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THE CIVIL PROCEDURE ACT

(Cap. 21)

THE CIVIL PROCEDURE (COURT-ANNEXED MEDIATION)
RULES, 2022

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THE CIVIL PROCEDURE ACT

(Cap. 21)

THE CIVIL PROCEDURE (COURT-ANNEXED MEDIATION)
RULES, 2022

IN EXERCISE of the powers conferred by section 81 (2) (ff) of the Civil Procedure Act, the Rules Committee makes the following Rules—

THE CIVIL PROCEDURE (COURT-ANNEXED MEDIATION)
RULES, 2022

PART I—PRELIMINARY

1. These Rules may be cited as the Civil Procedure (Court-Annexed Mediation) Rules, 2022. Citation.

2. In these Rules, unless the context otherwise requires— Interpretation.

“accredited mediator” means a person whose name is enlisted in the Committee’s register of accredited mediators;

“case” means proceedings in court commenced in any manner prescribed by law;

“court” means the High Court, Environment and Land Court, Employment and Labour Relations Court, and subordinate court as defined under Article 169 (1) of the Constitution;

“court record” includes the physical file and pleadings or documents contained therein, and the electronic or digital file thereof;

“filing” includes the physical filing of documents at the mediation registry and electronic filing by uploading documents onto the official Judiciary portal designated for that purpose;

“mediation” means the informal and non-adversarial process conducted physically or virtually where a mediator encourages and facilitates the resolution of a dispute between two or more parties but does not include any attempt by a judge or magistrate to settle a dispute within the course of judicial proceedings;

“Mediation Deputy Registrar” means a Deputy Registrar designated by the court to provide administrative support and manage the court-annexed mediation programme at that court and includes a magistrate, Kadhi or other officer;

“Mediation Registrar” means the person appointed by the Chief Justice under section 59A (3) of the Act;

“private settlement agreement” means a settlement agreement arising out of a mediation process conducted by a qualified mediator in respect of a dispute that is not the subject of a pending court case;

“qualified mediator” means a mediator whose name is enlisted on the Committee’s register of qualified mediators”;

“screening” means the process by which a screening officer reviews a case to determine its suitability for referral to mediation;

“screening officer” means a Mediation Deputy Registrar or other officer of the court authorised to screen cases; and

“settlement agreement” means a written and signed agreement arising out of a mediation process and includes a partial settlement.

3. These Rules shall apply to any case, and any private settlement agreement presented before court for adoption, recognition and enforcement. Application.

4. (1) Where a court is implementing the Court-Annexed Mediation Programme, it shall establish a Mediation Registry. Mediation registries.

(2) The Mediation Registry established under sub-rule (1) shall be headed by a Mediation Registrar or such other officer designated by the court for that purpose.

PART II—COURT-ANNEXED MEDIATION PROCESS

5. (1) A court before which a case is being heard may, at any stage before final judgment, refer the case to mediation. Referral to mediation.

(2) Any case instituted before the coming into operation of these Rules shall be subjected to screening by a screening officer to determine the suitability of the case to referral to mediation.

(3) A case that is determined to be suitable to mediation shall, by order in writing given by the Mediation Registrar, be referred to mediation with or without further orders.

(4) The parties to a case may, by mutual consent, request the court to refer the case to mediation.

(5) Nothing in these Rules shall derogate from the jurisdiction of the court to refer the case to mediation in accordance with section 59B of the Act or to another method of alternative dispute resolution under section 59C.

6. (1) Each case shall be screened upon the close of pleadings or at any other appropriate stage as the court may determine. Screening.

(2) The screening officer shall endorse on the physical or electronic file a direction or order that the case has undergone screening and found to be suitable or unsuitable for referral to mediation.

(3) Where a case is not suitable for referral to mediation, the screening officer shall endorse on the file the reasons thereof.

7. The court shall develop screening criteria to be used by screening officers which shall account for— Screening criteria.

- (a) the age of the case;
- (b) the value and nature of the subject matter;
- (c) whether the issues for determination in the case are pure points of law;
- (d) whether the case is a public interest litigation or one which raises issues of public concern; and

- (e) generally, whether the case is one which would benefit the parties more if referred to mediation.

8. (1) The court shall maintain an updated register of all cases referred to mediation. Mediation register.

(2) The register shall contain information on the steps undertaken in each mediation case including—

- (a) the date of referral to mediation;
- (b) whether the case was referred to mediation through screening, by consent of parties, or through direct referral by a judge or judicial officer;
- (c) the mediation file number;
- (d) the court or division of court from which the case was referred;
- (e) the case type;
- (f) the original case number;
- (g) the exact or estimated value of the subject matter;
- (h) the names of the parties and the parties' representatives;
- (i) the contact details of the parties and the parties' representatives;
- (j) in the case of a succession matter, name of the deceased person;
- (k) the name and contact details of the appointed mediator;
- (l) the date of the appointment of the mediator and date of notification;
- (m) the reason for the appointment of the mediator if the appointment is done otherwise than from the register of mediators kept by the Committee;
- (n) the outcome of the mediation;
- (o) the date of filing of the mediator's report, settlement agreement or non-compliance certificate;
- (p) the date when the claim for payment is forwarded; and
- (q) any other relevant information about the case and conduct of the mediation.

9. (1) Upon the referral of a case to mediation, the court shall cause to be opened and maintained a mediation file in accordance with a system that is distinct from other court files. Mediation file.

(2) A mediation file shall contain the following documents—

- (a) a copy of the order referring the case to mediation;
- (b) the case summaries;

- (c) any interim orders issued by the court regarding of the mediation;
- (d) the attendance sheets signed by the parties and the mediator at mediation meetings;
- (e) the mediator's report; and
- (f) a copy of the non-compliance report or settlement agreement, as the case may be.

