

NO. 20 OF 2011

EMPLOYMENT AND LABOUR RELATIONS COURT ACT

SUBSIDIARY LEGISLATION

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EMPLOYMENT AND LABOUR RELATIONS COURT (PROCEDURE) RULES, 2016

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SCHEDULES

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**EMPLOYMENT AND LABOUR RELATIONS COURT
(PROCEDURE) RULES, 2016**

[L.N. 146/2016.]

1. Citation

These Rules may be cited as the Employment and Labour Relations Court (Procedure) Rules, 2016.

2. Interpretation

In these Rules, unless the context otherwise requires—

"affidavit of service" means an affidavit of service in the form prescribed by these Rules;

"appeal" means an appeal made to the Court by a party against an order, decision or proceedings under any written law and includes appeals from the Cabinet Secretary, Director of the Work Injury Benefits Authority, Registrar of Trade Unions, subordinate courts and tribunals;

"appellant" means a party who initiates an appeal;

"Central Planning Monitoring Unit" means the unit of the Ministry of Labour and Human Resources responsible for analyzing collective agreements to ensure that they conform with labour laws, undertaking investigation 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, terms and conditions of service;

"notice" includes a notice of motion;

"notify" means to give a notice in writing;

"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 under rule 4;

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

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

3. Sittings of the Court

The Court may sit in any station established by the Chief Justice in consultation with the Principal Judge.

4. Institution of claim

(1) A party 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 mailing address and full particulars of the claimant;
- (b) the name, physical and mailing address and the description of the respondent;
- (c) the name, physical and mailing address of any other party involved in the dispute;
- (d) the facts and grounds of the claim specifying issues which are alleged to have been violated, infringed, breached or not observed and 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;
- (e) any principle, policy, convention, law, industrial relations issue or management practice to be relied upon;
- (f) a schedule listing the documents that are material and relevant to the claim; and
- (g) the relief sought.

(2) A statement of claim filed under paragraph (1) shall be accompanied by an affidavit verifying the facts relied on.

5. Statement of claim issued pursuant to the Labour Relations Act (No. 14 of 2007)

(1) Where a labour dispute is referred to the Court in accordance with the provisions of the Labour Relations Act (No. 14 of 2007)—

- (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 a subject of conciliation, the statement of claim shall be accompanied by—
 - (i) a report by the conciliator on the conciliation process supported by the minutes of the conciliation meeting; 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 a 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 no conciliation has taken place, 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 conciliation has not taken place.

6. Statement of claim issued under any other written law

Where a claim is referred to the Court in accordance with the provisions of any written law other than the Labour Relations Act under Rule 5, 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.

7. Institution of petition and judicial review proceedings

(1) A party 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, 2012.

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

(3) Notwithstanding anything contained in this Rule, a party is at liberty to seek the enforcement of any constitutional rights and freedoms or any constitutional provision in a statement of claim or other suit filed before the Court.

8. Appeals

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

(2) Where no period of appeal is specified in the written law under paragraph (1), an appeal shall be filed within thirty days from the date the decision was delivered.

(3) A memorandum of appeal shall be in Form 1 set out in the First Schedule with necessary modifications.

(4) A memorandum of appeal shall be accompanied by copies of the proceedings, all documentary evidence relied on and a copy of the judgment from the proceedings of the matter being appealed against.

Provided that where copies of proceedings are not filed with the memorandum of appeal, the appellant shall file the such copies as soon as possible and within a reasonable time.

9. Suits by several persons

(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, 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 address, description, and the details of wages due or the particulars of any other breaches and reliefs sought by each claimant.

10. Filing procedure

(1) The Court shall maintain a suitable filing system.

(2) A party filing a suit shall present as many copies as there are respondents and two copies for the Court by depositing them at the registry and pay the prescribed fee:

(3) Notwithstanding paragraph (2), the Court may direct the filing of any pleading in electronic form and may, depending on the number of parties, require a party to file additional copies of any pleading.

(4) A party shall indicate their physical, mailing and email address and telephone number on all its filed pleadings.

(5) The Court shall allocate a serial number to every suit at the time of filing and after the payment of the prescribed fees.

(6) Where a party intends to file a pleading in more than one suit, the party shall submit a sufficient number of copies for each such suit.

[Subsidiary]

(7) The claimant shall, after filing a suit, cause it to be served on the respondent by a qualified process server.

11. Service of summons

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

(2) A claimant shall serve the summons issued under paragraph (1) to the respondent together with the statement of claim.

(3) 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 from time to time if satisfied that it is just to do so.

(4) A respondent who files any pleading in response to any suit filed in Court shall have the pleadings served on the claimant or the appellant by a qualified process server within fourteen days of filing.

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

(6) 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.

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

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

(9) 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.

12. Service on a corporate body

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

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

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

13. Response to pleadings

(1) If a party served with a statement of claim intends to respond, the party shall, within twenty one days from the date of service, enter appearance and file and serve a response to the suit.

