contained in a separate paragraph.

(2) Any dates, sums or other numbers contained in pleadings shall be expressed in figures and not words save for where a party is quoting a passage from a secondary document.

(3) Each party may, through pleadings, raise any point of law or quote any provision, statement or principle of law.

(4) Pleadings may contain evidence:

Provided that the Court may require the evidence to be verified by an affidavit or sworn oral evidence.

Objections to pleadings.

33. A party may, by notice, object to a pleading and in that notice, state the grounds of objection except that no objection may be raised to any pleading on the ground of any want of form.

Amendment of pleadings.

34. A party may amend pleadings before service or before the close of pleadings:

Provided that after the close of pleadings, the party may only amend pleadings with the leave of the Court on oral or formal application, and the other party shall have a corresponding right to amend its pleadings.

Witness statements.

35. (1) A party shall notify the Court when submitting a statement of claim or a response to a statement of claim of any witnesses it proposes to call in support of its submissions, file witness statements, file list and copies of documents to be relied upon, and shall, at the same time, notify the other party.

(2) A party may, with the leave of the Court, file and serve a further witness statement or further list and copies of documents to be relied upon.

Expert witnesses.

36. A party who intends to call an expert witness shall serve a notice to that effect, together with a summary of the evidence, report or opinion of the expert witness, as part of the witness statement or list and copies of documents to be relied upon and as prescribed under this rule.

Witness summonses.

37. Any party who requires a witness to attend any proceedings to give evidence on his behalf may upon order by the Court have summons issued by the Registrar for that purpose.

Additional documents.

38. Where a party intends to rely on a document that has not been filed as at the time of filing pleadings, the party shall make sufficient copies of each document for the Court file and serve the other party with a copy at least fourteen days before the case is set down for hearing or such shorter period as the Court may order:

Provided that after the close of pleadings, the Court may allow the filing of a supplementary bundle of documents.

Memorandum of agreed issues.

39. (1) Parties may file a memorandum of agreed issues and facts upon which the Court may proceed to consider submissions and render ruling or judgment.

(2) For purposes of sub-rule (1), the parties to the memorandum of agreed issues may file a list and copies of documents to be relied upon as may be necessary.

## PART VII—PRE-TRIAL CONFERENCE

Pre-trial conference.

40. (1) The parties to a suit shall, within fourteen days after the close of pleadings or such other period as the Court may, on application, direct, move the Court to hold a pre-trial conference to ascertain—

(a) points of agreement and disagreement;

(b) the possibility of alternative dispute resolution or any other form of settlement;

(c) whether evidence is to be oral or by affidavit;

(d) the discovery and the exchange of documents, and the preparation of a paginated bundle of documentation in chronological order;

(e) whether evidence on affidavit will be admitted with or without the right of any party to cross-examine the deponent;

(f) the manner in which documentary evidence is to be dealt with, including any agreement on the status of documents and whether documents, or parts of documents, will serve as evidence of what they purport to be;

(g) securing the presence at court of any witness;

(h) expert evidence;

(i) whether an interpreter is required and if so for which language;

(j) whether legal argument shall be written or oral, or both;

(k) the estimated length of the hearing; and

(l) any other matters the Court may deem necessary.

(2) Sub-rule (1) shall not apply where parties act in person and the subject matter of the suit is, in the opinion of the Court, not complex.

(3) Where no defence or response is filed in Court within the prescribed period, the Court may, upon application by the claimant, direct that the matter proceed for formal proof.

(4) Where the matter is to proceed for formal proof, the claimant shall issue a hearing notice upon the respondent.

(5) Where a party fails to attend a pre-trial conference or fails to comply with the directions made by the judge in terms of sub-rule (1), the matter may be fixed for hearing or dismissed, as the case may be.

(6) Upon the direction of the Court, the defaulting party may not appear at the hearing unless the Court, on sufficient cause shown, makes appropriate orders.

(7) A party affected by any order or directions made under the provisions of this rule may apply, upon good reason shown, to the Court for variation of such orders or directions as the case may be, and

the Court may with or without conditions including as to costs, order or direct as just.

Framing of issues by the Court.

41. Where parties to a suit fail to agree on issues for determination, the Court may frame the issues for determination.

Discovery of documents.

42. (1) If the parties cannot reach an agreement regarding the discovery of a document or an electronic recording, either party may apply to the court for an appropriate order, including an order as to costs.

(2) For the purpose of this rule, an electronic recording includes a soundtrack, film, magnetic tape record or any other material or medium by which visual images, sound or other information is recorded.

Notice to show cause why suit should not be dismissed.

