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Ref: Rul 2/2019

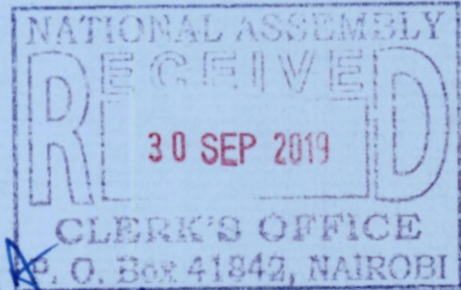
THE JUDICIARY

25<sup>th</sup> September, 2019

## RULES COMMITTEE

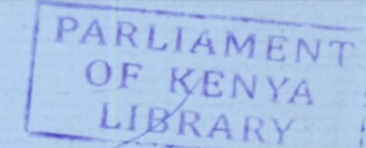
The Clerk  
Kenya National Assembly  
Parliament Buildings  
P.O Box 41842-00100  
NAIROBI

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Dear Sir,

**RE: SMALL CLAIMS COURT RULES, 2019 AND CODE OF CONDUCT FOR ADJUDICATORS, 2019**



The above subject refers.

Pursuant to the provisions of section 11 of the Statutory Instruments Act No.23 of 2013, the Rules Committee of the Judiciary forwards copies of the Small Claims Court Rules, 2019 and the Code of Conduct for Adjudicators for tabling before Parliament and referral to the Committee on Delegated Legislation. The Rules and Code of Conduct were gazetted vide Gazette Vol. CXXI—No. 113 of 2019 dated 30<sup>th</sup> August, 2019.

In addition, please find attached the following copies of documents showing proof of public participation before validation of the rules and Code of Conduct:

1. Explanatory Memorandum to the Committee on Delegated Legislation of the National Assembly;
2. Attendance sheets of stakeholders in the select regions: Nakuru, Eldoret, Kakamega, Kisumu, Voi, Mombasa, Machakos, Nyeri and Nairobi;
3. Court Notices in various courts regarding the public participation;
4. Memoranda received from select stakeholders and;
5. Report on public participation on the Rules and Code of Conduct.

Thank you for your continued support.

Yours Faithfully,

ANNE A. AMADI, CBS  
**CHIEF REGISTRAR OF THE JUDICIARY**

*② Head, table office  
to register, acknowledge  
receipt, come tabling  
and referral to  
relevant committee.  
Party  
30-9-19.*

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LEGAL NOTICE NO. 145

THE SMALL CLAIMS COURT ACT, 2016

(No 2 of 2016)

THE SMALL CLAIMS COURTS RULES, 2019

ARRANGEMENT OF RULES

*Rule*

PART I—PRELIMINARY

- 1—Short title and commencement
- 2—Interpretation
- PART II—PRESENTATION OF CLAIMS, RESPONSES, ETC
- 3—How to File a Claim
- 4—Claims by or against minors, or persons of unsound mind
- 5—Claim under section 12 in respect of loss or damage of property
- 6—Claim against the estate of a deceased person
- 7—Service of Statement of Claim
- 8—Service out of the Court's jurisdiction
- 9—Response to Statement of Claim, etc.
- 10—Admission of claim, set-off or counterclaim, etc
- 11—Power of Court to enter or set aside default judgment
- 12—Respondent to serve their response
- 13—Form of counterclaim and set-off
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**PART III—HEARING, OFFER TO SETTLE, ENFORCEMENT OF  
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## THE SMALL CLAIMS COURT ACT

(No. 2 of 2016)

IN EXERCISE of powers conferred by section 50 of the Small Claims Court Act, 2016, the Chief Justice makes the following Rules—

## THE SMALL CLAIMS COURT RULES, 2019

## PART I—PRELIMINARY

1. These Rules may be cited as the Small Claims Courts Rules, 2019. Short title
2. In these Rules, unless the context otherwise requires— Interpretation
  - “Act” means the Small Claims Courts Act,
  - “Adjudicator” means an adjudicator appointed under section 5 of the Act;
  - “claimant” has the meaning assigned to it under section 2 of the Act;
  - “creditor” means a person to whom a debtor is required to pay a sum of money which the Court finds to be due and payable to them;
  - “Court” means the Small Claims Court established under section 4 of the Act;
  - “debtor” means a person who owes a creditor a sum of money which the Court finds to be due and payable to the creditor;
  - “intermediary” means a person approved by the Court to represent and act on behalf of a person who is under eighteen years of age or of unsound mind in any matter before the Court,
  - “Registrar” means the Registrar of the Small Claims Court appointed under section 8 of the Act; and
  - “respondent” has the meaning assigned to it under section 2 of the Act.

## PART II—PRESENTATION OF CLAIMS, RESPONSES , ETC.

3. (1) To commence proceedings under the Act, a person shall complete and file a Statement of Claim in form SCC-1 set out in the First Schedule hereto by presenting it at the court registry and on payment of the prescribed fee How to file a claim.
- (2) The claimant shall file the Statement of Claim at the Court nearest to the place where—

- (a) the transaction or event to which the claim relates took place; or
- (b) the respondent ordinarily resides or carries on business.

(3) A person may file a claim against two or more respondents jointly and severally where the claim against the respondents relates to, or is directly connected with, the matter in respect of which the claim arises

(4) A claimant who has a claim of more than two hundred thousand shillings may abandon that part of the claim that is in excess of two hundred thousand shillings

(5) Where a claimant abandons part of a claim, he or she shall state in the Statement of Claim that the amount in excess of two hundred thousand shillings has been abandoned

(6) A claimant who abandons part of a claim shall not subsequently sue for recovery of that part of the claim that has been abandoned, unless the claimant withdraws the entire claim in accordance with rule 14 (1) (c) and subsequently pursues the entire claim in a Magistrates Court

4. (1) Where a claimant or respondent is a person who is under eighteen years of age or of unsound mind, the Statement of Claim or Response shall expressly state that the claimant or respondent is a minor or person of unsound mind, and is represented by the intermediary named in the Statement of Claim or Response

Claims by or against minors, or persons of unsound mind

(2) The provision of sub-rule (1) shall apply with the necessary modifications to any other person to whom section 20 (1) applies.

(3) In the case of a representative claim, the Statement of Claim shall comply with, among others, the requirements of section 24 (a) and (d) of the Act

5. (1) A person claiming compensation under section 12 (1) (c) of the Act in respect of a motor vehicle which has been damaged in a road traffic accident or other accident shall attach to the Statement of Claim—

Claim under section 12 in respect of loss or damage of property

- (a) an itemized estimate of the cost of repair prepared by a licenced mechanic or certified motor vehicle assessor; or
- (b) an itemised receipt issued in acknowledgement of money paid by the claimant to a licenced mechanic on account of repairs already carried out on the motor vehicle in question.

(2) A person claiming compensation for loss or damage caused to any property, or for the delivery or recovery of movable property, pursuant to section 12 (1) (c) of the Act shall attach to the Statement of Claim—

- (a) an itemized estimate of the cost of repair prepared by a competent assessor;
- (b) an itemized receipt issued in acknowledgement of money paid by the claimant on account of repairs already carried out on the property; or
- (c) a copy of any document proving the value of the property sought to be recovered.

(3) A person claiming compensation for personal injuries pursuant to section 12 (1) (d) of the Act shall attach to the Statement of Claim—

- (a) a medical report from a licenced medical practitioner; and
- (b) any receipts in respect of medical expenses incurred on treatment.

6. A person making a claim against the estate of a deceased person shall file the claim against the executor of the deceased's will (if any) or the duly appointed legal representative of the deceased's estate, as the case may be.

Claim against the estate of a deceased person.

7. (1) The claimant shall serve a copy of the Statement of Claim on each of the respondents named in the Statement in the manner prescribed under rule 35.

Service of Statement of claim.

(2) If the claimant fails to serve a Statement of Claim within six months from the date on which it was filed, the claim shall be deemed as having been abandoned, whereupon it shall stand dismissed.

(3) Despite sub-rule (2), the claimant may apply to the Court in writing to have his or her claim reinstated giving reasons for failure to serve, and a claim dismissed under sub-rule (2) may be reinstated under this sub-Rule only once.