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

- (a) the respondent's name and address for purpose of service;
- (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 its reply;
- (e) any defence or grounds upon which the respondent may wish to rely;
- (f) any principle, policy, convention, law, industrial relations 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 paragraph (3) or, where a reply is not filed, fourteen days after service of a response to pleadings under paragraph (1).

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

14. Pleadings generally

(1) A 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) Dates, sums and other numbers shall be expressed in figures and not words save for where a party is quoting a passage from a secondary document.

(3) A 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.

(5) A party may, by notice, object to a pleading stating grounds of objection except that no objection may be raised to any pleading on the ground of any want of form.

(6) 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.

(7) Where the Court, either on its own motion or on application by a party, is satisfied that a pleading does not adequately set out the particulars required by it, or for any other reason the Court requires clarification on any pleading or submission by a party, it may request the party to provide further details or file any supplementary pleading as it may consider necessary within such period as it may determine or specify and the party so requested shall provide them to the Court and the other party.

(8) 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 and shall, at the same time, notify the other party.

(9) A party may, with the leave of the Court, call other witnesses.

(10) Where a party intends to rely on a document that has not been filed as part of its 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.

[Subsidiary]

15. Pre-trial procedure

(1) The parties to a suit shall, within fourteen days after the close of pleadings or such other period as the Court on application may direct, move the Court to hold a scheduling 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) whether legal argument shall be written or oral, or both;
- (e) the estimated length of the hearing; and
- (f) any other matters the Court may deem necessary.

(2) Paragraph (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.

16. Notice to show cause why suit should not be dismissed

(1) In any suit in which no application has been made in accordance with Rule 15 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 paragraph (1).

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

17. Interlocutory application and temporary injunctions

(1) An interlocutory application shall be made by notice of motion and shall be heard in open Court.

(2) A party shall, after filing a 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, a claimant or 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 paragraph (5) for a temporary or interim injunction, the Court may, by order, grant an injunction on such terms as it deems fit.

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

(8) 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.

(9) A party may respond to an application by filing grounds of opposition verified by an affidavit.

(10) 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.

18. Case management

(1) The Court may, on its own motion and where it considers it fit, serve or order service of a pleading on any party whom it is satisfied may be interested in the matter being considered.

(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.

19. Alternative dispute resolution

(1) The Court shall encourage parties to proceedings before it to enter into conciliation, negotiation and agreements and may, at any time during hearing, refer the matter for 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.

20. Witness summons

(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 set out in the First Schedule.

21. Determination by documentary evidence

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.

[Subsidiary]

22. Proceedings in the absence of either party

(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 paragraph (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.

23. Consolidation of cases

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.

24. Test suit

Where two or more persons have instituted suits against the same respondents, 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 directing that one of the suits be tried as a test case, and staying all the steps in the other suits until the selected suit is determined, or fails to be a real trial of the issues.

25. Hearing procedure

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

(2) The Court shall, at the beginning of the hearing, explain the order of the proceedings which it proposes to adopt.

(3) Evidence before the Court may be given orally or if the judge so orders, by affidavit or a written statement, and the Court may at any stage of 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, either 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.

26. Close of hearing

(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.

27. Submissions

(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 shall file one original copy of the submission with the Court and serve additional copies on each party to the proceedings.

28. Decision of the court

(1) The Court shall, after considering all relevant facts and supporting documents presented to it and in accordance with the procedures set in these Rules—

- (a) where the suit was originated by a statement of claim, petition, judicial review application or appeal, deliver a judgment;
- (b) in any other proceedings, deliver a ruling.

Provided that, subject to these Rules and to any other written law, the Court may at any time in the conduct of its 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 to meet the ends of justice.

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

(3) The decision of the Court shall be delivered in open Court, dated and signed by the presiding judge or by all the judges where more than one judge is sitting save that a judgment delivered by a judge other than the judge who wrote it shall be dated and countersigned by that judge in open Court.

29. Costs and interest

(1) The Court shall be guided by section 12(4) of the Employment and Labour Relations Court Act (No. 20 of 2011) and the Advocates (Remuneration) Order in awarding costs.

(2) The Court may order reasonable reimbursements of money spent by litigants in the course of litigation.

(3) 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.

30. Record of proceedings and decisions

(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 Employment and Labour Relations Court 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 certified, signed and sealed by the Registrar shall be conclusive evidence of the existence of the judgment, ruling, order or decision of the Court.

31. Decree

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

[Subsidiary]

(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 was delivered.

32. Execution and warrants

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

(2) Rules on execution of an order or decree shall be enforceable in accordance Civil Procedure Rules.

33. Review

(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 new and important matter or evidence which, after 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 subparagraphs (b), (c) or (d), 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.

34. Correction of errors

The Court shall, either 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.