43. (1) In any suit in which no application has been made in accordance with rule 31 or no action has been taken by either party within one year from the date of its filing, the Court may give notice in writing to the parties to show cause why the suit should not be dismissed and, if no reasonable cause is shown to its satisfaction, may dismiss the suit.

(2) If reasonable cause is given to the satisfaction of the Court, it may make such orders as it thinks fit to obtain the expeditious hearing and determination of the suit.

(3) Any party to the suit may apply for dismissal as provided in sub-rule (1).

(4) The court may dismiss the suit for non-compliance with any direction given under this rule or rule 31.

Urgent applications.

44. (1) All matters brought under certificate of urgency shall be filed before noon and placed before the Court on the same day, but those filed after noon, shall be placed before the Court on the next working day, unless the Court otherwise directs.

(2) The urgency must be self-evident in the certificate of urgency, or in the grounds on the face of the application.

(3) The Court shall have discretion on whether to hear parties orally at the *ex parte* stage or to proceed to consider and issue orders or directions as appropriate.

(4) The orders or directions issued by the Court shall be published by the Registrar or electronically in the e-filing portal on the day the application is considered.

(5) The Registrar shall facilitate the expeditious extraction of orders relating to urgent applications and the applicant may prepare the draft order for approval and issuance by the Registrar as appropriate.

## PART VIII—INTERLUCOTORY APPLICATIONS AND TEMPORARY INJUNCTIONS

Interlocutory applications and temporary injunctions.

45. (1) An interlocutory application shall be made by notice of motion and may be heard in open court or as the Court may direct.

(2) A party shall, after filing a notice of motion, notify all the parties of the motion.

(3) The Court may, for good cause, hear an application *ex parte* and make an order upon terms as to costs and subject to such undertaking, if any, as the Court considers just:

Provided that a party affected by that order may apply to set it aside.

(4) An *ex parte* injunction may be granted only once for not more than fourteen days and shall not be extended thereafter except once by consent of the parties or by the order of the Court for a period not exceeding fourteen days.

(5) In a suit where an injunction is sought, an applicant may at any time in the suit, apply to the Court for an interim or temporary injunction to restrain the respondent from committing a breach of contract or an injury complained of, or any injury of a like kind arising out of the same contract or relating to the same property or right.

(6) Where an application is made to the Court under sub-rule (5) for a temporary or interim injunction, the Court may, by order, grant an injunction on such terms as it deems fit.

Discharge, variation or setting aside of orders of injunction.

46. Any order for injunction may be discharged, varied or set aside by the Court on application by any party dissatisfied with such order.

Notice of motion.

47. A notice of motion shall state in general terms the grounds of the application and where the motion is supported by an affidavit, both the notice of motion and a copy of the affidavit shall be served on the other party.

Opposition to notice of motion.

48. A party may respond to an application by filing grounds of opposition, a replying affidavit or notice of preliminary objection.

Written submission to accompany interlocutory applications.

49. Every interlocutory application to the Court shall be filed together with written submissions and shall, unless the Court otherwise directs, be determined by way of written submissions.

Service of interlocutory applications.

50. An interlocutory application together with written submissions shall be served within seven days of filing or such other period as the Court may direct.

Response to the interlocutory applications.

51. A response to the interlocutory application together with written submissions shall be filed and served within seven days or such other period as the Court may direct.

Rejoinders in interlocutory applications.

52. The applicant, upon service of the response, may file a rejoinder which may include supplementary submissions within seven days or such other period as the Court may direct.

Court not to grant orders of reinstatement.

53. Notwithstanding anything contained in this Rule, the Court shall not grant an *ex parte* order that reinstates into employment an employee whose services have been terminated.

Applications to maintain *status quo*.

54. A party who has reported a trade dispute for conciliation under the Labour Relations Act may file a notice of motion in a suit seeking an injunction, conservatory or restraining order or any other order to maintain the *status quo* pending the conclusion of the conciliation.

## PART IX—CASE MANAGEMENT

Case management.

55. (1) The Court may, on its own motion where it considers it fit, or upon application by a party, serve or order service of a pleading on any person whom it is satisfied may be interested, affected or necessary for efficient and final determination of the dispute.

(2) The Court may summon any person or expert for the purposes of examination of facts and full adjudication of a dispute.

(3) A party may request the Court that a particular expert, if any, who took part in and is conversant with particulars of any matter in issue, makes representation in writing or be called upon to attend the hearing of the case and give evidence.

(4) The Court may serve or order service of pleadings and documents on any party in a suit.

Alternative dispute resolution.

56. (1) The Court may at any time refer a matter to alternative dispute resolution.