(4) Despite sub-rule (3), the Court shall not reinstate any claim under this Rule in any case where—

- (a) the claim relates to an accident which took place more than three years before the date of the application; or
- (b) the claim arises from a contract entered into between the claimant and the respondent more than six years before the date of the application.

8. (1) A claimant may serve the Statement of Claim on a respondent outside the local limits of the Court's jurisdiction, with the Court's approval, if the respondent carries on business or ordinarily resides outside the local limits of the jurisdiction of the Court.

Service out of the Court's jurisdiction.

(2) Where the claimant is, for reasons shown to the satisfaction of the Court, unable to serve a Statement of Claim personally on the respondent, the claimant may apply to the Court either orally or in writing to—

- (a) direct the alternative manner in which the claimant may serve; and
- (b) fix the time within which the respondent shall file the response to the claim

(3) Where the Court directs that the claimant may effect service of the Statement of Claim otherwise than personally on the respondent, the claimant shall serve a copy of the court order together with the Statement of Claim unless—

- (a) the Court otherwise directs, or
- (b) the Court directs that the notice of the claim be advertised, at the claimant's expense, in at least one newspaper with national circulation.

(4) A person who effects service of any document under this rule is required to file a Certificate of Service in Form SCC 5 set out in the Schedule hereto.

9. (1) A respondent who is served with a Statement of Claim may —

Response to  
statement of  
claim, etc

- (a) settle the amount claimed in full by making payment directly to the claimant or by depositing the amount claimed in court, whereupon the claimant shall withdraw the claim;
- (b) admit the whole or part of the amount claimed with a proposal on the mode of payment on such terms as the parties may agree or, failing agreement on the proposal, as the Court may direct;
- (c) deny the whole or part of the claim, giving reasons for the denial;
- (d) claim a set-off or make a counterclaim against the claimant in accordance with rule 13;
- (e) apply to join a third party, who the respondent has reason to believe is answerable to the claimant's claim; or
- (f) request the Court, in writing, to transfer the proceedings to an alternative court station.

(2) A respondent who has taken any of the actions specified in sub-rule 1 (b) to (e) shall file his or her response in Form SCC 2 set out in the First Schedule hereto in the court where the Statement of Claim was filed, and within the following period—

- (a) in the case of a respondent who carries on business or ordinarily resides within the local limits of the jurisdiction of the Court, within fourteen days of service the Statement of Claim;
- (b) in the case of a respondent who carries on business or ordinarily resides outside the local limits of the jurisdiction of the Court, within thirty days of service of the Statement of Claim; or
- (c) within such time as the Court may direct.

10 (1) Where a respondent admits in writing the whole or any part of the claim or by indicating admission in the Response, with or without any proposed settlement, the Court shall enter judgment in favour of the claimant to the extent of the respondent's admission.

Admission of claim, set-off, or counterclaim, etc.

(2) Sub-rule (1) applies, with necessary modifications, to admission by the claimant of any set-off or counterclaim in favour of the respondent.

(3) An admission of a claim or counterclaim made in accordance with the Act shall be made in writing or orally before the Court

(4) Where a party admits a claim, whether wholly or partially, but fails to propose the mode of settlement, the Court may, on hearing the parties—

- (a) direct the manner in which the claim shall be settled; and
- (b) order execution to enforce its decree.

(5) Where the corresponding party admits only part of the claimant's claim or respondent's counterclaim, the Court shall proceed to hear and determine that part of the claim or counterclaim which is denied.

11. (1) Where a respondent fails to file a response to the claim within the time specified in these Rules or within such additional time as the Court may have allowed, the Court shall, on the written request of the claimant, enter default judgment and issue a decree in favour of the claimant.

Power of court to enter or set aside default judgment

(2) Where a State department or State organ fails to file its response to a claim under the Act, the Court shall enter default judgment in accordance with the Government Proceedings Act or any other written law

(3) Sub-rule (1) applies, with necessary modifications, to cases where the claimant fails to file a response to a counterclaim.

(4) The Court may set aside a default judgment or any consequential orders given under this rule on the written request of any



party that is aggrieved by the decree or order if the Court is satisfied, on evidence given by the applicant, and on hearing the other parties to the proceeding that—

- (a) the default was inadvertent;
- (b) the applicant has a valid defence with a probability of success; or
- (c) there are sufficient grounds to warrant setting aside the default judgment, decree or order

(5) Where the Court gives an order setting aside default judgment or other consequential orders, the Court may order payment of reasonable costs incurred by the corresponding parties in the proceedings

12 (1) A respondent shall serve a copy of his or her Response to the claimant's claim on every person named as a party in the Statement of Claim in accordance with rule 35

Respondent to serve response.

(2) Where the response includes a counter-claim or set-off, the claimant shall file his or her response together with the counterclaim or set off as the case may be, within fourteen days of service upon every person named as a party in the Statement of Claim

(3) For the purposes of this rule, a counterclaim is a claim made by a respondent against a claimant that can be conveniently tried at the same time as the claimant's claim, and includes a set-off

13 (1) In addition to his or her response to the claimant's claim, a respondent may make a counterclaim or set-off against a claimant in Form SCC 3 as set out in the First Schedule hereto

Form of counterclaim and set-off

(2) A respondent shall serve his or her Response containing the counterclaim or set-off on the claimant, and on every other party named in the statement of claim in accordance with rule 35

14 (1) A respondent who has a counterclaim exceeding two hundred thousand shillings may—

Respondent may abandon part of counterclaim

- (a) abandon that part of the counterclaim exceeding two hundred thousand shillings;
- (b) pursue his or her counterclaim in the proceedings and recover an amount not exceeding two hundred thousand shillings; or
- (c) file a separate claim in the Magistrates' Court to recover the whole of the amount counterclaimed

(2) A respondent who abandons that part of the counterclaim exceeding two hundred thousand shilling shall state in his or her response that the amount in question is abandoned.

(3) A respondent who abandons any part of a counterclaim or set-off in accordance with this rule shall not be entitled to file a subsequent claim in any court to recover the amount stated as abandoned.

15. (1) A claimant who is served with a Response to Claim and Counterclaim may take one or more of the following actions —

Claimant to respond to counterclaim or set-off

- (a) settle the amount counterclaimed in full by making payment directly to the respondent or by depositing the amount counterclaimed in court, whereupon the respondent shall withdraw the counterclaim;
- (b) admit the whole or part of the amount counterclaimed with or without making a proposal on the mode of payment on such terms as the parties may agree or, failing agreement, as the Court may direct; or
- (c) deny the whole or part of the counterclaim, giving reasons for the denial.

(2) A claimant who has taken any of the actions specified in sub-rule (1) (b) and (c) shall file their response in Form SCC 3 as set out in the First Schedule hereto in the proceedings—

- (a) within fourteen days of service upon him or her of the response and counterclaim; or
- (b) within such time as the Court may direct.

16. (1) Where a respondent who has filed a response reasonably believes that another person (hereinafter referred to as “the third party”) is liable to pay all or any part of the claimant’s claim, the respondent may make a claim against the third party by filing a Third Party Notice in Form SCC 4 as set out in the First Schedule hereto, and joining the third party in the proceedings, before the date fixed for hearing of the respective claims.

Respondent may join third parties

(2) Where the respondent joins a third party in the proceeding under this rule, the respondent shall serve on the third party, and on all persons named in the Statement of Claim, the following documents—

- (a) a copy of the Third Party Notice;
- (b) a copy of the Statement of Claim;
- (c) a copy of the response to the Statement of Claim and counterclaim (if any);
- (d) where a date has been fixed for the hearing of the claim, a copy of the Hearing Notice; and

(e) all documents filed in support of the claim, response or counterclaim, as the case may be.

(3) The respondent shall file a Certificate of Service in Form SCC 5 as set out in the First Schedule hereto within fourteen days of service on the third party of the Notice and all documents specified in sub-rule (2) as proof of service

(4) Where the third party has filed a response to the Third Party Notice, and to the relevant claim made against him or her, the respondent shall not be required to file a Certificate of Service under sub-rule (3).

