



**RULES OF PROCEDURE
OF THE COURT OF JUSTICE OF
THE COMMON MARKET FOR EASTERN AND
SOUTHERN AFRICA, 2025**

(COMESA COURT OF JUSTICE)





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**THE TREATY ESTABLISHING THE COMMON MARKET FOR EASTERN AND
SOUTHERN AFRICA**

**THE RULES OF PROCEDURE OF THE COURT OF JUSTICE OF
THE COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA, 2025**

In exercise of the powers conferred on the Court of Justice by Article 38 of the Treaty Establishing the Common Market for Eastern and Southern Africa (COMESA), the Court of Justice, with the approval by the Council, hereby makes the following Rules of Procedure of the Court of Justice-

PART I
GENERAL PROVISIONS

PART I

GENERAL PROVISIONS

SECTION I

PRELIMINARY

Rule 1

Citation

These Rules may be cited as the Rules of Procedure of the Court of Justice of the Common Market for Eastern and Southern Africa, 2025 (hereinafter referred to as the "Rules").

Rule 2

Interpretation

In these Rules-

"Alternative Dispute Resolution" means a method of resolving disputes prior to the trial by way of mediation, conciliation and arbitration pursuant to Rules 73;

"Alternative Dispute Resolution Roster" means a list of Alternative Dispute Resolution professionals issued pursuant to Rule 76;

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

"Authority" means the Authority of the Common Market established under Article 7 of the Treaty;

"Common Market" means the Common Market for Eastern and Southern Africa established under Article 1 of the Treaty;

"Council" means the Council of Ministers of the Common Market established under Article 7 of the Treaty;

"Counsel" means a legal practitioner who is entitled to appear before a court of a Member State;

"Court" means the Court of Justice of the Common Market established under Article 7 of the Treaty;

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

"Institution" means an institution established by the Common Market;

"Interlocutory application" means an application to the Court concerning a specific matter made in the proceedings after commencement and before the conclusion of the matter;

"Intervener" means a Member State, the Secretary-General or a resident of a Member State who is not a party to a case before the Court and who may, with leave of the Court, intervene in the case;

"Judge" means a Judge of the Court appointed under Article 20 of the Treaty;

"Letter of request" means a letter issued by the Court to a national court or tribunal for the examination of witnesses or experts;

"Member State" means a Member State of the Common Market;

"Notice of Motion" means a party's written notice under these Rules requesting the Court's determination on or pertaining to a matter before the Court;

"Official Gazette" means the Official Gazette of the Common Market;

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

"President" means the President of the Court appointed under Article 20 of the Treaty;

"Presiding Judge" means the President, the Principal Judge or other Judge presiding over the Appellate Division or the First Instance Division;

"Principal Judge" means the Judge designated as such by the Authority under Article 20 of the Treaty;

"Reference" means a notice in writing addressed to the Registrar by which proceedings before the Court are commenced;

"Registrar" means the Registrar of the Court appointed under Article 41 of the Treaty and includes Deputy and Assistant Registrars;

"Seat" means the Seat of the Court determined by the Authority;

"Secretary-General" means the Secretary-General of the Common Market as provided for by Article 17 of the Treaty; and

"Treaty" means the Treaty establishing the Common Market for Eastern and Southern Africa.

Rule 3

Objective and Scope of Application of the Rules

- (1) The objective of these Rules is to regulate the procedure of matters before the Court.
- (2) Nothing in these Rules shall limit or otherwise affect the inherent power of the Court to administer substantive justice without undue regard to technicalities or prevent abuse of the process of the Court.
- (3) A matter before the Court shall be commenced, proceeded with and disposed of by the Court in accordance with these Rules.
- (4) The President or the Principal Judge may issue practice directions for the proper implementation of these Rules.

SECTION II

ORGANISATION OF THE COURT

Rule 4

Seat of the Court

The Seat of the Court shall be determined by the Authority, but the Court may, on its own motion or upon application by a Party, sit in any other place within any other Member State if it considers it expedient.