(2) Parties in a proceeding may reach a consensus at any time before judgment is rendered and the parties shall file the consent within such period as the Court may prescribe.

(3) The Court shall record and adopt the consent reached by the parties as its own ruling or judgment in that matter.

(4) Where a matter is partially determined by virtue of a consent adopted by the Court, the issues that have not been resolved shall proceed before the judge hearing it.

(5) Where the Constitution, a written law, collective bargaining agreement, contract of service, policy, or other instrument provides for alternative dispute resolution mechanisms—

(a) a person being party to a dispute may file a suit and seek appropriate interlocutory relief pending exhaustion of such alternative dispute resolution mechanisms or pending determination of the suit;

(b) want of exhaustion of such alternative dispute resolution mechanisms shall not operate as a bar to a suit for application for interim orders or alleging unconstitutionality or unlawfulness of the action, omission, decision or other matter in dispute pending such exhaustion; and

(c) a suit filed prior to exhaustion of such alternative dispute resolution mechanisms may be stayed and not struck out on account of such exhaustion.

Consent orders.

57. (1) Parties to proceedings before the court may at any time consent to settle the whole or any part of the suit.

(2) A consent under sub-rule (1) may be in writing, signed and dated by the parties and filed in Court.

(3) Any party to the proceedings may orally apply to the Court for adoption of the consent as an order or decree of the court.

Witness summons.

58. (1) The Court may, either on its own motion or at the request of a party, summon for examination any person who has information relevant to any of the issues before it.

(2) The Court may direct a party applying for witness summons to be responsible for service and to pay such money as is sufficient to cater for the expenses of the witness including travel and subsistence allowances at a reasonable rate determined by it.

(3) The summons for examination shall be signed by the Registrar and shall—

(a) require the person named in the summons to appear before the Court;

(b) state the date, time and place at which the person is required to attend;

(c) specify whether attendance is required for the purpose of giving evidence or to produce a document or both; and

(d) sufficiently identify any book, document or object required to be produced by that person

(4) The Court shall administer an oath or accept an affirmation from a person summoned to give evidence before it.

(5) Where a person to whom summons is issued fails to attend Court and an affidavit of service is filed, the Court may issue a warrant of arrest, summon the person and if that person fails to provide a good reason to the satisfaction of the Court, it may impose any other penalty it deems fit.

(6) Witness summons shall be in Form 5 as set out in the First Schedule.

Determination by documentary evidence.

59. The Court may, either by an agreement by all parties, or on its own motion, proceed to determine a suit before it on the basis of pleadings, affidavits, documents filed and submissions made by the parties.

Procedure in the absence of a party.

60. (1) Where a hearing notice was served on the parties and an affidavit of service has been filed, the Court may proceed with the case before it in the absence of any party thereto if—

(a) the party has indicated that it does not wish to attend the hearing;

(b) the party fails to appear for the hearing without providing any reasons; or

(c) the Court is not satisfied with the reasons forwarded to it by that party for non-attendance.

(2) Subject to sub-rule (1), where a party fails to attend Court on the day fixed for hearing, the Court may dismiss the suit except for good reason to be recorded.

Consolidation of cases.

61. The Court may consolidate suits if it appears that in any number of suits—

(a) some common question of fact or law arises; or

(b) it is practical and appropriate to proceed with the issues raised in the suits simultaneously.

Test suit.

62. (1)Where two or more persons have instituted suits against the same respondent, the Court may, either on its own motion or upon the application of any of the parties with notice to all the affected parties, if satisfied that the issues to be tried in each suit are similar, make an order—

(a) directing that one of the suits be tried as a test case; and

(b) staying all the steps in the other suits until the selected suit is determined or fails to be a real trial of the issues.

(2) The outcome of a test suit shall be binding on any suit that is stayed under sub-rule (1).

Representation by trade unions or employer organizations. Cap. 233.

63. (1) A trade union including employers' or employees' associations registered under the Labour Relations Act are entitled to represent themselves or their members by filing and acting in suits accordingly.

(2) Where a party is represented by a trade union or an employers' organization, the trade union or employers' organization shall furnish the Registrar with a list of authorized officers who may appear in the suit.

(3) A copy of the list required in sub-rule (2) shall be filed in the respective file.

(4) Where a party is represented by a trade union or an employers' organization, the party shall file and serve a notice of appointment to act as such setting out the names of the persons authorized and the address of service.

(5) Where a trade union or an employers' organization intends to cease acting in a matter or intends to replace a person authorized to act in that behalf, it shall obtain the written consent of the parties or leave of the Court and, the changes shall be notified to all the other parties.

Withdrawal of suits.