(3) A mediation file shall be confidential and kept at the mediation registry separately from the court file.

10. (1) Where a case is referred to mediation, the court shall notify the parties and the parties' advocates within seven days after screening in Form 1 as set out in the Schedule.

Notification of referral to mediation.

(2) Each party or party's advocate shall, within seven days after receipt of the notification under sub-rule (1), file a case summary in Form 2 as set out in the Schedule.

(3) A party shall, immediately after filing the case summary, serve upon the mediator and all other parties:

Provided that the court and mediator shall not be prevented from proceeding with the mediation process only for the reason that a party has not filed a case summary.

11. (1) Each notice and other process shall be served upon a party and the party's advocates or authorised representative through the address provided to the court at the time of the filing of the case or case summary.

Service of process.

(2) Service shall be effected physically, electronically or by post in accordance with the relevant procedural rules, and the court and the mediator shall maintain proof of service upon the parties.

12. (1) Mediation under this Part shall be conducted by an accredited mediator whose status is active on the register of accredited mediators maintained by the Committee.

Mediators under the programme.

(2) The Committee shall ensure that the register of mediators is up to date upload it on the official Judiciary website and other platforms.

(3) Each mediator shall subscribe to and be bound by a Mediators' Code of Conduct as may be prescribed by the Committee and be subject to the Committee's disciplinary process.

(4) Each court station participating in the Court Annexed Mediation Program shall forward any complaint against a mediator to the Committee within seven days after receipt of the complaint.

(5) The Mediation Deputy Registrar or the designated officer of the court shall forward to the Committee the annual confidential report on the performance of each mediator that is attached to that court for purposes of improving the program.

13. (1) The Mediation Deputy Registrar shall, within seven days after the referral of a case to mediation, appoint a mediator from the register of accredited mediators and immediately thereafter notify the appointed accredited mediator.

Appointment of mediators and allocation of cases.

(2) The notification under sub-rule (1) shall be Form 3 as set out in the Schedule, and shall be copied to the parties and the parties' advocates.

(3) The mediator shall, within seven days after the notification of appointment under sub-rule (1), notify the court whether he or she accepts or declines the appointment in Form 4 as set out in the Schedule.

(4) The parties may, by mutual consent, select a mediator from the register of accredited mediators and notify the court within seven days after receipt of the notification under rule 10 (1).

(5) Before making a decision to select a mediator under sub-rule (4), the parties may request the Committee to provide further or other information about the nominated mediator.

(6) The mediator selected by the parties under sub-rule (4) shall supersede any appointment by the court under sub-rule (1) and the court shall immediately appoint and notify such mediator within five days after receipt of the notification from the parties.

(7) Where a mediator declines an appointment, the court shall immediately appoint another mediator and issue notification within five days of receipt of the notice under sub-rule (3).

(8) The Mediation Deputy Registrar shall allocate cases to mediators in chronological order according to the date on which an accredited mediator's name was added to the register of accredited mediators.

(9) Where the Mediation Deputy Registrar does not allocate a case to a mediator in accordance with sub-rule (7), he or she shall note on the mediation file and the electronic register the reasons for the decision.

(10) In order to ensure the efficient running of the Court Annexed Mediation Program, the Mediation Deputy Registrar shall distribute cases equitably amongst the mediators in accordance with their skills, performance, experience and availability.

14. (1) The court shall, within fourteen days after the appointment of a mediator, list the matter for mention before the Mediation Deputy Registrar or a designated officer.

Court mentions.

(2) A mention under sub-rule (1) may be conducted virtually.

(3) Where the court deems it necessary for the efficient and expeditious disposal of a particular case or at the request of any of the parties, the court may direct or order the attendance of the mediator during the mention.

(4) The court shall, during the mention, give directions as to the general conduct of the mediation including filing of case summaries and the expected conduct of the parties during the mediation.

(5) At the mention, the court shall inform the parties of the requirement to attend mediation sessions, participation in the mediation process in good faith, and the consequences of non-compliance.

(6) The mediator or a party to the dispute may request that a matter pending in mediation be listed for mention before the court in order to address a particular issue that may or is likely to delay, prejudice or impede its resolution.

15. (1) The mediator shall conduct the first mediation session within seven days after the date of notification of appointment with or without the mention under rule 14 (1).

Commencement
of mediation.

(2) The notice of the date of the first mediation session shall be in Form 5 as set out in the Schedule and shall be served by the mediator upon the parties, parties' advocates and the court.

(3) Where the case was mentioned under rule 14 (1), the parties and mediator shall agree on a suitable date for the first mediation session during or after the mention.

16. (1) Parties or parties' advocates or representatives shall attend each mediation session and participate in the mediation process in good faith.

Attendance at
mediation.

(2) The parties may be accompanied by an advocate or a representative.

(3) The personal details and role of the representative shall be disclosed to all parties at the first mediation session.

17. (1) Where a natural person participates in the mediation through a representative who is not an advocate, the representative shall, at the first mediation session, present to the mediator written authority signed by the party indicating that the representative has been authorised to take part in the mediation process and execute a settlement agreement on behalf of that party.

Representatives
of natural
persons.

(2) The authority under sub-rule (1) shall be in Form 6 as set out in the Schedule.

18. (1) Where one of the parties is a corporation, partnership, the government, government agency or entity, an officer duly authorized to represent and bind that party shall attend each mediation session and, at the first mediation session, present the mediator with a written authorization indicating that the officer has been authorized to enter into a binding settlement agreement on behalf of the corporation, partnership, the government, government agency or entity.