Rule 5

Registry of the Court

- (1) The Registry of the Court shall be at the Seat of the Court.
- (2) Subject to approval by the Council, the Court may establish sub-registries in Member States.

Rule 6

Sessions and Sittings of the Court

- (1) The length of sessions of the Appellate Division and the First Instance Division and the dates, times and nature of sittings, shall be fixed by the President and the Principal Judge, respectively.
- (2) Notwithstanding subrule (1), after the hearing commences, the sitting Court or Presiding Judge, as the circumstances may require, may modify the length of the session, dates, times and nature of sittings of the Court.
- (3) The Court may, on its own motion or upon application by a party, sit and exercise its functions using technology, in accordance with Section V of Part I.

Rule 7

Composition and Quorum

- (1) The Appellate Division shall sit in plenary session or with a quorum of three Judges, as the President may determine.
- (2) The First Instance Division shall sit in plenary session or with a quorum of five or three Judges as the Principal Judge may determine.
- (3) The President or the Principal Judge may, where necessary, designate a single Judge to preside over a matter.
- (4) Where the Court cannot sit in plenary session by reason of a Judge being absent or prevented from taking part in the proceedings, the President or the Principal Judge may direct that the case be heard with an odd-numbered reduced quorum.
- (5) The Court or Presiding Judge shall adjourn the sitting until there is a quorum if after a sitting has been convened it is found that the quorum of Judges has not been attained.

Rules 8

Disqualification and Recusal of Judges

- (1) A Judge shall disqualify oneself in proceedings in which the Judge's impartiality might reasonably be questioned.
- (2) The nationality of a Judge shall not in itself, be sufficient ground to disqualify a Judge from any proceedings.
- (3) Where a party has alleged that a Judge is directly or indirectly interested in a case before the Court, the party shall submit a recusal request and inform the Judge of the grounds on which the allegation of bias is based on.
 - (1) The recusal request in subrule (3), shall be submitted to the Judge in the presence of the opposing parties.
 - (2) Upon such request being made, the Judge shall refrain from sitting on the case, and the Presiding Judge shall upon considering the statement of the Judge, decide on whether the recusal request may be granted.
 - (3) The Presiding Judge may invite the parties to provide further information in the presence of the Judge before arriving at a decision.
 - (4) The Judge shall, without necessarily admitting bias, abide by the decision of the Presiding Judge, following which the parties shall be notified.
 - (5) The Court shall not entertain multiple requests for recusal by the same party in the same matter.

Rule 9

Recusal of the President and Principal Judge

- (1) The President or Principal Judge shall disqualify oneself in proceedings in which the Judge's impartiality might reasonably be questioned.
- (2) Rule 8 subrules (2) to (4) shall apply, with the necessary modifications, to the recusal of the President and Principal Judge.
- (3) In view of Article 22 (5) of the Treaty, where a party has alleged that the President is directly or indirectly interested in a case before the Court, the President shall refrain from sitting on the case, and such refraining shall not be construed as an admission of bias.
- (4) The case shall proceed with another Appellate Judge presiding over the matter, in the absence of the President in accordance with Rule 7.

RULES OF PROCEDURE OF THE COMESA COURT OF JUSTICE 2025

- (5) Where a party has alleged that the Principal Judge is directly or indirectly interested in a case before the Court, the Principal Judge shall refrain from sitting on the case, and the President shall, upon hearing the Principal Judge, decide on whether the recusal request may be granted.
- (6) The Principal Judge shall, without necessarily admitting bias, abide by the decision of the President, following which the parties shall be notified.

