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THE CIVIL PROCEDURE ACT

(Cap. 21)

THE MEDIATION (PILOT PROJECT) RULES, 2015

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## THE CIVIL PROCEDURE ACT

(Cap. 21)

## THE MEDIATION (PILOT PROJECT) RULES, 2015

IN EXERCISE of powers conferred by section 59A, 59B and 81 (2FF) of the Civil Procedure Act, the Rules Committee makes the following Rules:—

1. These Rules may be cited as the Mediation (Pilot Project) Rules, 2015 and shall take effect and subsist for such period as the Chief Justice may direct.

Title.

2. The Rules shall during the Pilot Project apply to all civil actions filed in the Commercial and Family Divisions of the High Court of Kenya at Milimani Law Courts, Nairobi during the Pilot Project.

Application.

3. In these Rules unless the context otherwise requires—

Interpretation.

“civil action” means a civil proceeding commenced in any manner prescribed by law save where otherwise provided by the Court.

“court” means the Commercial and/or Family Divisions of the High Court of Kenya at Milimani Law Courts, Nairobi;

“MAC” means the Mediation Accreditation Committee;

“mediation” means an informal and non-adversarial process where an impartial mediator encourages and facilitates resolution of a dispute between two or more parties, but does not include attempts made by a judge to settle a dispute within the course of judicial proceedings related thereto;

“Mediation Deputy Registrar” means a designated deputy registrar in the court assigned to handle mediation cases;

“Mediation Registrar” means the person appointed by the Chief Justice under Section 59A (3) of the Civil Procedure Act,

“mediator” means an impartial third party appointed to conduct a mediation;

“pilot project” means the mediation program conducted by the court under these Rules.

“screening” means the process by which the Mediation Deputy Registrar or the Court reviews civil actions for suitability for mediation or otherwise;

Referral to mediation.

4. (1) Every civil action instituted in court after commencement of these Rules, shall be subjected to mandatory screening by the Mediation Deputy Registrar and those found suitable and may be referred to mediation.

(2) Civil actions shall be screened as follows—

(a) in the Commercial Division, cases shall be screened upon close of pleadings.

(b) in the Family Division, cases shall be screened upon filing of Complaint or Petition or other originating process, or at the close

of pleadings or at any other appropriate stage as the Court may determine.

- (c) where filed prior to the commencement of these Rules and pending determination, may be screened and referred to mediation.
- (d) before a case is set down for hearing the Court may refer any case for mediation.

(3) Pending filing of the Mediator's report in accordance with Rule 13 of these Rules, the time limits applicable to civil actions under the Civil Procedure Rules shall cease to run.

Provided that nothing in these Rules shall derogate from the jurisdiction of the court under Section 59B of the Act.

5. Where a case is referred to mediation, the Mediation Deputy Registrar shall notify the parties within seven (7) days of completion of screening, that the case has been referred for mediation. The notification shall be in the prescribed Form 1. The parties shall within seven (7) days of receipt of notification file a case summary the prescribed Form 2.

Notification of  
referral to  
mediation.

6. (1) Mediation under these Rules shall be conducted by a person registered as a mediator by MAC.

Mediators.

(2) For each case referred to mediation, the Mediation Deputy Registrar shall nominate three qualified mediators from the Register of mediators maintained by MAC, and notify the parties of the names of the nominated mediators.

(3) The parties shall within seven (7) days of receipt of the nominated mediators, state their preference in order of priority, and shall file a notice with the Mediation Deputy Registrar.

(4) The Mediation Deputy Registrar shall within seven (7) days of receipt of the notice, appoint a mediator giving due consideration to the parties preference; and notify the parties and the notice shall be in prescribed Form 3 as set out in the Schedule.

(5) Parties shall not pay the mediators under this pilot project.

Provided that parties may by consent select any other mediator from the MAC register within the seven (7) days stipulated in section 6 (2) above.

7. Mediation proceedings shall take place and be concluded within sixty (60) days from the date of referral to mediation provided that time may be extended for a further period not exceeding ten (10) days by the Mediation Deputy Registrar having regard to the number of parties or complexity of issues or with the written consent of the parties, which consent shall be duly filed with the Mediation Deputy Registrar.