Representatives
of corporations,
partnerships, the
government,
government
agencies or
entities.

(2) The written authorisation under sub-rule (1) shall be in Form 7 as set out in the Schedule.

19. A State Counsel or other officer appearing on behalf of the Attorney-General shall, unless the contrary is confirmed, be deemed to have the express authority to bind the Office of the Attorney-General or the ministry, government department, agency or other organ on whose behalf the State Counsel appears.

State Counsel
deemed to be
authorised to bind
Attorney-General

20. (1) The mediator may adjourn a mediation session to another date where a party fails to attend.

Adjournments.

(2) Where a mediation session has been rescheduled under sub-rule (1), the mediator shall issue the parties with a notice indicating the

new date, time and venue for the mediation session and file a copy of the notice with the court.

21. (1) The mediator and the parties attending a mediation session shall sign an attendance sheet provided by the mediator and file the attendance sheet with the court.

Attendance sheets.

(2) The attendance sheet under sub-rule (1) shall be in Form 8 as set out in the Schedule and shall be made readily available online by the court and in hard copies places designated by the court for that purpose.

22. The mediator shall provide guidance on the mediation process as may be appropriate in each case.

Mediator to guide mediation process.
Venue and time of conducting mediation.

23. (1) Mediation proceedings under these Rules shall be conducted virtually or in person at the court premises or such other place as the mediator and the parties may agree.

(2) Where mediation is conducted at the court premises, the Mediation Deputy Registrar shall give necessary facilitative assistance to the mediator and the parties.

(3) Upon notice to the court, the entire mediation process or a session thereof may be conducted at the mediator's offices or such other venue, on any day or time as may, by mutual consent, be agreed upon by the parties.

(4) Where a mediation session is conducted at the mediator's offices, the mediator shall not inconvenience the parties or charge any fees or expense to the parties or the court, and shall ensure that the parties sign attendance forms in respect of such session.

(5) Where a mediation session is conducted in person at such other venue as provided for under sub-rule (3), the mediator shall ensure the venue's neutrality and, if need be, make arrangements with the court for security.

24. (1) At the commencement of the mediation session, the mediator shall read and explain to the parties and the parties' advocates or representatives the terms set out in an agreement to mediate, if any, and require the parties and the parties' advocates or representatives to sign the agreement.

Agreement to mediate.

(2) The agreement to mediate shall be in the prescribed Form 9 as set out in the Schedule.

25. (1) Any person taking part in a mediation process under these Rules shall be required by the mediator to execute a confidentiality agreement and shall be bound by the terms of such agreement.

Confidentiality and inadmissibility.

(2) The confidentiality agreement shall be in Form 10 as set out in the Schedule.

(3) Any communication during mediation including the mediator's notes shall be confidential and shall not be admissible in evidence in any ongoing or subsequent legal proceedings.

(4) Any person taking part in a mediation process shall maintain the confidentiality of any information obtained during the mediation and not disclose that information unless—

- (a) that person is required by law to disclose the information; or
- (b) the information relates to child abuse, child neglect, defilement, domestic violence, a sexual offence or any related criminal or illegal purpose.

(5) The court shall put measures in place to guide the procedure on the making and processing of disclosures under sub-rule (4).

(6) Subject to sub-rule (4), the mediator or any person present or appearing at a mediation session may not 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.

(7) No person present or appearing at a mediation session whether in person or through a virtual platform shall use any electronic device of any nature to record the mediation session.

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

(9) This rule shall not apply to any settlement agreement, decree or order arising from the mediation.

26. (1) At every mediation session, save as otherwise agreed, only the parties to the dispute and the parties' advocates or representatives shall have the right to attend.

Persons who may attend mediation session.

(2) Save as otherwise agreed at the initial mediation session, each party to the dispute appearing without an advocate shall have the right to be represented by one representative.

(3) A law firm representing a party during a mediation shall, at any given time, allocate that case to a particular advocate or advocates within the firm.

(4) With the prior consent of all the parties, the following persons may attend a mediation session—

- (a) a mediator enlisted on the Committee's list of mediators under the mentorship program:

Provided that such mediator attending by virtue of this sub-rule shall have been attached to the mediator appointed for that case as his or her mentor and present a letter from the Registrar indicating that he or she is under a mentorship program in accordance with the Committee's Mentorship Guidelines;

- (b) an advocate holding brief; and

- (c) a pupil attached to an advocate on record for a party:

Provided that not more than one pupil from a given law firm may attend a case under this sub-rule and shall at all times attend in the company of the master advocate.

(5) Any person attending a mediation session under sub-rule (4) shall be bound by the rules of confidentiality set out in rule 25 and, at his or her first appearance, sign the confidentiality agreement.

(6) The mediator shall ensure that any person attending a mediation session is authorized to do so and that the requisite consent has been obtained from the parties where necessary.

27. An advocate acting for a party in a mediation shall—

Role of advocate
in mediation.

- (a) ensure that the party respects the notices by the mediator and court;
- (b) ensure the appearance of the party at each mediation session;
- (c) explore with the party the available options so as to ensure speedy conclusion of the mediation;
- (d) adopt an advisory role while the party takes the lead role in mediation sessions; and
- (e) co-operate, and encourage the party to co-operate, with the mediator and the other party during mediation sessions to ensure a speedy resolution of the dispute.

28. (1) A party or the party's representative who fails to comply with any of the mediator's directions, consistently fails to attend mediation sessions or engages in deliberate misconduct may be cited for contempt of court and dealt with in the manner provided for under rule 29.

Non-compliance.

