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THE EAST AFRICAN COURT OF JUSTICE RULES OF PROCEDURE

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THE EAST AFRICAN COURT OF JUSTICE RULES OF PROCEDURE, 2010

RULES OF COURT

In exercise of the powers conferred on the East African Court of Justice by Article 42 of the Treaty for the Establishment of the East African Community, the Court hereby makes the following revised rules of procedure to conform to the Treaty amendments restructuring the Court.

SECTION 1: GENERAL**Rule 1: Citation and commencement**

These Rules may be cited as “The East African Court of Justice Rules of Procedure 2010” and shall be deemed to have come into force on 1st February, 2010.

Nothing in these Rules shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

Rule 2: Interpretation

In these Rules words and expressions shall have the meanings assigned to them respectively in the Treaty, and unless the context otherwise requires:

“**Advocate**” means an advocate who is entitled to appear before a superior court of any of the Partner States;

“**Agent**” means a person that is authorised by another to act for or in place of him;

“**Appellate Division**” means the Appellate Division of the Court provided for under Article 23 of the Treaty;

“**Counsel to the Community**” means the Counsel to the Community provided for under Article 69 of the Treaty;

“**Court**” means the East African Court of Justice established under the Treaty and includes a single Judge exercising any power vested in that Judge sitting alone;

“**Decree**” means the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to any of the matters in controversy in the suit and may be either preliminary or final.

“**Deputy Principal Judge**” means the Deputy Principal Judge of the Court;

“**First Instance Division**” means the First Instance Division of the Court provided for under Article 23 of the Treaty;

“**Gazette**” means the East African Community Gazette;

“Intervener” means a Partner State, the Secretary General or a resident of a Partner State not a party to a case before the Court, that is permitted to intervene in a case in accordance with Section VIII;

“Judge” means a Judge of the Court serving on the First Instance Division or the Appellate Division;

“National Court” means a court of competent jurisdiction in a Partner State;

“National day” means the Independence day in the Republic of Burundi, Jamhuri day in the Republic of Kenya; the Independence day in the Republic of Rwanda; the Union day in the United Republic of Tanzania and the Independence day in the Republic of Uganda; and

“Notification” means a notice of claim issued by the Court in accordance with sub-rule (1) of Rule 26 of these Rules;

“Official holiday” includes the national days of the Partner States as well as New Year’s Day, Idd el Fitr, Idd el Haj, Good Friday, Easter Monday, Labour Day, Christmas and Boxing Day;

“Pleading” includes any document lodged by or on behalf of a party relating to a matter or any case before the Court;

“President” means the President of the Court;

“Principal Judge” means Principal Judge of the Court;

“Registrar” means the Registrar of the Court or other officer acting on his behalf;

“Registry” means the Court registry and sub-registry;

“Representative” means a person that is empowered to stand or act for another;

“Rules” means these Rules as may from time to time be amended;

“Treaty” means the Treaty for the Establishment of the East African Community;

“Vice-President” means the Vice-President of the Court.

Rule 3: Computation of time

- (1) Any period of time fixed by these Rules or by any order of the Court for doing any act shall be reckoned as follows;
 - (a) where a period is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the period in question; and the period shall end with the expiry of the last day of the period;
 - (b) periods shall include official holidays, Sundays and Saturdays;
 - (c) periods shall not be suspended during the Court vacations;
 - (d) if a period would otherwise end on a Saturday, Sunday or an official holiday, it shall be extended until the end of the first following working day.
- (2) For purposes of this Rule a declared public holiday in the Partner State shall be an official holiday in respect of that Partner State.

Rule 4: Extension of time

A Division of the Court may, for sufficient reason, extend the time limited by these Rules or by any decision of itself for the doing of any act authorised or required by these Rules, whether before or after the expiration of such time and whether before or after the doing of the act, and any reference in these Rules to any such time shall be construed as a reference to such time as so extended.

SECTION II: REGISTRAR AND REGISTRY**Rule 5: Powers of the Registrar**

- (1) The Registrar shall be responsible for the acceptance and custody of documents and for effecting service as provided for by these Rules.
- (2) The Registrar shall have custody of the seal of the Court and shall be responsible for the records and the publications of the Court.
- (3) The Registrar shall be responsible for all administrative work and in particular for the accounts and financial administration in accordance with the financial procedures of the Community.

Rule 6: Registry and sub-registries

- (1) The Registry of the Court shall be situate at the seat of the Court:
Provided that where the Court is sitting or about to sit in any place other than the seat of the Court, then, for the purposes of any application to be heard in that place, the Registry shall be deemed to be situate in that other place.
- (2) There shall be sub-registries of the Court at such places in the Partner States as the President may from time to time direct.

Rule 7: Maintenance of registers

- (1) There shall be kept in the Registry and in the sub registries, registers in which all cases shall be entered.
- (2) There shall be kept separate registers each for claims, references, advisory opinions, applications and appeals.
- (3) All cases entered in the register shall be numbered serially for each succeeding year.
- (4) Whenever any document is lodged in the Registry or in a sub-registry in accordance with these Rules, the Registrar or other officer authorised by the Registrar, as the case may be, shall forthwith endorse the original showing the date and time when it is lodged and if a party so requests shall similarly endorse any copy submitted for that purpose.
- (5) Entries in the register and endorsements made as provided for in sub-rule (4) shall be deemed authentic.
- (6) The parties may inspect the registers, documents, record of proceedings, and any expert's report at the Registry, and obtain copies at their own expense except where a party who has been exempted from payment of fees in accordance with sub-rule (1) of Rule 118. Any other person having an interest in any matter before the Court may on payment of the appropriate fee inspect the register, documents, record of proceedings and expert's report and obtain copies of pleadings and certified copies of judgments and orders.

SECTION III: DOCUMENTS**Rule 8: Preparation of documents**

- (1) All documents prepared for use in the Court shall be on paper of durable quality, shall be clear and easily legible and may be produced by computer, printing, lithography, stencil duplicating, photography, xerography, typewriting or any combination of these media.
- (2) The pages of every document shall be numbered consecutively and shall be bound in book form where appropriate.
- (3) Whenever applicable, in all pleadings and all documents annexed thereto, the tenth line of each page shall be indicated on the right hand side.
- (4) Every pleading shall be divided into paragraphs numbered consecutively, each allegation being so far as appropriate contained in a separate paragraph.
- (5) Dates, sums and other numbers shall be expressed in figures and not words.
- (6) Every pleading lodged in the Court shall indicate the address of service of the party making it and be signed by that party or by the party's advocate or a person entitled under Rule 17 to represent the party.

Rule 9: Rejecting documents

- (1) The Registrar may refuse to accept any document which does not comply with the requirements of Rule 8, 24, 25, 30, 31, 32 or 36.
- (2) Subject to the provisions of Rule 118 the Registrar, shall refuse to accept any document tendered without the prescribed fee.

Rule 10: Document lodged out of time

- (1) The Registrar shall not refuse to accept any document on the ground that it is lodged out of time but shall mark the document "***Lodged out of time***" and inform the person lodging it accordingly.
- (2) When a document is accepted out of time at a sub-registry, the receiving officer shall inform the Registrar of that fact promptly.

Rule 11: Hours for lodging documents

Unless the President directs otherwise, the registry and any sub-registry of the Court shall be open for the receipt of documents lodged under the provisions of these Rules between 8:30 am and 5:00 pm.

Rule 12: Amendment of documents

- (1) A party entitled or given leave to amend a pleading may amend the original document itself or lodge an amended version of the document.
- (2) The amendment shall be by:
 - (a) striking through the words or figures to be deleted in red while they remain legible; and/or
 - (b) writing the words or figures to be added in red.

Rule 13: Change of address for service

A person who has given an address for service may, at any time, change his or her address for service by lodging a notice of such change in the registry and serving copies of the notice on all persons who have been served with the previous address.

Rule 14: Mode of service of documents

- (1) Where by these Rules a document is required to be served on any person service of the document shall be made by tendering to that person a duplicate thereof and requiring him or her to endorse the original acknowledging service. Where the Court is satisfied that the person refused to endorse the document, it may declare that the document was duly served.
- (2) A document may be served on the party's advocate.
- (3) Service on a Government of a Partner State shall be effected by delivering or tendering the document to the Attorney General of the Partner State or an officer authorised to accept service on behalf of the Attorney General.
- (4) Service on the Community shall be effected by delivering or tendering the document to the Secretary General of the Community or an officer authorised to accept service on behalf of the Secretary General.
- (5) Service on a body corporate shall be effected by delivering or tendering the document to the Chief Executive Officer, Director, General Manager or Company Secretary, or an officer authorised to accept service in that behalf.

Rule 15: Return of service

The serving officer, in all cases in which a document has been served, shall swear an affidavit of service stating the time when and the manner in which the document was served and the name and address of the person (if any) who identified the person served and witnessed the delivery or tendering of the document. The affidavit of service shall be in accordance with Form 2 of the First Schedule with such modifications as circumstances may require.

Rule 16: Examination of serving officer

On any allegation that a document has not been properly served, the Court may examine the serving officer on oath or cause him or her to be examined by a competent court of a Partner State, and may make such further inquiry in the matter as it thinks fit; and shall either declare that the document has been duly served or order such service as it thinks fit.

SECTION IV: APPEARANCE AND REPRESENTATION**Rule 17: Appearance and Representation**

- (1) A party to any proceedings in the Court may appear in person or by an agent and may be represented by an advocate.
- (2) The Counsel to the Community may appear and represent the Community or any of its institutions in any matter where the Community or any of its institutions is a party or where the Counsel thinks that such appearance is desirable.

- (3) A corporation or company may either appear by its director, manager or secretary, who is appointed by resolution under the seal of the corporation or the company, or may be represented by an advocate.
- (4) A person under legal disability may appear by guardian *ad litem*, or next friend as the case may be and may be represented by an advocate.
- (5) The advocate for a party shall file with the Registrar a certificate that he or she is entitled to appear before a superior court of a Partner State.
- (6) A representative of a party other than an advocate shall for purposes of this Rule file with the Registrar proof of his or her appointment as such representative.
- (7)
 - (a) Subject to any law by which any right or cause of action is extinguished by the death of a person, proceedings before the Court shall not abate upon the death of any party.
 - (b) Where the death of a party occurs during the continuance of proceeding, the legal representative shall take over the proceedings.
 - (c) Where no legal representative is appointed within a reasonable time, the surviving party may, with leave of the Court, proceed *ex parte*.

Rule 18: Change of advocate

A party may, change its advocate but shall within seven (7) days of the change, lodge with the Registrar notice of the change and shall serve a copy of such notice on each party.

SECTION V: COURT VACATION AND HOLIDAYS

Rule 19: Court vacations

- (1) The Court shall have a short and long vacation in every year. The vacations of the Court and the arrangements for business during vacation shall be determined by the President and shall be published in the Gazette.
- (2) No business shall be conducted during Court vacation, except the delivery of judgment and taxation of bill of costs but the President may upon an application, which must be accompanied by a certificate of urgency direct that a matter be heard during Court vacation.

Rule 20: Holidays

The official holidays of the Community shall be the official holidays of the Court.

PART B: INSTITUTION OF PROCEEDINGS IN THE FIRST INSTANCE DIVISION

SECTION VI: INTERLOCUTORY APPLICATIONS

Rule 21: Interlocutory applications

- (1) Subject to sub-rule (4) of this Rule, all applications to the First Instance Division shall be by motion, which shall state the grounds of the application.

- (1) No motion shall be heard without notice to the parties affected by the application. Provided, however, that the First Instance Division, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable injustice, may hear the motion and make any *ex parte* order upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Division deems just.
- (3) Upon making an *ex parte* order the First Instance Division shall set down the application for *inter partes* hearing within thirty (30) days of the *ex parte* order.
- (4) A notice of motion shall be substantially in the Form A in the Fourth Schedule.
- (5) Every formal application to the First Instance Division shall be supported by one or more affidavits of the applicant or of some other person or persons having knowledge of the facts.
- (6) An applicant may, with the leave of the First Instance Division or with the consent of the other party, lodge one or more supplementary affidavits. Application for such leave may be made informally.
- (7) The provisions of this rule shall not apply to:
 - (a) applications made in the course of a hearing, which may be made informally;
 - (b) applications made by consent of all parties, which may be made by letter.

Rule 22: Service of Notice of Motion

- (1) The notice of motion and copies of all affidavits shall be served on all affected parties not less than seven (7) days before the hearing.
- (2) Rules 14, 15 and 16 shall apply with necessary modifications to service of Notice of Motion.

Rule 23: Affidavits in reply

- (1) Any person served with a notice of motion under Rule 22 may lodge one or more affidavits in reply in not less than three (3) days before the day of hearing and shall as soon as practicable serve a copy or copies thereof on the applicant.
- (2) Any such person may, with the leave of the First Instance Division or with the consent of the applicant, lodge one or more supplementary affidavits. Application for such leave may be made informally.

SECTION VII: WRITTEN PROCEEDINGS

Rule 24: References

- (1) A reference by a Partner State, the Secretary General or any person under Articles 28, 29, 30 respectively of the Treaty shall be instituted by presenting to the Court an application.
- (2) An application under sub-rule (1) shall state:
 - (a) the name, designation, address and where applicable residence of the applicant;
 - (b) the designation, name, address and where applicable residence of the respondent;
 - (c) the subject-matter of the reference and a summary of the points of law on which the application is based;

- (d) where appropriate, the nature of any evidence offered in support;
- (e) where applicable the order sought by the applicant;
- (3) Where the reference seeks the annulment of an Act, regulation, directive, decision or action, the application shall be accompanied by documentary evidence of the same.
- (4) Where the reference is made by a body corporate the application shall be accompanied by documentary evidence of its existence in law.
- (5) The Registrar shall serve on every respondent named in the reference and on the Secretary General a notification of the reference and a copy of the application.

Rule 25: Disputes between the Community and its employees

- (1) A claim for determination of a dispute between the Community and its employees under Article 31 of the Treaty shall be instituted by presenting to the First Instance Division a statement of claim.
- (2) A statement of claim shall state:
 - (a) the name, designation, address and where applicable residence of the claimant;
 - (b) the designation, name, address and where applicable residence of the respondent;
 - (c) a concise statement of facts on which a claim is based and of the law applicable;
 - (d) the order sought.