(5) Where a respondent fails to serve on the third party the Third Party Notice in accordance with this rule, the claim against the third party shall be deemed as having been abandoned

(6) Despite sub-rule (5), the Court may, on the respondent's request, and on hearing the other parties to the proceeding, direct the time within which the respondent shall serve the Third Party Notice and file the requisite Certificate of Service before the date fixed for hearing of the respective claim

(7) Rules 9 and 18 apply with necessary modifications to the response by the third party to the Third Party Notice, and to the claims made against the third party

17 (1) A claimant, respondent or third party, may amend and serve on the other parties to the proceeding the Statement of Claim, response or counterclaim filed with the court, as the case may be, at any time, but not later than seven days before the date fixed for hearing of the claim.

Amendment of  
Statement of  
Claim, response  
or counterclaim

(2) Where hearing has commenced, a party may, with leave of the Court on written application, amend and serve any of the documents referred to in sub-rule (1) on such terms as the Court may direct.

(3) An application under this rule shall be made by way of a letter accompanied by copies of the document sought to be amended, showing the proposed amendments.

(4) The proposed amendments shall —

(a) be underlined in red;

(b) indicate the date on which the amendment is made; and

(c) be signed by the party making the amendment.

(5) Any party wishing to respond to an amendment under this rule shall file and serve his or her response on all the parties named in the proceeding in the manner prescribed under rule 35 within seven

days of being served with the amended document, or within such period as the Court may direct.

18. (1) Where a claim has been scheduled for trial or hearing of an application, each party to the proceeding shall, within seven days of the hearing, file and serve on the other parties a list of the documents which they seek to rely on in support of their claim.

List of documents to be exchanged before hearing.

(2) The list referred to in sub-rule (1) shall be accompanied by copies of the specified documents.

(3) Where a party fails or neglects to file and serve his or her list of documents in accordance with this rule, the Court may—

(a) proceed to hear and determine the application or claim (as the case may be) on its merits despite the default.; or

(b) direct that the party in default do file and serve copies of their evidential documents within such time, and on such terms, as the Court may direct.

(4) Nothing in this rule prevents a party from filing and serving on the other parties a supplementary list of evidential documents, including additional documents not previously disclosed or served in accordance with this rule and, in any event, not later than three (3) days before the date fixed for hearing of the claim

#### PART III—HEARING, OFFER TO SETTLE, ENFORCEMENT OF ORDERS AND DECREES AND APPEALS

19. (1) The Court shall, at least fourteen days before the date fixed for hearing, notify the parties of the date, time and place of the hearing and determination of the claim.

Hearing Notice and procedure at hearing.

(2) At the hearing, the Adjudicator may do any one or more of the following things—

(a) adopt and implement any appropriate means of dispute resolution in accordance with section 18 (1) of the Act to facilitate the amicable settlement of all or any of the claims;

(b) adopt an alternative dispute resolution mechanism pursuant to section 18 (2) of the Act on such terms as the Court may direct,

(c) determine the issues on which the parties are in agreement and those in respect of which the parties are in contention;

(d) enter consent judgment in respect of any claim in the proceeding, or give such orders or directions as the Court may think just;

- (e) where necessary, adjourn the hearing and fix an alternative date for the hearing and determination of the claim;
- (f) in relation to a claim for compensation arising from damage to property, direct that a party against whom the claim is made be accorded the opportunity to examine the property and file a report in that regard; or
- (g) give such other or further orders and directions as the Court may consider necessary for the expeditious determination of the claim, and in accordance with the Guiding Principles set out in section 3 of the Act

(3) The Adjudicator shall preside over and make a record of the proceedings at the hearing of the claim

(4) The Court may adjourn and reschedule the hearing to a later date on the request of any party to the proceeding on such terms as the Court may direct, including an order directing the applicant to pay to the other parties such reasonable costs as are occasioned by the adjournment

20. (1) Where at the hearing a party alleges that the parties to the claim have settled the whole or any part of the claim, the Court shall proceed to hear the parties, and make a record of its findings in that regard.

Procedure in relation to settled claims

(2) Where it is shown to the satisfaction of the Court that the claim in issue has been settled either wholly or in part, the Court shall, to that extent, mark the claim as settled

(3) Where only part of the claim in issue is settled, the Court shall proceed to hear and determine that part of the claim that is denied

21. (1) Where neither the claimant nor the respondent attends on the date fixed for hearing, the Court may dismiss the claim

Effect of non-attendance at hearing

(2) Where only the claimant attends, and the Court is satisfied that—

- (a) the respondent was duly served with the Hearing Notice, it may proceed to hear and determine the claim;
- (b) the respondent was not duly served with the Hearing Notice, it shall direct that a second Hearing Notice be served; or
- (c) the Hearing Notice was not served in sufficient time for the respondent to attend, or that the respondent was, for sufficient cause, unable to attend, it shall postpone the hearing to a later date as determined by the Court.

(3) Where only the respondent attends, but does not admit any part of the claim, the Court shall, except for good cause to be recorded in the proceedings, dismiss the claim.

(4) If only the respondent attends and admits any part of the claim, the Court shall give judgment in favour of the claimant on admission and, except for good cause to be recorded in the proceeding, dismiss that part of the claim which is denied.

(5) If only the respondent attends, and has counterclaimed, the Court may proceed to hear and determine the respondent's counterclaim.

(6) The provisions of sub-rules (1) to (5) apply with necessary modifications to claims in which there are more than one claimant or respondent.

22. (1) Where the parties to a claim under the Act enter into a settlement agreement, the Court shall issue a decree or order in terms of the agreement.

Effect of  
settlement  
agreement.

(2) Where a party fails to comply with the terms of a settlement agreement other than the payment schedule, the Court may, on the written application of the party in favour of whom the decree or order is issued, make such other or further orders as may be just to facilitate execution of the decree or order.

23. (1) On the date fixed for hearing of the claim, the Court shall take oral and documentary evidence (if any) adduced by the parties or their witnesses.

Form of hearing  
and expert report.

(2) The parties or their witnesses shall give oral evidence on oath or affirmation.

(3) Nothing in this rule prohibits a party from introducing a report containing an expert opinion without calling the maker where –

- (a) the party seeking to introduce the report in support of their claim or response has filed and served a copy of the report to the other parties at least fourteen days prior to the date set for hearing;
- (b) the parties consent to the introduction of the report; or
- (c) on hearing the parties, the Court directs that the report be admitted in evidence at the trial without calling the maker.

(4) At the end of the hearing, the Court shall prepare a written record of its decision in final determination of the claims before it and—

- (a) pronounce its decision in accordance with section 34 (2) of the Act; or
- (b) send a copy of its written decision to the parties.

(5) The Adjudicator's decision takes effect from the date on which it is read in court or, if it is sent to the parties, on the date on which it is signed and indicated as having been made.

24. (1) A party against whom a claim is made under the Act may offer to settle the whole or part of the claim, with or without proposing a payment schedule— Offer to settle.

- (a) orally at the hearing;
- (b) by a written proposal made to the party by whom the claim is made, and filed in court and served on the other parties in the proceeding at any time before the date fixed for hearing; or
- (c) in writing addressed to the Court and served on all the parties to the proceeding at any time after the hearing, but before judgement

(2) Where a party makes an offer to settle in accordance with sub-rule (1), and the offer is accepted by the party to whom it is made, the Court shall —

- (a) record the offer in the terms on which it is made as an order of the Court, and
- (b) enter judgment on such terms as the parties may agree

(3) Where an offer to settle is given, but the parties do not agree, the Court may, upon hearing the parties, direct that the claim be satisfied on the terms of the offer, or on such other terms as the Court may think just.

(4) A party whose claim is satisfied, whether wholly or in part, in accordance with the offer to settle made before the date fixed for hearing of the claim shall notify the Court in writing of the satisfaction, whereupon the claim shall, to the extent of the satisfaction, stand settled.

(5) A party against whom a claim is made, and who has satisfied the claim in accordance with this rule, may notify the Court in writing of the satisfaction, providing documentary proof of such satisfaction.

(6) The Court shall not enter judgment or give any order in respect of a notice given pursuant to sub-rule (5) unless and until the party in whose favour the satisfaction is made gives written confirmation of such satisfaction.

