

NO. 14 OF 2006

THE HIV AND AIDS PREVENTION AND CONTROL ACT

SUBSIDIARY LEGISLATION

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THE HIV AND AIDS TRIBUNAL RULES

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SCHEDULE —

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THE HIV AND AIDS TRIBUNAL RULES

[Legal Notice 33 of 2022]

PART I – PRELIMINARY**1. Citation**

These Rules may be cited as the HIV and AIDS Tribunal Rules.

2. Interpretation

In these Rules, unless the context otherwise requires—

"claimant" means a person who files a claim with the Tribunal;

"interested party" means a person or entity who has an identifiable stake or legal interest in a claim filed with the Tribunal but is not a party to the claim or may be directly involved with the claim;

"pleading" includes a statement in writing of the claim of a claimant, and the response by the respondent thereto, and the reply of the claimant to any response;

"representative" means an advocate or another person appearing for a party to a claim filed with the Tribunal;

"registry" means the place designated by the Tribunal for the filing of pleadings under these Rules;

"Secretary" means the chief executive officer and registrar of the Tribunal;

"respondent" means a party against whom a claim is filed.

3. Scope and object of the Rules

(1) These Rules shall apply in the determination of claims filed with the Tribunal.

(2) The object of these Rules is to provide for the procedure to facilitate the just and expeditious determination of claims arising out of any breach of the provisions of the Act.

(3) The Tribunal shall apply these Rules without undue regard to technicalities and procedure.

PART II – ORGANISATION AND ADMINISTRATION**4. Language of the Tribunal**

The proceedings of the Tribunal shall be in English or Kiswahili.

5. Duties of the Chairperson

The duties of the Chairperson shall be—

- (a) to constitute a panel to hear and determine any matter filed with the Tribunal;
- (b) to oversee the general administration of the Tribunal;
- (c) to appoint a member of the Tribunal to dispose of any preliminary matter relating to a claim filed with the Tribunal; and
- (d) to ensure the orderly and prompt conduct of the business of the Tribunal.

6. Sittings of the Tribunal

(1) The Tribunal may hold its sittings between the hours of 8:00 a.m. and 5:00 p.m. on a working day.

(2) The sittings of the Tribunal may be held at any place that the Tribunal determines to be necessary for the expedient and proper discharge of its functions.

(3) In determining where the sittings of the Tribunal shall be held, the Tribunal shall give the parties reasonable notice and opportunity to appear before the Tribunal.

[Subsidiary]

7. Moderation of proceedings

In determining any matter, the Tribunal may moderate the language used by a party and the party's representative where the use of language is likely to occasion stigma to any person living with or affected by HIV and AIDS.

8. Seal of the Tribunal

The seal of the Tribunal shall be authenticated by the signature of the Secretary.

9. Secretary to the Tribunal

The Secretary shall be the—

- (a) the accounting officer of the Tribunal;
- (b) responsible for the day-to-day conduct of the affairs of the Tribunal; and
- (c) organisation and management of the registry.

10. Principal registry and other registries

- (1) The principal registry of the Tribunal shall be at Nairobi.
- (2) The Tribunal may establish such other registries as may be necessary.

11. Register of claims

(1) The Tribunal shall cause to be established, kept and maintained a register of claims filed with the Tribunal.

(2) The register of claims shall include the following particulars in respect of each claim filed with the Tribunal—

- (a) the name and contact details of each party;
- (b) the number assigned to the claim;
- (c) the date of the claim;
- (d) the relief sought;
- (e) the final determination or order of the Tribunal and the date thereof; and
- (f) the names of the members of the Tribunal who heard and determined the claim.

PART III – PROCEDURE BEFORE THE TRIBUNAL

12. Capacity to file the claim

(1) Any person may file a claim with the Tribunal in respect of any breach or threatened breach of the provisions of the Act.

(2) A claim may be filed with the Tribunal by—

- (a) a person acting on behalf of another person who cannot act in his or her own name;
- (b) a representative of, or in the interest of, a group or class of persons; or
- (c) a person acting in the public interest.