Rule 10

Motion for Recusal

- (1) Where the President, Principal Judge or Presiding Judge decides that the same bench shall hear or continue with the matter, and the party is not satisfied with the outcome, the party shall make a formal recusal motion in open court at the next hearing date, with notice to the other party.
- (2) On taking cognisance of the formal motion, the President, Principal Judge or Presiding Judge shall assign a Judge who is not seized of the case to hear and determine the recusal motion in question.
- (3) The hearing shall be summary and proceed on affidavit evidence.
- (4) The decision on recusal shall be final and binding on the parties to the motion.

Rule 11

Vacations of the Court

- (1) The President may in each year designate vacations of the Court and cause the dates to be published in the Official Gazette.
- (2) In exceptional circumstances, the President or the Principal Judge may convene the Court during a vacation.
- (3) The Court shall observe the official public holidays of the Member State where it has its Seat or where it is sitting, save in exceptional circumstances.

SECTION III
REPRESENTATION

Rule 12

Representation

- (1) A party to proceedings in the Court shall be represented by Counsel appointed by that party.
- (2) Counsel to the Common Market may appear and represent the Common Market or its Institutions in a matter where the Common Market or one of its Institutions is a party.
- (3) A body corporate or unincorporate or legal entity may either appear by its director, or a person appointed by resolution of the corporation or legal entity and shall be represented by Counsel.
- (4) Counsel shall appear before the Court in the attire prescribed under the First Schedule.

Rule 13

Counsel to Enjoy Immunity and Privileges

- (1) Counsel appearing before the Court or before a judicial authority to which the Court has issued a letter of request under Rule 80 (1), shall enjoy immunity in respect of statements made by them in Court or in pleadings prepared by them concerning the case or the parties.
- (2) Counsel representing parties shall enjoy the following further privileges and facilities
 - (a) papers and documents relating to the proceedings are exempt from both search and seizure;
 - (b) authorisation for foreign currency by Member States as may be necessary for the performance of their duties, subject to foreign currency regulations of a Member State; and
 - (c) travel in the course of duty without hindrance.

Rule 14

Appearance as Counsel

- (1) Where Counsel has been involved in a matter prior to it being filed before the Court and is likely to be called as a witness by a party to that matter, Counsel shall refrain from appearing as Counsel in the matter.
- (2) Counsel shall not depone before the Court, in any manner, unless the matter is to the specific knowledge of Counsel.

Rule 15

Change of Counsel

- (1) A party may change Counsel and shall file with the Registrar a notice of the change and, within fourteen days of filing the notice, serve a copy of the notice on each party.
- (2) Where new Counsel is appointed, Counsel shall furnish proof of status by filing with the Registrar-
 - (a) a Special Power of Attorney in accordance with Form A of the Second Schedule; and
 - (b) valid practicing certificate authorising Counsel to appear before a court in a Member State.
- (3) Counsel no longer wishing to act for a party shall file a notice of withdrawal as Counsel of record with the Registrar and, within fourteen days of filing the notice, serve a copy of the notice of withdrawal on each party.
- (4) A party may change Counsel after judgment has been delivered and shall file an application for leave of the Court and notify all Counsel on record for that matter.

Rule 16

Exclusion of Counsel from Proceedings

- (1) Counsel whose conduct offends the dignity of the Court or the proper administration of justice may, at any time, be excluded from the proceedings by an order of the Court.
- (2) Counsel shall not be excluded without having been given a reasonable opportunity to be heard.
- (3) An order issued under this Rule shall have immediate effect.

- (4) Where Counsel is excluded from the proceedings, the proceedings shall be suspended for a period fixed by the Presiding Judge in order to allow the party concerned to appoint other Counsel.
- (5) The Court may, upon sufficient cause shown, rescind a decision taken under this Rule.

SECTION IV

LANGUAGES

Rule 17

Languages

- (1) The official languages of the Court shall be the official languages of the Common Market.
- (2) A Party shall file its pleadings in one of the official languages of the Court.
- (3) The Court shall determine the language or languages of the oral proceedings.
- (4) A party wishing to call a witness or expert who is unable to testify in any of the languages of the Court, shall inform the Court at the scheduling conference.