Provided that where no confirmation is given within thirty days of the notice of satisfaction, the claim shall be deemed settled.

(7) This rule applies with necessary modifications to offers made to settle any claim, including claims against third parties, and to any counterclaim or set-off

25. (1) Any order or decree of the Court shall be enforceable in accordance with the Civil Procedure Rules.

Procedure for enforcement of orders and decrees

(2) Without prejudice to the generality of sub-rule (1), a party against whom a decree is issued or order given under the Act may propose—

- (a) a payment schedule toward satisfaction of the decree; or
- (b) the manner and time within which they propose to comply with the court order.

(3) A payment schedule or proposal given pursuant to sub-rule (2) may be made—

- (a) orally in court; or
- (b) in writing, addressed to the party in whose favour it is made, and filed in court.

(4) Where the party in favour of whom the decree is issued or order given accepts the payment schedule or proposal given under this rule, either orally in court or by written notice of such acceptance, the Court shall record the payment schedule or other proposal as an order of the Court.

26. Where a debtor fails to satisfy the payment schedule or acts in breach of the proposal to comply with a court order given under this rule, the payment is recoverable, and the order is enforceable, in accordance with the Civil Procedure Rules.

Effect of non-compliance.

27. (1) Where a party in favour of whom a decree has been issued rejects the debtor's proposal to satisfy the decree by instalments, the Court may, on the oral or written application made by the debtor—

Power of Court to order payment by instalments.

- (a) hear the parties' corresponding proposals; and
- (b) on being satisfied on evidence that the debtor is unable to satisfy the decree in lumpsum, make an order allowing the debtor to satisfy the decree—
  - (i) in accordance with the payment schedule proposed by the debtor;
  - (ii) in accordance with the payment schedule proposed by the creditor; or
  - (iii) by instalments on such terms as the Court may think just.

(2) In determining an application made under this rule, the Court shall consider, among other things—

- (a) the debtor's net monthly income;



(b) the aggregate value of the debtor's assets and liabilities,

(c) the aggregate value of the debtor's assets, if any, disposed of by the debtor immediately before or subsequent to the filing of the claim against the debtor with intent to defeat the creditor.

28. (1) Where the Court gives judgment or makes an order in favour of any party to the proceeding, the Court may, on the written request of the party against whom the decree or order is given, stay execution of such decree or order given on such terms as the Court may direct

Power of Court to stay execution of orders and decrees

(2) An application under sub-rule (1) may be made orally in court in the presence of all the parties to the proceeding

(3) The Court may stay execution of a decree or order on a request made pursuant to this rule only where—

- (a) the Court is satisfied that there are sufficient grounds to grant the request, or
- (b) the parties consent to the stay of execution as requested by the applicant

(4) Without prejudice to sub-rule (1), the Court may stay execution of its decree or order—

- (a) to allow reasonable time for the party against whom the decree is issued to comply with the decree and settle the claim, or counterclaim, on such terms as the Court may direct, or
- (b) to allow reasonable time for the party against whom an order is made to comply with the order on such terms as the Court may direct

(5) Before making an order under this rule to stay execution of its decree or order, the Court shall hear all the parties to the proceeding.

29 (1) The Court may review any decree passed or order given in proceedings under the Act on the written request of any party aggrieved by such decree or order where it is shown to the satisfaction of the Court that the decree or order sought to be reviewed—

Power to review decree or order

- (a) has an error apparent on the face of the record, or
- (b) has a clerical or arithmetical mistake

(2) A request for review of a decree or order under this rule shall be made within three (3) months of the passing of the decree or of the making of the order in issue, and may be made—

- (a) orally in court; or
- (b) in writing addressed to the Court and served on all parties to the proceedings.

(3) Nothing in this rule prevents the Court, of its own motion, from reviewing and making a correction of any clerical or arithmetical mistake within thirty days of passing the decree or making the order in issue.

30. A person aggrieved by the judgment or order of the Court may, pursuant to section 38 of the Act, appeal to the High Court in accordance with Order 42 of the Civil Procedure Rules, 2010.

Appeals

#### PART IV—GENERAL AND MISCELLANEOUS PROVISIONS

31. In the conduct of any proceedings before it, the Court shall not be bound by the strict rules of procedure or evidence.

Court not bound by strict rules of procedure or evidence

32. No technical objection may be raised to any pleading or document prescribed by these Rules on the ground of any want of form

Technical objection for want of form

33. The Court may extend or shorten a time limit fixed under these Rules or by any order of the Court requiring anything to be done under these Rules, on such terms as the Court thinks just.

Power of Court to enlarge or vary time.

34. (1) Where a claimant files a claim outside the local limits of the jurisdiction of the Court nearest the respondent's ordinary place of business or residence, or where the transaction or event giving rise to the claim occurred, the respondent may apply to the Court in writing for orders that the proceeding be transferred—

Power of Court to transfer proceedings.

- (a) to the court nearest the respondent's place of business, or nearest the place where the respondent ordinarily resides; or
- (b) to the court nearest the place where the transaction or event giving rise to the claim took place.

(2) The Court shall not transfer any proceeding on the request of a party under this rule unless—

- (a) the party making the request has disclosed reasonable grounds to the satisfaction of the Court to justify the transfer; and
- (b) before making its decision, the Court has heard the other parties in response to the request.

(3) Nothing in this rule prevents parties from requesting the Court to transfer any proceeding to any other station of the court by consent of the parties.

35. (1) Service of any document under these Rules shall be made by delivering a copy thereof personally to the party upon whom it is to be served and, where there are more than one party to be served, on each of them. Mode of service

(2) Wherever it is practicable, service shall be made on each party in person unless they have an agent authorised to accept service, in which case service on the agent personally shall be sufficient.

(3) The person served under this rule is required to endorse an acknowledgment of service on the original document:

Provided that, if the Court is satisfied that the party or such agent or other person has refused so to endorse, the Court may declare the document to have been duly served, and a Certificate of Service shall be sufficient proof of service.

(4) Where it is not practicable to effect personal service of a document on a party in accordance with this rule, service may be effected by mail addressed to the party's last known postal address, and a certificate of posting in that regard shall be attached to the Certificate of Service.

(5) Where the respondent is a corporation, the claimant may—

- (a) send by registered mail a copy of the document to the registered office of the corporation, and obtain a certificate of posting; or
- (b) deliver a copy of the document—
  - (i) at the registered office of the corporation;
  - (ii) at the principal place of business of the corporation; or
  - (iii) to a director, chief officer, manager, Receiver or Liquidator, or Receiver Manager, of the corporation.

(6) The person served pursuant to sub-rule (6) (b) is required to sign and affix a stamp or seal of the corporation on the original document in acknowledgment of service.

(7) This rule applies with necessary modifications, subject to section 13 of the Government Proceedings Act, to service of documents on the Government for the purpose of, or in connection with, civil proceedings against the Government.

36. Service of a document may be proved by filing in court any or all of the following— Proof of service

- (a) in the case of personal service, a copy of the document duly endorsed in acknowledgment of service;

- (b) in the case of service by mail, a copy of the document that was mailed, accompanied by a certificate of posting; or
- (c) in the case of service on an agent of the party to be served, a copy of the document duly endorsed in acknowledgment of service.

37. In assessing costs recoverable under section 33 (1) of the Act, the Court shall be guided by the Second Schedule to these Rules.

Assessment of costs

FIRST SCHEDULE

[rr 3(1), 9(2), 13(1), 15(2), 16(1), 16(3) & 37(1)]

FORMS

Rule 3

FORM No SCC I

REPUBLIC OF KENYA

IN THE SMALL CLAIMS COURT AT .....

CLAIM NO .. . . . OF .. . . .

A B. . . . . CLAIMANT

VERSUS

C.D . . . . . RESPONDENT

STATEMENT OF CLAIM

1. Claimant's Personal Details:

Name .. . . .

Postal Address: .. . . .

Physical Address: .. . . .

Telephone Contact: .. . . .

Email Address: .. . . .

Nature of Business: .. . . .

Location/Sub/Village .. . . .