13. Appearances and representation

(1) A party may appear before the Tribunal in person or through a representative of his or her choice or through any other person that the Tribunal admits in that regard.

(2) A representative contemplated in subrule (1) may include a family member, health practitioner or legal representative.

(3) A respondent who has been served with summons in respect of a claim shall—

- (a) file a Memorandum of Appearance in Form HAT 1 as set out in the Schedule; or
- (b) appear in person before the Tribunal on the date, time and place specified in the summons.

14. Application of L.N. 151/2020

The procedure set out in the Civil Procedure Rules, 2010 shall apply in proceedings before the Tribunal in respect of addition, joinder, substitution and striking out of parties.

15. Filing of claims

(1) A claim may be initiated by filing in the registry—

- (a) a Statement of Claim in Form HAT 2 as set out in the Schedule; or
- (b) any other document or letter outlining the claim.

(2) Where a claim is not initiated in Form HAT 2, the Tribunal may require that the claim be reduced into that Form.

(3) A Statement of Claim may be filed at the registry in paper form or through electronic means as may be specified by the Tribunal.

(4) The Tribunal shall not charge a fee for the filing of a claim under these Rules.

16. Service of summons and proof of service

(1) Upon the filing of a claim under rule 15, the Tribunal shall issue summons in Form HAT 3 as set out in the Schedule.

(2) The summons shall—

- (a) be served on the respondent within six months after the date of the filing of the claim; and
- (b) be accompanied by the Statement of Claim.

(3) Upon the service of summons, the person effecting service shall complete a Certificate of Service in Form HAT 4 as set out in the Schedule and file it in the registry.

(4) The service of summons may be done in the manner provided for in the Civil Procedure Rules, 2010 with the necessary modifications.

17. Response by respondent

(1) Upon being served with a Statement of Claim under rule 16, the respondent may oppose the claim by filing a response in the registry within fourteen days from the date of service.

(2) The response to a claim under subrule (1) shall be in Form HAT 5 as set out in the Schedule.

(3) The respondent shall serve the claimant with the response to claim within seven days after the date of the filing of the response in the registry.

(4) The Tribunal may, on the written application of a party, extend the time a party may respond to a claim or any other pleading under these Rules.

18. Close of pleadings

(1) Upon the filing of a response by the respondent under rule 17, the claimant may file a reply within seven days after being served with the response or such other period as the Tribunal may direct.

(2) Pleadings shall close after seven days from the date of the filing of the reply by the claimant under subrule (1).

19. Acknowledgment by the Secretary.

Upon receipt of any document filed in relation to a claim, the Secretary or a person authorised by the Secretary in that behalf shall—

- (a) acknowledge receipt of the document;
- (b) enter the name of the claimant, respondent, or the claimant's or respondent's representative, as the case may be, in the register; and
- (c) advise the person filing the document of any other steps that the party may require to take in respect of the claim.

[Subsidiary]

20. Status conference

(1) The Tribunal shall, before holding any hearing in respect of a claim, hold a status conference—

- (a) to determine whether parties have been served with the relevant pleadings;
- (b) to identify whether any party intends to file any additional evidence or produce any other document;
- (c) to determine whether or not the parties to the claim have complied with the provisions of the Rules;
- (d) to delineate the contested and uncontested issues;
- (e) to create a timetable for the proceedings;
- (f) to consider any other form of settlement;
- (g) to determine the appropriate mode of hearing; and
- (h) to consider any other matter that the Tribunal may consider just in the circumstances.

(2) Where the parties reach an agreement in respect of any issue that is the subject of the claim, the Tribunal shall record the agreement as a settlement on the terms agreed upon between the parties.

21. Applications

(1) A party to a claim under these Rules may make an interlocutory application before the Tribunal orally or in writing.

(2) The Tribunal shall give directions on how an application under subrule (1) shall be determined.

(3) The Secretary shall place an application that has been filed under a Certificate of Urgency before the Chairperson, or a member of the Tribunal designated by the Chairperson, for directions.

22. Notice of hearing

(1) The Tribunal shall, after considering the convenience of the parties and the need for expeditious determination of the claim, notify the parties of the date, time and place for hearing.