Rule 26: Notification of statement of claim

- (1) Upon the filing of a claim or reference, the Registrar shall issue a notification in accordance with Form 1 of the First Schedule requiring the respondent to file a statement of defence,
- (2) A notification shall be signed by the Registrar or an officer authorised by the Court in that behalf and shall be sealed with the seal of the Court.
- (3) A notification shall be accompanied by a copy of the statement of claim.

Rule 27: Transmission of notification

- (1) Where the Court has issued a notification to a respondent, it may be delivered for service:
 - (a) to a sub-registry of the Court established in accordance with sub-rule 2 of Rule 6;
 - (b) to any person for the time being duly authorised by the Court or by the High Court or a court of equivalent jurisdiction of a Partner State;
 - (c) to an advocate; or
 - (d) to the High Court or a court of equivalent jurisdiction in the Partner State where the respondent resides with the request to effect the service.
- (2) A national court to which a request for service of notification is sent under sub-rule (1) (c) may upon receipt thereof proceed as if the notification had been issued by such national court, and shall then return the notification to the Court, together with the record if any of its proceedings with regard thereto.

- (3) No objection may be made to the service of a notification on the ground that the person who served the notification either was not authorised so to do or exceeded or failed to comply with his or her authority in any way.

Rule 28: Validity of Notification

- (1) A notification shall be valid for a period of three (3) months from the date of issue.
- (2) Where a notification has not been served on a respondent the Court may extend the validity of the notification from time to time if satisfied it is just to do so.
- (3) An Application for extension under sub-rule (2) shall be supported by an affidavit setting out the attempts to serve and their result, and the extension may be made without the advocate or claimant appearing in person.
- (4) Where after expiry of six (6) months from the issue of notification no application for extension of notification has been made under sub-rule (2) the Court may without notice dismiss the claim.

Rule 29: Substituted service

- (1) Where the Court is satisfied that for any reason the notification cannot be served in accordance with any of the preceding Rules, the Court may on application direct the notification to be served by affixing a copy thereof in some conspicuous place in the Court premises, and also upon some conspicuous part of the premises, if any, in which the respondent is known to have last resided or carried on business or worked for gain, or by advertisement in newspapers or in such other manner as the Court thinks fit.
- (2) Substituted service under sub-rule (1) shall be as effectual as if service had been made on the respondent personally.
- (3) Unless otherwise directed, where substituted service of notification is by advertisement, the advertisement shall be in accordance with Form 3 in the First Schedule with such variations as the circumstances require.

Rule 30: Response to reference

- (1) The respondent shall within forty-five (45) days after being served with a notification of the reference file a response stating the:
 - (a) name and address of the respondent;
 - (b) concise statement of facts and law relied on;
 - (c) nature of evidence in support where appropriate; and
 - (d) order sought by the respondent.
- (2) After the filing of a response to a reference the Registrar shall serve a copy thereof on the applicant.
- (3) Within forty-five (45) days after service under sub-rule 2 the applicant may file a reply to the response. A reply shall not repeat the party's contentions but shall be directed to bringing out the issues that still divide them.
- (4) The respondent may, within forty-five (45) days of service, respond to the reply of the applicant. A rejoinder shall not repeat the party's contentions but shall be directed to bringing out unresolved issues between the parties.

Rule 31: Defence and counter-claim

- (1) Within 30 days after being served with notification of the statement of claim, the respondent shall file a statement of defence with or without a counter-claim and serve a copy on the claimant.
- (2) A Statement of Defence shall state the:
 - (a) name and address of the respondent;
 - (b) concise statement of facts and law relied on;
 - (c) the nature of any evidence in support where appropriate; and
 - (d) order sought by the respondent.
- (3) A respondent who desires to make a counter-claim shall add it to the statement of defence. A counter-claim shall contain:
 - (a) an admission or denial of the facts stated in the claim;
 - (b) any additional facts if necessary and the law relied on;
 - (c) order sought.

SECTION VIII: THIRD PARTY AND INTERVENTION**Rule 32: Notice to third party**

- (1) Where a respondent claims as against any other person not already a party to the claim or reference (hereinafter called the third party):
 - (a) any contribution or indemnity; or
 - (b) any relief or remedy relating to or connected with the original subject-matter of the claim or reference and substantially the same as some relief or remedy claimed by the applicant or 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 applicant or claimant and the respondent but also as between the applicant or claimant and respondent and the third party or between any or either of them;

the respondent may, with leave of the Court, issue a notice (hereinafter called a third party notice) to that effect. Application for such leave shall be by *ex parte* motion supported by affidavit.

- (2) A copy of such third party notice shall be filed and served on the third party in accordance with the Rules relating to the service of a notification.
- (3) The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the Court, be filed within the time limited for filing the response, and shall be in accordance with Form 4 in the First Schedule with such variations as circumstances require. The third party notice shall be served with a copy of the claim.

- (4) A third party who has as against another person a claim referred to in sub-rule (1) may similarly apply to the Court for leave to issue a notice to such other person. The provisions of the preceding sub-rules shall also apply and the expressions “third party notice” and “third party” shall respectively apply to include every notice so issued and every person served with such notice.
- (5) The provisions of sub-rule (4) shall also apply to any subsequent person made a party to the claim or reference.

Rule 33: Default by third party

- (1) A third party intending to dispute a claim or reference shall, within thirty (30) days after being served with the third party notice, file a statement of defence stating if it disputes the original claim by the claimant or applicant or its own liability to the party who issued the third party notice or both.
- (2) A third party who does not file a response or defence within prescribed period shall be deemed to admit the validity of the reference or claim against the respondent and its own liability to contribute or indemnify the respondent as the case may be to the extent claimed in the third party notice.
- (3) Where a third party makes default in filing a response or defence, or in delivering any pleading and the respondent giving the notice suffers judgment by default, such respondent shall be entitled, after causing satisfaction of the judgment against himself to be entered upon the record, to judgment against the third party to the extent claimed in the third party notice. The Court may upon the application of the respondent pass such judgment against the third party before such respondent has satisfied the judgment against him or her: Provided that it shall be lawful for the Court to set aside or vary any judgment passed under this Rule upon such terms as may seem just.

Rule 34: Third party directions

Where a third party files a response or defence pursuant to the third-party notice, the Court shall on application of an applicant or claimant, or respondent or third party or on its own motion fix a date for the giving of directions and the Court may on such a date, if satisfied that there is a proper question to be tried as to the liability of the third party, order the question of such liability as between the third party and the respondent giving the notice, to be tried in such manner, at or after the trial of the case, as the Court may direct; and, if not so satisfied, may pass such judgment or make such order as the nature of the case may require.

Rule 35: Cross claims

- (1) A respondent who desires to claim against a co-respondent:
 - (a) to be entitled to contribution or indemnity; or
 - (b) to be entitled to any relief or remedy relating to or connected with the original subject-matter of the action which is 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 as some 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 the respondent and such other person or between any or either of them;

may, without leave of the Court, issue and serve on such other person a notice making such claim or specifying such question or issue.

- (2) The determination of such claim, question or issue shall follow the same procedure as if such other person were a third party under this Part.
- (3) Nothing contained in this Rule shall operate or be construed so as to prejudice the rights of the claimant against any respondent to the action.

Rule 36: Intervention

- (1) An application for leave to intervene under Article 40 of the Treaty shall be by notice of motion.
- (2) An application under sub-rule (1) shall contain:
 - (a) a description of the parties;
 - (b) the name and address of the intervener;
 - (c) a description of the claim or reference;
 - (d) the order in respect of which the intervener is applying for leave to intervene;
 - (e) a statement of the intervener's interest in the result of the case.
- (3) The application shall be served on each party who shall, within thirty (30) days, file a response.
- (4) If the Court is satisfied that the application is justified, it shall allow the intervention and fix a time within which the intervener may submit a statement of intervention and the Registrar shall supply to the intervener copies of the pleadings.
- (5) The intervener shall accept the case as it is at the time of intervention.
- (6) Where a request to intervene is granted, the decision of the Court in respect of the dispute or reference shall be binding upon the intervener in respect of the intervention.

SECTION IX: PLEADINGS

Rule 37: Facts not evidence to be pleaded

- (1) Subject to the provisions of this Rule and Rules 40, 41 and 42, every pleading shall contain a concise statement of material facts upon which the party's claim or defence is based not the evidence by which those facts are to be proved.
- (2) Without prejudice to sub-rule (1), the effect of any document or the purport of any conversation referred to in the pleading shall, if material, be briefly stated, but the precise words of the document or conversation shall not be stated, except in so far as those words are themselves material.
- (3) A party need not plead any fact if it is presumed by law to be true or the burden of disproving it lies on the other party, unless the other party has specifically denied that fact.

Rule 38: Matters to be specifically pleaded

- (1) Every pleading shall contain the necessary particulars of any claim, defence or other matter pleaded and without prejudice to the generality of the foregoing shall include—

- (a) particulars of any misrepresentation, fraud, negligence, (a) breach of trust, wilful default or undue influence on which the party pleading relies; and
 - (b) where a party pleading alleges any condition of the mind of any person, such as disorder or disability of mind, malice, fraudulent intention or other condition of the mind except knowledge, particulars of the facts on which the party relies.
- (2) A party shall plead every matter which—
- (a) is alleged to make the pleading of the opposite party not maintainable; or
 - (b) if not specifically pleaded, would take the opposite party by surprise; or
 - (c) raises issues of fact not arising out of the preceding pleading.
- (3) Subject to Rules 37 and 40, a party may in any pleading plead any matter which has arisen at any time, whether before or since the filing of the reference or statement of claim.

Rule 39: Annexures to pleadings

- (1) There shall be annexed to the original of every pleading certified copies of any relevant document in support of the contentions contained in the pleading.
- (2) If only parts of the documents are relevant, only such certified extracts as are necessary for the purpose of the pleading in question or for identifying the document need be annexed.
- (3) A list of all documents annexed to a pleading shall be furnished at the time the pleading is filed.

Rule 40: Departure

- (1) No party may, in any pleading, make an allegation of fact, or raise any new ground of claim, inconsistent with that party's previous pleading in the same case.
- (2) Sub-rule (1) shall not prejudice the right of a party to amend or apply for leave to amend any previous pleading.

Rule 41: Points of law

A party may by pleading raise any point of law.

Rule 42: Particulars of pleadings

- (1) The Court may order a party to supply to any other party better or further particulars of any application, claim, defence or other matter stated in its pleading, and the order may be made on such terms as the Court thinks just.
- (2) An order under this Rule shall not be made before the filing of the defence unless the order is necessary or desirable to enable the respondent to plead or for some other special reason.

Rule 43: Admissions and denials

- (1) Any allegation of fact made by a party in a pleading shall be deemed to be admitted by the opposite party unless it is denied by the opposing party in the pleading.

- (2) A denial may be made either by specific denial or by a statement of non-admission and either expressly or by necessary implication.
- (3) Every allegation of fact made in a pleading which is not admitted by the opposite party shall be specifically denied by that party; and a general denial or a general statement of non-admission of such allegation shall not be a sufficient denial.

Rule 44: Denials by joinder of issues

- (1) If there is no reply to a response or defence, there is a joinder of issues.
- (2) Subject to sub-rule (3)—
 - (a) there is, at the close of pleadings, a joinder of issues on the pleading last filed; and
 - (b) a party may, in his or her pleading, expressly join issue on the immediately preceding pleading.
- (3) There can be no joinder of issues on an application, claim or counterclaim.
- (4) A joinder of issues operates as a denial of every material, allegation of fact made in the pleading in question except what is stated to be admitted

Rule 45: Closure of pleadings

The pleadings, in any case, shall be closed fourteen (14) days after service of the reply, or, if no reply is served, fifteen (15) days after service of the response or defence or the defence to a counterclaim.

Rule 46: No filing after close of pleadings

- (1) After the close of the written proceedings, no further documents may be submitted to the Court by either party except with leave of the Court.
- (2) The party desiring to produce a document after closure of pleadings shall deposit, at the registry, the original or a certified copy thereof and shall be responsible for serving a copy thereof to the other party and shall file a return of service in the registry. The other party shall be held to have given its consent if it does not lodge an objection to the production of the document within seven (7) days of service.
- (3) In the event of objection, the Court may, after hearing the parties, authorise production of the document if it considers production necessary.
- (4) If a new document is produced under this Rule, the other party shall have an opportunity of commenting upon it and of submitting documents in support of its comments.
- (5) No party may, during the oral proceedings, refer to the contents of any document which was not produced as part of the written proceedings or in accordance with this Rule.
- (6) The application of this Rule shall not in itself constitute a ground for delaying the opening or the course of the oral proceedings.

Rule 47: Striking out pleadings

- (1) The Court may, on application of any party, strike out or expunge all or part of a pleading or other document, with or without leave to amend, on the ground that the pleading or other document:

- (a) may prejudice or delay the fair trial of the case; or
- (b) is scandalous, frivolous or vexatious; or
- (c) is an abuse of the process of the Court.

(2) An application under this Rule shall state concisely the grounds on which it is made.

SECTION X: AMENDMENT OF PLEADINGS

Rule 48: General power to amend

For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any pleading, a party may amend its pleading:

- (a) without leave of the Court, before the close of pleadings;
- (b) with the consent of all parties, and where a person is to be added or substituted as a party, that person's consent; or
- (c) with leave of the Court.

Rule 49: Amendment without leave

- (1) A party that amends its pleading under paragraph (a) or (b) of Rule 48, shall lodge the original of the amended version of the pleading in the registry, and shall forthwith serve a copy thereof on every other party.
- (2) Where a party is served with an amended pleading, after it has filed its answer it may, without leave of the Court, amend its own answer to the pleading which is being amended, and shall lodge it in the registry within fourteen (14) days after being so served.