Claiming in Person  Claiming as a Representative (Please tick where appropriate)

If Claiming as a representative, kindly provide the Personal Details of the person you represent

Name: .. . . .

Postal Address: .. . . .

Physical Address: .. . . .

Telephone Contact: .. . . .

Email Address: .. . . .

Nature of Business: .. . . .

Location/Sub/Village .. . . .

Give reasons why you claim as a representative attaching a copy of the written authority (if any)

2 Respondent's Personal Details:

Name: .. . . .

Postal Address: .. . . .

Physical Address .. . . .

Telephone Contact: .. . . .

Email Address: .. . . .

Nature of Business: .. . . .



REPUBLIC OF KENYA  
 IN THE SMALL CLAIMS COURT OF AT . . . . .  
 CLAIM NO . . . . . OF . . . . .  
 A.B . . . . .CLAIMANT  
 VERSUS  
 C.D. . . . .RESPONDENT  
RESPONSE TO STATEMENT OF CLAIM

1 Claimant's Personal Details

Name: .. . . . .

Postal Address .. . . . .

Physical Address: .. . . . .

Telephone Contact: .. . . . .

Email Address: .. . . . .

Nature of Business .. . . . .

Location/Sub/Village .. . . . .

2. Respondent's Personal Details

Name: .. . . . .

Postal Address: .. . . . .

Physical Address: .. . . . .

Telephone Contact. .. . . . .

Email Address: .. . . . .

Nature of Business: .. . . . .

Location/Sub/Village .. . . . .

3. Response to Statement of Claim

In response to the Statement of Claim dated the      day of      20      , the Respondent states as follows: *(Please tick where appropriate)*

- The Respondent does not owe the Claimant any money.
- The Respondent owes the Claimant only a portion of the amount claimed in the Statement of Claim amounting to Kshs..... (state the amount admitted)
- The Respondent admits the whole of the Claimants claim.

The Respondent has paid to the Claimant all the sum claimed in the Statement of Claim.

It is the Claimant who owes the Respondent a sum of Kshs ..... on account of .....(explain the basis on which the Claimant owes the amount stated)

If the response is in denial of the whole or part of the claim. Give reasons why the claim is denied (explain briefly)

4. In addition to the Respondent's response in paragraph three above, the Respondent state's that this claim (Please tick where appropriate)

Is filed in the right Court

Is filed in the wrong Court and should be transferred to the Small Claims Court at .....

5. Counterclaim

Without prejudice to the Respondent's response in paragraphs three and four, the Respondent Counterclaims against the Claimant the sum of Kshs..... on account of .....

(state the amount of counterclaim and the grounds on which the counterclaim is based)

6. Set-Off

While admitting the Claimant's claim in the sum of Kshs ....., the Respondent states they are entitled to a Set-Off in the sum of Kshs.....on account of .....

(state the amount sought to be set-off and the reasons for the set-off)

7. Claim against Third Party

The Respondent denies the Claimants claim and states that the person named below ("the Third Party") is liable to the Claimant on the grounds set out in the attached Third Party Notice.

Name of Third Party .....

Postal Address .....

Telephone Contact .....

Email Address .....

Location/Sub/Village .....

8. Remedy/ Relief Sought

The Respondent requests the Court to (Please tick where appropriate)

Dismiss the Claimants claim with costs to the Respondents

Enter Judgment in favour of the Claimant against the Respondent in the sum of Kshs .....

Enter judgment in favour of the Respondent against the Claimant on the Counterclaim/Set off in the sum of Kshs.....



Enter judgment in favour of the Claimant against the Third-party in the sum of Kshs .....

**Declaration**

I declare that the information given above is true

Name of Respondent

Signature of Respondent

Dated this

day of

20

**Acknowledge of Service**

I acknowledge service of this Response to Statement of Claim delivered to me, with evidential documents attached, on .....

Name of Claimant

Signature of Claimant

**For Official Use Only**

This Response to Statement of Claim was filed on the

day of

20

Signed ...

(Registrar)

Rules 13

FORM No SCC 3

REPUBLIC OF KENYA

IN THE SMALL CLAIMS COURT AT .....

CLAIM NO ..... OF .....

A.B ..... CLAIMANT

VERSUS

C.D.....RESPONDENT

**RESPONSE TO COUNTERCLAIM/SET OFF\**

**1 Claimant's Personal Details**

Name .....

Postal Address .....

Physical Address .....

Telephone Contact .....

Email Address .....

Nature of Business: .....

Location/Sub/Village: .....

## 2. Respondent's Personal Details

Name: .....

Postal Address: .....

Physical Address: .....

Telephone Contact: .....

Email Address: .....

Nature of Business: .....

## 3. Response to Counterclaim/Setoff

In response to the Counterclaim dated the        day of        20    , the Claimant states as follows:

*(Please tick where appropriate)*

- The Claimant does not owe the Respondent any money as claimed in the Counterclaim.
- The Claimant owes the Respondent only a portion of the amount Counterclaimed amounting to Kshs..... (state the amount admitted)
- The Claimant admits the whole of the Respondent's Counterclaim and proposes to pay the amount admitted as follows ..... (state the proposed terms of payment)
- The Claimant paid to the Respondent the whole of the amount claimed in the Counterclaim amounting to Kshs ..... on the        day of        20    (attach copies of documents in evidence of payment)
- If the Claimant denies the whole or part of the Counterclaim. Give reasons for the denial. (explain briefly)

4. In addition to the Claimant's response in paragraph three above, the Claimant state's that the grounds on which the Respondent's Counterclaim is based fall outside the jurisdiction of this Court *(Please explain briefly)*

## 6. Remedy/ Relief Sought

The Claimant requests the Court to *(Please tick where appropriate)*

- Dismiss the Respondent's Counterclaim/Setoff with costs to the Claimant
- Enter Judgment in favour of the Claimant against the Respondent in the sum of Kshs .....

## Declaration

I declare that the information given above is true

Name of Claimant

Signature of Claimant

Dated this

day of

20

Acknowledge of Service

I acknowledge service of this Response to Statement of Claim delivered to me, with evidential documents attached, on.....

Name of Respondent

Signature of Respondent

For Official Use Only

This Response to Statement of Claim was filed on the 20

day of

Signed ..... (Registrar)

Rule 16

FORM No SCC 4

REPUBLIC OF KENYA

IN THE SMALL CLAIMS COURT OF AT .....

CLAIM NO ..... OF .....

A.B.....CLAIMANT

VERSUS

C.D.....RESPONDENT

E.F ..... THIRD PARTY

THIRD PARTY NOTICE

(Issued pursuant to the order of the Court given on .....

TO

Name: .....

Postal Address: .....

Physical Address: .....

Telephone Contact: .....

Email Address: .....

Nature of Business: .....

Location/Sub/Village: .....

Take notice that a Claim has been brought by the claimant against the respondent. In it the claimant claims against the Respondent in accordance with the attached Statement of Claim.

The respondent claims against you ..... (here state nature of claim against third party) ..... on the grounds that ..... (state the grounds on the Response to Statement of 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 and serve the Claimant and the Respondent with a response within 14 days after the service of this notice on you, inclusive of the day of service, 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.

Your response shall be in Form No SCC 2 with necessary modifications.

Name of Respondent Signature of Respondent

Acknowledge of Service

I acknowledge service of this Third Party Notice delivered to me, with evidential documents attached, on .....

Name of Third Party Signature of Third Party

Dated this day of 20

For Official Use Only

This Third Party Notice was filed on the day of 20

Signed (Registrar)

/Enc/

- (a) A copy of the statement of claim with evidential documents attached.
- (b) A copy of the response to the statement of claim with evidential documents attached.
- (c) A copy of the notice of settlement conference or hearing of the claim, if any has been issued.

REPUBLIC OF KENYA  
 IN THE SMALL CLAIMS COURT AT . . . . .  
 CLAIM NO . . . . . OF . . . . .  
 A B . . . . . CLAIMANT  
 VERSUS  
 C D . . . . . RESPONDENT

CERTIFICATE OF SERVICE

I . . . . . of P O Box . . . . . a process server, states as follows:

1 On the . . . . . day of . . . . ., 20 . . . . . at . . . . . (indicate the time) I served . . . . . (indicate the name of the party) at . . . . . (indicate the name of the place) by tendering a copy of . . . . . (Indicate document served) to him/her and requiring a signature on the original

(Please tick where appropriate)

He/she  signed  refused to sign the document.