(2) The notice under subrule (1) shall—

- (a) be in Form HAT 6 as set out in the Schedule; and
- (b) be sent to each party at least twenty-one days before the date of the hearing.

(3) The Tribunal may, for reasons given in writing and on reasonable notice, vary the period specified in subrule (2)(b).

23. Hearing procedure and evidence

(1) The Tribunal shall, in respect of the hearing of a claim, give such directions as may be necessary to enable a party to the claim to prepare for the hearing.

(2) The Tribunal shall apply the rules of natural justice during the hearing of a claim under these Rules and shall not be bound by the strict rules of evidence.

(3) Subject to any directions by the Tribunal, the evidence of the claimant shall be heard first, followed by that of the claimant's witnesses, if any.

(4) The respondent shall be afforded an opportunity to examine the claimant and the claimant's witnesses.

(5) At the close of the claimant's and claimant's witnesses' evidence, the evidence of the respondent and the respondent's witnesses, if any, shall be heard and the claimant shall be afforded the opportunity to examine the respondent and respondent's witnesses.

(6) The Tribunal may, at any time during the hearing, examine a party or a party's witness and may call for additional evidence.

- (7) The Tribunal may use electronic modes of presentation and recording of evidence.
- (8) The Tribunal may require a witness to give evidence on oath or affirmation.
- (9) The proceedings of the Tribunal shall be held *in camera* except where the parties request that the proceedings shall be held in open court.
- (10) During the hearing, the Tribunal may allow a report to be introduced and admitted without calling the maker of the report—
- (a) where the party introducing the report has filed the report with the Tribunal and served a copy thereof on the other party at least fourteen days before the date of the hearing;
 - (b) where the other party has consented to the introduction of the report; or
 - (c) where after hearing the parties, the Tribunal directs that the report be introduced and admitted without calling the maker of the report.

24. Witness summons

- (1) The Tribunal may, on its own motion or on the written request of a party, summon any person who has information that is relevant to the claim before the Tribunal for examination.
- (2) A summons under subrule (1) shall be in Form HAT 7 as set out in the Schedule and may—
- (a) require the person being summoned to appear before the Tribunal; and
 - (b) state the date, time and place at which the person shall appear.
- (3) The Tribunal may require the person summoned under subrule (1) to present his or her evidence on oath or affirmation.
- (4) Where the person summoned under subrule (1) fails to honour the summons without reasonable cause, that person may be held in contempt of the Tribunal and the Tribunal may give such orders or directions in that regard that may be just in the circumstances.

25. Expert evidence

- (1) In accordance with section 27(4) of the Act, the Tribunal may summon an expert to present evidence that may be relevant to a claim before the Tribunal.
- (2) The evidence of the expert summoned under subrule (1) may be presented—
- (a) through oral submissions before the Tribunal;
 - (b) through written submissions; or
 - (c) through any other manner that the Tribunal may direct or permit.

26. Non-attendance at a hearing

Where, on a date fixed for the hearing of a claim and where the Tribunal is satisfied that each party was served with the notice of the hearing—

- (a) the claimant and respondent do not attend the hearing, the Tribunal may dismiss the claim; or
- (b) either the claimant or respondent fails to attend the hearing, the Tribunal may proceed as it considers fit in the circumstances.

27. Inadmissible claims

The Tribunal shall not hear and determine a claim in which the matter in issue—

- (a) is pending before any court or other tribunal of competent jurisdiction; or
- (b) has been substantially determined by any court or other tribunal of competent jurisdiction.

28. Dismissal of a claim

- (1) In any claim where no application has been made or no action taken by either party within one year from the date of the filing of the claim with the Tribunal, the Tribunal may—

[Subsidiary]

- (a) give notice in writing to each party to show cause why the Tribunal should not dismiss the claim; and
- (b) if no cause is shown to the Tribunal's satisfaction, the Tribunal may dismiss the claim.

(2) Where reasonable cause is shown why the Tribunal should not dismiss a claim, the Tribunal may make such orders or give such directions for the expeditious hearing and determination of the claim.