Rule 50: Amendment with leave

- (1) The Court may, at any stage of the proceedings, allow any party to amend its pleadings in such manner as it may direct and on such terms as to costs or otherwise as may be just.
- (2) The Court may, in the following circumstances, grant such leave to amend notwithstanding that any relevant period of limitation current at the date of instituting the case has expired, if it thinks it is just so to do:
 - (a) where the amendment is to correct the name of a party even if it has the effect of substituting a new party, if the Court is satisfied that the mistake sought to be corrected was a genuine mistake;
 - (b) where the amendment is to alter the capacity in which the party is or is made party to the proceedings, if the altered capacity is one which that party could have been or been made party at the institution of the proceedings;
 - (c) where the amendment adds or substitutes a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed by the party seeking leave in the same case.

- (3) Whenever a formal application is made to the Court for leave to amend any pleading, the amendment for which leave is sought shall be set out in writing, lodged with the Registrar and served on the opposite party before the hearing of the application.
- (4) Where the Court grants leave for the amendment of any pleading, the amendment shall be made or be lodged within the time specified by the Court and if no time is so specified then within fourteen (14) days of the granting of leave.
- (5) Where any person obtains leave to amend a pleading, the pleading itself may be amended or, an amended version of the pleading may be lodged.
- (6) A party amending a pleading shall highlight any words or figures added to the original.
- (7) Every pleading and other document amended under this Part shall be endorsed with the date of the amendment and either the date of the order allowing the amendment or, if made without leave, the number of the Rule in pursuance of which the amendment was made.

SECTION XI: WITHDRAWAL AND DISCONTINUANCE

Rule 51: Withdrawal and discontinuance

- (1) An applicant or a claimant may discontinue its reference or claim against all or any of the respondents or may withdraw any part of the reference or claim; and the respondent may in similar manner discontinue or withdraw its counter-claim:
 - (a) without leave of the Court at any time before a date for opening oral proceedings is fixed, by lodging in the registry a notice to that effect and serving a copy thereof on all the respondents;
 - (b) with leave of the Court or with written consent of all parties after a date for opening oral proceedings has been fixed.
- (2) The parties may agree in writing the terms of any such withdrawal or discontinuance and lodge such agreement in the registry. In the absence of such agreement the Court may order such terms as to costs, the filing of any other reference or claim, and otherwise as the Court considers just.

Rule 52: Compromise

Where it is proved to the satisfaction of the Court that a dispute or reference has been adjusted wholly or in part by any lawful agreement or compromise, the Court shall, on the application of any party, direct that such agreement, compromise or satisfaction be recorded and shall enter judgment accordingly.

SECTION XII: ORAL PROCEEDINGS

XII (a) PRE-TRIAL PROCEEDINGS IN THE FIRST INSTANCE DIVISION

Rule 53: Scheduling conference

- (1) The First Instance Division shall, within fourteen (14) days after the close of pleadings or such other period as the Principal Judge may direct, hold a scheduling conference to ascertain:

- (a) points of agreement and disagreement,
 - (b) the possibility of mediation, conciliation 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,
 - (f) any other matters as the Division may deem necessary,
- (2) If the case has good potential for settlement, the Division shall direct that the case proceeds to mediation or other form of settlement.
- (3) If the matter is to proceed to hearing the Division shall fix the date for commencement of hearing.
- (4) In any case where there is no need for evidence and all parties opt to present legal arguments in writing, the Division shall prescribe the time within which the parties shall file their respective written legal arguments and may fix the date on which the parties shall appear before a bench of three judges to deal with any other matter the Division thinks necessary.

Rule 54: Alternative dispute resolution

- (1) Mediation or any other form of settlement shall be conducted by the Judge who presides over a scheduling conference and shall be in accordance with guidelines set out in the Fifth Schedule. The mediation or any other form of settlement shall be completed within twenty one (21) days after commencement; provided that the judge may extend the time for a period not exceeding fifteen (15) days on application by the parties, showing sufficient reasons for the extension.
- (2) Where mediation or other form of settlement succeeds, the Court shall record the settlement order.
- (3) Where the mediation or other form of settlement fails, the matter shall proceed to trial.

Rule 55: Fixing the date for oral proceedings

- (1) The Court shall, prior to the opening of the oral proceedings, meet in chambers to enable judges to exchange views concerning the written pleadings and the conduct of the case.
- (2) The Court shall, wherever possible, fix the date for the opening of the oral proceedings to take place within a period not exceeding six (6) months from the close of pleadings unless the Court is satisfied that there is adequate justification for deciding otherwise.
- (3) The Court shall, when fixing the date for the opening of the oral proceedings or postponing the opening or continuance of such proceedings, have regard to:
- (a) the need to hold the hearing without unnecessary delay;
 - (b) any special circumstances, including the urgency of the case or other cases on the list of cases;
 - (c) the views expressed by the parties; and
 - (d) the need to administer substantive justice without undue regard to technicalities.

- (4) After the date for opening of oral proceedings is fixed, the Registrar shall issue a notice of hearing stating the date and place of hearing, and cause it to be served on the parties.
- (5) A notice of hearing under this Rule shall be in accordance with Form 5 in the First Schedule.

XII (b) WITNESSES

Rule 56: Summoning witnesses

- (1) Any party in a claim or reference may obtain on application to the Court, summons to any person whose attendance is required either to give evidence or to produce documents.
- (2) Every witness summons shall specify the time and place of attendance, and whether attendance is required for the purpose of giving evidence or to produce a document, or for both purposes. The summons shall describe with reasonable accuracy the document required.
- (3) The Court may on its own motion summon any person to give evidence or to produce any document if in the opinion of the Court such evidence or document is essential for the just determination of any matter before it.
- (4) Where a person summoned to give evidence or produce a document fails to appear or refuses to give evidence or to produce the document the Court may in its discretion impose upon the witness a pecuniary penalty not exceeding USD 200.
- (5) A penalty imposed under this Rule shall be enforceable as an order in accordance with Article 44 of the Treaty.
- (6) Summons under this Rule shall be in accordance with Form 6 in the First Schedule and shall be served in the manner prescribed for service of notification.

Rule 57: Expenses of witnesses

- (1) A party calling a witness shall be responsible for the witness's expenses.
- (2) A party applying for summons shall, before the summons is issued, pay into Court such sum of money as appears to the Registrar to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court, and for one day's attendance.
- (3) In the case of any person summoned to give evidence as an expert, the Registrar may allow reasonable remuneration for the time spent both in giving evidence and in performing any work on the case.
- (4) Where it is proved to the satisfaction of the Registrar that the money deposited into Court to cover such expenses or reasonable remuneration is insufficient, the Registrar may require the party who applied for the summons to pay such further sum which appears to be necessary on that account.
- (5) In case of default in payment of further sum under sub-rule (4), the Court may order such sum to be levied by attachment and sale of the movable property of the defaulting party; or the Court may discharge the person summoned without requiring him or her to give evidence; or may both order such levy and discharge such person as aforesaid.
- (6) The expenses of the witness appearing before the Court under sub-rule (3) of Rule 56 shall be borne by the Court.

Rule 58: Commission to examine witnesses

- (1) The Court may issue a commission or letter of request for the examination, on interrogatories or otherwise, of any person resident within the limits of its jurisdiction who is from sickness or infirmity unable to attend Court.
- (2) The Court may issue a commission for the examination of:
 - (a) any person resident beyond the local limits of its jurisdiction;
 - (b) any person who is about to leave such limits before the date on which he or she is required to be examined in Court;
 - (c) any civil or military officer of a Government of any Partner State, or any servant of the Community who in the opinion of the Court cannot attend without detriment to the public service.
- (3) Where application is made for issue of a commission or letter of request for the examination of a person residing outside the jurisdiction of the Court, the Court must be satisfied that the evidence of such person is necessary, before issuing such commission or letter of request.
- (4) Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court, and the commission and the return thereto and the evidence taken under it shall form part of the record of the proceedings.
- (5) Before issuing any commission, the Court may order such sum as it thinks reasonable for the expenses of the commission, to be paid into the Court within a fixed time by the party at whose instance or for whose benefit the commission is issued.

XII (c) TRIAL PROCEEDINGS**Rule 59: Quorum of the Court**

- (1) The quorum for the First Instance Division shall be three (3) Judges, one of whom shall be the Principal Judge or Deputy Principal Judge:

provided that having regard to the public importance of the matter or to any conflict or other complexity in the law applicable, the Principal Judge or on application by any party, the Court may direct such matter to be heard and determined by a full bench of the Division.
- (2) The following interlocutory matters may be dealt with and determined by a single judge:
 - (a) application for extension of time prescribed by these Rules;
 - (b) application for extension of validity of notification;
 - (c) application for an order for substituted service;
 - (d) application for examining serving officer;
 - (e) application for leave to amend pleadings;
 - (f) Scheduling conference.

- (3) A party dissatisfied with a decision of a single judge may apply orally to the judge at the time when the decision is given, or by writing to the Registrar within seven (7) days after a decision of the judge to have the order, direction or decision of a single judge varied, discharged or reversed by full Court.
- (4) At the hearing by the full Court of an application previously decided by single judge, no additional evidence shall be adduced except with the leave of that court.

Rule 60: Proceedings to be held in open Court

- (1) All proceedings of the Court, including the pronouncement of the decision of the Court, shall be held in open Court.
- (2) The Court, on application by any party or on its own motion, may, for sufficient cause, order the proceedings to be held in camera. The proceedings heard in camera shall be recorded but shall not be published.
- (3) Applications before a single judge under sub-rule (2) of Rule 59 may be heard in chambers or in open Court as the judge may deem fit.

Rule 61: Hearing and consequence of non-attendance

- (1) If on the day fixed for hearing, neither party attends, the Court may dismiss the claim or application or make such other order as it thinks fit.
- (2) If on the day fixed for hearing the claimant or applicant does not appear and the respondent appears, the claim or application may be dismissed and any counterclaim may proceed, unless the Court sees fit to adjourn the hearing. Where the claim or application is so dismissed or a counterclaim so proceeds, the Court may, on application by the claimant or applicant, restore the claim or the application for hearing and may re-hear the counterclaim, if satisfied that the claimant or applicant was prevented by sufficient cause from appearing.
- (3) If on the day fixed for hearing the respondent does not appear and the claimant or applicant appears, the hearing may proceed in the absence of the respondent and any counterclaim may be dismissed unless the Court sees fit to adjourn the hearing. Where the claim or application so proceeds and/or the counterclaim is dismissed the Court may on the application of the respondent rehear the claim or application or restore the counter-claim for hearing if satisfied that the respondent was prevented by sufficient cause from appearing.
- (4) Any *ex parte* judgment or order made under sub-rule (2) or (3) shall be set aside when the Court orders that a claim, counterclaim or application be restored for hearing or be reheard.
- (5) Where under sub-rule (2) or (3) a claim, counterclaim or application is dismissed and an application for its restoration is disallowed, no fresh claim, counterclaim or application may be brought upon the same cause of action.
- (6) An application for restoration under sub-rule (2) or (3) shall be made within thirty (30) days of the decision of the Court.

Rule 62: Right to begin

- (1) The claimant shall have the right to begin unless the respondent admits facts alleged by the claimant and contends that either in point of law or on some additional facts alleged by the respondent the claimant is not entitled to any part of the relief he or she seeks, in which case the respondent shall have the right to begin.

- (2) Where there are several issues, and there is a dispute as to which party is to begin, the Court shall direct the party on which the greater burden of proof lies to begin.

Rule 63: Statement and production of evidence

- (1) At the hearing the party having the right to begin shall state its case and produce evidence in support of the issues which it is bound to prove. The other party shall then state its case and produce evidence, and may then address the Court generally on the case. The party beginning may reply.
- (2) Where, after the party beginning has produced its evidence the other party does not produce any evidence, the party beginning shall address the Court first on the case, and the other party shall then address the Court in reply. The Court may then allow the party beginning to comment on a new point raised in the address by the other party.
- (3) A party may present its legal arguments in writing.

Rule 64: Oath or affirmation

A witness shall before giving evidence take an oath or affirmation in accordance with Form 7 in the First Schedule.

Rule 65: Taking and recording of evidence

- (1) The evidence of every witness shall be given orally in Court and shall be recorded by the official Court recorder. The record of each hearing shall be signed by the Principal Judge or Deputy Principal Judge and shall be kept and maintained by the Registrar.
- (2) The Court may, at any stage of the hearing, on application by any party or on its own motion, recall any witness who has given evidence, to be further examined as the Court thinks fit.

Rule 66: Adjournments

- (1) Hearing of evidence shall continue from day to day until all the witnesses in attendance have been examined unless the Court finds it necessary to adjourn for reasons to be recorded.
- (2) Where, on any day to which the hearing is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the case in one of the modes set out in Rule 61.
- (3) Where any party to whom time has been granted fails to produce evidence or to cause the attendance of its witness, or to perform any other act necessary to the further progress of the case, the Court may, notwithstanding such failure, proceed to determine the dispute or reference forthwith.

Rule 67: List of authorities and copies of judgments to be referred to

- (1) A party who intends at the hearing to rely on any judgment in a decided case or to quote from any book shall lodge with the Registrar, a list containing the citations of such judgments, titles, authors and editions of such books and shall serve a copy of such list on the other party or on the other parties separately represented and shall annex to the list electronically produced copies of such judgments and relevant parts of the books. The party shall serve on each other party separately represented copy of the list and annexures.

- (2) The list and its annexures shall be in seven (7) copies, and shall be lodged at least seven (7) days before the hearing;

provided that a supplementary list and copies of authorities may, when necessary, be produced at the time of the hearing.

SECTION XIII: JUDGMENT AND ORDERS

Rule 68: Pronouncement and contents of judgment

- (1) Judgment shall be delivered within sixty (60) days from the conclusion of the hearing except where the Court is unable to do so.
- (2) At the close of the hearing the Court may give its judgment at once or on some future date which may be appointed then or subsequently notified to the parties.
- (3) The Court may, in any particular case, direct that only the decision of the Court and not the reasons for it shall be delivered in Court. The reasons for judgment shall be given on a date to be notified by the Registrar to the parties.
- (4) One judgment shall be given as the judgment of the Court and shall be signed by the judges who participated in it, but a judge who dissents shall not be required to sign the judgment and may, in his discretion, write a dissenting judgment. The same applies to an order other than one made by a single judge.
- (5) The judgment of the Court shall contain:
 - (a) the date on which it is read,
 - (b) the names of the judges participating in it,
 - (c) the names of the parties,
 - (d) the names of the advocates and agents of the parties,
 - (e) a concise statement of the facts,
 - (f) the points for determination,
 - (g) the decision arrived at,
 - (h) the reasons for such decision,
 - (i) The operative part of the judgment, including the decision as to costs.
- (6) The judgment of the Court and dissenting judgment if any, shall be sealed with the seal of the Court and shall be deposited in the registry. The Registrar shall provide the parties with certified copies of the judgment.