Rule 18

Translation

- (1) The Registrar shall, at the request of a Judge, arrange for the translation of the record of proceedings into a language chosen from the languages of the Court.
- (2) Subject to subrule (1), a party filing a document that is in a language other than the languages of the Court shall include a translation into the appropriate languages of the Court.
- (3) Unless otherwise ordered by the Court, on its own motion or at the request of the opposing party, translation of lengthy documents may be confined to relevant extracts.
- (4) Every translated document shall be accompanied by a certificate of translation signed by the translator.
- (5) The Registrar may grant a party, a period within which to translate a document that

has not been submitted in a language of the Court into the language or languages of the Court.

- (6) The Court shall reject a document from a party which has not been translated in accordance with this Rule.

Rule 19

Interpretation of Oral Proceedings

- (1) The Court shall direct the evidence of a witness or expert testifying in a language other than a language of the Court to be interpreted into the appropriate languages of the Court.
- (2) Judges may use one of the languages of the Court during oral proceedings when putting questions and when delivering their decision, and the Registrar shall arrange for interpretation into the appropriate languages of the Court.

Rule 20

Authentic Text

The text of documents prepared in one or more of the languages of the Court, in accordance with these Rules, are equally authentic.

SECTION V

CASE MANAGEMENT AND RECORDING SYSTEM

Rule 21

Use of Technology

- (1) In these Rules, technology includes -
 - (a) an e-filing system for filing and service of documents electronically;
 - (b) digital display devices;
 - (c) real time transcript devices;
 - (d) video or audio conferencing;
 - (e) notification to the parties through emails, or instant messaging applications or other electronic communication service; or
 - (f) any other technology approved by the Court.
- (2) The Court shall issue practice directions on the use of technology in court processes and judicial proceedings.

- (3) The Court may use technology for -
 - (a) electronic signature; and
 - (b) virtual hearings and court sessions.

Rule 22

Electronic Exchange of Documents

- (1) Parties may, under the directions of the Registrar-
 - (a) file and serve a pleading, document or witness statement electronically through the court e-filing system, e-mail, instant messaging applications or other electronic communication service; and
 - (b) in accordance with the Court's directions, use electronic data during hearings.
- (2) Where a party serves a pleading or document by electronic means, the party shall file an affidavit of service stating the mode and details of service.
- (3) Parties may, on request, accede to copies of Court documents in an electronic format.

Rule 23

Use of Technology to Deliver a Decision

The Court may deliver a decision, judgment, order, or ruling electronically by transmitting a copy of the decision, judgment, order, or ruling to the parties.

Rule 24

Registers

- (1) Separate registers, in both electronic and physical form, for the Appellate Division and the First Instance Division, in which all pleadings and supporting documents shall be entered in the order in which they are filed, shall be kept in the Registry under the control of the Registrar.
- (2) The Registrar shall make a note on the original when a document has been registered and, if a party so requests, on any copy submitted.
- (3) Entries in the registers and the notes provided for in subrule (2) shall be deemed to be authentic and shall be admissible in evidence as to the truth of their contents.

- (4) Subject to Rule 64 subrule (3)
- (a) a person having an interest in a matter before the Court may consult the register and may obtain copies or extracts of the documents referred to in subrule (1) on payment of the prescribed fee;
 - (b) a party may, on payment of the prescribed fee, obtain copies of pleadings and certified copies of judgments and orders; and
 - (c) any person not being a Party may, on payment of the prescribed fee, obtain certified copies of any judgment.
- (5) Notice shall be given by the Registrar in the Official Gazette of the date of registration of a reference, the names and addresses of the parties, the subject-matter of the proceedings and the relief sought by the applicant.