64. (1) At any time in a pending suit or application a party may, by an oral application before Court or by notice in writing, which notice shall be served on all parties, wholly or partially, discontinue the suit or application, as the case may be, against all or any of the respondents.

(2) Where a suit or application is wholly or partially withdrawn, the Court may grant costs to the other party as may be considered appropriate.

## PART X—HEARINGS

Hearing procedure.

65. (1) The Court shall give such directions as may be necessary to enable the parties to prepare for and conduct the hearing.

(2) Evidence before the Court may be given orally or if the Court so orders, by affidavit or a written statement.

(3) The Court may, at any stage of the hearing, require the attendance of a deponent or an author of a written statement for the purposes of examination of the facts deponed or written.

(4) The Court shall conduct the hearing in a manner it considers most suitable to the just handling and recording of proceedings and shall, if appropriate, avoid legal technicalities and formalities.

(5) The Court may use electronic modes of presentation and recording of evidence.

(6) The Court may require a witness to give evidence on oath or affirmation and shall, for that purpose, administer the oath or affirmation.

(7) The Court may, on its own motion or at the request of a party to a suit, be provided with visual demonstration facilities for the display of any maps, photographs, charts, diagrams and demonstrations or illustrations of texts and any other documents that are to be used for the purposes of making a finding in the matter for determination before it.

(8) The provisions of the Civil Procedure Rules in respect of affidavits shall apply. Sub. Leg.

Close of hearing.

66. (1) Upon completion of the hearing and presentation of the facts, evidence and statements by the parties, witnesses and experts, if any, the Court shall declare the hearing closed.

(2) The Court shall not re-open a hearing unless, for sufficient reason, it considers it fit to do so.

Submissions.

67. (1) Upon hearing the facts and evidence presented and upon consideration of the matters in question, the parties shall, subject to the Court's direction, agree between themselves on whether to orally submit or file written submissions summing up their respective cases before the Court

(2) Where written submissions are made, each party may file and serve the submissions electronically or physically.

(3) Parties shall file written submissions that summarize their argument, which shall not exceed twenty pages for main suit and ten pages for applications, unless, the Court certifies the matter as complex and parties are granted leave to file lengthy submissions owing to the nature of the case.

(4) Written submissions shall be in font size 14, double spaced, justified and paginated.

(5) Copies of all cited cases shall accompany the submissions together with an explanatory digest as appropriate.

(6) Where a party files submissions electronically, the Court may require parties to supply a physical copy of the submissions or such number as the Court may direct.

## PART XI—COURT DECISIONS AND DECREES

Decisions of the Court.

68. (1) The Court shall, after considering all relevant facts and supporting documents—

(a) where the suit was originated by a statement of claim, petition, judicial review application or appeal, deliver a judgment; and

(b) in any other proceedings, deliver a ruling:

Provided that subject to these Rules and any other written law, the Court may, at any time in the conduct of proceedings, issue—

(a) an injunctive order;

(b) a prohibitory order;

(c) a declaratory order;

(d) an order for specific performance;

(e) an order for payment of costs;

(f) an order for payment of interest on any principal sum awarded by the Court; or

(g) any other order necessary to meet the ends of justice.

(2) In an appeal, the Court may uphold the decision appealed against, set aside the decision, vary the decision, or grant such other relief contemplated in the applicable written law as may be just in the circumstances.

(3) Where it is shown that the satisfaction of a relief as may be granted in a pending suit may be defeated or frustrated, the Court may, upon application, make an order imposing conditions including deposit of security for due satisfaction of the relief if the applicant is successful upon final determination of the suit.

(4) A decision of the Court shall be in writing and contain a concise statement of facts and the reasons for the decision.

(5) The decision of the court may be delivered electronically, virtually or in open court and shall be dated and signed by the judge or where more than one Judge is sitting, by each Judge.

(6) Where a decision of the court is delivered by a Judge other than the Judge who drew it, the Judge who delivers it shall date and countersign it.

Adoption and enforcement of alternative dispute resolution agreements by the Court.

69. (1) Where parties have entered into a conciliation, negotiation or mediation agreement, or, are bound by an arbitral award or a lawful decision reached in Alternative Justice Systems, a party may file the award, decision or agreement for adoption and enforcement as an order of the Court.

(2) An application under sub-rule (1) shall be by way of a miscellaneous application instituted through a notice of motion supported by an affidavit exhibiting the award, decision or agreement together with all relevant documents.

Costs and interest. Sub. Leg.

70. (1) The Court shall be guided by section 12(4) of the Act and Advocates (Remuneration) Order in awarding costs.

(2) A party and party bill of costs shall be filed in the main suit.