Rule 69: Contents of an order

- (1) Every decision of the Court shall be embodied in an order.
- (2) An order referred to in sub-rule (1) shall be dated as of the date the decision was delivered and shall contain particulars of the case and specify clearly the relief granted or other determination of the case including costs.

Rule 70: Correction of judgments and orders

- (1) Clerical or arithmetical mistakes in any judgment of the Court or any error arising in it from accidental slip or omission, may at any time whether before or after the judgment has been embodied in an order be corrected by the Court either of its own motion or on the application of any of the parties so as to give effect to what the intention of the Court was when judgment was given.
- (2) An order of the Court may at any time be corrected by the Court either of its own motion or on the application by any interested person if it does not correspond with the judgment it purports to embody or, where the judgment has been corrected under sub-rule (1) with the judgment as corrected.
- (3) Every party shall be given an opportunity to be heard before the Court makes corrections under sub-rule (1) or (2).

Rule 71: Publication

Judgments of the Court may be published in law reports.

Rule 72: Review of judgment

- (1) An application for review of a judgment under Article 35 of the Treaty shall be made in accordance with this Rule.
- (2) A party who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within its knowledge or could not be produced by it at the time when the judgment was passed or the order made, or on account of some mistake, fraud or error apparent on the face of the record, or because an injustice has been done, desires to obtain a review of the judgment or order, may apply to the Court for review of the judgment without unreasonable delay.
- (3) The Court shall grant an application for review only where the party making the application under sub-rule (2) proves the allegations relied upon to the satisfaction of the Court.
- (4) When an application for review is granted, the Court may re-hear the case or make such other order as it thinks fit.

A decision made by the Court on an application for review shall be final.

Rule 73: Interim orders and directions

- (1) Pursuant to the provisions of Article 39 of the Treaty, the Court may in any case before it upon application supported by affidavit issue interim orders or directions which it considers necessary and desirable upon such terms as it deems fit.
- (2) The Court on application of any party may grant an *ex-parte* interim order if satisfied that it is just to do so. Upon granting an *ex-parte* interim order the Court shall fix a date within a period not exceeding thirty (30) days for the hearing of the application *inter-partes*.
- (3) An *ex-parte* order under sub-rule (2) shall be granted only once and shall not be extended.
- (4) The Court may for sufficient cause discharge, vary or set aside an interim order granted under sub-rule (1) or sub-rule (2) on application of any party.

- (5) A person who disobeys or breaches any terms of an interim order shall be cited for contempt of Court.

Rule 74: Execution of judgments

- (1) A party who wishes to execute an order of the Court in accordance with Article 44 of the Treaty shall make an application for an execution order in accordance with Form 8 in the First Schedule.
- (2) Where a judgment of the Court imposes a pecuniary obligation on a person its execution shall be governed by the Rules of civil procedure in the Partner State in which the execution is to take place.
- (3) The order for execution shall be appended to the copy of the judgment verified by the Registrar and thereupon, the party in whose favour execution is to take place, may initiate execution proceedings.

PART C: PROCEEDINGS IN APPELLATE DIVISION

SECTION XIV: ADVISORY OPINION

Rule 75: Advisory opinion of the Court

- (1) A request for an advisory opinion under Article 36 of the Treaty shall be lodged in the Appellate Division and shall contain an exact statement of the question upon which an opinion is required and shall be accompanied by all relevant documents likely to be of assistance to the Division.
- (2) Upon the receipt of the request under sub-rule (1) the Registrar shall immediately give notice of the request to all the Partner States and the Secretary General.
- (3) The Division may identify any person likely to furnish information on the question and shall direct the Registrar to give notice of the request to such person.
- (4) The Registrar shall in the notice given under sub-rule (2) and (3) invite the Partner States, Secretary General and such other person to present written statements on the question within the limit stated in the notice.
- (5) Upon receiving written statements the Registrar shall send a copy of each such written statement to the parties mentioned in sub-rule (4) for comments if any.
- (6) The Division shall decide whether oral proceedings shall be held and if so shall fix the date for such proceedings and invite the parties mentioned in sub-rule (4) to make oral presentations.
- (7) Provision of sub-rules (4) and (5) of Rule 68 shall apply to advisory opinion under this Rule with necessary modifications.
- (8) The Division shall deliver its advisory opinions in open court, notice having been given to the Partner States and to the Secretary General.

SECTION XV: CASE STATED

Rule 76: Preliminary rulings

- (1) A request by a national court or tribunal of a Partner State concerning the interpretation or application of the provisions of the Treaty or validity of any regulations, directives, decisions or actions of the Community pursuant to Article 34 of the Treaty shall be lodged in the Appellate Division by way of a case stated.

- (2) A case stated shall specify the question raised and the issues to be determined.
- (3) The Court as soon as it has reached a decision shall communicate it to the national court or tribunal concerned.

SECTION XVI: INSTITUTION OF APPEAL

Rule 77: Appeals

An appeal from the judgment or any order of the First Instance Division shall lie to the Appellate Division on:

- (a) points of law;
- (b) grounds of lack of jurisdiction; or
- (c) procedural irregularity.

Rule 78: Notice of Appeal

- (1) Any person who desires to appeal to the Appellate Division shall lodge a written notice in duplicate in the registry of the First Instance Division.
- (2) Every notice shall, subject to the provisions of Rule 82 be so lodged within thirty (30) days of the date of the decision against which it is desired to appeal.
- (3) Every notice of appeal shall state whether it is intended to appeal against the whole or part only of the decision and where it is intended to appeal against part only of the decision, shall specify the part complained of, shall state the address for service of the appellant and shall state the names and addresses of all persons intended to be served with copies of the notice.
- (4) When an appeal lies only with leave or on a certificate that a point of law is involved, it shall not be necessary to obtain the leave or the certificate before lodging the notice of appeal.
- (5) Where it is intended to appeal against a decree or order, it shall not be necessary that a decree or order be extracted before lodging a notice of appeal.
- (6) A notice of appeal shall be substantially in the Form B in the Sixth Schedule to these Rules and shall be signed by or on behalf of the appellant.

Rule 79: Service of notice of appeal

- (1) An intended appellant shall, within fourteen (14) days after lodging a notice of appeal, serve copies of it on all persons who seem to him to be directly affected by the appeal; but the Court may, on an *ex parte* application, direct that service need not be effected on any person who took no part in the proceedings in the First Instance Division.
- (2) Where any person required to be served with a copy of a notice of appeal gave any address for service in or in connection with the proceedings in the First Instance Division, and has not subsequently given any other address for service, the copy of the notice of appeal may be served on him at that address, notwithstanding that it may be that of an advocate who has not been retained for the purpose of an appeal.

Rule 80: Respondent to give address for service

- (1) Every person on whom a notice of appeal is served shall, within fourteen (14) days after service on him of the notice of appeal:
 - (a) lodge in the appropriate registry and serve on the intended appellant notice of a full and sufficient address for service; and
 - (b) serve a copy of the notice of address for service on every other person named in the notice of appeal as a person intended to be served.
- (2) A notice of address for service shall be substantially in the Form D in the Sixth Schedule to these Rules and shall be signed by or on behalf of the person lodging it.
- (3) The lodging and service of an address for service shall not operate or be construed as an admission that the appeal is competent or as a waiver of any irregularity.

Rule 81: Application to strike out notice of appeal or appeals

A person on whom a notice of appeal has been served may at any time, either before or after the institution of the appeal, apply to the Court to strike out the notice or the appeal, as the case may be on the ground that no appeal lies or that some essential step in the proceedings has not been taken or has not been taken within the prescribed time.

Rule 82 Effect of failure to institute appeal

If a party who has lodged a notice of appeal fails to institute an appeal within the prescribed time:

- (a) he shall be deemed to have withdrawn his notice of appeal and shall, unless the Court orders otherwise, be liable to pay the costs of any persons on whom the notice of appeal was served arising from that failure to institute the appeal;
- (b) any person on whom the notice of appeal was served shall be entitled to give notice of appeal notwithstanding that the prescribed time has expired, if he does so within fourteen (14) days of the date by which the party who lodged the previous notice of appeal should have instituted his appeal.

Rule 83: Applications to First Instance Division or Appellate Division

Whenever application may be made either to the First Instance Division or to the Appellate Division, it shall in the first instance be made to the First Instance Division unless specific rules provide otherwise.

Rule 84: Form of application to Court

- (1) Subject to the provisions of sub-rule (3) and to any other rule allowing informal application, all applications to the Court shall be by motion, which shall state the grounds of the application.
- (2) A notice of motion shall be substantially in the Form A in the Sixth Schedule to these Rules and shall be signed by or on behalf of the applicant.
- (3) The provisions of this Rule shall not apply—
 - (a) to applications made in the course of hearing, which may be made informally; or
 - (b) to applications made by consent to all parties, which may be made informally by letter.

Rule 85 Supporting documents

- (1) Every formal application to the Court shall be supported by one or more affidavits of the applicant or of some other person or persons having knowledge of the facts.
- (2) An applicant may, with the leave of a Judge or with the consent of the other party, lodge one or more supplementary affidavits, and an application for such leave may be made informally.

Rule 86: Institution of appeals

- (1) Subject to the provisions of Rule 119, an appeal shall be instituted by lodging in the appropriate registry, within thirty (30) days of the date when the notice of appeal was lodged—
 - (a) a memorandum of appeal, in quintuplicate;
 - (b) the record of appeal, in quintuplicate;
 - (c) the prescribed fee; and
 - (d) security for the costs of appeal,save that where an application for a copy of the proceedings in the First Instance Division has been made within thirty (30) days of the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted be excluded such time as may be certified by the Registrar of the First Instance Division as having been required for the preparation and delivery to that copy of the appellant.
- (2) An appellant shall not be entitled to rely on the exception to sub-rule (1) unless his application for the copy was in writing and a copy of it was served on the respondent, and the appellant has retained proof of that service.

Rule 87: Contents of memorandum of appeal

- (1) A memorandum of appeal shall set forth concisely and under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against, specifying the points which are alleged to have been wrongly decided, and the nature of the order which it is proposed to ask the Court to make.
- (2) The grounds of objection shall be numbered consecutively.
- (3) A memorandum of appeal shall be substantially in the Form C in the Sixth Schedule to these Rules and signed by or on behalf of the appellant.

Rule 88: Contents of record of appeal

- (1) The record of appeal shall, subject to the provisions of sub-rule (3), contain copies of the following documents—
 - (a) an index of all the documents in the record with the numbers of the pages at which they appear;
 - (b) a statement showing the address for service of the appellant and the address for service furnished by the respondent and, as regards any respondent who has not furnished an address for service as required by Rule 80, his last known address and proof of service on him of the notice of appeal;

- (c) the pleadings;
 - (d) the affidavits read and all documents put in evidence at the hearing, or, if such documents are not in the English language, their certified translations;
 - (e) the judgment or reasoned order;
 - (f) the decree or order ;
 - (g) the notice of appeal;
 - (h) the record of proceedings;
 - (i) such other documents; if any, as may be necessary for the proper determination of the appeal, including any interlocutory proceedings which may be directly relevant, save that the copies referred to in paragraphs, (c) and (d) shall exclude copies of any documents or any of their parts that are not relevant to the matters in controversy on the appeal.
- (2) The documents mentioned in sub-rule (1) shall be bound in the order in which they are specified in that sub-rule. Documents produced in evidence shall be put in order of the dates they bear or, where they are undated, the dates when they are believed to have been made, without regard to the order in which they were produced in evidence; but an affidavit filed in support of a notice of motion shall be bound immediately following summons or notice, as the case may be.
- (3) Each copy of the record of appeal shall be certified to be correct by the appellant or by any person entitled under Rule 17 to appear on his behalf.

Rule 89: Service of memorandum and record of appeal

- (1) The appellant shall, within seven (7) days after lodging the memorandum of appeal and the record of appeal in the appropriate registry, serve copies of them on each respondent who has complied with the requirements of Rule 80.
- (2) The appellant shall also serve copies of the memorandum of appeal and the record of appeal on such other parties to the original proceedings as the Court may at any time on application or of its own motion direct and within such time as the Court may prescribe.

Rule 90: Supplementary record

- (1) If a respondent is of opinion that the record of appeal is defective or insufficient for the purposes of his case, he may lodge in the registry four (4) copies of a supplementary record of appeal containing copies of any further documents or any additional parts of documents which are, in his opinion, required for the proper determination of the appeal.
- (2) The respondent shall as soon as practicable after lodging a supplementary record of appeal, serve copies of it on the appellant and on each other respondent who has complied with the requirements of Rule 80.
- (3) An appellant may at any time lodge in the registry four (4) copies of a supplementary record of appeal and shall as soon as practicable after doing so serve copies of it on every respondent who has complied with the requirement of Rule 80.

- (4) A supplementary record of appeal may be lodged to cure defects in the original record of appeal due to want of compliance with Rule 89 of these Rules.
- (5) A supplementary record of appeal shall be prepared as nearly as may be in the same manner as record of appeal.

Rule 91: Notice of cross-appeal

- (1) A respondent who desires to contend at the hearing of the appeal that the decision of the First Instance Division or any part of it should be varied or reversed, either in any event or in the event of the appeal being allowed in whole or in part, shall give notice to that effect, specifying the grounds of his contention and the nature of the order which he proposes to ask the Appellate Division to make, or to make in that event as the case may be.
- (2) A notice given by a respondent under this Rule shall state the names and addresses of any persons intended to be served with copies of the notice and shall be lodged in quadruplicate in the appropriate registry not more than thirty (30) days after service on the respondent of the memorandum of appeal and the record of appeal.
- (3) A notice of cross-appeal shall be substantially in the Form E in the Sixth Schedule to these Rules and shall be signed by or on behalf of the respondent.