He/she was  personally known to me  was identified to me by . . . . . (indicate the name) and admitted that he/she was the . . . . . (indicate the name of the party)

2 Not being able to find the . . . . . (indicate the name of the party) on the . . . . . day of . . . . . 20 at . . . . . ( indicate the time) I served the . . . . . (indicate the document served) on . . . . . (indicate the name) an adult member of the family of the . . . . . (Indicate the name of the party) who is residing with him/her.

3 Not being able to find the . . . . . (indicate the name of the party) or any person on whom service could be made, on the . . . . . day of . . . . . 20 . . . . . at . . . . . (indicate the time), I affixed a copy of the . . . . . (indicate the document served) to the outer door of the premises in which the . . . . . resides/ carries on business at . . . . . (indicate name of the premises)

4 Not being able to serve in the manner prescribed above, I sent the . . . . . (indicate the document served) on the . . . . . day of . . . . . 20 . . . . . by registered mail to the last known postal of the . . . . . (indicate name of addressee) and obtained the attached certificate of postage

5 I declare that the information given above is true

|                                       |              |
|---------------------------------------|--------------|
| Name                                  | Signature    |
| Dated this . . . . . day of . . . . . | 20 . . . . . |

## SECOND SCHEDULE

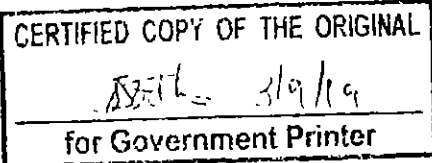
(r. 37)

## FEES

|  | Kshs. |
|--|-------|
| 1 Filing a claim -   |       |
| (a) less than Sh. 50,000.00  | 200   |
| (b) more than sh. 50,000.00 but less than Sh 100,000.00  | 400   |
| (c) more than 100,000.00 but less than Sh 150,000.00   | 600   |
| (d) more than Sh. 150,000.00 but less than 200,000.00  | 1000  |
| 2 Filing a counterclaim  |       |
| (a) less than Sh 50,000.00   | 200   |
| (b) more than sh. 50,000.00 but less than Sh 100,000.00  | 400   |
| (c) more than 100,000.00 but less than Sh. 150,000.00  | 600   |
| (d) more than Sh. 150,000.00 but less than 200,000.00  | 1000  |
| 3. Filing all other responses  | 200   |
| 4 Third Party Notice   | 400   |
| 5. Service fees  |       |
| (a) Within 2 km  | 100   |
| (b) Over 2 km and upto 10 km   | 300   |
| (c) Over 10 km   | 500   |
| 6. For every exhibit produced  | 10    |
| 7 Fees payable to a witness per day  | 200   |
| 8 The fees recoverable on execution of a Decree or Order of the Court shall not exceed 10% of the aggregate value of the subject matter together with disbursements on account of the fees specified in this Schedule. |       |

Dated the 15th August, 2019.

**DAVID K. MARAGA,**  
*Chief Justice and President of the Supreme Court.*



**SPECIAL ISSUE**

739

Kenya Gazette Supplement No. 148

23rd August, 2019

(Legislative Supplement No. 48)

LEGAL NOTICE NO. 144

**THE SMALL CLAIMS COURT ACT**

(No. 2 of 2016)

IN EXERCISE of the powers conferred by section 51 of the Small Claims Court Act, 2016, the Chief Justice prescribes the following Code of Conduct—

**THE SMALL CLAIMS CODE OF CONDUCT FOR ADJUDICATORS, 2019**

- |  |                         |
|--|-------------------------|
| 1. This Code may be cited as the Small Claims Court Code of Conduct for Adjudicators, 2019.  | Citation                |
| 2. This Code applies to adjudicators appointed under section 5 of the Small Claims Court Act, 2016.  | Application of the Code |
| 3. The objective of this Code is to—   | Objective of the Code.  |
| (a) guide the conduct, professional and ethical responsibilities of adjudicators;  |                         |
| (b) give effect to Articles 168 (1) (b) and 172 (1) (c) of the Constitution;   |                         |
| (c) give effect to the Bangalore Principles of Judicial Conduct as adopted by the Judicial Group on Strengthening Judicial Integrity, and revised at the Round Table Meeting of Chief Justices held at the Peace Palace, in the Hague from the 25 <sup>th</sup> to the 26th of November, 2002; and |                         |
| (d) supplement and not derogate from the General Leadership and Integrity Code for State officers prescribed under Part II of the Leadership and Integrity Act, 2012, and any other written law or code of conduct intended to bind judicial officers.   | No 19 of 2012           |
| 4. In this Code, unless the context otherwise requires—  | Interpretation          |
| “adjudicator” means an adjudicator appointed under section 5 of the Small Claims Court Act, 2016.  | No 2 of 2016            |

“confidential information” means information that has not been made a matter of public record relating to pending cases, as well as information not yet made public concerning the work of any adjudicator relating to pending cases, including notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations and similar papers;

"Commission" means the Judicial Service Commission established under Article 171 (1) of the Constitution;

"fiduciary interest" includes relationships such as those associated with a business partner, an executor, administrator, a trustee and guardian;

"immediate family" includes, spouse, son, daughter, brother, sister, parent, grandparent, grandchild, father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister or person living in the household of an adjudicator;

"adjudicator's family" includes an adjudicator's spouse, son, daughter, son in-law, daughter-in-law, or other person who forms part of the adjudicator's household whether as a relative, companion or employee;

"adjudicator's spouse" means the wife or husband of an adjudicator married under any recognized system of law in Kenya; and

"primary employment" means the position that ordinarily takes up the normal working hours of the adjudicator and requires his or her exclusive attention in performing official duties.

5. (1) An adjudicator shall uphold and exemplify independence in his or her individual and institutional capacities. Independence

(2) An adjudicator shall exercise the judicial authority independently on the basis of the adjudicator's assessment of the facts, and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

(3) An adjudicator shall not deviate from the law to appease public clamour, to avoid criticism or to advance an illegitimate interest.

(4) An adjudicator shall not be improperly influenced by—

- (a) the race, sex, gender, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, political association, culture, dress, nationality, socio-economic status, language or place of birth, or other irrelevant ground of a party appearing before the adjudicator;
- (b) the adjudicator's personal feelings concerning a victim of crime, witness, accused person, plaintiff or defendant; or
- (c) the control, direction or pressure from any person or authority claiming to have an interest in a particular case.

(5) An adjudicator shall be independent in relation to society in general and in relation to the particular parties to a dispute that the adjudicator has to adjudicate and shall resist and reject any external influence, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason, and shall have unfettered freedom to decide a case impartially, in accordance with his or her conscience and the application of the law to the facts of the case.



(6) An adjudicator shall be free from inappropriate connections with, and influence by, the executive and legislative branches of government and appear to a reasonable observer to be free therefrom.

(7) In performing judicial duties, an adjudicator shall be independent of judicial colleagues in respect of decisions that the adjudicator is obliged to make independently.

(8) An adjudicator shall encourage and uphold safeguards for the discharge of judicial duties.

(9) An adjudicator shall exhibit and promote high standards of judicial conduct.

(10) An adjudicator who is assigned an administrative role shall promote judicial independence in the discharge of such duties, and shall cooperate with other judicial officers in the discharge of their judicial duties by promoting unity of purpose and collegiality.

6. (1) An adjudicator shall promote impartiality in relation to the decisions of the adjudicator and the process by which decisions are made.

Impartiality.

(2) An adjudicator shall make decisions based on objective criteria and not on the basis of bias, prejudice or conferring the benefit to one person over another for improper reasons.

(3) An adjudicator shall not initiate or consider *ex parte* communications on the merits, or procedures affecting the merits of a proceeding that is before, or could come before, the adjudicator except as authorised by law.

(4) An adjudicator shall, as far as is reasonable, so conduct himself or herself as to minimize the occasions on which it will be necessary for the adjudicator to be disqualified from hearing or deciding cases.