(3) Any party to a claim may apply in writing for the dismissal of the claim under subrule (1).

(4) The Tribunal may dismiss the claim for non-compliance with any of the orders or directions of the Tribunal under this rule.

29. Withdrawal of claims

A claimant may withdraw a statement of claim by filing with the Tribunal a Notice of Withdrawal in Form HAT 8 as set out in the Schedule.

30. Decisions of the Tribunal

(1) The Tribunal shall, after considering all relevant facts, issue an order or any other decision in accordance with section 27(7) of the Act.

(2) The decisions of the Tribunal shall be in writing and signed by the Chairperson and at least four other members of the Tribunal.

31. Enforcement of orders of the Tribunal

An order of the Tribunal shall be enforced in accordance with section 29(1) and (2) of the Act.

32. Review of the orders or judgments of the Tribunal

A person may, at any time, apply to the Tribunal in writing for a review of an order or decision of the Tribunal on account of any clerical or arithmetical mistake arising from any omission for correction.

33. Appeals

An appeal from the decision of the Tribunal shall lie in the High Court.

34. Costs

The Tribunal may award the costs of any proceedings before it and—

- (a) direct that costs shall be taxed in accordance with any scale prescribed for suits in the magistrate's court; or
- (b) award a specific sum as costs.

35. Record of proceedings and decisions of the Tribunal

(1) The Tribunal shall, in respect of a claim, prepare a record of the proceedings, orders, directions and decisions of the Tribunal.

(2) The record prepared under subrule (1) shall be made available to the parties to the claim on request in the prescribed manner and after payment of the administrative fee.

(3) The Tribunal shall, in respect of the record prepared under subrule (1) and in any other case, protect the identity, confidentiality and the HIV and AIDS status of each party to the claim.

36. Alternative dispute resolution

The Tribunal shall encourage the parties to a claim to resolve the claim through conciliation, negotiation or agreement and may, at any time during the hearing, refer the claim for alternative dispute resolution mechanisms.

PART IV – GENERAL PROVISIONS

37. Directions by the Chairperson

The Chairperson may issue such directions, in writing, as may be necessary for the better carrying out of the object of these Rules including offering clarity on any matter that is not expressly provided for by these Rules.

38. Publication of decisions of the Tribunal

The Secretary of the Tribunal shall, within fourteen days after the date of the making of a decision by the Tribunal, submit a copy of the decision to the National Council for Law Reporting for publication.

SCHEDULE

FORMS

Form HAT 1 (r. 13(3))

REPUBLIC OF KENYA
IN THE HIV AND AIDS TRIBUNAL AT
CLAIM NO. OF 20
BETWEEN
..... CLAIMANT
AND
..... RESPONDENT

MEMORANDUM OF APPEARANCE

Please enter appearance for (1)
Sued as (2)
Whose address for service is (3) and whose address is (4)
Dated this day of, 20
Signed (5)

Notes:

¹ Give the full name of the respondent.

² Give the name by which the respondent is described in the summons if the name differs from the respondent's full name.

³ Address shall include phone number, email address, postal address and mobile-enabled application.

⁴ Give the address of the advocate within Kenya or of the respondent within Kenya if the respondent appears in person.

⁵ To be signed by the advocate or respondent or respondent's recognised agent if the respondent appears in person.

Form HAT 2 (r. 15(1)(a))

REPUBLIC OF KENYA
IN THE HIV AND AIDS TRIBUNAL AT
CLAIM NO. OF 20
BETWEEN
..... CLAIMANT

[Subsidiary]

AND

..... RESPONDENT

STATEMENT OF CLAIM

1. Claimant's address for service/Name and address of claimant's recognised representative (where applicable)

.....

2. Name and address of the respondent:

.....

3. Nature of claim:

.....

4. Grounds of claim and concise arguments in support of claim*:

.....

5. Relief sought:

.....