(3) An advocate and client bill of costs shall be instituted through a miscellaneous application.

(4) The Court may order reasonable reimbursements of money spent in the course of litigation by a litigant acting in person or represented by a trade union or an employers' organization.

(5) Where a suit involves a liquidated amount that is claimed and specified at the time of filing a statement of claim and the Court orders that the amount claimed or part of the amount be paid to the claimant, it may, in addition to that order, direct that interest be paid on the liquidated amount awarded at Court rates.

(6) In any suit the court may, upon application and for good reasons stated, order that security for the whole or part of the costs of any respondent or third or subsequent party be given by the other party.

(7) The Registrar shall perform the functions of a taxing master.

Records of proceedings and decisions.

71. (1) The Registrar shall cause a record of the proceedings and the decisions of the Court to be kept in accordance with the provisions of the Act and any other written law governing the keeping of judicial records.

(2) The record of the proceedings and decisions of the Court shall be made available to any interested person upon request and payment of the prescribed fee unless the Court orders otherwise.

(3) A judgment, ruling, order or decision of the Court that has been certified, signed and sealed by the Registrar shall be conclusive evidence of the existence of the judgment, ruling, order or decision of the Court.

Decrees.

72. (1) The Registrar shall draw, seal and issue each order or decree of the Court.

(2) An order or decree shall be drawn in accordance with the decision of the Court and shall specify clearly in paragraphs the relief sought and granted, any other determination and costs, if any.

(3) An order or a decree shall specify the date on which the judgment, ruling, order, or decree was given being the date it was delivered by the Court, and the date it is issued being the date it is signed and sealed by the Registrar.

(4) Any party to a suit may prepare a draft decree and submit it for approval by the other party to the suit, who shall approve it with or without amendment, or reject it, within seven days of service and if the draft is approved by the party, it shall be submitted to the Registrar who, if satisfied that it is drawn in accordance with the judgment, shall sign and seal the decree accordingly.

(5) If no approval of or disagreement with the draft decree is received within seven days after service, the Registrar, on receipt of notice in writing to that effect, if satisfied that the draft decree is drawn in accordance with the judgment, shall sign and seal the decree accordingly.

(6) Notwithstanding sub-rules (4) and (5), the Registrar may, upon request by a trade union or litigant acting in person, draw, sign and seal a decree in accordance with the judgment.

Execution and warrants.

73. (1) The Registrar shall issue an order in execution of a decree.

Sub. Leg.

(2) Rules on execution or stay of execution of an order or decree of the Court shall be in accordance with the Civil Procedure Rules.

(3) Where any written law provides for the enforcement of the decision of an administrative body by the Court, a party may, through a miscellaneous application, apply for the adoption of that decision by the Court.

(4) Notwithstanding sub-rule (3), an application for the enforcement of the decision of an administrative body shall only be made after the period allowed for appeal or review has lapsed, if any.

Review.

74. (1) A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling—

(a) if there is discovery of a new and important matter or evidence which, despite the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made;

(b) on account of some mistake or error apparent on the face of the record;

(c) if the judgment or ruling requires clarification; or

(d) for any other sufficient reason.

(2) An application for review of a decree or order of the Court under sub-rule (1) shall be made to the judge who passed the decree or made the order sought to be reviewed or to any other judge if that judge is not attached to the Court station

(3) A party seeking review of a decree or order of the Court shall apply to the Court by way of notice of motion supported by an affidavit and shall file a copy of the Judgment or decree or ruling or order to be reviewed.

(4) The Court shall, upon hearing an application for review, deliver a ruling allowing or dismissing the application.

(5) Where an application for review is granted, the Court may review its decision to conform to the findings of the review or quash its decision and order that the suit be heard again.

(6) An order made for a review of a decree or order shall not be subject to further review.

Correction of errors.

75. The Court shall, at the request of the parties or on its own motion, cause any clerical mistake, incidental error or omission to be rectified and shall notify the parties of such rectification.

Seal of the Court.

76. The seal of the Court shall be authenticated by the signature of the Registrar.

## PART XII—COLLECTIVE AGREEMENTS

Collective agreements.

77. (1) An employer, organization of employers or trade union that has entered into a collective agreement shall lodge a copy of the agreement with the Cabinet Secretary within fourteen days of its execution.

(2) The Cabinet Secretary shall furnish the Court with a copy of each collective agreement that has been lodged pursuant to sub-rule (1) and may also furnish the Court with such information and comments as the Cabinet Secretary considers necessary.

(3) Where the Cabinet Secretary objects to the registration of a collective agreement, a copy of the agreement shall be furnished to the Court accompanied by a statement giving reasons for objection.

