



COMESA

COURT OF JUSTICE

Users Manual



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VISION

"To be a trustworthy and reliable world class tribunal for dispute resolution in accordance with the COMESA Treaty."

MISSION

"To uphold and promote the rule of law through an accessible, fair, timely and transparent adjudication process."

CORE VALUES;

- **Accessibility**

Endeavour to minimize all barriers that impede access to justice by its users.

- **Responsiveness**

Aspire for agility and dynamism in responding to the needs of its users and to emerging issues arising from regional integration.

- **Efficiency**

Aspire for expediency and cost effectiveness in service delivery.

- **Effectiveness**

Guarantee to uphold the rule of law through accurate determination of facts and consistent interpretation of applicable law

- **Transparency**

Maintain effective communication and appropriate information sharing with stakeholders

- **Accountability**

Take responsibility for all actions undertaken in service delivery.

- **Integrity**

Uphold the highest ethical standards in the delivery of justice



1.1 WHO IS THIS GUIDE FOR AND HOW CAN IT HELP YOU?

This guide has been provided free of charge by the COMESA Court of Justice ("CCJ or the Court") to assist its users to better understand the functions and operations of the Court and how to access the Court.

It is intended to simplify the Court process and encourage more people and business enterprises to use the Court as their dispute resolution port of call. This guide will help explain how to access the services that are provided by the Court; how cases are filed and how they move through the Court.

This guide is not exhaustive and anyone that may require more information is encouraged seek legal advice from an advocate or contact the Court through the address given at the end of this manual.

2.1 WHAT IS THE COMESA TREATY AND ITS OBJECTIVES?

The Treaty for the Establishment of the Common Market for East and Southern Africa ("the COMESA Treaty") was signed in 1994.

The Common Market for East and Southern Africa has eight key organs:

- i. The Authority;
- ii. The Council;
- iii. The Court of Justice;
- iv. The Committee of Governors of Central Banks;
- v. The Intergovernmental Committee;
- vi. The Technical Committees;
- vii. The Secretariat; and
- viii. The Consultative Committee [Article 7 of the Treaty].

The Member States agreed that the objectives of the Common Market would include;

- To attain sustainable growth and development of Member States
- To promote joint development in all fields of economic activity and joint adoption of macro-economic policies and programmes



- To cooperate in creation of an enabling environment for foreign,
- To co-operate in promotion of peace, security and stability among member states
- To co-operate in strengthening relations between the Common Market and the rest of the world and adopt common positions in international fora
- To contribute to the establishment progress and realization of the objectives of the African economic community.

COMESA currently has twenty-one (21) Member States which are:

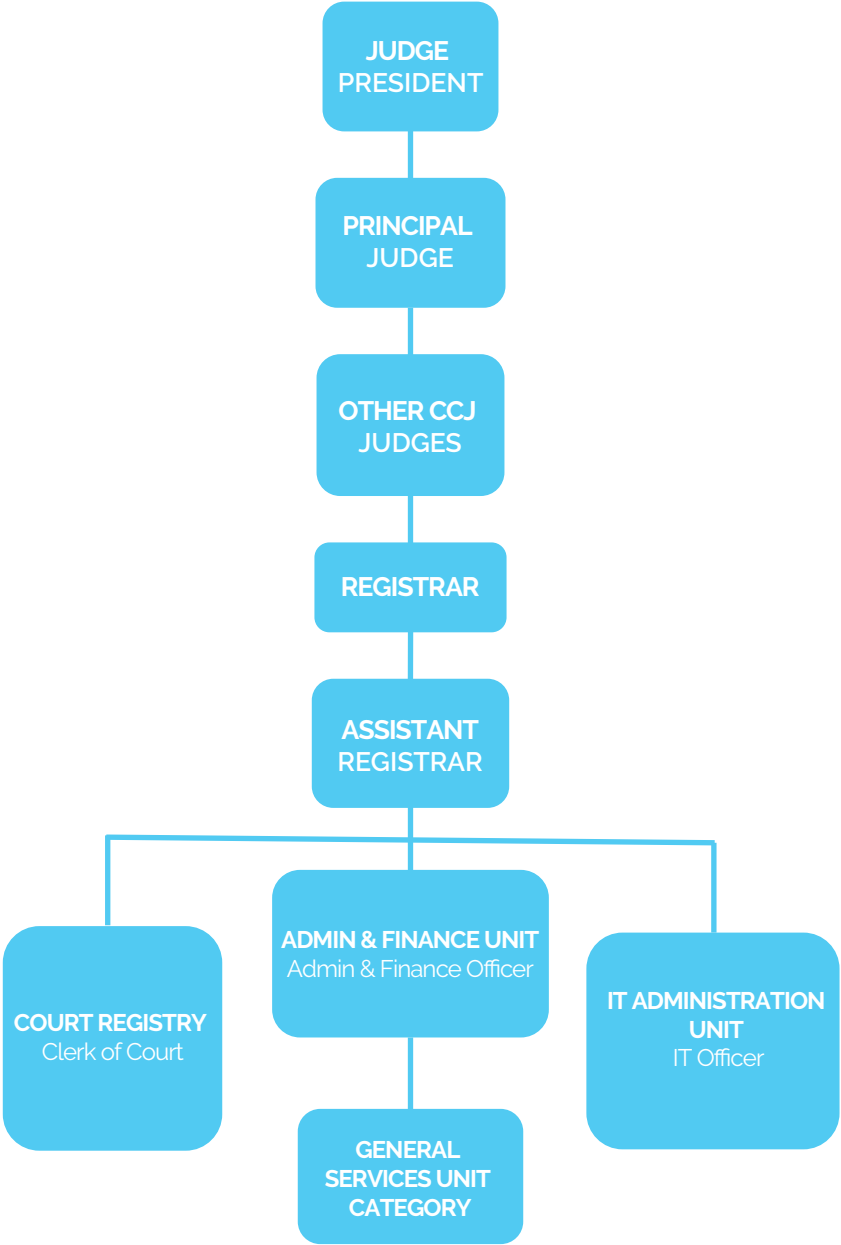
Burundi	Comoros	Djibouti
DR Congo	Egypt	Eritrea
Eswatini	Ethiopia	Kenya
Libya	Madagascar	Malawi
Mauritius	Rwanda	Seychelles
Somalia	Sudan	Tunisia
Uganda	Zambia	Zimbabwe

3.1 THE COMPOSITION AND STRUCTURE OF THE COURT

The COMESA Court of Justice was established in 1994 as an independent organ of the Common Market for Eastern and Southern Africa (COMESA) created under Article 7 of the COMESA Treaty as the judicial arm of the Common Market.

The Court is comprised of two Divisions; the Appellate Division which has five Judges and is headed by a Judge President, and the First Instance Division, which has seven Judges and is headed by a Principal Judge. The Court has a Registrar who is the Chief Executive Officer of the Court and is responsible for the day-to-day operations of the Court. The Registrar is assisted in her or his duties by an Assistant Registrar as well as other Registry and Administrative Staff.

The Court's Organogram



The Registrar

The Registrar is responsible for preparing the Cause List of the Court with the approval of the President in respect to the Appellate Division or the Principal Judge in respect to the First Instance Division of the Court.

The Registrar, in consultation with the Judge President or Principal Judge, will set dates for Court hearings.

The Registrar is responsible for signing and sending out hearing notices and other notifications and for taxation of costs.

The Registrar is responsible for the administration of all the Court. This includes investigating allegations of indiscipline or other conduct by staff members that may be in contravention of the Staff Rules and Regulations.

The Assistant Registrar

The Assistant Registrar assists the Registrar in the day-to-day management of the Court and carries out all the roles, duties and responsibilities of the Registrar when she or he is absent.

The Clerk of Court

The Clerk of Court, under the supervision of the Registrar, is in charge of the Registry and is responsible for updating of court registers and movement of files to ensure there are no unnecessary delays.

The Clerk of Court is responsible for registering new cases and receiving documents over the Registry counter. The Clerk gives case numbers and receives, stamps and seals documents before putting them in their respective case files.