Time limit.

8. (1) The appointed mediator shall immediately fix a date for the initial mediation session and shall notify the parties at least seven (7) days before that date. The notice shall be in prescribed Form 4 as set out in the schedule.

Commencement of  
mediation.

(2) Notice of the place, date and time of the mediation session, shall be served on the parties at the address of service provided in the case summary.

(3) The notice shall also advise parties that the mediation is mandatory.

(4) The appointed mediator shall file a copy of the notice with the Mediation Deputy Registrar.

9. (1) The parties are required to attend the mediation sessions. They may be accompanied by an Advocate or a representative. Where the party is a corporation, partnership, government agency or entity other than an individual, an officer duly authorized to represent and bind the party shall attend.

Attendance at the mediation.

(2) The mediator may adjourn a session, where a party fails to attend. Where the session is rescheduled a notice shall be issued to the parties.

(3) The Mediator shall provide guidelines on the process of mediation as appropriate for each referral.

10. At the commencement of the mediation session, the mediator shall read and explain to the parties, the rules of engagement set out in the prescribed Form 5 and shall require the parties to sign the form.

Statement of understanding.

11. If a party fails to comply with any of the mediator's directions or consistently fails to attend mediation sessions, the mediator shall file a certificate of non-compliance in the prescribed Form 6 with the Mediation Deputy Registrar, who shall then refer the matter back to the Court.

Non-compliance.

(2) The court may —

- (a) order that the parties attend further mediation sessions on such terms as the court considers appropriate; or
- (b) strike out the pleadings of the non-complying party, unless the party satisfies the court that there was reasonable excuse for the non-compliance and that striking out the party's pleadings will be inequitable;
- (c) order that the defaulting party pays costs to be assessed and determined by the Court.
- (d) Make any other orders as the Court deems fit.

12. (1) All communication during mediation including the mediator's notes shall be deemed to be confidential and shall not be admissible in evidence in any current or subsequent litigation or proceedings.

Confidentiality and Inadmissibility.

(2) The mediator and the parties to any mediation shall treat as confidential information obtained orally or in writing from or about the parties in the mediation and shall not disclose that information unless —

- (a) required by law to disclose;



(b) it relates to child abuse, child neglect, defilement, domestic violence or related criminal or illegal purposes.

(3) Neither the mediator nor any person present or appearing at a mediation session may be summoned, compelled or otherwise required to testify or to produce records or notes relating to the mediation in any proceedings before any court of law.

(4) No person present or appearing at a mediation session shall use any electronic device of any nature to record mediation sessions.

(5) Any breach of this rule shall constitute contempt of court.

(6) This rule shall not apply to any settlement arising from mediation.

13. Within ten (10) days of conclusion of the mediation, the mediator shall file a mediation report with the Mediation Deputy Registrar in the prescribed Form 7, and provide each of the parties with a copy of the filed mediation report.

Mediator's report.

14. (1) Where there is an agreement resolving some or all of the issues in dispute, such agreement shall be in the prescribed Form 8, duly signed by the parties and shall be filed by any of the parties, with the Mediation Deputy Registrar within ten (10) days of conclusion of the mediation.

Agreement.

(2) Any agreements filed with the Mediation Deputy Registrar shall be adopted by the Court and shall be enforceable as a Judgement or order of court.

15. The Court may at any stage of the court proceedings, make an order requiring the parties to participate in additional mediation.

Additional mediation.

16. No appeal shall lie against a judgment or order of the Court arising from mediation.

No appeal against settlement.

17. A mediator shall enjoy the same protection and immunity as that granted to judicial officers and judges.

Immunity.

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## SCHEDULE

rule 5

FORM NO. 1

THE HIGH COURT OF KENYA AT .....

PLAINTIFF/PETITIONER/APPLICANT

*versus*

DEFENDANT/RESPONDENT

MEDIATION NO ..... OF .....

ARISING OUT OF .....