(5) An adjudicator shall not—

- (a) knowingly, while a proceeding is before, or could come before, the adjudicator, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process; or
- (b) make any comment in public or otherwise that might affect the fair trial of any person or issue in difference.

(6) An adjudicator shall disqualify himself or herself in any proceedings in which his or her impartiality might reasonably be questioned, including if the adjudicator—

- (a) is a party to the proceedings;
- (b) was or is a material witness in the matter in controversy;
- (c) or a member of the adjudicator's family, has an economic or other interest in the outcome of the matter in controversy;
- (d) has personal knowledge of disputed evidentiary facts concerning the proceedings;

- (e) has actual bias or prejudice concerning a party;
- (f) has a personal interest or is in a relationship with a person who has a personal interest in the outcome of the matter;
- (g) had previously acted as counsel for a party; or
- (h) is precluded from hearing the matter on account of any other sufficient reason.

(7) Every disqualification of an adjudicator shall be based on a specific reason to be recorded in writing as part of the proceedings, including an explanation for the adjudicator's recusal on personal reasons.

(8) The disqualification of an adjudicator may be dispensed with if no other adjudicator can deal with the case or if, by reason of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

7. (1) An adjudicator shall ensure that his or her conduct is above reproach in the view of a reasonable observer. Integrity.

(2) An adjudicator shall uphold the principle that justice must not merely be done but must also be seen to be done.

(3) An adjudicator shall not use the judicial office to improperly enrich himself or herself or any other person.

(4) An adjudicator shall not knowingly permit a member of the adjudicator's staff or other person subject to the adjudicator's influence, direction or authority, to ask for, or accept, any gift, loan, hospitality, advantage, privilege or favour in relation to anything done or to be done or omitted to be done in connection with the adjudicator's duties or functions.

(5) An adjudicator shall not alter the substance of reasons for a decision given orally, or the transcript of evidence or of the summing up thereof.

8. (1) An adjudicator shall avoid any act that demeans the office of adjudicator. Propriety.

(2) An adjudicator shall avoid impropriety and the appearance of impropriety in all of the adjudicator's activities.

(3) An adjudicator shall accept personal restrictions that might be viewed as burdensome by the ordinary citizen freely and willingly.

(4) An adjudicator shall conform to conventionally accepted standards of behaviour, and morality and shall conduct themselves in a way that is consistent with the dignity of the judicial office.

(5) An adjudicator, in exercising the freedom of expression, belief, association and assembly, shall conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the Judiciary.

(6) An adjudicator shall not use or lend the prestige of the adjudicator to advance the private interests of the adjudicator, a member of the adjudicator's family or of anyone else, nor shall an

adjudicator convey or permit others to convey the impression that anyone is in a special position improperly to influence the adjudicator in the performance of his or her judicial duties.

(7) An adjudicator shall inform himself or herself about the adjudicator's fiduciary interests and shall make reasonable efforts to be informed about the financial interests of members of the adjudicator's family.

(8) An adjudicator shall not serve as an administrator, executor or trustee of any estate except the estate of a member of the adjudicator's family if such service will not interfere with the proper performance of his or her official duties.

(9) An adjudicator shall not engage in financial and business dealings that may reflect adversely on the adjudicator's impartiality, interfere with the proper performance of his or her official duties, exploit the adjudicator's office, or involve the adjudicator in transactions with persons likely to come before the court in which the adjudicator serves.

(10) Confidential information acquired by an adjudicator in the adjudicator's judicial capacity shall not be used or disclosed by the adjudicator for any other purpose not related to his or her judicial duties.

(11) Subject to the provisions of any other law, an adjudicator may—

- (a) write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;
- (b) appear at a public hearing before an official body concerned with matters relating to the law, the legal system, administration of justice or related matters;
- (c) serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judicial officer; or
- (d) engage in other activities if such activities do not detract from the dignity of the adjudicator or otherwise interfere with the performance of their judicial duties:

Provided that no salary may be payable to an adjudicator for the performance of any of the activities mentioned under this sub rule.

(12) An adjudicator shall not practice law by offering legal advice or drafting pleadings to litigants or members of the public, whether for a fee or free of charge while the adjudicator holds judicial office.

(13) Subject to any legal requirements relating to public disclosure, an adjudicator may receive a token gift, award, honorarium, allowance or benefit as appropriate to the occasion on which it is made:

provided that such gift, award or benefit might not reasonably be perceived as intended to influence the adjudicator in the performance of judicial duties or otherwise give rise to an appearance of partiality.

(14) An adjudicator may accept a gift in his or her official capacity:

Provided that if the gift is a non-monetary gift that exceeds twenty thousand shillings, such a gift shall be deemed to be a gift to the Judiciary and shall not be retained by the adjudicator.

(15) An adjudicator shall not engage in any correspondence with a litigant or other person relating to matter before or likely to come before the adjudicator.

(16) An adjudicator shall not—

- (a) solicit contributions from the public for whatever cause; or
- (b) participate in the public collection of funds:

Provided that—

- (i) an adjudicator may participate in voluntary fund-raising if the fund-raising does not reflect adversely upon the adjudicator's impartiality and does not interfere with the performance of the adjudicator's judicial duties or compromise the adjudicator's impartiality; and
- (ii) where an adjudicator contributes towards or attends such fund-raising, the adjudicator shall not play a central part in its organization or preside over it.

9. (1) An adjudicator shall be aware of, and understand, diversity in society and differences based on various factors, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, political association, culture, dress, language, place of birth or other like station.

Equality and non-discrimination.

(2) An adjudicator shall not, in the performance of his or her duties, by words or conduct, manifest bias or prejudice towards any person or group on any ground.

(3) An adjudicator shall carry out judicial duties with appropriate consideration for all persons including the parties, witnesses, intermediaries, court staff and judicial colleagues without differentiation on any ground.

(4) An adjudicator shall not knowingly permit court staff or other persons subject to the adjudicator's influence, direction or control to differentiate between persons concerned in a matter before the adjudicator on any ground.

(5) An adjudicator shall not—

- (a) hold membership in any organization that practises discrimination on any ground; or
- (b) use the benefits or facilities of any organization that practises discrimination on any ground to any significant extent.

10. (1) The judicial duties of an adjudicator shall take precedence over all other activities. Professionalism.

(2) An adjudicator shall devote his or her professional activities to judicial duties including the performance of judicial functions and responsibilities in court, the making of decisions, and any other tasks relevant to his or her office or to the operations of the court.

(3) An adjudicator shall take reasonable steps to maintain and enhance his or her knowledge, skills and personal qualities necessary for the proper performance of judicial duties.

(4) An adjudicator shall keep himself or herself informed of relevant developments in the law including international conventions and other instruments establishing human rights norms.

(5) An adjudicator shall perform all judicial duties including the delivery of reserved decisions, efficiently, fairly and expeditiously.

(6) An adjudicator shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, witnesses, intermediaries and others with whom the adjudicator deals in an official capacity and require similar conduct of parties, intermediaries, court staff and other persons before the court.

(7) An adjudicator shall not engage in conduct that may be incompatible with the diligent discharge of his or her judicial duties.

(8) An adjudicator shall, as far as practicable, adopt procedures to facilitate and promote access to justice as contemplated in the Constitution.

11. (1) An adjudicator or any member of the adjudicator's family shall not solicit or accept any bribe, gift, loan, hospitality, advantage, privilege or favour in relation to anything done or to be done or omitted to be done by the adjudicator in connection with the performance of judicial duties or which might reasonably be perceived as being intended to influence the performance of the adjudicator's judicial duties.

Accountability for, and prohibition of, corrupt practices.

(2) An adjudicator shall maintain honest and impeccable conduct in and out of court, whether in official or private capacity, and shall uphold the dignity and integrity of the judiciary.

12. (1) An adjudicator shall keep themselves informed about and observe the laws and policies relating to sexual harassment.

Prohibition of sexual harassment.

(2) An adjudicator shall not sexually harass a fellow member of staff or any other person in the workplace, or other professional or social situation.