The Clerk is responsible for maintaining Court diaries for the Registrar, the First Instance and the Appellate Divisions of the Court.

The Clerk assists in the preparation of the courtroom, attends court sessions and helps in arranging and transcription of court proceedings.

The Clerk of Court also responds to queries from Advocates, agents or parties.

The Administrative and Finance Officer

The Administrative and Finance Officer is responsible for preparing budgets for various Court activities and having the same approved by the Registrar. He or she also receives all payments made to the Court.

4.1 HOW DO I KNOW IF I CAN BRING MY CASE TO THE CCJ?

The following questions may help an interested party to find out if they could bring their case to the CCJ:

- a) Is the case against a COMESA Member State?
- b) Is it against the Common Market (COMESA) or any of its institutions
- c) Does the subject matter relate to the interpretation and application of the COMESA Treaty?
- d) Does the dispute arise out of a contract which has an arbitration clause granting the Court jurisdiction to arbitrate in accordance with Article 28 of the Treaty?
- e) Is the issue about the legality of an act, decision, regulation or directive of the COMESA Council of Ministers or of a Member State and does it constitute an infringement of the provisions of the Treaty?
- f) Have all local remedies been exhausted, or is there good reason exhaustion of local remedies was not possible?

If the answer is 'YES' to any of the above questions, you may bring your case to the CCJ. If your answer is 'NO' you may still be able to bring your case to the CCJ, but you should seek the advice of a Advocate.



5.1 JURISDICTION OF THE COURT

The source of Jurisdiction for the CCJ stems from the COMESA Treaty Article 19 to 36.

5.1.1 Article 23 - General Jurisdiction of the Court

The Court shall have powers to adjudicate upon all matters brought before it pursuant to the Treaty. The First Instance Division, shall, subject to a right of appeal to the Appellate Division, have jurisdiction to hear and determine any matter brought before it in accordance with the Treaty.

5.1.2 Article 23(3) - Appellate Jurisdiction of the Court

An appeal lies to the Appellate Division of the Court on the following grounds;

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

5.1.3 Article 24 - References by Member States

The Court has the power to hear references from Member States against another Member State or the Council of Ministers in the event there is failure to fulfill an obligation under the Treaty or in case of infringement of a Treaty provision by a Member State or Council. In the same spirit a Member State can refer for the Courts an application for determination of the legality of any act, decision regulation or directive of the Council of Ministers on grounds that such act, decision regulation or directive is unlawful or constitutes infringement of a Treaty provision or any rule or law relating to its application or is tantamount to a misuse or abuse of power.



Article 26 — Reference by Legal and Natural persons

The Court has power to hear references from a person (legal or natural) who is a resident in a Member State concerning the legality of act, decision regulation or directive of the Council or of a Member State on grounds that such act, decision regulation or directive is unlawful or constitutes an infringement of the provisions of the Treaty. This Article however imposes an obligation on persons to exhaust all local remedies before a reference is made to the Court.

Article 27 — Jurisdiction over claims by the COMESA Employees and Third parties against COMESA or its Institutions

The Court has jurisdiction to hear disputes between the COMESA and its employees that arise in the application and interpretation of the Staff Rules and Regulations of the Secretariat or other institution regarding the terms and conditions of employment of the employees. Similarly, the Court has jurisdiction to determine claims by any person brought against COMESA or its institutions for acts of their employees in the performance of their duties, and to award damages.

Article 28 — Jurisdiction under Arbitration Clauses and Special Agreements

The Court has jurisdiction to hear and determine matters arising from an arbitration clause contained in a contract which confers such jurisdiction to which the Common Market or any of its institutions is a party or from a dispute between Member States regarding the Treaty if the dispute is submitted to it under a special agreement between the Member States concerned.



Article 30 - Preliminary Rulings

The Court has jurisdiction to issue Preliminary Rulings upon request of a court or tribunal in a Member State where a question concerning the application or interpretation of the Treaty or validity of regulations, directives and decisions of the Common Market has been raised in proceedings before that court or tribunal, if a ruling on the question is necessary to enable it to give judgment.