**NOTICE THAT CASE HAS BEEN SCREENED FOR MEDIATION**

TO:

THE PLAINTIFF AND DEFENDANT

TAKE NOTICE THAT:

1. The above cause has been screened and scheduled for mandatory mediation.
2. You are required to file a case summary in prescribed Form 2 within seven (7) days of receipt of this notice.

Dated at .....day of .....2015.

DEPUTY REGISTRAR

Copied to the parties (and advocates if represented)

rule 5

General Heading

No. 2

**CASE SUMMARY***(To be provided to the mediator and parties at least 7 days before the mediation session)*

1. Brief summary of case
2. Issues in dispute

The Plaintiff (or Defendant) state that the following issues are in dispute and remain to be resolved. Issues to be stated briefly and numbered consecutively.

3. Address of service

Name, physical and postal address, email, and telephone number.

Date

Party's signature

rule 6 (3)

No. 3

(General Heading)

**NOTICE OF APPOINTMENT OF MEDIATOR**

TO: MEDIATOR

1. I certify that I have consulted the parties and the parties have chosen you to act as the mediator.
2. Please proceed to immediately fix a date for the mediation session.

Dated at .....day of .....2015.

MEDIATION DEPUTY REGISTRAR

Copied to the parties (and advocates if represented)

rule 8 (1)

No. 4

(General Heading)

**NOTICE BY MEDIATOR**

Rule 10(1) TO:  
AND TO:

I have been assigned to conduct the mediation session under Rule 1.

The mediation session will take place on (date) from (time) to (time) at (place)

Unless the court orders otherwise, you are required to attend this mediation session. If you have a lawyer representing you in this action, he/she is also required to attend.

You are required to file a case summary 7 days before the mediation session.

When you attend the mediation session, you should bring with you any documents that you consider of importance in the action. You should plan to remain throughout the scheduled time. If you need another person's approval before agreeing to a settlement, you should make arrangements before the mediation session to ensure you have ready access to that person throughout the session even outside regular business hours.

**YOU MAY BE PENALIZED IF YOU FAIL TO FILE A CASE SUMMARY OR TO ATTEND THE MEDIATION SESSION.**

Date

(Name, Address, Telephone Number and Email of the mediator)

cc. Deputy Registrar.

## Rule 10

## General Heading

## No. 5

**STATEMENT OF UNDERSTANDING**

My name is .....I have been assigned to mediate your case. I will serve as a neutral party to help you resolve your dispute. I will not act as an advocate for any party.

This mediation is strictly confidential. No party shall be bound by anything said or done in mediation unless a settlement is reached. If a settlement is reached, it shall be reduced in writing and, once signed, shall be binding upon all parties to the agreement. Each party agrees not to request that, I, the mediator testify against other party, not ask me nor any other party to testify regarding statements made in mediation.

Please sign below to acknowledge that you have read and understood this statement and the mediation rules

Date

.....  
*Plaintiff*

.....  
*Defendant*

.....  
*Plaintiff's Advocate*

.....  
*Defendant's Advocate*

.....  
*Mediator*

.....  
*Mediator*

rule 11(1)

## General Heading

## No. 6

**CERTIFICATE OF NON COMPLIANCE**

TO MEDIATION DEPUTY REGISTRAR

I ....., the mediator, certify that this certificate of non-compliance is filed on account of:

Date

Name, address, telephone number and email of mediator



rule 13

General Heading

No. 7

**MEDIATOR'S REPORT**

TO THE MEDIATION DEPUTY REGISTRAR

I ..... having been designated as the mediator in this action and having conducted mediation between the parties do hereby report that the parties have/have not reached a settlement.

Dated

.....  
*Mediator's signature*

rule 14(2)

General Heading

No. 8

**MEDIATION SETTLEMENT AGREEMENT**

We, the undersigned parties to this action have agreed to settle our dispute/differences as follows:

Date

.....  
*Plaintiff*

.....  
*Defendant*

.....  
*Plaintiff's Advocate*

.....  
*Defendant's Advocate*

.....  
*Mediator*

.....  
*Mediator*

Dated the 7th September 2015.

ALNASHIR VISRAM,  
*Judge, Court of Appeal / Chair of the Rules Committee.*