(3) For the purposes of this Code, "sexual harassment" has the meaning assigned to it in the Sexual Offences Act, 2006, and includes doing any of the following, if the person doing it knows or ought to know that it is—

No. 3 of 2006.

(a) bullying or coercion of a sexual nature;

- (b) the unwelcome and inappropriate promise of rewards in exchange for sexual favours;
- (c) exerting unwarranted pressure for sexual activity or favours;
- (d) making intentional or careless physical contact that is sexual in nature; or
- (e) unwelcome sexual advances or requests for sexual favour, whether verbal or physical conduct, sending of suggestive electronic text messages, pictures and videos or gestures of a sexual nature, including noises, jokes or comments, innuendos regarding another person's sexuality:

Provided that, consensual sexual behaviour based on mutual attraction shall not constitute sexual harassment.

(4) An act may constitute sexual harassment if it is so frequent and severe that it creates a hostile or offensive work environment resulting in adverse employment decisions including the victim of the act being dismissed, transferred, demoted or compelled to leave employment.

(5) Investigations into allegations of sexual harassment shall be conducted in utmost confidentiality and shall take into account the circumstances of a particular case.

13. (1) An adjudicator who intends to maintain a bank account outside Kenya shall notify the Commission in writing of such intention before opening the account.

General provisions.

(2) Where an adjudicator maintains a bank account outside Kenya, he or she shall annually supply the Commission with a bank statement relating to that account.

(3) An adjudicator shall not seek or accept a personal loan or benefit in circumstances that compromise or are likely to compromise the adjudicator's integrity.

(4) An adjudicator shall take all reasonable steps to ensure that property entrusted to his or her care is adequately protected and not misused or misappropriated.

(5) Adjudicators shall, once every two years, submit to the Commission a declaration of their income, assets and liabilities, and that of their spouse or spouses and their dependent children younger than eighteen years in the form and manner prescribed under any written law.

(6) Chapter Six of the Constitution and any other written law relating to public officers shall, with the necessary modifications, apply to adjudicators in accordance with section 52 of the Leadership and Integrity Act, 2012.

No. 19 of 2012.

14. A breach of this Code shall be an act of misconduct for which appropriate disciplinary or any other lawful action may be taken.

Breach of the Code.

15. (1) The Chief Justice may issue guidelines and directions on the oversight and implementation of this Code including the lodging and determination of complaints against adjudicators.

Institutional framework for implementation of the Code.

(2) Without prejudice to the generality of sub-rule (1), the Chief Justice may prescribe administrative and procedural mechanisms including measures—

- (a) to promote compliance and the implementation of the inspirational aspects of this Code through mentorship, counselling, and promotion of employee wellness;
- (b) to establish collegial peer review panels for the determination of complaints against adjudicators;
- (c) to facilitate the referral of complaints to and from other state organs, including the Commission, the Commission for Administrative Justice and other judicial offices;
- (d) to ensure the expeditious disposal of complaints, appointment of ethics officers and establishment of appropriate mechanisms for the determination of complaints under this Code;
- (e) to set up suitable administrative frameworks including advisory peer support mechanisms to ensure compliance with the Code; and
- (f) to ensure complete confidentiality in the determination of complaints.

(3) Peer review panels established for the purposes of this Code shall, to the extent possible, attempt to reach a consensus and report their findings and decisions to the appointing authority.

16. Every adjudicator shall sign and subscribe to this Code.

Signing and  
subscription to the  
Code

17. (1) The provisions of this Code apply in addition to the requirements of any other law relating to the code of conduct and ethics for public officers.

Code to  
implement other  
legal  
requirements

(2) For the purposes of—

- (a) section 5 of the Public Officer Ethics Act, 2003;
- (b) section 37 of the Leadership and Integrity Act, 2012; and
- (c) section 17 of the Public Service (Values and Principles) Act, 2015,

No 4 of 2003

No 19 of 2012

No 1A of 2015

this Code is the prescribed specific Code for adjudicators, and by means of which the requirements of the three Acts are given effect.

Dated the 15th August, 2019.

DAVID K. MARAGA,  
Chief Justice and Chairman of the Rules Committee.

**EXPLANATORY MEMORANDUM TO THE COMMITTEE ON DELEGATED  
LEGISLATION OF THE NATIONAL ASSEMBLY ON THE CODE OF CONDUCT FOR  
ADJUDICATORS AND THE SMALL CLAIMS COURT RULES, 2019**

(L.N. No. 144/145 of 2019)

**PART I**

|  |   |
|--|---|
| <b>Name of the Statutory Instrument:</b> | The Small Claims Court Rules, 2019 and Code of Conduct for Adjudicators |
| <b>Name of the Principal Act:</b>        | The Small Claims Court Act No.2 of 2016                                 |
| <b>Enacted Pursuant to:</b>              | Section 50 of the Small Claims Court Act                                |
| <b>Name of the Ministry/Department:</b>  | Office of the Attorney-General and Department of Justice                |
| <b>Gazetted on:</b>                      | 23 <sup>rd</sup> August, 2019   |
| <b>Tabled on:</b>                        |   |

**PART II**

**1. The purpose of the Statutory Instrument**

1.1. The purpose of Small Claims Court Rules, 2019 and the Code of Conduct for Adjudicators is to give effect to Section 50 of the Small Claims Court Act (No.2 of 2016).

1.2. The Small Claims Court Rules are intended to enhance access to justice by providing the procedural guidelines for claims lodged in the Small Claims Courts.

**2. Legislative Context**

Section 50 of the Small Claims Court Act No.2 of 2016 confers the Chief Justice with power to make rules of practice and procedure for the functioning of the Small Claims Courts.

**3. Policy Background**

3.1. There is a lot of back-log of civil cases whose pecuniary value is below Kshs.200,000. The Small Claims Court Rules are intended to enhance access to justice by providing the procedural guidelines for claims lodged in the Small Claims Courts



as stipulated in the Act. This will ensure speedy resolution of disputes which would otherwise drag in already congested courts.

3.2. The Small Claims Court Act was enacted in the year 2016 but has not been operational due to the missing procedural guidelines for users on handling of claims lodged in the Court.

#### 4. Public Consultations and outcome

4.1. The Rules Committee of the Judiciary embarked on a public stakeholders consultations starting in May 2018 to April 2019. The public consultations were in the nature of correspondences, memoranda, meetings and public forums in Nakuru, Eldoret, Kisumu, Kakamega, Machakos, Mombasa, Voi, Nyeri and Nairobi. A report on this process was duly prepared.

4.2. The consultations and negotiations resulted in the final draft rules and Code of Conduct duly forwarded to the Office of the Attorney for finalization and gazettelement.

#### 5. Financial implications

5.1. There shall be a financial implications on the implementing body, the Judicial Service Commission (J.S.C).

#### 6. Impact

6.1. **Impact on Rights and Fundamental Freedoms:** The Small Claims Court Rules are necessary to enforce access to justice through operationalizing the Small Claims Courts. The rules will ensure that citizens are able to resolve civil disputes in a speedy, easy and efficient way.

6.2. **Impact on Private Sector:** The rules will impact positively in dispute resolution, access to justice for the poor and marginalized and improve economic cash flows in the country sometimes held up in disputes.

6.3. **Impact on Public Sector:** The rules will impact positively in dispute resolution, access to justice for the poor and marginalized and improve economic cash flows in the country sometimes held up in disputes.

## 7. Guidance

7.1. The Rules Committee shall ensure that there is ample sensitization of members of the public on the procedural mechanisms of approaching the court and resolution of claims by the Court. It will also work with the Sustaining Judiciary Transformation (SJT) team, partners and stakeholders to ensure actualization and functioning of the court and adjudicators attached to it.

## 8. Monitoring and review

8.1. The Rules Committee shall cooperate with implementing organs to ensure that the rules enhance access to justice through the Small Claims Courts.

## 9. Request to the National Assembly

9.1. The National Assembly is invited to:

- (a) Note the contents of this Memorandum
- (b) Adopt the Small Claims Court Rules, 2019
- (c) Adopt the Code of Conduct for Adjudicators, 2019

Anne Amadi  
CHIEF REGISTRAR OF THE JUDICIARY