Article 32 -Advisory Opinions

The Court has jurisdiction to give Advisory Opinions on the written request of a Member State or the Secretary General on a question of law arising from provisions of the Treaty.

Article 36- Interveners

A Member State, the Secretary General or a resident of a Member State who is not a party to a case before the Court may, with leave of the Court, intervene in that case, but the submissions of the intervening party shall be limited to evidence supporting or opposing the arguments of a party to the case.

6.1 WHO MAY APPEAR OR BE REPRESENTED BEFORE THE COURT?

The ways in which a party may appear and be represented in the Court are provided for in the Treaty as well as in the CCJ Rules of Procedure, 2016 (Article 33 and Rule 18) as follows:

Counsel appointed by a party — every party to a reference or in any proceedings before the Court shall be represented by Counsel appointed by that party. Counsel must be one that is certified to practice before a court of a Member State.



Counsel to the Common Market — the Counsel of the Common Market may appear and represent the Common Market in any proceedings where the Common Market is a party.

Director of corporation or company — a director of a company or any other person appointed by resolution of the company may appear for the company but must be represented by counsel.

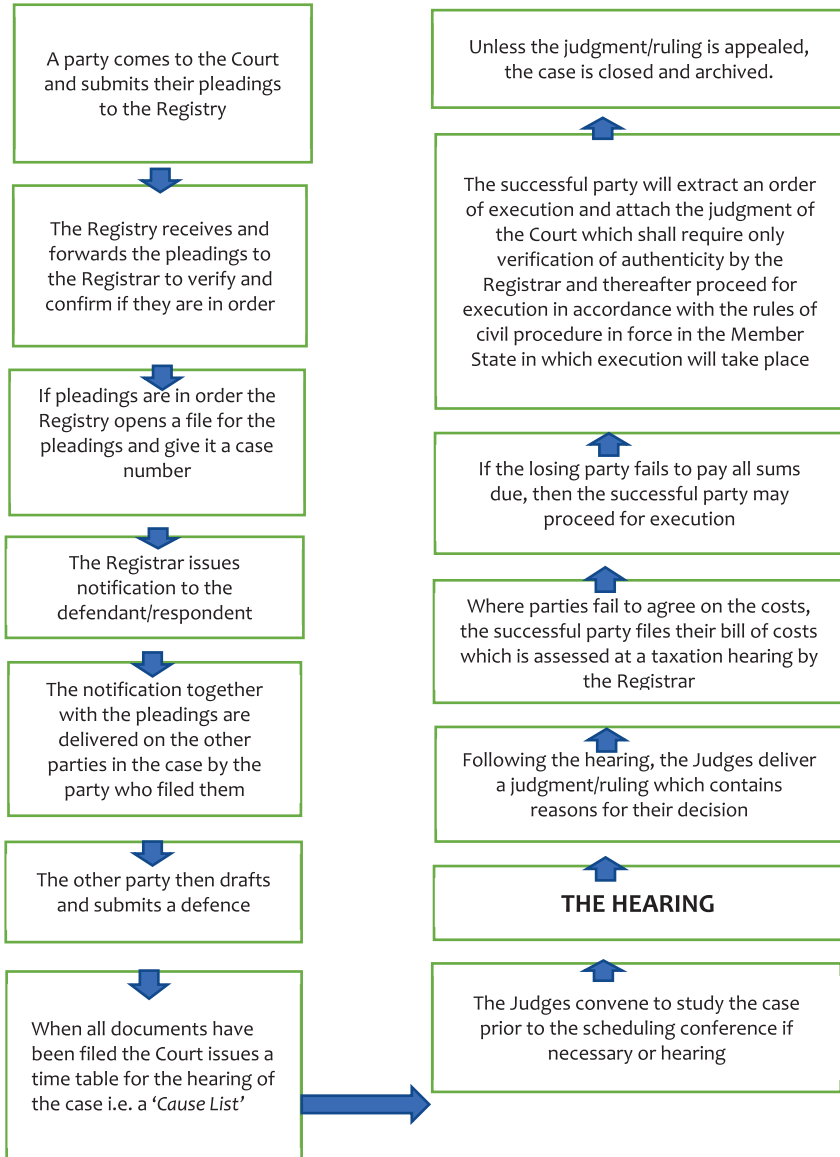
It is important to note that in the CCJ all persons bringing or defending a reference **MUST** be represented by an Advocate or an agent.