Rule 92: Notice of grounds for affirming decision

- (1) A respondent who desires to contend on an appeal that the decision of the First Instance Division should be affirmed on grounds other than or additional to those relied upon by that court shall give notice to that effect, specifying the grounds for his contention.
- (2) A notice given by the respondent under this Rule shall state names and addresses of any persons intended to be served with copies of the notice and shall be lodged in quadruplicate in the appropriate registry not more than thirty (30) days after service on the respondent of the memorandum of appeal and the record of appeal.
- (3) A notice of grounds for affirming a decision shall be substantially in the Form F in the Sixth Schedule to these Rules and shall be signed by or on behalf of the respondent.
- (4) A respondent who desires to contend at the hearing of the appeal that part of the decision of the First Instance Division should be varied or reversed and that part of that decision should be affirmed on grounds other than or additional to those relied upon by that court may include both contentions in a notice of cross-appeal under Rule 92 and shall not be required to give notice also under this Rule.
- (5) The provisions of sub-rules (1), (2) and (3) of this Rule shall apply *mutatis mutandis* to an appellant who desires to contend in opposition to a cross-appeal that the decision of the First Instance Division should be affirmed on grounds other than or additional to those relied on by that court.

Rule 93: Service of notice of cross-appeal or notice of grounds for affirming decision

- (1) A respondent who intends to cross-appeal or to contend that a decision of the First Instance Division should be affirmed on grounds other than those relied on by that court shall, within seven (7) days after lodging his notice of cross-appeal or notice of grounds for affirming the decision, as the case may be, serve a copy of it on all other persons directly affected by the cross-appeal or by the appeal, as the case may be.

- (2) The respondent shall also serve copies of the notice of cross-appeal or notice of grounds for affirming the decision, as the case may be, on such other parties to the original proceedings as that court may, at any time, on application or of its own motion, direct and within such time as the court may prescribe.

Rule 94: Withdrawal of appeal

- (1) An appellant may at any time after instituting his appeal and before the appeal is called on for hearing lodge in the appropriate registry a written notice that he does not intend further to prosecute the appeal.
- (2) The appellant shall, within seven (7) days after lodging the notice of withdrawal, serve copies of it on each respondent who has complied with the requirements of Rule 80.
- (3) If all the parties to the appeal consent to the withdrawal of the appeal, the appellant may lodge in the appropriate registry the document or documents signifying the consent of the parties and thereupon the appeal shall be struck out of the list of pending appeals.
- (4) If all the parties to the appeal do not consent to the withdrawal of the appeal, the appeal shall stand dismissed with costs, except as against any party who has consented, unless the court, on the application of the appellant, otherwise orders.
- (5) An application under sub-rule (4) of this Rule shall be made within fourteen (14) days after the lodging of the notice of withdrawal.

Rule 95: Rights of respondent when appeal is withdrawn

- (1) If an appeal is withdrawn under Rule 94 of these Rules after notice of cross-appeal has been given, the respondent who gave the notice may withdraw it within fourteen (14) days after the service on him of the notice of withdrawal.
- (2) If it is not withdrawn, the cross-appeal shall proceed to hearing, and these Rules shall apply as if the cross-appellant were an appellant and the appellant a respondent.
- (3) If an appeal is withdrawn under Rule 94 of these Rules within fourteen (14) days after the date when the appeal was instituted, any respondent who has not lodged a notice of cross-appeal is entitled to give notice of appeal notwithstanding that the time prescribed by Rule 78 of these Rules has expired, if he does so within fourteen (14) days after the date when the appellant's notice of withdrawal was served on him.

Rule 96: Withdrawal of cross-appeal or of grounds for affirming decision

- (1) A respondent who has given notice of cross-appeal or notice of grounds for affirming the decision of the First Instance Division may withdraw it at any time before the appeal is called on for hearing by lodging in the appropriate registry a written notice to that effect, signed by him or on his behalf.
- (2) The respondent shall, before or as soon as practicable after lodging the notice of withdrawal, serve a copy of it on the appellant and copies of it on all other respondents who were served with the notice of cross-appeal or notice of grounds for affirming the decision, as the case may be.

Rule 97: Death of party to appeal

- (1) An appeal shall not abate on the death of the appellant or the respondent but the Court shall, on the application of any interested person, cause the legal representative of the deceased to be made a party in place of the deceased.

- (2) A notice of appeal shall not be incompetent by reason only that the person on whom it is required to be served was dead at the time when the notice was lodged but a copy of the notice shall be served as soon as practicable on the legal representative of the deceased.
- (3) An appeal shall not be incompetent by reason only that the respondent was dead at the time when it was instituted but the court shall on the application of any interested person cause the legal representative of the deceased to be made a party in place of the deceased
- (4) An appeal shall not be instituted in the name of a person who is dead or has ceased to exist but may be instituted in the name of his or its legal representative.

SECTION XVII: HEARING OF APPEALS

Rule 98: Preliminary objection

Where a respondent intends to take a preliminary objection to any appeal or any part of it, he shall, before the scheduling conference under Rule 99 of these Rules, give seven (7) days written notice to the Court and to the other parties to the appeal of the grounds of that objection.

Rule 99: Scheduling conference

- (1) The Appellate Division shall, within fourteen (14) days after the close of pleadings or such other period as the President may direct, hold a scheduling conference to ascertain:
 - (a) points of agreement and disagreement,
 - (b) whether legal argument shall be written or oral, or both,
 - (c) the estimated length of the hearing,
 - (d) any other matters as the Court may deem necessary.
- (2) If the matter is to proceed to hearing, the Appellate Division shall fix the date for commencement of hearing.
- (3) In any case where all parties opt to present legal arguments in writing, the Court shall prescribe the time within which the parties shall file their respective written legal arguments and may fix the date on which the parties shall appear before a full Court to deal with any other matter the Court thinks necessary.

Rule 100: Presentation of arguments in writing

- (1) Any party to an appeal who does not intend to appear in person or by advocate at the hearing of the appeal may lodge in the appropriate registry a written statement of his arguments in support of or in opposition to the appeal or the cross-appeal, if any, as the case may be, and shall, before, or within seven (7) days after lodging it, serve a copy of it on the other party or on each other party appearing in person or separately represented.
- (2) Every such statement shall be lodged—
 - (a) by an appellant, within fourteen (14) days of lodging his memorandum of appeal;
 - (b) by a respondent, within thirty (30) days of service on him of the memorandum and record of appeal.

- (3) An appellant who has lodged a statement under sub-rule (1), may, if served with a notice of cross-appeal, lodge a supplementary statement of his arguments in opposition to it.
- (4) No party who has lodged a statement under this Rule shall, except with leave of the Court, address the Court at the hearing of the appeal.

Rule 101: Hearing Notice

The Registrar shall give all parties to an appeal not less than fourteen (14) days notice of the date fixed for the hearing of an appeal; but it shall not be necessary to give that notice to any party with whose consent the date for the hearing was fixed.

Rule 102: Quorum in the Appellate Division

- (1) The quorum in the Appellate Division shall be three Judges, one of whom shall be the President or Vice-President.

Provided that having regard to the public importance of the matter or to any conflict or other complexity in the law applicable, the President or on application by any party, the Court may direct such matter to be heard and determined by a full bench of the Division.

- (2) The following interlocutory matters may be dealt with and determined by a single judge:
 - (a) application for extension of time prescribed by these Rules;
 - (b) application for extension of validity of notification;
 - (c) application for an order for substituted service;
 - (d) application for examining serving officer;
 - (e) application for leave to amend pleadings;
 - (f) Scheduling conference.
- (3) A party dissatisfied with a decision of a single judge may apply orally to the judge at the time when the decision is given, or by writing to the Registrar within seven (7) days after a decision of the judge to have the order, direction or decision of a single judge varied, discharged or reversed by full Court.
- (4) At the hearing by the full Court of an application previously decided by single judge, no additional evidence shall be adduced except with the leave of that court.

Rule 103: Power of single Judge

A single Judge may exercise any power vested in the Appellate Division, which does not involve the decision of an appeal, but if any Judge rejects any application for the exercise of the power, the person making that application shall be entitled to have his application determined by that court.

Rule 104: List of authorities and copies of Judgment to be referred

- (1) A party who intends, at the hearing of any application or appeal, to rely on the judgment in any reported case or to quote from any book shall lodge with the Registrar, a list and copies of cases with their citations and the names, authors and editions of the book or books, and shall serve a copy of that list on the other party or on each other party appearing in person or separately represented, as the case may be; but a supplementary list may, when necessary, be produced at the time of the hearing.

- (2) The list shall be in quadruplicate, except in the case of an application to be heard by a single Judge, when it shall be in duplicate and shall be lodged at least twenty four hours before the application or appeal is due to be heard.
- (3) A party who intends, at the hearing of any application or appeal, to rely on the judgment in any unreported case shall, at or before the hearing, produce a certified or Photostat copy of that judgment and, except in the case of an application to be heard by a single judge, two other copies of it for the use of the Court, and in every case, one copy for the use of the other party, or each other party appearing in person or separately represented, as the case may be.

Rule 105: Hearing in open court

- (1) Every appeal shall be heard in court, to which all members of the public shall have access so far as space in the court permits and so long as they conduct themselves in an orderly manner, subject to sub-rules (2) and (3).
- (2) The Presiding Judge may, if, in exceptional circumstances, he is satisfied that the interests of justice so require, direct that the public or any particular person or category of persons be excluded or removed from the court in which an appeal is being heard.
- (3) Nothing in this Rule shall be construed so as to prejudice other inherent powers of the Court to hear proceedings in camera.

Rule 106: Arguments at hearing

At the hearing of an appeal—

- (a) No party shall, without the leave of the court, argue that the decision of the First Instance Division should be reversed or varied except on ground specified in the memorandum of appeal or in a notice of cross-appeal, or support the decision of the Court of First Instance on any ground not relied on by that court or specified in a notice given under Rule 88 of these Rules;
- (b) a respondent shall not, without leave of the court, raise any objection to the competence of the appeal which might have been raised by application under Rule 81 of these Rules;
- (c) the Appellate Division shall not allow an appeal or cross-appeal on any ground not set forth in the memorandum of appeal or notice of cross-appeal, without affording the respondent, or any person who in relation to that ground should have been made a respondent, or the appellant, as the case may be, an opportunity of being heard on that ground; and
- (d) at the hearing of an appeal, the arguments contained in any statement lodged under Rule 101 of these Rules shall receive the same consideration as if they had been advanced orally at the hearing.

Rule 107: Non-appearance

- (1) If on any day fixed for the hearing of an appeal, the appellant does not appear, the appeal may be dismissed and any cross-appeal may proceed, unless the Appellate Division sees fit to adjourn the hearing;
- (2) Where an appeal has been so dismissed under sub-rule (1) of this Rule or any cross-appeal has been allowed, the appellant may apply to the Appellate Division to restore the appeal for hearing or to re-hear the cross-appeal, if he can show that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing.

- (3) If the appellant appears and the respondent fails to appear, the appeal shall proceed in the absence of the respondent and any cross-appeal may be dismissed, unless the Appellate Division sees fit to adjourn the hearing.
- (4) Where an appeal has been allowed or cross-appeal dismissed in the absence of the respondent, the respondent may apply to that court to re-hear the appeal or to restore the cross-appeal for hearing, if the respondent can show that he was prevented by any sufficient cause from appearing when the appeal was called for hearing.
- (5) An application for restoration under the proviso to sub-rule (2) or (4) of this Rule shall be made within thirty (30) days of the decision of that court, or in the case of a party who should have been served with a notice of the hearing but was not served, within thirty (30) days of his first hearing of that decision.
- (6) For the purposes of this Rule, a party who has lodged a statement under the provisions of Rule 100 shall be taken to have appeared.

Rule 108: Order of addresses

- (1) The Appellate Division shall, at the hearing of an application or appeal hear first the applicant or appellant, then the respondent, and then the applicant or appellant
- (2) At the hearing of an appeal where notice of a cross-appeal has been given, the Court shall ordinarily hear the appellant first on the appeal, then the respondent on the appeal and on the cross-appeal, then the appellant in reply on the cross-appeal.
- (3) The Appellate Division may dismiss but shall not allow any preliminary objection, application, appeal or cross-appeal without affording the opposing party an opportunity to be heard.
- (4) After hearing the opposing party, the Appellate Division may allow but shall not dismiss any preliminary objection, application, appeal or cross-appeal without giving the objector, applicant, appellant or cross-appellant an opportunity to reply.
- (5) The provisions of this Rule shall apply where notice of grounds for affirming the decision has been given, in the same way in all respects as where notice of cross-appeal has been given.

Rule 109: Judgment

- (1) The judgment of the Appellate Division shall be pronounced in open court, either on the hearing or at any subsequent time, of which notice shall be given by the Registrar to the parties to the appeal.
- (2) Such judgment may be pronounced notwithstanding the absence of the Judges who composed the Appellate Division or any of them, and the judgment of any Judge not present may be read by a Judge or by the Registrar.
- (3) A certified copy of the judgment shall be sent by the Registrar to the First Instance Division.

PART D: MISCELLANEOUS PROVISIONS

SECTION XVIII: STAY OF PROCEEDINGS AND EXECUTION

Rule 110: Stay of Proceedings and of Execution

- (1) An appeal shall not operate as a stay of proceedings under decree or order appealed from except so far as the Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Court may for sufficient cause order stay of execution of such decree.

- (2) Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing there from, the court which passed the decree may on sufficient cause shown order the execution to be stayed.
- (3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the First Instance Division or the court making it is satisfied—
 - (a) that substantial loss may result to the party applying for stay of execution unless the order is made;
 - (b) that the application has been made without unreasonable delay; and
 - (c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.
- (3) Notwithstanding anything contained in sub-rule (3), the court may make an ex-parte order for stay of execution pending the hearing of the application.