(2) The mediator may, in the first instance, request that the case be listed for mention before the Mediation Deputy Registrar or other officer designated for that purpose for directions aimed at facilitating the uninterrupted continuation of the mediation process.

(3) If, after several attempts by the mediator to continue the mediation process forward, a party fails to comply, the mediator shall file a certificate of non-compliance in Form 11 as set out in the Schedule.

(4) The Mediation Deputy Registrar or such other designated officer shall, upon the filing of the certificate of non-compliance, refer the file back to the trial court.

(5) It shall be the obligation of the mediator to satisfy himself or herself that sufficient effort has been made to continue the mediation process without success before filing a certificate of non-compliance under sub-rule (4).

(6) In assessing whether this obligation was met by the mediator, the court shall consider, among other things, the attempts made at contacting the parties, the number of sessions held if any, and the attempt by the mediator to explain the process to the parties.

29. Upon the referral of the file under rule 28(4), the court may—

Consequences of
non-compliance.

- (a) order the party in default to pay a penalty fee as the court may deem fit unless the party satisfies the court that there was a good cause for non-compliance;
- (b) strike out the pleadings of the non-complying party unless the party satisfies the court that there was a valid reason for

non-compliance and that striking out the party's pleadings would be inequitable in the circumstances; or

- (c) make any other order as the court deems fit, including an order that the parties conduct fresh mediation sessions a period to be specified in the order.

30. The mediation process shall come to an end upon the—

Conclusion of the mediation process.

- (a) filing of the settlement agreement and mediator's report where a settlement was reached;
- (b) filing of a non-compliance report; or
- (c) expiry of sixty days from the date that the mediator was notified of his appointment to handle the case or, where the period was extended, upon the expiry of such extended period.

31. Upon conclusion of the mediation, the court may, where necessary and with the consent of the parties, make an order for further mediation.

Further mediation.

32. (1) Where there is a settlement agreement resolving some or all of the issues in dispute, such agreement shall, with the necessary modifications, be in Form 12 as set out in the Schedule and be duly signed by the parties, the parties' advocates or representatives, and the mediator.

Mediation settlement agreement.

(2) The mediator shall, within ten days after the conclusion of the mediation, file the settlement agreement in court and provide each party or party's advocate or representative with a copy thereof.

33. The mediator shall file a report within ten days after the conclusion of the mediation in Form 13 as set out in the Schedule.

Mediator's report.

34. (1) The Mediation Deputy Registrar or other officer designated for that purpose shall, within ten days after the settlement agreement being filed under rule 32, place the settlement agreement before the trial court or other designated officer for adoption.

Adoption of settlement agreements.

(2) It shall not be necessary for the parties or the mediator to attend court for purposes of adoption of the settlement agreement and such proceedings may be conducted in chambers or virtually.

(3) Where the court deems it necessary, it may seek further clarification from the mediator, each party or the party's representative before adopting the settlement agreement.

35. (1) Where the parties reach a settlement on only some of the issues to the dispute, the mediator shall prepare and file a partial settlement agreement in a similar manner as provided under rule 32.

Directions on partial settlements.

(2) A partial settlement agreement shall, with necessary modifications, be in Form 14 as set out in the Schedule and concisely state the issues that the parties were able to agree upon and the issues that remain unresolved.

(3) The partial settlement agreement shall, where the parties so request, indicate any specific directions or assistance that the parties would like the court to grant for the expeditious resolution of the remaining issues.

(4) Where the amount of costs payable in the main suit and the party liable to pay were canvassed at the mediation and not agreed upon, the settlement agreement shall be treated as a partial settlement for purposes of this rule.

(5) A partial settlement agreement shall be adopted in the same way as a full settlement agreement but the court shall, at the time of adoption, give appropriate directions regarding the execution of the partial settlement and the expeditious disposal of the issues that remained unresolved.

(6) In giving its directions under sub-rule (5), the court may take into account any specific request by the parties as envisaged under sub-rule (2).

(7) Where the court directs that the unresolved issues be determined at trial, the court file shall immediately be placed before the court for hearing and determination on priority basis within ninety days from the date the directions are made:

Provided that where the matter is not disposed of within the said period, the court shall, for reasons to be recorded, extend the time for a further period not exceeding thirty days.

36. (1) Upon the adoption of a settlement agreement, the court shall issue an order or decree in the terms of the agreement.

Enforcement of
settlement
agreements.

(2) A decree and an order arising from the adoption of a settlement agreement shall be enforceable as any other order or decree of the court.

(3) No appeal shall lie against a decree or order of the Court arising from a settlement agreement.

(4) A party who is aggrieved by the failure to implement an order or decree arising out of a settlement agreement may move the court for its execution as provided for under the relevant procedural rules or apply for further orders or directions by the court.

37. (1) Pending the conclusion of mediation in accordance with rule 30, the time limits applicable under procedural rules of court shall not apply to cases that are referred to mediation under these Rules.

Time.

(2) Mediation proceedings shall take place and be concluded within sixty days from the date that an appointed mediator is notified of his or her appointment to handle the case.

(3) The court may, upon request by the mediator or the parties extend the time for a further period not exceeding ten days having regard to the number of parties or complexity of issues.

(4) Parties may, through a written, duly signed and filed consent, agree to extend the period within which the mediation shall take place.

38. When a matter is pending in mediation, a party may apply before the trial court for an interim measure including the issuance of a conservatory order.

Interim measures by the court.

39. (1) No application for setting aside of an order or decree arising from a mediation settlement agreement shall be filed except with the leave of court.

Setting aside an order or decree arising out of a settlement agreement.

(2) An application for leave under sub-rule (1) shall be supported by an affidavit detailing the grounds upon which the applicant intends to rely in setting aside the order or decree.