35. Seal of the court

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

36. Collective agreements

(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 paragraph (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 Court shall maintain a register of collective agreements that have been accepted by it for registration.

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

37. Disagreement over collective agreements

(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 any suit or such other time as the Court considers necessary.

(2) In any dispute involving state or public officers, the Salaries and Remuneration Commission shall file a report in Court within thirty days of service of the pleadings in any suit or such other time as the Court considers necessary.

38. Court to regulate its procedure

Subject to these Rules, the Court may regulate its own procedure.

39. Fees

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

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

(3) Where the party under paragraph (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 shall be a first charge on any money recovered or to be recovered.

40. Revocation, L.N. 78/2010

The Industrial Court (Procedure) Rules, 2010 are hereby revoked.

FIRST SCHEDULE

FORM 1

[Rule 8(3).]

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

APPEAL UNDER SECTIONOF

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

.....

Employment and Labour Relations Court

[Subsidiary]

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 is:

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

(5) Take note also that the Appellant shall accept services 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

[Rule 11(1).]

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 one 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

[Rule 11(5).]

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

[Rule 11(9).]

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 NAIROBI this day of, 20

* Claimant/Appellant/Respondent

* Delete as necessary

[Subsidiary]

FORM 5

[Rule 20(6).]

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

SUMMONS FOR ATTENDANCE

EMPLOYMENT AND LABOUR RELATIONS COURT CAUSE/APEAL

NO.* OF.....

IN THE MATTER OF APEAL OF CAUSE/APEAL

BETWEEN

[NAME OF CLAIMANT/APELLANT*] CLAIMANT/APELLANT

AND

[NAME OF RESPONDENT] RESPONDENTS

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 20(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

[Rule 39.]

FEES

<i>No.</i>	<i>Pleading</i>	<i>Ksh.</i>
1.	Sale of forms:	
	per form	5
	50 forms	150
2.	On filing a statement of claim	
(a)	Individual employee	
(i)	Fee on statement of claim	200
(ii)	Verifying affidavit	75
(iii)	Annexure (per document)	10
(b)	Any other party	
(i)	Fee on statement of claim	500
(ii)	Verifying affidavit	75
(iii)	Annexure (per document)	10
(c)	Filing reply to claim	500
(d)	Replying affidavit	75
(e)	Annexure (per document)	10
3.	On filing a petition	6,000
4.	On filing a judicial review application	6,000
5.	(a) On filing interlocutory application	250
	(b) Affidavits in support of applications	75
	(c) Annexure (per document)	10
6.	(a) On filing grounds of opposition	250
	(b) Replying affidavits	75
	Annexure (per document)	10
7.	(a) On filing application for review of the award	500
	(b) Affidavits in support of application	75
	Annexure (per document)	10
8.	(a) On filing response to application for review	500
	(b) Affidavit in support of application	75
	Annexure per document.....	10
9.	On filing appeals from subordinate Court	1,000
10.	(a) On filing appeals from the decision of registrar of trade unions	5,000
	(b) Affidavit in support of appeals	75
	(c) Annexure per document	10
	(d) Notice of appeal	50
11.	(a) On filing appeals from the decision of the Cabinet Secretary	2000
	(b) Affidavit in support of appeal	75
	(c) Annexure per document	10
	(d) Notice of appeal	50
12.	(a) On filing appeals other than appeals from the decision of the Registrar of Trade Unions or the Cabinet Secretary	1,000
	(b) Affidavit in support of appeal	75
	(c) Annexure (per document.)	10

Employment and Labour Relations Court

[Subsidiary]

13. (a) On filing memorandum of reply to any appeal	1,000
(b) Replying affidavit	75
(c) Annexure per document	10
.	
14. (a) On filing affidavit of service, supplementary or further affidavit	75
(b) Annexure per document.....	10
15. Issue of summons/notice of appearance	50
.	
16. Taking out witness summons or any other summons not provided for	100
17. Filing memorandum of appearance of notice of appointment of advocates ...	100
.	
18. For filing any document for which no fee is prescribed under this schedule.....	75
19. Certification/attestation of documents	75
.	
20. For swearing an affidavit (Cap. 15)	50
21. On filing matter under certificate of urgency	550
.	
22. On application for adjournment at time of hearing	400
23. On filing consent orders	150
.	
24. (a) On filing 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
.	
25 . Application of decree	100
.	
26. On filing a bill of costs	250
.	
27. (a) Application for uncertified copy of proceedings or judgment (per copy)	30
(b) Application for certified copy of proceedings or judgment (per copy)	60
.	
28. (a) Application to draw/be issued with Court order	50
(b) Copies per page	10
.	
29. Issue of a certificate by registrar after award is given by the Court	100
30. On registration of a collective agreement	100
.	
31. On filing any application for which no provision is made under this schedule	1,000
32. Court collection fee	1,500
33. On any order by Court	150
.	
34. On mention	375