(4) The Registrar shall list, with notice to the parties and within thirty days of receipt, the collective agreement furnished to the Court by the Cabinet Secretary for consideration and registration by a Judge of the Court.

(5) Upon hearing the parties to a collective agreement or considering the parties' respective written concurrence, the Court may order the agreement to be registered with or without amendments.

(6) Where the Court considers that the collective agreement should not be registered, the Court may direct the parties to take appropriate steps.

(7) Where the Court orders the collective agreement to be registered, the Registrar shall draw the relevant certificate of registration of the agreement for signing by the Judge who made the order.

(8) The Registrar shall maintain a register of collective agreements that have been accepted by the Court for registration.

(9) A collective agreement shall not take effect until it has been registered by the Court.

(10) A corrigendum or addendum to a collective agreement shall be registered and take effect upon registration in accordance with this rule.

Disagreement over collective agreements.

78. (1) Any person who seeks to challenge the registration of a collective agreement shall file a miscellaneous application initiated by a notice of motion supported by an affidavit exhibiting all relevant documents.

(2) A respondent to the application under this rule may file a replying affidavit within seven days of service or such other period as the Court may direct, to oppose the application.

(3) The Court shall hear and determine an application filed under this rule on priority basis.

Collective economic disputes in public service.

79. (1) In any economic dispute involving a collective agreement or any other issue where the Court considers it fit, the Court may order the Central Planning and Monitoring Unit to file a report within thirty days of service of the pleadings in the suit or such other time as the Court considers sufficient.

(2) In any dispute relating to a collective agreement for public officers, the Salaries and Remuneration Commission may file a report in Court within thirty days of service of the pleadings in the suit or within such other time as the Court considers sufficient.

(3) Where the Central Planning and Monitoring Unit or the Salaries and Remuneration Commission fails to submit its report within the time specified in sub-rule (1) or (2), the Court may proceed to hear and determine the matter.

## PART XIII—MISCELLANEOUS PROVISIONS

Court may extend time.

80. The Court may, upon application or on its own motion, extend any time prescribed under these Rules or such time as may be stipulated in an order of the Court.

Fees.

81. (1) The fees chargeable by the court for filing pleadings, instruments and procedures shall be as set out in the Second Schedule.

(2) The Court may, on application by a party in writing and upon being satisfied that the party does not possess sufficient means to pay the fee prescribed by law, waive all or any fee chargeable

(3) Where the party under sub-rule (2) succeeds in any suit which results in a decree or order for payment of any sum of money to that party, the Court may order that the court fees waived be paid and in which event, it shall be a first charge on any money recovered or to be recovered.

Reconstruction of files.

82. (1) A party may, through a miscellaneous application, apply for the reconstruction of a court file that cannot be traced.

(2) Where the court is satisfied that the original court file cannot be traced, the court may order the reconstruction of the file.

(3) An order to reconstruct a court file under this rule shall not be made unless the Registrar has submitted to the Court a report confirming that the file is not available at the Court's registry and setting out the circumstances for its unavailability.

Role of the Registrar in case management.

83. The Registrar shall be responsible to the Court for—

(i) the administration and management of a station or division of the Court;

(ii) implementation of the Court's directions and orders on case management;

(iii) assisting the Judges for efficient judicial docket management system of the Court including the day-to-day operation and administration of the Court registry and human resources in the station or division;

(iv) performing duties as may be provided in these rules, or under any written law and, the functions provided under the Act;

(v) preparing work plans and budgets for effective realization of these rules and accounting for any service in respect of which monies have been allocated and for which issues are made from the Judiciary Fund;

(vi) planning, preparing, implementing and monitoring the budget and collecting and accounting for revenue in the station or division; and

(vii) undertaking any other duties assigned by the Court for the benefit of the Court.

Revocation. Sub. Leg.

84. The Employment and Labour Relations Court (Procedure) Rules are revoked.

FIRST SCHEDULE

FORMS

Form 1 *r. 14*

THE EMPLOYMENT AND LABOUR RELATIONS COURT ACT

*(Cap. 8E)*

THE EMPLOYMENT AND LABOUR RELATIONS COURT (PROCEDURE) RULES, 2024

MEMORANDUM OF APPEAL

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

APPEAL UNDER SECTION ..... OF .....

APPEAL NO. ..... OF .....

IN THE MATTER OF APPEAL OF

[NAME OF APPELLANT] .....APPELLANT

AND

[NAME OF THE INSTITUTION OR AUTHORITY AGAINST WHOSE DECISION APPEAL IS LODGED] .....RESPONDENT

OR

[NAME OF INTERESTED PARTY [IF APPLICABLE] .....