(3) The following shall constitute the grounds upon which an application to set aside an order or decree arising from a mediation settlement agreement—

- (a) misconduct, fraud, or a fundamental mistake by the mediator as relates to the mediation proceedings that goes to the core of the matter:

Provided that the misconduct, fraud or mistake should not have been known by the applying party at the time of execution of the settlement agreement and should be one which affected the process and outcome of the mediation in such a way that it would be unfair and inequitable to enforce it in its form;

- (b) fraud, collusion, or misrepresentation by any party to the mediation (other than the party applying) or any witness or person who took part in the proceedings and whose participation materially affected the outcome;
- (c) a fundamental mistake by any or all of the parties to the mediation as to the existence or state of the subject matter, person or thing; or to any set of facts that materially affected the parties' decision to enter into the subject agreement and which has rendered such agreement unfair and inequitable;
- (d) where a party was, at the time of the making of the agreement, under some legal incapacity to take part in the subject mediation proceedings or to conclude and execute a binding settlement; or
- (e) where the settlement agreement is invalid under Kenyan or international law, or is or has become incapable of enforcement under Kenyan law.

(4) At the hearing of an application to set aside an order or decree, no party shall, without leave of court, be allowed to canvass any other ground in support of the application other than the grounds specified in sub-rule (3).

(5) The court shall hear and determine an application under this on priority basis within thirty days after filing.

40. A mediator shall, in respect of mediation proceedings, enjoy the same protection and immunity as the immunity granted to judges, magistrates and judicial officers.

Immunity.

41. (1) Each mediator shall be entitled to payment of a fee upon conclusion of mediation.

Payment of
mediators.

(2) The scale of payment of fees to mediators shall be determined and regularly reviewed by the Committee.

(3) Where mediation proceedings are concluded by the filing of a certificate of non-compliance, the mediator shall be entitled to a fee prorated with the mediator's input in attempting to conduct the mediation process.

42. The Chief Justice may, by order made under section 44 of the Advocates Act, prescribe and regulate the remuneration of advocates representing parties during mediation under these Rules.

Remuneration of
advocates.
Cap.16

(2) In prescribing and regulating the remuneration of advocates under sub-rule (1), the Chief Justice may take into account the fees already charged by an advocate at the time that a case is referred to mediation and fees which may be charged by the advocate should the case be referred to the trial court for disposal.

(3) Until the prescription of fees under sub-rule (1), advocates shall be entitled to charge fees for attending at a mediation session at the same rate as fees charged for attendances in court under the Advocates Remuneration Order.

PART III—REGISTRATION, RECOGNITION AND ENFORCEMENT OF PRIVATE SETTLEMENT AGREEMENTS

43. The objective of the Rules under this Part is to give effect to the provisions of Article 159 (2) (e) of the Constitution and section 59D of the Civil Procedure Act by providing a framework for the courts to register, recognize and enforce private settlement agreements.

Objective of this
Part.

44. (1) In order for a mediator to be recognized as a qualified mediator within the meaning of section 59D of the Civil Procedure Act, he or she should—

Recognition and
registration of
qualified
members.

- (a) possess full accreditation status by the Committee, whether active or not;
- (b) be accredited by any other institution recognized by the Committee; or
- (c) possess such other or further qualification as may be approved by the Committee.

(2) The Committee shall maintain and publish a list of recognized institutions that may accredit mediators for purposes of recognition under sub-rule (1).

(3) The Committee shall maintain and publish a list of qualified mediators for purposes of this part indicating, among others; their training and experience, the category or type of disputes that they mediate, as well as their geographical region.

(4) For the purposes of this Part, the Committee may, where any mediator is facing criminal charges, or a disciplinary action before any

professional body or tribunal, or for any other sufficient reason, suspend the qualification status of that mediator for a specific period or disqualify such mediator altogether.

45. A private settlement agreement entered into by the parties with the assistance of a qualified mediator may be presented at the mediation registry for purposes of registration and adoption by the court.

Mediation registry to register private settlement agreements.

46. In order for a private settlement agreement to be registered by the court, it should —

Requirements for the registration of a private settlement agreement.

- (a) have been reached with the assistance of a qualified mediator or mediators who should endorse his or her or their accreditation or other identifying number thereon;
- (b) relate to a dispute that is not the subject of a pending court case;
- (c) relate to a dispute capable of being resolved by mediation under Kenyan or international law;
- (d) not be illegal;
- (e) be capable of being enforced by the court under Kenyan or international law;
- (f) be reduced into writing in the language of the court;
- (g) be dated and signed by the mediator, each of the parties to the dispute, and the parties' advocates or representatives, if any;
- (h) indicate the place where the mediation took place and where the settlement agreement was signed;
- (i) have resolved all the issues in dispute; and
- (j) indicate concisely the nature of the dispute, the issues involved, and the settlement agreement thereupon.

47. (1) A private settlement agreement may, within thirty days after it has been signed be presented by the mediator for registration to the nearest mediation registry where it was concluded.

Presentation for registration.

(2) The private settlement agreement shall be presented to court for registration as an annexure or attachment to an affidavit duly sworn by the mediator.

(3) The affidavit under sub-rule (2) shall, with necessary modification, be in Form 15 as set out in the Schedule and, among other things, indicate —

- (a) that the person presenting was a mediator in the dispute and witnessed the execution of the private settlement agreement;
- (b) that the mediation process, including the execution of the private settlement agreement, was voluntary;

- (c) that the private settlement agreement complies with the requirements set out at rule 46; and
- (d) that the private settlement agreement is not, or is likely not to be, affected by the grounds for setting aside of a settlement agreement under rule 39.