SECTION XIX: COSTS

Rule 111: Costs

- (1) Costs in any proceedings shall follow the event unless the Court shall for good reasons otherwise order.
- (2) If it appears to Court that costs have been incurred improperly or without reasonable cause by reason of any misconduct or default of the party and or advocate, the Court may call on the advocate by whom such costs have been so incurred to show cause why such costs should not be borne by the advocate personally, and thereupon may make such order as the justice of the case requires.

Rule 112: Assessment of costs

- (1) When the Court makes an order for costs it may assess the same or direct the costs to be taxed and any order in which the amount is not assessed, shall operate as a direction that the costs be taxed.
- (2) For the purpose of execution for costs, certificate of taxation and the order directing taxation shall be appended to the execution order.

Rule 113: Taxation of costs

- (1) The Registrar shall be a taxing officer with power to tax the costs of or arising out of any claim or reference as between parties.
- (2) The remuneration of an advocate by the client shall be by agreement between them. Where there is no such agreement either of the parties may refer the matter to the Registrar for taxation.
- (3) The costs shall be taxed in accordance with the Rules and scale set out in the Second Schedule for the First Instance Division and Eighth Schedule for the Appellate Division .

Rule 114: Reference on taxation

Any person who is dissatisfied with a decision of the taxing officer may within fourteen (14) days apply for any matter to be referred to a single judge of the Court whose decision shall be final.

Rule 115: Security for costs

- (1) The Court may, either on the application of any respondent or of its own motion, order the claimant or claimants within time fixed by it to give security for the payment of all costs incurred or likely to be incurred by the respondent.

Provided that where a claimant is a Partner State, the Secretary General, or any of the institutions of the Community no security for costs shall be required.

- (2) Where security for costs has been deposited in Court, the Registrar may pay out the same either by consent of the parties or in conformity with the decision of the Court.

SECTION XX: FEES**Rule 116: Fees payable**

Subject to the provisions of Rule 117 fees set out in the Third Schedule for First Instance Division and Seventh Schedule for Appellate Division shall be payable in respect of all matters and services therein set out.

Rule 117: Time of payment of fees

- (1) The fee payable on lodging any document shall be payable at the time when the document is lodged.
- (2) The Registrar may require the payment in advance of the fee for any other service, or where the amount of the fee cannot conveniently be ascertained when the service is requested, may require a deposit towards it. Any fee so paid in advance or deposit made shall be refunded if the request for the service is cancelled before the service has been undertaken.

Rule 118: Relief from fees and security

- (1) If the Court is satisfied on the application of an applicant or claimant that he or she lacks the means to pay the required fees and that the claim or application has a reasonable possibility of success, the Court may by order direct that the claim or application may be lodged without prior payment of fees, or on payment of any specified amount less than the required fees.
- (2) No fee shall be payable on the lodging of any such application.
- (3) Where the party permitted to sue as a pauper succeeds, the Court may by order direct the losing party to pay the Court fees which would have been payable.
- (4) An order made under this Rule shall be enforceable in accordance with Article 44 of the Treaty.

Rule 119: Sessions and sittings of the Court

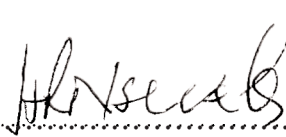
The Seat of the Court shall be at such place as may be decided by the Summit; provided that the Court may, if it considers it desirable, direct that all or part of the proceedings in any case shall be held at a place other than the Seat of the Court.

SECTION XXI: ADVOCATES**Rule 120: Manner of dress for advocates**

Advocates shall appear before the Court in their national professional dress.

Dated at Arusha, Tanzania on this 25th day of January, 2010.




.....
President,
East African Court of Justice

SCHEDULES AND FORMS

FIRST SCHEDULE

FORMS

FORM 1: Notification

(Rule 26 (1))

IN THE EAST AFRICAN COURT OF JUSTICE—FIRST INSTANCE DIVISIONAT.....

CASE NO.of 20.....

.....Applicant / Claimant
versus
.....Respondent

To:
.....
.....

You are hereby notified that the above named Applicant/Claimant has instituted a reference/claim against you, copy of which is annexed hereto. You are hereby required to file a response or written statement of defence within days from the day of the service hereof. In default whereof the claim will be heard and determined in your absence.

Given under my hand and seal of the Court, this day of 20....

.....
Registrar

FORM 2: AFFIDAVIT OF SERVICE**(Rule 15)**

IN THE EAST AFRICAN COURT OF JUSTICE - FIRST INSTANCE DIVISION AT.....

CASE NO.of 20.....

.....Claimant

versus

.....Respondent

I of and an advocate/ a process server of the Court / a claimant make oath and state as follows:

(1) On, 20 at (time) I served the notification in this case 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 notification. He/She was personally known to me/identified to me by Who is known to me.

(2) Not being able to find the respondent on, 20..... at (time) I served the notification on (name) an adult member of the family of the respondent who is residing with him/her.

(3) Not being able to find The respondent or any person on whom service could be made, on, 20..... at (time), I affixed a copy of the notification to the outer door of being the house in which he/she ordinarily resides/carries on business/personally works for gain. I was accompanied by..... who identified the house to me.

(4) The original notification is annexed to this affidavit.

(5) (Otherwise specify the manner in which the notification was served).

..... Deponent

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

Before me:.....

A Commissioner of Oaths/Notary Public

FORM 3: SUBSTITUTED SERVICE BY ADVERTISEMENT (Rule 29 (3))

IN THE EAST AFRICAN COURT OF JUSTICE - FIRST INSTANCE DIVISION AT.....

CASE NO.of 20.....

.....Claimant
versus

.....Respondent

To

of

Take notice that a claim has been filed in the East African Court of Justice at In Case No Of 20....., in which you are named as respondent. Service of the notification on you has been ordered to be by means of this advertisement. A copy of the notification and the statement of claim may be obtained from the Court at (postal address of registry/sub-registry).

And further take notice that, unless you file a statement of defence within forty-five (45) days from the date of this advertisement, the case will be heard in your absence.

GIVEN under my hand and the Seal of the Court, thisday of20....

.....
Registrar

FORM 4: THIRD PARTY NOTICE**(Rule 32 (3))**

IN THE EAST AFRICAN COURT OF JUSTICE - FIRST INSTANCE DIVISION AT.....

CASE NO.of 20.....

.....Claimant

versus

.....Respondent

THIRD PARTY NOTICE

(Issued pursuant to the order of the Court dated, 20.....)

To: of (address)

.....

Take notice that this action has been brought by the claimant against the respondent. In it the claimant claims against the respondent in accordance with the attached plaint.

The respondent claims against you (here state nature of claim against third party, for instance “for indemnity”, contribution” or “the following relief or remedy” namely”) on the grounds that (state the grounds of the claim).

(*) And take notice that if you wish to dispute the claimant’s claim against the respondent, or the respondent’s claim against you, you must file your statement of defence within twenty one (21) days after the service of this notice on you, otherwise you will be taken to admit the claimant’s claim against the respondent and the respondent’s claim against you and you will be bound by any judgment given in the suit.

Dated the day of, 20.....

.....

Respondent/Advocate for the Respondent.

Note:- * Delete this paragraph if the notice is served on a party who has already appeared in the suit.

FORM 5: NOTICE OF DATE OF HEARING

(Rule 55 (5))

IN THE EAST AFRICAN COURT OF JUSTICE - FIRST INSTANCE DIVISION AT.....

CASE NO.of 20.....

.....Claimant

versus

.....Respondent

NOTICE OF DATE OF HEARING

TAKE NOTICE that the above case has been fixed for hearing on..... day of
..... at 9:00 a.m. Before Justice(s). YOU ARE
required to appear in this Court without fail and you must produce on that day all the documents upon
which you intend to rely in support of your case.

Given under my hand and Seal of the Court this..... day of.....20.....

.....
Registrar

To Be Served Upon:

.....
.....
.....
.....
.....
.....
.....

FORM 6: SUMMONS TO WITNESS**(Rule 56 (6))**

IN THE EAST AFRICAN COURT OF JUSTICE - FIRST INSTANCE DIVISION AT.....

CASE NO.....of 20.....

.....*Claimant/Applicant**Versus*.....*Respondent*

To.....

.....

.....

WHEREAS your attendance is required to give evidence and / or produce documents described as.....

.....
 on behalf of the claimant / applicant / respondent
 in the above stated case/reference, you are hereby required [personally] to appear before this Court on the
day of20, at O'clock in the forenoon, and/or on such other
 date or dates to which the case may stand adjourned, and not to depart thence without leave of the Court.

If you fail to comply with this order without lawful excuse, you will be subject to the consequences of non-attendance laid down in Rule 56 (4) of the East African Court of Justice Rules, 20.....

GIVEN under my hand the seal of the Court, thisday of 20

.....

Registrar

NOTICE:- (1) The money for your travel by road/air and other expenses amounting to has been deposited in Court and will be paid to you by the Registrar when you attend.

To be signed by person to whom summons is addressed

I..... hereby acknowledge the receipt of a duplicate of this summons.

Signature

Date.....

This summons was served by me on the above named on the day of 20 aboutO'clock by delivering a copy thereof to him/her and requiring his/her signature to the acknowledgement of service.

I effected service as aforesaid in the presence of of
..... by whom the said was pointed out to me.

.....
Process Server

Dated this day of 20.....

.....
(Commissioner for Oaths)

FORM 7: Oath or affirmation

(Rule 64)

IN THE EAST AFRICAN COURT OF JUSTICE - FIRST INSTANCE DIVISION

Before giving his evidence, the witness shall take oath or affirm as follows:-

“I..... swear/affirm that I shall tell the truth, the whole truth and nothing but the truth.”

FORM 8: Execution of Judgments**(Rule 74(1))**

IN THE EAST AFRICAN COURT OF JUSTICE - FIRST INSTANCE DIVISION

AT:_____

CASE NO. _____ OF _____

_____ *Claimant**Versus*_____ *Respondent*I, _____ judgment holder, hereby
apply for execution of the order herein as set forth below:

Date of Order:

Amount with interest due upon the order
or other relief granted thereby together
with particulars of any cross order:-

Amount of costs, if any, awarded:-

	USD	Cts	USD	Cts
Principal				
Interest at % from to ...				
Less subsequent payment				
Less amount of cross Order, if any				
Total or balance				
Costs as in the Order				
Costs, subsequently incurred				
Further interest at... % p.a from to ...				
TOTAL				

Against whom to be executed:-

Mode in which the assistance of the Court is required:-

.....

I, _____-declare that what is stated
herein is true to the best of my knowledge and belief.

Dated this _____ day of _____ 20_____

Judgment Holder

EAST AFRICAN COURT OF JUSTICE**FIRST INSTANCE / APPELATE DIVISION****SECOND SCHEDULE: TAXATION OF COSTS****(Rule 113 (3))****Rule 1: Interpretation**

In this Schedule, a folio means one hundred words, and a single figure or group of figures up to seven shall count as one word.

Rule 2: Lodging and service of bill of costs

- (1) Where costs are to be taxed, the advocate for the party to whom the costs were awarded shall lodge his or her bill with the taxing officer and shall, before or within seven (7) days after lodging it, serve a copy of it on the advocate for the party liable to pay it.
- (2) A bill of costs shall be lodged as soon as practicable after the making of the order for costs and not later than twenty-one (21) days after a request in writing therefore by the party liable, or such further time as the Registrar may allow.
- (3) A bill of costs may not be lodged by an advocate who is not on record.

Rule 3: Form of bill

- (1) A bill of costs shall be intituled and filed in the proceedings and shall be in the form of a bill prepared in five columns as follows-

The first or left hand column for the dates of the items;

The second column for the serial numbers of the items;

The third column for the particulars of the service charged for;

The fourth column for the professional or scale charges;

The fifth column for the taxing officer's deductions.

- (2) Every bill of costs shall be endorsed with:-

- (a) the name and address of the advocate lodging the same; the name and address of every party to be served or his or her advocate;
- (b) a certificate signed by the advocate lodging the bill that the number of folios, in respect of any item in the bill charged for by the folio, is correct. If such certificate is found to be incorrect the item may be disallowed.

- (3) Every bill of costs shall be endorsed at the end thereof with a form of certificate for signature by the taxing officer certifying the result of the taxation.

Rule 4: Disbursements

- (1) Disbursements shall be shown separately at the foot of the bill of costs.
- (2) Receipts for the disbursements shall be produced to the taxing officer at the time of taxation.
- (3) No disbursement shall be allowed which has not been paid at the time of taxation.

Rule 5: Bills not to be altered after lodging

No alteration or addition to a bill of costs once lodged shall be made except by Consent of the parties or by permission of the taxing officer or the Court.

Rule 6: Notice of taxation

When a bill of costs has been lodged as aforesaid, the taxing officer shall issue a notice to all parties concerned or their advocates giving the date, time and place at which the bill will be taxed.

Rule 7: Time and adjournment

The taxing officer shall have power to limit or extend the time for any proceedings before him, and to adjourn the same from time to time and from place to place.

Rule 8: Failure to attend taxation

If any party or advocate who has been duly served with a notice of taxation fails to appear at the date and time specified in such notice, the taxing officer may proceed to tax the bill notwithstanding such absence.

Rule 9: Quantum of costs

- (1) The fee to be allowed for instructions to make, support or oppose any application shall be such sum as the taxing officer shall consider reasonable but shall not be less than US\$ 100.
- (2) The fee to be allowed for instruction to institute a suit or a reference or to oppose a suit or a reference shall be such sum as the taxing officer shall consider reasonable, having regard to the amount involved in the reference, its nature, importance and complexity, the interest of the parties, the other costs to be allowed, the general conduct of the proceedings, the person to bear the costs and all other relevant circumstances.
- (3) The sum allowed under sub-rule (2) shall include all work necessarily and properly done in connection with the suit or reference and not otherwise chargeable including attendances, correspondence, perusals and consulting authorities.
- (4) Other costs shall, subject to the provisions of Rules 10, 11 and 12, be awarded in accordance with the scale set out below.

Rule 10: Fees for drawing documents

The fee for drawing a document shall include the preparation of all copies for use of the party drawing it and for filing and service when only one other party or one advocate for other parties has to be served: where there are additional parties, fees may be charged for making the necessary additional copies.