Rule 25

Electronic Register of Persons

- (1) Parties may file and serve pleadings and documents electronically through the electronic case and evidence management platform of the Court.
- (2) Only persons registered on the electronic case and evidence management platform of the Court shall be allowed to file pleadings and documents on the platform.
- (3) The Registrar shall establish and maintain an electronic register of persons registered on the platform.
- (4) The electronic register shall include a physical address, telephone number and email address.

Rule 26

Video Conferencing and Livestream

- (1) Subject to Rule 82, trials before the Court may be transmitted by way of video-conference or livestream.
- (2) Delivery of judgments, decisions, rulings and Advisory Opinions may be transmitted by way of video-conference or livestream.
- (3) The recordings of hearings that have been transmitted by way of video-conference or livestream shall remain available on the website of the Court for a maximum period of three months after the close of the hearing.

Rule 27

Receipt of Electronic Document

A document served electronically shall be deemed to have been received when it is sent and a copy of the electronic emission shall constitute sufficient evidence of receipt.

PART II
PROCEEDINGS IN THE
FIRST INSTANCE DIVISION

PART II

PROCEEDINGS IN THE FIRST INSTANCE DIVISION

SECTION I

WRITTEN PROCEDURE

Rule 28

Reference

- (1) A Member State, the Secretary-General, Institution or a legal or natural person who seeks to refer a matter in dispute to the Court shall file a reference with the Registrar.
- (2) A reference shall contain -
 - (a) the name, designation, address, telephone number and residence of the applicant;
 - (b) the name, designation, address, and residence of the respondent;
 - (c) a concise statement of facts on which the claim is based;
 - (d) the relief sought by the applicant;
 - (e) a list of witnesses, if any, including their full names and addresses, together with their statements;
 - (f) a list of documents, and copies thereof on which the applicant relies;
 - (g) the physical and electronic address for service, and telephone number of the applicant's Counsel;
 - (h) a Special Power of Attorney in accordance with Form A in the Second Schedule; and
 - (i) a valid practicing certificate of the Counsel representing the applicant.
- (3) Where the reference seeks the annulment of a decision of an Institution, the reference shall be accompanied by documentary evidence of the decision, the annulment of which is sought.
- (4) A reference made by a legal person shall be accompanied by -
 - (a) the instruments that establish or regulate that legal person, a recent extract from the register of companies, firms or associations, or any other proof of the legal persons' existence in law; and
 - (b) proof that the authority granted to the applicant's Counsel has been

properly conferred on the Counsel by someone authorised for the purpose.

- (5) Where a reference does not comply with the requirements set out subrule (2) to (4), and the Registrar determines that the reference is not admissible in the Registrar may grant the applicant time within which to amend and file the reference.
- (6) Where the applicant fails to put the reference in order within the period determined under subrule (5), the Registrar shall determine that the reference is not admissible.
- (7) An applicant whose reference has been found to be inadmissible may commence fresh proceedings.

Rule 29

Notification of Reference

- (1) The Registrar shall, upon the filing of a compliant reference, issue a notification in accordance with Form B of the Second Schedule, accompanied by a copy of the reference, requiring the respondent to file a memorandum of appearance and statement of defence.
- (2) A notification shall be signed by the Registrar and sealed with the seal of the Court.

Rule 30

Mode of Service

- (1) A person who has filed a notice, pleading or document required to be served under these Rules, shall serve the notice, pleading or document and file an affidavit of service with the Registrar in accordance with Form C of the Second Schedule.
- (2) Service shall be effected by tendering to that person the original of the document and requiring the person to sign a duplicate, acknowledging service.
- (3) A notice, pleading or document served on -
 - (a) a Member State, shall be served on the Minister of Justice, the Attorney-General or any other competent authority of the Member State;
 - (b) the Common Market, shall be served on the Secretary-General;
 - (c) an Institution, shall be served on the head of the Institution or the Secretary-General where the Institution does not have legal personality;
 - (d) other institutions, shall be served on the head of the institution;
 - (e) a corporate body, shall be served at the registered office or on the company secretary or director of the corporate body;