48. (1) Where a mediator presents a private settlement agreement for registration under rule 47, a court officer designated for that purpose shall endorse the affidavit, the settlement agreement, and any annexures thereto with a stamp of the court.

Registration of private settlement agreements.

(2) The assessment of the payable filing fees shall be done in accordance with the scale for the time being applicable to fees chargeable for filing affidavits in other court cases.

(3) Each private settlement agreement shall, upon filing, be serialised and registered in the register of private settlement agreements kept and maintained for that purpose.

49. Each private settlement agreement presented and registered under this Part shall be recognised by the court and form part of the record of the court.

Recognition of private settlement agreements.

50. (1) Where a party to a private settlement agreement that has been registered under rule 48 wishes to have the agreement enforced by execution or otherwise, he or she shall apply to the court in Form 16 as set out in the Schedule indicating the intention to do so.

Enforcement of private settlement agreements.

(2) The registry shall, upon receiving the application under sub-rule 1, open a separate file for the private settlement agreement.

(3) The file opened under sub-rule (2) shall be placed before the court within fourteen days for adoption.

(4) The court may order that other parties or the mediator be served, or that the applicant or other party be heard or examined on oath before adopting the private settlement agreement, or make such order as it may deem necessary.

(5) Where the court is satisfied that the private settlement agreement is duly signed meets the conditions specified in rule 46, the court may adopt it as a judgment of the court and issue an order or decree in the terms of the agreement.

(6) A party who executed a private settlement agreement but who was not heard before its adoption by the court, or any other affected party, may, with leave of court, apply to set aside the adoption proceedings or resultant orders.

(7) An aggrieved party may, within fourteen days, appeal against the order of the court made under sub-rule (6) but no appeal shall against the private settlement agreement itself or the contents thereof.

51. (1) Subject to the provisions of this Part, an international private settlement agreement may be registered and enforced under this Part.

Adoption and enforcement of international private settlement agreements.

(2) For purposes of these Rules, an agreement will be regarded as an international private settlement agreement if—

- (a) the dispute that is the subject of the agreement was between parties who are nationals of more than one country;
- (b) where the dispute was between bodies corporate, the parties are incorporated in more than one country or central management and control of the parties is exercised in different countries;
- (c) the subject matter of the dispute is situate in a country other than the country of origin of the parties or any of them, or the country where the mediation proceedings are conducted or agreement concluded; or
- (d) the private settlement agreement is presented for registration and enforcement in a country other than the country of origin of the parties, or the country where the subject matter is situate, or the country where the mediation proceedings were conducted or private settlement agreement concluded.

(3) An international private settlement agreement shall not be registered under these Rules unless—

- (a) it is valid under Kenyan or international law and the law of the country where the mediation proceedings took place or the country where the private settlement agreement was concluded and executed;
- (b) it meets the requirements of rule 46;
- (c) either of the parties is a Kenyan or ordinarily resident in Kenya, or the subject matter is situate in Kenya, or the mediation proceedings were conducted and private settlement agreement concluded in Kenya, or the enforcement of the private settlement agreement is expected to be conducted in Kenya; and
- (d) the mediation was conducted by a qualified mediator under these Rules:

Provided that where the mediation was conducted by a mediator who does not meet the requirements of rule 44 (1), the mediator shall first be required to apply for recognition and certification of his or her qualification status by the Committee before filing the agreement in court.

(4) Before registering an international private settlement agreement, the court shall satisfy itself of the compliance of the agreement with the provisions of sub-rule (3) and may, for sufficient reason to be recorded, decline such registration.

(5) The provisions of rule 50 shall apply with the necessary modifications in the enforcement of an international private settlement agreement.

PART IV—VIRTUAL MEDIATION PROCEEDINGS

52. Mediation proceedings through virtual platforms shall be undertaken in accordance with these Rules and other court rules and practice directions for the time being governing the conduct of virtual court proceedings insofar as the same are applicable.

Rules applicable to virtual proceedings.

53. A settlement agreement including private settlement agreement resulting from mediation proceedings undertaken through a virtual platform shall be valid and capable of enforcement in the same manner as settlement agreements resulting from mediation proceedings conducted in person.

Validity of virtual mediation agreements.

PART V—MISCELLANEOUS PROVISIONS

54. Nothing in these Rules shall limit the power of the court to make such orders or give such directions or notices to the mediator and parties as it deems fit to facilitate the effective and expeditious conduct of the mediation process.

Power of the court.

55. The court may, on such terms as it deems fit, extend the time fixed for the doing of anything or taking any step under these Rules.

Extension of time.

56. An application under these Rules shall, unless otherwise provided for, be by notice of motion and be disposed of virtually or physically as the court may direct.

Applications.

57. The Practice Directions on Court Annexed Mediation, 2017 are revoked.

Revocation.

SCHEDULE

FORMS

Form 1

r. 10 (1)

REPUBLIC OF KENYA
COURT ANNEXED MEDIATION REGISTRY

Mediation No.

Arising out of:

Case Type:

NOTICE OF REFERRAL OF CASE TO MEDIATION

TO: 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 Form 2 within seven days after receipt of this Notice.

Dated theday of, 20.....

DEPUTY REGISTRAR/MAGISTRATE/KADHI

Copied to the Parties (and Advocates, if represented)

Form 2

r. 10 (2)

REPUBLIC OF KENYA
COURT ANNEXED MEDIATION REGISTRY

Mediation No.

Arising out of:

Case Type:

CASE SUMMARY*(To be provided to the Mediator and Parties at least seven days before mediation session)*

1. Brief summary of case
2. Issues in dispute

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

3. Address of service

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

Dated theday of....., 20.....