Rule 11: Taxation of bills

- (1) On taxation the taxing officer shall allow such costs, charges and disbursements as shall appear to him or her to have been reasonably incurred for the attainment of justice but no costs shall be allowed which appear to the taxing officer to have been incurred through overpayment, extravagance, overcaution, negligence or mistake or by payment of special charges or expenses to witnesses or other persons or by other unusual expenses.
- (2) In taxing the costs of any dispute or reference, the taxing officer shall disallow the costs of any matter improperly included in the record of a suit or reference or in any supplementary record of a suit or reference.

Rule 12: Over-riding discretion

If, after a bill of costs has been taxed, the taxing officer considers that, having regard to all circumstances, the total of the bill before signing the certificate of taxation is excessive, he or she may make such a deduction from the total as will in his or her opinion render the sum reasonable.

Rule 13: Excessive claims

If more than one quarter of the profit costs claimed is disallowed on taxation the costs of drawing, filing and serving the bill and attending taxation may be disallowed.

Rule 14: Set-off of costs

Where a party entitled to receive costs is also liable to pay costs, the taxing officer may tax the costs which that party is liable to pay and adjust them by way of deduction or set-off and direct payment of any balances.

SCALE OF CHARGES (RULE 9(4) OF THE SECOND SCHEDULE)

COSTS OF PROCEEDINGS

A – Party and Party Costs

1. Instruction fees

The fee for instructions in suits and references shall be as follows, unless the taxing officer in his or her discretion shall increase or reduce it:

- (a) In proceedings in which no defence or other denial of liability is filed, or, in a reference: where the value of the subject matter can be determined from the pleading, judgment or settlement between the parties –

<i>That value exceeds</i> US\$	<i>But does not exceed</i> US\$	US\$
-	1000	100
1000	5000	150
5000	10000	1680
10000	20000	2800
20000	100000	3840
100000	250000	4140
250000	500000	4440
500000	1000000	5040
Over 1000000	-	5040
<i>plus 1% on the amount over US\$ 1000000.</i>		

- (b) In any proceedings or in a reference described in paragraph (a) where a defence or other denial of liability is filed; or to have an issue determined arising out of interpleader or other proceedings before or after suit: where the value of the subject-matter can be determined from the pleading, judgment or settlement between the parties and–

<i>That value exceeds</i> US\$	<i>But does not exceed</i> US\$	US\$
-	1000	150
1000	5000	200
5000	10000	1740
10000	20000	3600
20000	100000	6600
100000	250000	12600
250000	500000	15000
500000	1000000	18600
Over 1000000	-	18600
<i>plus 1% on the amount over US\$ 1000000.</i>		

- (c) To defend proceedings where the respondent substantially adopts the defence of another respondent: an instruction fee calculated under subparagraph 1(a).
- (d) To defend any other proceedings: an instruction fee calculated under subparagraph 1 (b).
- (e) To sue or defend in any case not provided for above: such sum as may be reasonable but not less than 50
- (f) To institute a reference in any matter 50
- (g) To counter-claim: fee under subparagraph (a) or (b), as appropriate
- (h) Matters arising during proceedings –
 - (i) to prepare an affidavit 10
 - (ii) to prepare interrogatories or answers thereto 120
 - (iii) to apply for a commission or letters of request for the examination of a witness 60
 - (iv) to prepare a brief for counsel in relation to a commission for examination of a person not residing within East Africa: such sum as may be reasonable but not less than 360 US\$
 - (v) to prepare a case stated for the opinion of the Court: such sum as may be reasonable but not less than 120
 - (vi) to present an application for a temporary injunction or similar order-
 - if unopposed 60
 - to present or oppose in ordinary cases: such sum as may be reasonable but not less than 120
 - to present or oppose in cases where the judges shall certify that the matter is complex 600
 - (vii) to present or oppose an application
 - not otherwise provided for, by notice of motion -where the application is unopposed 30
 - where the application is opposed, such sum as may be reasonable but not less than 50

Provided that –

- (i) the taxing officer, in the exercise of his or her discretion, shall take into consideration the other fees and allowances to the advocate (if any) in respect of the work which any such allowances applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the general conduct of the proceedings, a direction by the Court, and all other relevant circumstances;

- (ii) in any case in which a certificate for more than one advocate has been given by the Court, the instruction fee allowed on taxation as between party and party shall be increased by one-third and other charges shall be doubled where requisite;

2. Fees for getting up or preparing for trial

In any case in which a denial of liability is filed or in which issues for trial are joined by the pleadings, a fee for getting up and preparing the case for trial shall be allowed in addition to the instruction fee and shall be not less than one-quarter of the instruction fee allowed on taxation:

Provided that-

- (i) this fee be increased as the taxing officer considers reasonable but it does not include any work comprised in the instruction fee;
- (ii) no fee under this paragraph is chargeable until the case has been confirmed for hearing, but an additional sum of not more than 10 per cent of the instruction fee allowed on taxation may, if the Court so directs, be allowed against the party seeking the adjournment in respect of each occasion upon which a confirmed hearing is adjourned;
- (iii) in every case which is not heard the taxing officer must be satisfied that the case has been prepared for trial under this paragraph.

3. Drawing

- (i) Concise statement, plaint, written statement of defence, interlocutory application, notice of motion, originating notification, affidavit, interrogatories, agreement for compromise, adjustment or satisfaction of suit, or any other pleading not otherwise provided for—

	US\$
(i) four folios or less	3
(ii) in excess of four folios: additional per folio after the first four folios	1
(j) All other documents (including proofs of witnesses' evidence), so far as necessary: per folio	1
(k) Bill of costs: per folio	1
(l) Affidavit or return of service	2

Provided that in relation to paragraph (a) (ii), and (b) the taxing officer may direct that the costs of any repetitive or unnecessary matter shall be disallowed.

4. Copies

- (a) Of plaint, written statement of defence, affidavit, interrogatories, replies to interrogatories, reference, agreement in satisfaction of suit, exhibit, bill of costs and every other document (whether for Court or opposing party): per folio 0.5
- (b) The actual cost of copies of Court's notes bespoken from day to day as a case proceeds may be allowed if certified for by the Court.

- (c) Printing: actual costs, supported by vouchers of all necessary printing.
- (d) Photostat copies: actual costs, supported by vouchers of all necessary photocopying.
- (e) All other necessary copies: per folio 0.5

5. Correspondence

	US\$
Letters before action or other necessary letters	1.5
Or per folio	1

6. Attendances

	Ordinary Scale US\$	Higher Scale US\$
(a) On any necessary application to or formal attendance on the Registrar	10	
(b) At offices of Court or Registrar on routine matters	10	
(c) At Court on any matters on a Date fixed by the Court for hearing, when the case cannot be taken, or by advocate for calling over lists	20	
(d) At Court not otherwise provided for-		
(i) half hour or less	20	
(ii) one hour	30	
(iii) half day	40	
(iv) whole day	50	
(e) Routine telephone calls: each necessary telephone call allowed per three minutes or part thereof	5	
(f) All necessary attendance (including attendance to take minutes of evidence of witness other than the party for whom the advocate is appearing) of any nature whatsoever not otherwise		
	US\$	
provided for: per quarter-hour	1.5	

7. Perusals

- | | |
|---|---|
| (a) Of pleadings, affidavits, interrogatories and answers thereto, notices to admit, notice of motion in Court, originating notification, or other necessary documents not specifically provided for: per folio | 5 |
| (b) Of notices and other routine documents | 5 |
| (c) Of necessary letters: per folio | 5 |

8. Service

- | | |
|--|-----|
| (a) Within three kilometres of the Court or Registry or any sub-registry | 2 |
| (b) Every additional kilometre over three: Such amount as is reasonable, not Exceeding per kilometre | 1 |
| (c) By post, if authorized | 0.5 |

9. Plans, models, Etc

Actual costs supported by vouchers of all necessary plans, charts, photographs and models.

10. Translators

Actual costs, supported by vouchers of all necessary translations.

11. Execution proceedings

- | | |
|--|---|
| (a) Instructions to execute decree and drawing necessary application | 3 |
| (b) Attendance at Court filing application | 1 |
| (c) Attending Court to peruse order | 1 |

B – Advocate and Client Costs

As between advocate and client the minimum fees shall be-

- (a) the fees prescribed in A above, increased by one third; or
- (b) the fees ordered by the Court, increased by one-third; or
- (c) the fees agreed by the parties in pursuance of the Court's order or judgment therein, increased by one third,

as the case may be, such increase to include all proper attendances on the client and all necessary correspondence.

THIRD SCHEDULE: FEES

(Rule 116)

1	Upon filing of plaint	
	Item No.	US\$
	(i) where the claim is for money, or ownership of, or entitlement to the possession of property: if the value or the value of the property:	
	(a) does not exceed US\$ 10,000	
	(b) exceeds US\$ 10,000	US\$ 400 for the first US\$ 10,000; and for each subsequent US\$ 2000 or part thereof up to US\$ 50,000, US\$ 50; and for each subsequent US\$ 2000 or part thereof, US\$ 25; but so that the fee shall not exceed US\$ 10,000.
	(ii) In any other case	US\$ 400, with an additional fee of US\$ 400 for each day or part of a day of hearing after the first, but so that the fee shall not exceed US\$ 1000.
2	For serving any document with any suit or reference in addition to all necessary expenses of travel- where the person to be served resides or has his or her place of business within the city or town where the Registry or a sub-registry of the Court is situate	10
	where the person to be served does not reside or have his or her place of business within the city or town where the Registry or a sub-registry of the Court is situate	60
3	For sealing an order	10
4	For preparing certified copies of any document for each folio or part thereof- for the first copy	1
	for each subsequent copy	0.50
5	Upon lodging a bill of costs for taxation	10
6	For the certificate of the result of a taxation	10
7	Upon applying for a reference	500

FOURTH SCHEDULE

FORM A: Notice of Motion

(Rule 21 (4))

IN THE EAST AFRICAN COURT OF JUSTICE
FIRST INSTANCE DIVISION

AT.....

CASE NO.....of 20.....

In the matter of _____ between:

.....Applicant/Claimant

and

.....Respondent

NOTICE OF MOTION

TAKE NOTICE that _____ the _____ day

of _____, 20 _____, at _____ o'clock in
the morning or soon thereafter as he/she can be heard, Mr/Mrs/Miss/Dr _____, Advocate
for the above-named applicant/Claimant, will move the Court for an order that _____

on the grounds that _____

And for an order that the costs of and incidental to this application abide the result of the case.

The application will be supported by the affidavit of _____

sworn on _____

the _____ day of _____, 20_____

Signed _____

Advocate for the Applicant/Claimant

Lodged in the Registry/ Sub-registry on the _____ day of _____, 20_____

Registrar

**EAST AFRICAN COURT OF JUSTICE
(FIRST INSTANCE / APPELLATE DIVISION)**

FIFTH SCHEDULE: GUIDELINES FOR MEDIATION

(Rule 54 (1))

1. A mediation session shall take place as directed by the management Judge under Rule 54 of the Rules of the East African Court of Justice Rules of Procedure,
2.
 - (1) At least seven (7) days before the mediation session every party, shall prepare a statement and provide a copy to every other party and to the Judge mediator.
 - (2) The statement shall identify the factual and legal issues in dispute and briefly set out the position and interests of the party making the statement,
 - (3) The Party making the statement shall attach to it any documents that the Party considers of central importance to the action.
 - (4) The Judge mediator shall have power to enlarge the time under paragraph 2 (1) hereof and subject to provisions of Rule 53 (1) of the East African Court of Justice Rules of Procedure, may from time to time adjourn mediation proceedings.
 - (5) Each party or its representative responsible for making decisions regarding proceedings shall attend the mediation session personally with its advocate if any.
3. All communications at a mediation session and the mediator's notes and records shall be deemed to be without prejudice. The parties or their representatives shall sign an agreement of confidentiality in accordance with form A of Fifth Schedule.
4.
 - (1) If the agreement settles the case or resolves some of the issues in dispute, the parties and their advocates shall sign the agreement and the Judge mediator shall make an order that the case or the issues as the case may be have been so settled or resolved.
 - (2) Where the Judge Mediator orders that the case has been settled, the order is as good as a Court decree. In the event the mediation leads to a partial settlement and order will be drawn accordingly and the unresolved issues will go for trial.

SIXTH SCHEDULE FORMS

FORM A: NOTICE OF MOTION

(Rule 84 (2))

In the East African Court of Justice – Appellate Division

at.....

Application No.....of 20.....

In the matter of an Appeal No.....of 20.....

Between

..... Appellant.

And

..... Respondent

(Appeal from the⁽¹⁾ of the First Instance Division

at(Justice (s))

Dated.....20..... In

Application No.....of 20.....

NOTICE OF MOTION

TAKE NOTICE that on..... the day of 20....., at..... o'clock in the morning/afternoon ⁽²⁾ or as soon thereafter as he can be heard,, Applicant or Advocate for the above-named applicant, will move the Court/a Judge of the Court (1) for an order that

And for an order that the costs of the incidental to this application abide the result of the said appeal ⁽³⁾.

The application will be supported by the affidavit of

Sworn ontheday of20.....

The address for service of the applicant is.....

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

Signed:.....Applicant/Advocate for the Applicant

Lodged in the registry aton theDay of....., 20....

.....
Registrar

¹ Insert judgment, decree, or order as the case may be.

².

FORM B: NOTICE OF APPEAL**(Rule 78 (6))**

In the East African Court of Justice – Appellate Division

at.....

Application No.....of 20.....

In the matter of an Appeal No.....of 20.....

Between

..... Appellant.

And

..... Respondent

(Appeal from the³) of the First Instance Division

at(Justice (s))

Dated.....20..... In

Application/Appeal/ No.....of 20.....

NOTICE OF APPEAL

TAKE NOTICE thatbeing dissatisfied

with the decision of the Court of First Instance Division (Justice (s))

.....given at

..... on the

day of 20....., intends to appeal to the

Appellate Division of the East African Court of Justice against the whole of the said decision/such part of the said decision as decided that (1) (2).

The address for service of the appellant is.....

.....

.....

It is intended to serve copies of this notice on (3)

.....

Dated this day of20.....