SECOND RESPONDENT

1. Take Notice that the Appellant appeals against the decision of the .....

.....

2. The Appeal relates to .....

.....

3. The decision Appealed against is .....

.....

4. The Appeal is to be determined by the Employment and Labour Relations Court at a date, time and place to be set by .....

Notice to the Parties.

(2) The Appeal is based on the following grounds [set out each ground concisely]

.....

.....

(*attach any relevant documents*)

(3) The decision sought for:

.....

.....

.....

(4) And take note that the Appellant appoints ..... as Appellant's representative in this matter.

(5) Take note also that the Appellant shall accept service of all documents on the above matter at the Appellant's address which is set below:

.....

.....

Signed and dated at ..... this ..... day of ....., 20.....

.....

*Appellant/Advocate*

Form 2 *r. 25(1)*

THE EMPLOYMENT AND LABOUR RELATIONS COURT ACT

*(Cap.* 8E*)*

THE EMPLOYMENT AND LABOUR RELATIONS COURT (PROCEDURE) RULES, 2024

NOTICE OF SUMMONS

To.....
(name)

of.....
(address)

Take notice that a statement of claim has been filed in the Employment and Labour Relations Court at..... in Cause/Appeal No..... 20 ..... in which you are named as Respondent.

A copy of the summons and the Statement of Claim is herewith attached.

Unless you file a Response within twenty - eight days from the date of this summon, the suit will be heard and determined in your absence.

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

.....
*Registrar*

Form 3 *r. 25(7)*

THE EMPLOYMENT AND LABOUR RELATIONS COURT ACT

*(Cap. 8E)*

THE EMPLOYMENT AND LABOUR RELATIONS COURT (PROCEDURE) RULES, 2024

AFFIDAVIT OF SERVICE

I ..... of .....

..... an *advocate/a police officer/a process server of the court make oath and states as follows:

(1) On ..... 20 ..... at..... (time)

I served the summons in this suit on..... at (place) by tendering a copy thereof to *him/her and requiring a signature on the original.

*He/She *signed/refused to sign the summons. He/She was personally known to me/was identified to me by..... and admitted that *He/She was the Respondent.

(2) Not being able to find ..... the Respondent on ..... 20 .....at .....(time) I served the summons on..... (name) an employee of the Respondent who is working with the Respondent.

(3) (Otherwise specify the manner in which the summons was served).

SWORN by the said ..... this ..... day of .....20.....

Before me

.....

*A Commissioner of Oaths/Magistrate*

*Delete as necessary

Form 4 *r. 25(11)*

THE EMPLOYMENT AND LABOUR RELATIONS COURT ACT

*(Cap. 8E)*

THE EMPLOYMENT AND LABOUR RELATIONS COURT (PROCEDURE) RULES, 2024

REQUEST TO THE COURT TO EFFECT SERVICE

To the Registrar

Employment and Labour Relations Court of Kenya

1. The *Claimant/Appellant/Respondent hereby requests the Registrar to effect service of process on the *Claimant/Appellant/Respondent.
2. The physical address of the *Claimant/Appellant/Respondent for purpose of this suit is as follows:

   .....

   .....

   .....

   .....

3. The *Claimant /Appellant/Respondent has paid the requisite fee for service.

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

* Claimant/Appellant/Respondent

* Delete as necessary

Form 5 *r. 58(6)*

THE EMPLOYMENT AND LABOUR RELATIONS COURT ACT

*(Cap.* 8E*)*

THE EMPLOYMENT AND LABOUR RELATIONS COURT (PROCEDURE) RULES, 2024

SUMMONS FOR ATTENDANCE

IN THE MATTER OF APPEAL OF CAUSE/APPEAL

BETWEEN

[NAME OF CLAIMANT/APPELLANT*] .....

CLAIMANT/APPELLANT

AND

[NAME OF RESPONDENT] ..... RESPONDENT

You are hereby summoned to appear in person before the above-named Court at

..... on ..... day

of ..... at .....(state time) and thereafter to remain in attendance until excused by the Court in regard to all matters within your knowledge relating to the matter pending before the Court wherein the Claimant/Appellant/Applicant* is seeking as follows

.....

.....

YOU ARE REQUIRED to bring and produce to the Court the following;

[insert accurately the document, book or thing to be produced]

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

BE INFORMED that should you on any account neglect to comply with any of the appropriate consequences this summons the Court shall in accordance with Rule 35(5) issue a warrant of arrest and impose any other penalty it deems fit.

(*delete whichever is not applicable)

Signed and dated at.....this day of....., 20 .....