.....
Party's signature

Form 3

r. 13 (2)

REPUBLIC OF KENYA
COURT ANNEXED MEDIATION REGISTRY

Mediation No.

Arising out of:

Case Type:

Plaintiff/Applicant

versus

Defendant/Respondent

NOTICE OF APPOINTMENT AS MEDIATOR

TO: (*Mediator's name*)

1. I certify that I have appointed you to act as the Mediator.
2. Please proceed to immediately fix a date for the mediation session.

Dated theday of, 20.....

MEDIATION DEPUTY REGISTRAR/MAGISTRATE/KADHI
Copied to the Parties (and Advocates, if represented)

Form 4

r. 13 (4)

REPUBLIC OF KENYA
COURT ANNEXED MEDIATION REGISTRY

Mediation No.

Arising out of:

Case Type:

NOTICE OF ACCEPTANCE/DECLINING OF APPOINTMENT AS MEDIATOR

TO:

The Mediation Deputy Registrar/Magistrate/Kadhi

I, an Accredited Mediator, do hereby confirm receipt of the Notice of Appointment. I accept the appointment as Mediator in the above case.

I confirm that there is no real or apparent conflict of interest or any circumstance that can affect my ability to be impartial and effectively discharge my duty as Mediator in this matter.

OR

I, an Accredited Mediator, do hereby confirm receipt of the Notice of Appointment. I decline the appointment as Mediator in the above case for the reason that

.....

.....

Signature.....

Date.....

Form 5

r. 15 (3)

REPUBLIC OF KENYA
COURT ANNEXED MEDIATION REGISTRY

Mediation No.

Arising out of:

Case Type:

Plaintiff/Applicant

versus

Defendant/Respondent

NOTICE OF COMMENCEMENT OF MEDIATION

TO:

Parties

Advocates/Representative

I have been appointed to conduct the mediation session.

The mediation session shall take place on the day of,
20..... from in the forenoon/afternoon at
.....

(venue)

Unless the court otherwise orders, you are required to bring with you any documents that you consider of importance in the action. You shall be required to be present throughout the period during which the mediation session shall be conducted.

If it is necessary to obtain someone else's permission or authorization before entering into a settlement agreement, you shall be required to make arrangements in this regard before the mediation session to ensure that you have ready access to that person throughout the mediation session and outside regular business hours.

Attendance at the mediation session is mandatory.

Date.....

(Name, address, telephone number and email address of the Mediator)

Copied to the Mediation Deputy Registrar/Magistrate/Kadhi

Form 6

r. 17 (2)

REPUBLIC OF KENYA
COURT ANNEXED MEDIATION REGISTRY

Mediation No.

Arising out of:

Case Type:

LETTER OF AUTHORISATION(By natural person)

TO:

The Mediator

I..... of ID No..... do hereby authorize
..... Of ID No.....to act on my behalf in
this mediation case and confer on him/her to execute a binding settlement agreement on
my behalf.

Any and all acts carried out by..... on my behalf, within the
scope of the power granted herein, shall have the same effect as acts of my own.

Signature.....

Date.....

Name, address, telephone number and email of mediator

Copied to the Mediation Deputy Registrar/Magistrate/Kadhi

Form 7

r. 18 (2)

REPUBLIC OF KENYA
COURT ANNEXED MEDIATION REGISTRY

Mediation No.

Arising out of:

Case Type:

LETTER OF AUTHORISATION

(By company/government/government agency/partnership)

TO:

The Mediator

I.....do hereby authorize
..... Officer to act on its behalf in all issues in relation to
this mediation matter, including executing documents relating to this matter including a
settlement agreement.

If you have any questions regarding the authorization, please contact the Mediation
Deputy Registrar/Magistrate/Kadhi.

Signature.....

Date.....

(Authorised officer)

Copied to the Mediation Deputy Registrar/Magistrate/Kadhi

Form 8

r. 21 (2)

REPUBLIC OF KENYA
COURT ANNEXED MEDIATION REGISTRY

Mediation No.

Arising out of:

Case Type:

Plaintiff/Applicant

versus

Defendant/Respondent

MEDIATION SESSION ATTENDANCE SHEET

Date	
Venue	
Mediator	
Officer in attendance	
Star time	
End Time	
Outcome	
Next day of activity (If adjourned, state reasons for adjournment)	

	<i>Parties</i>	<i>Telephone No.</i>	<i>Signature</i>
	Accompanied by:	Telephone No.	Signature
	Advocate		
	Any other person	Telephone No.	Signature

Form 9

r. 24 (2)

REPUBLIC OF KENYA
COURT ANNEXED MEDIATION REGISTRY

Mediation No.

Arising out of:

Case Type:

Plaintiff/Applicant

versus

Defendant/Respondent

AGREEMENT TO MEDIATE

I.....have been appointed to mediate your case. I shall serve as a neutral party to help you resolve your dispute. I shall not act as an advocate for any party.

This mediation is strictly confidential. No party shall be bound by anything said or done during this mediation, unless a settlement is reached.

If a settlement is reached, it shall be reduced into writing and, when signed and dated by both parties, shall be binding on all the parties to the settlement agreement.

Each party agrees not to request that I, the Mediator, testify against the other party, nor ask me nor any other party to testify regarding statements made during the mediation.

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

Date.....

.....

Plaintiff

.....

Plaintiff's advocate

.....

Mediator

.....

Defendant

.....

Defendant's advocate

Form 10

r. 25 (2)

REPUBLIC OF KENYA
COURT ANNEXED MEDIATION REGISTRY

Mediation No.