- (f) other legal persons, shall be served on the head of that legal person or any person acting in the capacities duly designated; and
 - (g) a partnership, where partners are sued in the name of their firm, shall be served on any one or more of the partners, or the principal place of business of the partnership and such service shall be considered good service upon the firm.
- (4) Where a recipient fails to sign the acknowledgment, the affidavit of service shall state that fact.
 - (5) A person seeking to serve a pleading or document may, where personal service cannot be effected, be authorised by the Registrar, upon sufficient cause being shown, to serve the pleading or document by registered post, by courier or similar delivery system, facsimile or electronic means with proof of delivery.
 - (6) Where the Court is satisfied that the person to be served refused to acknowledge service of the document, it may declare that the pleading or document was duly served.
 - (7) A notice, pleading or document which is required to be served under these Rules shall be considered to have been received on the day it is served.
 - (8) The Registrar shall certify the copies of documents to be served.
 - (9) A notice, pleading or document addressed to or served on Counsel or representatives of parties shall be considered to be addressed or served to or on the parties.
 - (10) Service of a notice, pleading or document and acknowledgment of such service may be effected electronically in accordance with Rule 21.

Rule 31

Appearance

- (1) A respondent shall enter appearance to the reference within fourteen days from service of the notification of reference by delivering to the Registrar a memorandum of appearance in writing dated on the day of its delivery.
- (2) A memorandum of appearance shall -
 - (a) contain the name, telephone number, and physical and electronic address of the respondent;
 - (b) the name, telephone number, and physical and electronic address of the respondent's Counsel; and
 - (c) be in accordance with Form D of the Second Schedule.

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- (3) The memorandum of appearance may be accompanied by an interlocutory application, if any.
- (4) The respondent shall raise the issue of jurisdiction in the memorandum of appearance where there is a plea on lack of jurisdiction.
- (5) The Registrar shall seal the memorandum of appearance and accompanying documents and immediately return a copy to the respondent for service upon the applicant.
- (6) The respondent shall serve the memorandum of appearance and accompanying documents on the applicant within fourteen days of receiving them.
- (7) Where a respondent duly served with a reference fails to file a memorandum of appearance within the prescribed period, the matter shall proceed *ex parte*.

Rule 32

Statement of Defence and Counterclaim

- (1) The respondent shall file a statement of defence, with or without a counterclaim, within thirty days of filing a memorandum of appearance.
- (2) A statement of defence shall contain -
 - (a) the name, designation, address, telephone number and residence of the respondent;
 - (b) an admission or denial of the facts stated in the reference;
 - (c) a concise statement of facts relied upon;
 - (d) the nature of evidence in support, where appropriate;
 - (e) the relief sought by the respondent;
 - (f) a list of witnesses, if any, including their full names and addresses, together with their statements;
 - (g) a list of documents and copies thereof on which the respondent relies;
 - (h) a physical and electronic address for service, and telephone number of the respondent's Counsel;
 - (i) a Special Power of Attorney in accordance with Form A of the Second Schedule; and
 - (j) a valid practicing certificate of the Counsel representing the respondent.
- (3) The respondent may apply for an extension of the time limit laid down in subrule (1).

- (4) The Principal Judge may, upon hearing the parties, extend the time.
- (5) Where a respondent duly served with a reference fails to file a statement of defence within the prescribed period, the matter shall be fixed for *ex parte* hearing with notice to the respondent.
- (6) In addition to the determination on the merits of the reference at the *ex parte* hearing, the Court shall rule on whether -
 - (a) the reference initiating proceedings is admissible; and
 - (b) the appropriate formalities have been complied with.
- (7) Where the Registrar determines that the statement of defence is not admissible, the Registrar may grant the respondent time within which to amend and file the statement of defence.
- (8) Where the respondent fails to put the statement of defence in order within the period determined under subrule (7), the Registrar shall determine that the statement of defence is not admissible.
- (9) A respondent whose statement of defence has been found to be inadmissible may file a new statement of defence.
- (10) A respondent who has a counterclaim shall include the counterclaim in the statement of defence.
- (11) A counterclaim shall contain -
 - (a) an admission or denial of the facts stated in the claim;
 - (b) any additional facts relied upon; and
 - (c) the relief sought.
- (12) The provisions of Rule 28 (2) shall apply, with necessary changes, to a counterclaim.