.....

*Registrar*

## SECOND SCHEDULE

*[r. 81(1)]*

FEES

| *No.* | *Pleading* | *Ksh.* |
|---|---|---|
| 1. | Issuance of forms | |
| | Per form | 10 |
| | 50 forms | 150 |
| | (a) On filing a statement of claim | |
| | (i) Statement of claim | 500 |
| | (ii) Verifying affidavit | 75 |
| | (iii) Annexure (per document) | 10 |
| | (b) Response to claim | 500 |
| | (c) Replying affidavit | 75 |
| | (d) Annexure (per document) | 10 |
| 2. | On filing counterclaim | |
| | (a) Counterclaim | 500 |
| | (b) Verifying affidavit | 75 |
| | (c) Annexure (per document) | 10 |
| | (d) Response to counterclaim | 75 |
| 3. | Reply to defence | 75 |
| 4. | On filing a petition | 6,000 |
| 5. | On filing a judicial review application | 6,000 |
| 6. | (a) On filing an interlocutory application | 250 |
| | (b) Affidavit in support of application | 75 |
| | (c) Annexure (per document) | 10 |
| 7. | (a) On filing grounds of opposition | 250 |
| | (b) Replying affidavits | 75 |
| | (c) Annexure (per document) | 10 |
| 8. | (a) On filing application for review of award | 500 |
| | (b) Affidavit in support of application | 75 |
| | (c) Annexure (per document) | 10 |
| 9. | (a) On filing response to application for review | 500 |
| | (b) Affidavit in support of application | 75 |

| | | |
|---|---|---|
| | (c) Annexure (per document) | 10 |
| 10. | On filing a memorandum of appeal or cross appeal from subordinate Court | 1,000 |
| 11. | (a) On filing a memorandum of appeal or cross appeal from the decision of registrar of trade unions | 5,000 |
| | (b) Affidavit in support of an appeal or cross appeal | 75 |
| | (c) Annexure (per document) | 10 |
| | (d) Notice of appeal | 50 |
| 12. | (a) On filing an appeal from the decision of the Cabinet Secretary | 2,000 |
| | (b) Affidavit in support of application | 75 |
| | (c) Annexure (per document) | 10 |
| 13. | (a) On filing an appeal from the decision of the Registrar of Trade Unions or the Cabinet Secretary | 1,000 |
| | (b) Affidavit in support of application | 75 |
| | (c) Annexure (per document) | 10 |
| 14. | (a) On filing memorandum of reply to any appeal | 1,000 |
| | (b) Affidavit in support of application | 75 |
| | (c) Annexure (per document) | 10 |
| 15. | (a) On filing affidavit of service, supplementary or further affidavit | 75 |
| | (b) Annexure (per document) | 10 |
| 16. | Issue of summons/notice of appearance | 50 |
| 17. | Taking out witness summons or any other summons not provided for | 100 |
| 18. | Filing memorandum of appearance of notice of appointment of advocate | 100 |
| 19. | For filing any document for which no fee is prescribed under this Schedule | 75 |
| 20. | Certification or attestation of a document | 75 |
| 21. | For commissioning an affidavit (Cap. 15) | 50 |
| 22. | On filing matter under certificate of urgency | 550 |
| 23. | On application for adjournment at time of hearing | 400 |
| 24. | On filing a consent order | 150 |
| 25. | (a) On filing an application for execution | 250 |

| | | |
|---|---|---|
| | (b) Issuance of execution order | 150 |
| | (c) Notice to show cause | 150 |
| | (d) Issuance of notice to show cause | 150 |
| | (e) Issue of attachment warrant | 50 |
| | (f) Issue of sale warrant | 50 |
| | (g) Service by court (CBD) | 300 |
| 26. | Application of decree | 100 |
| 27. | On filing a bill of costs | 250 |
| 28. | Filing a notice of objection on bill of costs | 75 |
| 29. | (a) Application for uncertified copy of proceedings or judgment (per page) | 30 |
| | (b) Application for certified copy of proceedings or judgment (per page) | 60 |
| 30. | (a) Application to draw/be issued with Court order | 50 |
| | (b) Copies per page | 10 |
| 31. | Issue of certificate of costs by Registrar | 100 |
| 32. | On registration of a collective bargaining agreement | Nil |
| 33. | On filing any application for which no provision is made under this Schedule | 1,000 |
| 34. | Court collection fee | 1,500 |
| 35. | On any order by Court | 150 |
| 36. | On mention | 375 |
| 37. | Perusal fee | 50 |

Made on the 30th July, 2024.

MARTHA K. KOOME,
*Chief Justice.*

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