Arising out of:

Case Type:

CONFIDENTIALITY AND INADMISSIBILITY AGREEMENT

Each person taking part in this mediation process shall treat as confidential all information obtained orally or in written form by and about the parties in the mediation, including the Mediator's notes, and shall not disclose that information unless the party is required by law to do so.

All information obtained during the mediation process shall be covered by this Confidentiality and Inadmissibility Agreement and shall not be admissible in court as evidence.

Please sign below to acknowledge that you agree to be bound by this Confidentiality and Inadmissibility Agreement.

Date.....

.....

Plaintiff

.....

Plaintiff's advocate

.....

Any other person (please indicate capacity under which you are attending)

.....

Mediator

.....

Defendant

.....

Defendant's advocate

Form 11

r. 28 (3)

REPUBLIC OF KENYA
COURT ANNEXED MEDIATION REGISTRY

Mediation No.

Arising out of:

Case Type:

CERTIFICATE OF NON-COMPLIANCE

TO:

The Mediation Deputy Registrar/Magistrate/Kadhi

I....., the Mediator in this matter, certify
that this certificate of compliance is filed on account of

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

Signature.....

Date.....

Name, address, telephone no. and email of Mediator

Form 12

r. 32 (1)

REPUBLIC OF KENYA
COURT ANNEXED MEDIATION REGISTRY

Mediation No.

Arising out of:

Case Type:

Plaintiff/Applicant

versus

Defendant/Respondent

SETTLEMENT AGREEMENT

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

1.
.....
.....
.....
2.
.....

Date.....

Plaintiff/Applicant..... Plaintiff's/Applicant's advocate.....

Defendant/Respondent..... Defendant's/Respondent's advocate.....

Mediator.....

Form 13 r. 33

REPUBLIC OF KENYA
COURT ANNEXED MEDIATION REGISTRY

Mediation No.

Arising out of:

Case Type:

Plaintiff/Applicant

versus

Defendant/Respondent

MEDIATOR'S REPORT

TO:

The Mediation Deputy Registrar/Magistrate/Kadhi

I....., having been appointed as the Mediator in this matter, and having conducted the mediation between the parties, do hereby report that the parties have reached a full settlement/reached a partial settlement/not reached a settlement (*delete as appropriate*).

Signature..... Date.....

Form 14 r. 35 (2)

REPUBLIC OF KENYA
COURT ANNEXED MEDIATION REGISTRY

Mediation No.

Arising out of:

Case Type:

Plaintiff/Applicant

versus

Defendant/Respondent

PARTIAL SETTLEMENT AGREEMENT

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

1.
.....
2.
.....
3.
.....

We, the undersigned parties in this matter, have agreed to refer the following issues back to the court for determination:

1.
.....
2.
.....
3.
.....

Date.....

Plaintiff/Applicant..... Plaintiff's/Applicant's advocate.....

Defendant/Respondent..... Defendant's/Respondent's advocate.....

Mediator.....

Form 15

r. 47 (3)

REPUBLIC OF KENYA
COURT ANNEXED MEDIATION REGISTRY

Mediation No.

Arising out of:

Case Type:

Plaintiff/Applicant

versus

Defendant/Respondent

AFFIDAVIT OF PRIVATE MEDIATION AGREEMENT

I..... of ID No. of P.O. Box
..... NAIROBI in the Republic of Kenya, a qualified mediator accredited
by the Mediation Accreditation Committee, make oath and state as FOLLOWS:

1. THAT I am an adult of sound mind, hence competent to swear this affidavit.
2. THAT I was the Mediator in this dispute and I witnessed the execution of the settlement agreement between the parties to the dispute. (Annexure 1)
3. THAT the entire mediation process, including the execution of the settlement agreement, was voluntary.
4. THAT the settlement agreement complies with the requirements of rule 45 of the Civil Procedure (Court-Annexed Mediation) Rules, 2022 and therefore, the agreement is not affected by the grounds of setting aside a settlement agreement under rule 39 (3) thereof.
5. THAT what is stated herein is true to the best of my knowledge and information.

SWORN at NAIROBI by)

the said.....)

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

)

BEFORE ME)

Form 16 r. 50 (1)

REPUBLIC OF KENYA
COURT ANNEXED MEDIATION REGISTRY

Mediation No.

Arising out of:

Case Type:

Plaintiff/Applicant

versus

Defendant/Respondent

NOTICE OF MOTION FOR ENFORCEMENT OF PRIVATE MEDIATION
AGREEMENT

*(Pursuant to rule 50 (1) the Civil Procedure (Court-Annexed Mediation) Rules, 2022,
section 59D of the Civil Procedure Act, and all other enabling provisions of law.)*

TAKE NOTICE that this Honourable Court shall be moved on theday
of....., 20..... at 9:00 O'clock in the forenoon or soon
thereafter as the Counsel for the Plaintiff/Applicant may be heard on the application FOR
ORDERS:

1. THAT the agreement is valid.
2. THAT the agreement is capable of being enforced by the Court under Kenyan or international law.
3. THAT the agreement herein be adopted as a judgment of the Court.
4. THAT costs of the Application be costs in the cause.

WHICH APPLICATION is based on the following grounds:

- (a) THAT the agreement was reached with the assistance of a qualified mediator or mediators.
- (b) THAT the dispute did not relate to the subject of a pending court case.
- (c) THAT the dispute is capable of being resolved by mediation under Kenyan or international law.
- (d) THAT the agreement is not illegal and is capable of being enforced under Kenyan or international law.
- (e) THAT the agreement met all the requirements of a valid agreement including that it was in writing in the language of the court, dated and signed by the mediator and all the parties to the dispute.

Made on the 2nd August, 2022.

G.V. ODUNGA,
Chairperson of the Rules Committee.