Rule 33

Reply

- (1) An applicant may, within thirty days after service of a statement of defence, or a statement of defence and a counterclaim, file -
 - (a) a reply to the statement of defence; and
 - (b) a statement of defence to the counterclaim, in default of which the matter shall be fixed for hearing.
- (2) Where there is more than one statement of defence or a statement of defence and

counterclaim filed, an applicant may file a reply to the statement of defences and a statement of defence to the counterclaims, within thirty days after the last service of the statement of defence, or statement of defence and counterclaim, in default of which the matter shall be fixed for hearing.

- (3) The provisions of Rule 28 (2) shall apply, with necessary changes, to the reply to the statement of defences and statement of defence to the counterclaims.

Rule 34

Contents of Pleadings

- (1) Pleadings shall contain a concise statement of material facts upon which the party's claim or defence is based and not the evidence by which those facts are to be proved.
- (2) The effect of a document or the purport of a conversation referred to in the pleading shall, if material, be briefly stated, but the precise words of the document or conversation may not be stated, except where the words are material.
- (3) A party may not plead any fact if it is presumed by law to be true or the burden of disproving it lies on the other party, unless the other party has specifically denied that fact.
- (4) Pleadings shall bear a date and be signed by the party's Counsel.
- (5) In the calculation of time limits for taking steps in proceedings, only the date of filing with the Registrar shall be taken into account.

Rule 35

Matters to be Specifically Pleaded

- (1) Pleadings shall contain the necessary particulars of any claim, defence or other matters pleaded, including -
 - (a) particulars of any misrepresentation, fraud, negligence, breach of trust, wilful default or undue influence on which the party pleading relies;
 - (b) particulars of the facts on which the party relies, where a party pleading alleges any condition of the mental state of any person or malice or fraudulent intention;
 - (c) prescription of time; or
 - (d) lack of jurisdiction of the Court.
- (2) A party shall plead every matter which -
 - (a) is alleged to make the pleading of the opposing party not maintainable;

- (b) where not specifically pleaded, would take the opposing party by surprise;
or
 - (c) raises issues of fact not arising out of the preceding pleading.
- (3) Subject to Rules 34 and 37, a party may in a pleading, plead a matter which has arisen at any time, whether before or since the filing of the reference.

Rule 36

Transmission of Documents

- (1) The Parties shall produce within time-limits laid down by the Registrar, translations of all pleadings into the appropriate languages of the Court.
- (2) All pleadings, accompanied by annexes referred to therein, shall be filed either physically or electronically with the Registrar.
- (3) A whole document or a full copy of it shall be filed with the Registrar where only extracts from the document are annexed to the pleading.

Rule 37

Departure from Pleadings

- (1) Save for an admission, a party may not, in a subsequent pleading, make an allegation of fact, or raise a new ground of claim, inconsistent with that party's previous pleading in the same case.
- (2) Subrule (1) shall not prejudice the right of a party to apply for leave to amend a previous pleading.

Rule 38

Further and Better Particulars

- (1) The respondent may, without leave of court and within the period specified for filing of the statement of defence, request for further and better particulars of the reference before filing the statement of defence.
- (2) The applicant may, where the defendant has filed a statement of defence with a counterclaim, without leave of court and within the period specified for filing of the defence to the counterclaim, request for further and better particulars of the counterclaim.
- (3) Where a party refuses to supply further and better particulars, the Court may, on

application, order that party to supply the further and better particulars requested.