7.1 HOW ARE CASES DEALT WITH AT THE CCJ?

All cases follow a similar procedure at the Court. That procedure is governed by the CCJ Rules of Procedure, 2016 and the CCJ Arbitration Rules, 2018.

The diagram below highlights the various steps a case goes through at the Court. However, the steps may vary on a case-by-case basis.

HOW CASES MOVE THROUGH THE CCJ



N.B All steps and procedures in the above diagram are explained in the CCJ Rules of Procedure, 2016 and CCJ Arbitration Rules, 2018 which specify among other things, the various time limits.

8.1 CAN THE CCJ HELP YOU SETTLE A DISPUTE WITHOUT GOING TO TRIAL?

YES, under the Court Rules of Procedure (Rule 53), the CCJ may encourage Alternative Dispute Resolution (ADR) mechanisms for resolving disputes without going to trial. These ADR mechanisms have many advantages for example they:

- save time;
- reduce legal expenses;
- are less formal and flexible; and
- are more confidential.

There are several ADR mechanisms such as arbitration, mediation, conciliation and negotiation.

Arbitration

The foundation for arbitration specifically can be traced to Article 28 of the COMESA Treaty. It is a consensual process where parties to a dispute agree to present their grievances to a third party or parties called an "Arbitrator(s)" for resolution.

Mediation

Mediation simply is a process by which a neutral third party called 'a mediator' helps the parties in a case to reach a mutually acceptable agreement (Rule 53).

Under the CCJ Rules of Court, 2016, if a case has good potential for settlement, the Division concerned shall direct that the case proceeds to ADR and the case shall be completed within such time as is fixed by the Court. However, if ADR fails, the matter will proceed to trial (Rule 53).

GLOSSARY OF LEGAL TERMS AND PHRASES.

"Advocate" means a legal practitioner who is entitled to appear before a court of any of the Member States;

"Arbitration Rules" means the Arbitration Rules of the Court, 2018 (as may be amended from time to time)

"Appellate Division" means the Appellate Division of the Court established under Article 19(2) of the Treaty;

"Counsel to the Common Market" means an advocate representing the Common Market;

"Court" means the COMESA Court of Justice established under Article 7 of the Treaty and includes a single Judge exercising any power vested in that Judge sitting alone;

"Ex-Parte" means hearing or determining a case or any part of it with only one of the parties present;

"First Instance Division" means the First Instance Division of the Court established under Article 19 (2) of the Treaty;

"Gazette" means the Gazette of Common Market for East and Southern Africa;

"Hearing" is court proceeding in which those involved in the case are heard and evidence presented;

"Intervener" means a Member State, the Secretary General or a resident of a Member State not a party to a case before the Court, that is permitted to intervene in a case in accordance with the Treaty and the Court's Rules;

"Judge" means a Judge of the Court serving in the First Instance Division or the Appellate Division as appointed under Article 20 of the Treaty;

"Judge President" means the President of the Court [the Head of the Court and the Appellate Division];

"National Court" means a court of competent jurisdiction in a Member State;

"Official Holiday" means all official holidays recognised by the Host Country at the seat of the Court;

"Party" means the applicant, appellant, the respondent or third part intervener in proceedings before the Court;

"Pleadings" means and includes any document filed by or on behalf of a party relating to a case before the Court;

"Principal Judge" means Principal Judge of the Court (Head of the First Instance Division);

"Registrar" means the Registrar of the Court appointed under Article 41 of the Treaty;

"Registry" means the Court Registry;

"Rules" means the CCJ Rules of Procedure, 2016 (as may be amended from time to time);

"Representative" means a person that is empowered to act for a party;

"Treaty" means the Treaty Establishing the Common Market for East and Southern Africa.



THE COURT ADDRESS

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