Signed..... Appellant/Advocate for the Appellant (1)

To: The Registrar of the East African Court of Justice.....

Lodged in the Registry of the East African Court of Justice.....

this..... day of 20.....

.....

*Registrar*³ Insert judgment, decree, or order as the case may be.

FORM C: MEMORANDUM OF APPEAL**(Rule 87 (3))**

In the East African Court of Justice – Appellate Division

at.....

Appeal No.....of 20.....

Appeal No.....of 20.....

Between

..... Appellant.

And

..... Respondent

(Appeal from the⁽⁴⁾ of the First Instance Division

at(Justice (s))

Dated.....20..... In

Appeal No.....of 20.....

MEMORANDUM OF APPEAL

....., the above-named appellant appeals to the Appellate Division against the whole/part (3) of the above-mentioned decision on the following grounds, namely:—

1.
2.
- etc.

It is proposed to ask the Court for an order (4)

.....

Dated this day of, 20.....

Signed:..... Appellant/Advocate for the Appellant.

To: The Honourable Judges of the Appellate Division.

Copies to be served on.....

Lodged in the Registry at

On theday of, 20.....

.....
Registrar

⁴ Insert judgment, decree, or order as the case may be.

FORM D: NOTICE OF ADDRESS FOR SERVICE**(Rule 80 (2))**

In the East African Court of Justice – Appellate Division

at.....

Application/Appeal No.....of 20.....

In the matter of an Application/Appeal No.....of 20.....

Between

..... Appellant.

And

..... Respondent

(Appeal from the⁽⁵⁾ of the First Instance Division

at(Justice (s))

Dated.....20..... In

Application/Appeal No.....of 20.....

NOTICE OF ADDRESS FOR SERVICE

TAKE NOTICE that the address for service of

Respondent served with notice of appeal, is

Dated this..... Day of, 20.....

Signed:..... Respondent/Advocate for the Respondent

To: The Registrar/Deputy Registrar of the East African Court of Justice at.....

Copies to be served on.....

Lodged in the Registry at.....

on the day of, 20.....

.....
*Registrar*⁵ Insert judgment, decree, or order as the case may be.

FORM E: NOTICE OF CROSS-APPEAL**(Rule 91 (3))**

In the East African Court of Justice – Appellate Division

at.....

Appeal Case No.....of 20.....

Between

..... Appellant.

And

..... Respondent

(Appeal from a(⁶) of the First Instance Division

at(Justice (s))

Appeal Case No. of 20.....

NOTICE OF CROSS-APPEAL

TAKE NOTICE that on the hearing of this appeal, the above-named respondent will contend that the above-mentioned decision ought to be varied or reversed to the extent and in the manner and on the grounds hereinafter set out, namely—

1.
2.etc.

It is proposed to ask the Court for an order that (1)

It is intended to serve copies of this notice on.....

Dated this..... day of 20.....

Signed:..... Respondent/Advocate for the Respondent.

To: The Honourable Judges of the Appellate Division.

Lodged in the Registry at

On the day of, 20.....

.....
Registrar

⁶ Insert judgment, decree, or order as the case may be.

FORM F: NOTICE OF GROUNDS FOR AFFIRMING THE DECISION**(Rule 92 (3))**

In the East African Court of Justice – Appellate Division

at.....

Appeal No.....of 20.....

Between

..... Appellant.

And

..... Respondent

(Appeal from a⁽⁷⁾ of the First Instance Division

at(Justice (s))

Dated theday of20.....

Appeal Case No.....of 20.....

NOTICE OF GROUNDS FOR AFFIRMING THE DECISION

TAKE NOTICE that on the hearing of this appeal, the above-named respondent, will contend that the above-mentioned decision ought to be affirmed upon grounds other than those relied upon by the First Instance Division, namely—

1.

2.etc.

It is intended to serve copies of this notice on.....

.....

Dated this..... Day of, 20.....

Signed Respondent/Advocate for the Respondent

To: The Honourable Judges of the Appellate Division.

Lodged in the Registry at, 20.....

.....
Registrar

⁷ Insert judgment, decree, or order as the case may be.

SEVENTH SCHEDULE

(Rule 116)

FEES

PART I: Fees in connection with applications.

Items No.	USD.CTS
1. Upon lodging a notice of motion	10.00
2. Upon lodging an affidavit, other than an affidavit annexed to a Notice of Motion	5.00
3. Upon giving notice under Rule 48 (1)	5.00

PART III: Fees in connection with appeals:

6. Upon lodging a notice of appeal	10.00
7. Upon lodging a notice of address for service of a notice of change Of address	5.00
8. Upon lodging a memorandum of appeal: Against an interlocutory decision	20.00
Against a final decision:	40.00
(i) where the appeal is against an award of money or the refusal To make such an award or against any decision as to the Ownership of or entitlement to the possession of property if The amount of money (exclusive of any interest awarded therefore) or the value of the property —	
(a) does not exceeds USD 1,000	100.00
(b) exceeds USD 1,000 for the first USD 1,000	100.00
For each subsequent USD 2,000 or part there of up to 10,000	100.00
for each subsequent USD. 2,000 or part thereof	50.00
(ii) but the fees shall not exceed USD. 5,000	
9. Upon lodging a notice of cross-appeal	10.00
10. Upon lodging a notice of grounds for affirming the decision	10.00
11. Upon lodging a notice withdrawing an appeal, or a notice of cross- appeal, or a notice of grounds for affirming the decision	5.00

PART IV: Miscellaneous:

12. For serving any document in connection with any civil application or Appeal, in addition to all necessary expenses of travel — Where the Person to be served resides or has his place or business within the city or town where the registry of the court is situated	50.00
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	In any other case	60.00
13.	For sealing an order in any civil application or appeal	50.00
14.	For preparing certified copies of any document for each folio or Part thereof — for the first copy of each subsequent copy	5.00
	For each subsequent copy	10.00
15.	For the grant of a licence under Rule 27 (2) and a further USD 50.00 for each day or part of a day of the hearing after the first.	100.00
16.	Upon applying to inspect the proceedings of any application or appeal That has been determined	20.00

PART V: Fees in connection with taxation of costs:

17.	Upon lodging a bill of costs for taxation	15.00
18.	For the certificate of the result of a taxation	50.00
19.	Upon applying for a reference under Rule 96.....	50.00

N.B. Under Rule 91 of the Appellate Division Rules there shall be a deposit of USD 500 lodged to the court on the institution of a civil appeal as security for costs of the appeals.

EIGHTH SCHEDULE

(Rule 113 (3))**TAXATION OF COSTS**

- 1 In this Schedule, a folio means one hundred words, and a single figure or a group of figures up to seven shall count as one word.
2.
 - (1) Where costs are to be taxed, the advocate for the party to whom the costs were awarded shall lodge his bill with the taxing officer and shall, within seven (7) days after lodging it, serve copy of it on the advocate for the party liable to pay it.
 - (2) A bill of costs shall be lodged as soon as practicable after the making of the order for costs and not later than twenty-one (21) days after a request in writing therefore by the party liable or such further time as the Registrar may allow.
 - (3) A bill of costs may not be lodged by an advocate who is not on the record.
3.
 - (1) A bill of costs shall be instituted and filed in the proceedings and shall be in Form of bill prepared in five columns as follows_

The first of left hand column for the dates of the items;
The second column for the serial numbers of the items;
The third column for the particulars of the services charged for;
The fourth column for the professional of scale charged;
The fifth column for the taxing officer's deductions.
 - (2) Every bill of costs shall be endorsed with:-
 - (a) The name and address of the advocate lodging the same;
 - (b) The name and address of every party to be served or his advocate;
 - (c) A certificate signed by the advocate lodging the bill that the number of folios, in respect of any item in the bill charged for by the folio, is correct. If such certificate is found to be incorrect the item may be disallowed.
4.
 - (1) Disbursements shall be shown separately at the foot of the bill of costs.
 - (2) Receipts for all disbursements shall be produced to the taxing officer at the time of taxation.
 - (3) No disbursement shall be allowed which has not been paid at the time of taxation.
5. No alteration or addition to a bill of costs once lodged shall be made except by consent of the parties or by permission of the taxing officer or a Judge.
6. When a bill of costs has been lodged as aforesaid, the taxing officer shall issue a notice to all parties concerned or their advocates giving the date, time and place which the bill will be taxed.
7. The taxing officer shall have power to limit or extend the time for any proceeding before him, and to adjourn the same from time to time and from place to place.
8. If any party or advocate who has been duly served with a notice of taxation fails to appear at the date and time specified in such notice, the taxing officer may proceed to tax the bill notwithstanding such absence.

9. (1) The fee to be allowed for instructions to make, support or oppose any application shall be such sum as the taxing officer shall consider reasonable, but shall not be less than USD 100
- (2) The fee to be allowed for instructions to appeal or to oppose an appeal shall be such sum as the taxing officer shall consider reasonable, having regard to the amount involved in the appeal, its nature, importance and difficulty, the interest of the parties the other costs to be allowed, the general conduct of the proceedings, the fund or person to bear the costs and all other relevant circumstances.
- (3) The sum allowed under sub-paragraph (2) shall include all work necessarily and properly done in connection with the appeal and not otherwise changeable including attendance, correspondence, perusals and consulting authorities.
- (4) Other costs shall, subject to the provisions of paragraph 10, 11 and 12, be awarded in accordance with the scale set out below or, in respect of any matter for which no provision is made in those scales, in accordance with the scale applicable in the High Court.
10. The fee for drawing a document shall include the preparation of all copies for the use of the party drawing it and for filing and service when only one other party or one advocate for other parties has to be served: where there are additional parties, fees may be charged for making the necessary additional copies.
11. (1) On taxation, the taxing officer shall allow such costs, charges and disbursements as shall appear to him to have been reasonably incurred for the attainment of justice but no costs shall be allowed which appear to the taxing officer to have been incurred through overpayment, extravagance, over-caution, negligence or mistake or by payment of special charges or expenses to witnesses or other persons or by other unusual expenses.
- (2) In taxing the costs of any civil appeal, the taxing officer shall disallow the costs of any matter improperly included in the record of appeal or in any supplementary record of appeal.
12. If, after a bill of costs has been taxed, the taxing officer considers that, having regard to all the circumstances, the total of the bill before signing the certificate of taxation is excessive, he may make such a deduction from the total as will in his opinion render the sum reasonable.
13. If more than one quarter of the profit costs claimed is disallowed on taxation the cost of drawing, filing and serving the bill and of attending taxation shall be disallowed.
14. Where a party entitled to receive costs is also liable to pay costs, the taxing officer may tax the costs which that party is liable to pay and adjust them by way of deduction or set-off and direct payment of any balance.
15. (1) Costs of more than one advocate shall not be allowed unless the Court has so directed:
Provided that if an advocate has instructed another advocate to appear at the hearing of an appeal, the fee paid to the latter, or so much thereof as the taxing officer considers reasonable, may be allowed but so that the total of such fee and the instruction fee allowed to the instructing advocate shall not be greater than it would have been if one advocate only had acted in the matter.
- (2) Where the Court has directed that the costs of two advocates be allowed:—
 - (a) Where the senior advocate is not a member of the same firm as the advocate on the record, he shall be allowed the fee paid to him, including fees for attending in court, or so much thereof as the taxing officer shall consider reasonable;

- (b) Where the senior advocate is a member of same firm as the advocate on an record, he shall be allowed such fee as would have allowed in the case of the advocate not a member of that firm; and
 - (c) The advocate on the record shall be allowed the usual instruction, hearing and other fees.
 - (3) The fee paid to another advocate by the advocate on the record shall be shown as a disbursement.
16. If there has been a change of advocates the bill of costs of the first advocate may be annexed to that of the current advocate and its total shown as a disbursement. They will be taxed in the ordinary way, the current advocate being heard on it, but the taxing officer may require the first advocate to attend.
17. Where the same advocate is employed for two or more parties and separate proceedings are taken by or on behalf of any two such parties, the taxing officer shall consider in the taxation of such advocate's bill of costs whether such separate proceeding were necessary and proper, and if he is of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed.
18. In taxing the costs as between party or for payment out of a trust fund of joint executors or trustees who are separately represented, the taxing officer shall, unless otherwise ordered by the Court or a Judge, allow only one set of costs for such parties, such costs to be apportioned among them at the taxing officer shall deem fit.
19. The taxing officer shall allow the reasonable expenses of a party who appeared in person at the hearing of an application or appeal and those of a witness who gave evidence at any such hearing but shall not allow the expenses of any person who may have attended the hearing, unless the Court has so ordered.

SCALE OF COSTS

USD.	Cts	
1. For instruction to file a notice of appeal.....	50	00
2. For instructions to act for a respondent:- Where an appeal is subsequently instituted.....	60	00
Where no appeal is subsequently instituted to cover all costs arising Out of the notice of appeal, other than disbursements and those of Any application to the High Court of the Court.....	100	00
3. For drawing a notice of motion.....	30	00
4. For drawing an affidavit, for each folio or part thereof, exclusive of exhibits.....	10	00
With a minimum fee of	20	00
5. For drawing a notice of appeal.....	15	00
6. For drawing a notice of address for service	10	00
7. For drawing a memorandum of appeal.....	150	00
8. For drawing a notice of cross-appeal.....	75	00
9. For drawing a notice of grounds for affirming a decision	50	00
10. For drawing an order for each folio or part thereof.....	10	00
with a minimum fee of	20	00
11. For drawing a bill of costs, for each folio or part thereof.....	5	00
12. For drawing any other necessary document to be filed or used in the Court, for each folio or part therefore.....	5	00
13. For making any necessary copies for each folio or part therefore For the first copy.....	3	00
For each subsequent copy	1	00
14. For attendance at the Registry	10	00
15. For attendance on the Registrar—— for the first 15 minutes.....	25	00
for each subsequent 15 minutes	10	00
16. For attending on a Judge in Chambers for the first 30 minutes.....	40	00
17. For attending in Court, where the matter was listed but not reached	50	00
18. For attending in Court on the hearing of any application or appeal—— For the first 30 minutes	75	00
For each subsequent 30 minutes.....	25	00
19. For attending in Court to hear judgment		