Dated at this day of, 20

**Attach a schedule listing all documents in support of the Statement of Claim.*

.....
Claimant/Recognised representative

Form HAT 3 (r. 16(1))

REPUBLIC OF KENYA

IN THE HIV AND AIDS TRIBUNAL AT

CLAIM NO. OF 20

BETWEEN

..... CLAIMANT

AND

..... RESPONDENT

SUMMONS

You are hereby summoned to appear in person before the HIV and AIDS Tribunal at on the day of at (*state time*) and thereafter to remain in attendance until excused by the Tribunal in regard to all matters within your knowledge relating to the claim pending before the Tribunal wherein the Claimant is seeking the following reliefs:

.....

YOU ARE REQUIRED to bring and produce to the Tribunal the following:

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

1.

2.

BE INFORMED that if you, on any account, neglect to comply with the requirements of this summons, you shall be held in contempt of the Tribunal and liable to sanctions as the Tribunal may consider just in the circumstances.

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

.....
Chairperson

Form HAT 4 _____ (r. 16(3))

REPUBLIC OF KENYA
IN THE HIV AND AIDS TRIBUNAL AT
CLAIM NO. OF 20
BETWEEN
..... CLAIMANT
AND
..... RESPONDENT

CERTIFICATE OF SERVICE

I of (address), having been authorized to serve summons by the Tribunal, declare as follows:

1. On the day of, 20 at (time), served the summons in this claim upon at (place) by tendering a copy thereof to *him/her and requiring a signature on the original.
2. He/she* signed/refused to sign* the summons. He/she* was personally known to me/ was identified to me* by and admitted/refused to admit* that he/she* was the *respondent/interested* party.
3. Not being able to the respondent/interested party* on the, day of, 20 at (time), I served the summons on (name) who was residing with him/her*.
4. (Otherwise specify the manner in which the summons was served.)

MADE BY the said on this day of, 20.....

**Delete as necessary*

Form HAT 5 _____ (r. 17(2))

REPUBLIC OF KENYA
IN THE HIV AND AIDS TRIBUNAL AT
CLAIM NO. OF 20
BETWEEN
..... CLAIMANT
AND
..... RESPONDENT

STATEMENT OF RESPONSE

1. Respondent's address for service:
2. Name and address of Respondent's recognised representative
(where applicable):
.....

3. Grounds of opposition:
.....

4. Relief sought:
.....

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

[Subsidiary]

.....
Respondent/
Respondent's Recognised
representative

Drawn and filed by:

.....

To be served upon:

.....

Form HAT 6 _____ (r. 22(2)(a))

REPUBLIC OF KENYA
IN THE HIV AND AIDS TRIBUNAL AT
CLAIM NO. OF 20
BETWEEN
..... CLAIMANT
AND
..... RESPONDENT

HEARING NOTICE

To:

- 1.
- 2.
- 3.

Take Notice that the above matter has been fixed for hearing/mention/determination on the day of, 20..... at o'clock at

If you fail to appear, the Tribunal may proceed with the matter and a determination may be made in your absence.

Dated at on this day of, 20

Signed

Form HAT 7 _____ (r. 24(2))

REPUBLIC OF KENYA
IN THE HIV AND AIDS TRIBUNAL AT
CLAIM NO. OF 20
BETWEEN
..... CLAIMANT
AND
..... RESPONDENT

WITNESS SUMMONS

To:

..... (Witness)

Take notice that a claim has been filed in the HIV and AIDS Tribunal at
in Claim No. of 20 on the day of, 20
in which you are required to

Hiv and Aids Prevention and Control

[Subsidiary]

Take further notice that unless you appear as required on the day of, 20, at o'clock, the Tribunal may issue order against you in accordance with the law.

Signed and dated at this day of, 20

.....
Chairperson

Form HAT 8 _____ (r. 29)

REPUBLIC OF KENYA
IN THE HIV AND AIDS TRIBUNAL AT
CLAIM NO. OF 20
BETWEEN

..... CLAIMANT

AND

..... RESPONDENT

NOTICE OF WITHDRAWAL

To: (Name of Registry)

.....

TAKE NOTICE that the Statement of Claim filed in Claim No. of, 20 by me of (*address*) is hereby withdrawn.

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

.....
*Claimant/Claimant's
recognised representative*