- (4) An order for further and better particulars shall be made on such terms as the Court may determine.
- (5) The Court may, on application by a party, order a party to supply to the other party further and better particulars of a reference, statement of defence or counterclaim.
- (6) The Court may strike out the reference if an applicant fails to comply with the order to supply further and better particulars within the period specified in the order.
- (7) The Court may proceed to hear the matter *ex parte* if the respondent fails to comply with the order to supply further and better particulars.

Rule 39

Preliminary objection

- (1) Matters under this Rule do not relate to preliminary rulings under Article 30 of the Treaty.
- (2) Where a respondent intends to raise a preliminary objection, the respondent shall raise it in the statement of defence or prior to the scheduling conference in Rule 72, by giving not less than seven days written notice of the preliminary objection to the Court and to the other parties, stating specifically the nature and grounds of that objection.
- (3) Where a preliminary objection on the jurisdiction of the Court has been raised, Rule 31 (4) shall apply.
- (4) The Court may, at its discretion and for sufficient cause shown, entertain a preliminary objection raised after the scheduling conference.

Rule 40

Admissions and Denials

- (1) An allegation of fact made by a party in a pleading shall be deemed to be admitted unless it is denied by the opposing party in its pleading.
- (2) An allegation of fact made in a pleading which is not admitted by the opposing party shall be specifically denied by that party.
- (3) A general denial or a general statement of non-admission of an allegation of fact

shall not be a sufficient denial and shall constitute an admission of that fact.

Rule 41

Closure of Pleadings

- (1) Pleadings shall be closed fourteen days after service of the final permissible defence or reply, that may include a-
 - (a) statement of defence;
 - (b) reply to statement of defence;
 - (c) statement of defence to counterclaim; or
 - (d) reply to defence and counterclaim, whichever is applicable.
- (2) After the close of pleadings, no further documents shall be produced by either party except with leave of the Court.

Rule 42

Jurisdiction

Where a party has not raised an issue of jurisdiction, the Court may, on its own motion, and having heard the parties, determine whether the Court has jurisdiction to entertain an action.

Rule 43

Striking out Pleadings

The Court may, on application by a party, strike out or expunge all or part of a pleading or other document, on such conditions as the Court deems necessary, on the ground that the pleading or other document -

- (a) discloses no reasonable cause of action or defence in law;
- (b) may prejudice or delay the fair trial of the case;
- (c) is scandalous, frivolous or vexatious; or
- (d) is an abuse of the process of the Court.

Rule 44

Amendment of Pleadings Without Leave

- (1) A party may, without leave of the Court, amend its pleadings once, before the closure of pleadings.
- (2) Subrule (1) shall not apply to an amendment which seeks to -
 - (a) alter the capacity of a party to the case; or

- (b) add or substitute a new cause of action.
- (3) Where an amended pleading is served on the respondent, if the respondent has -
 - (a) not filed a defence, the respondent may file the statement of defence as provided by these Rules for the filing of the statement of defence; or
 - (b) filed a defence, the respondent may file an amended statement of defence within fourteen days of service of the amended pleading.
- (4) Where an amended pleading is served on the applicant, if the applicant has -
 - (a) not filed a reply to the defence, the applicant may file a reply as provided by these Rules for the filing of a reply; or
 - (b) filed a reply, the applicant may file an amended reply within fourteen days of service of the amended statement of defence.
- (5) References in subrule (2) and (3) to a statement of defence and a reply include references to a counterclaim and a defence to counterclaim respectively.
- (6) Where a party has pleaded to a pleading which is subsequently amended and served on the other party, then, if that party does not amend the pleading under the foregoing provisions of this Rule, that party shall be taken to rely on that pleading in answer to the amended pleading.

Rule 45

Amendment of Pleadings with Leave

- (1) After closure of pleadings, a party may amend pleadings only with leave of the Court.
- (2) The Court may allow a party to orally make amendments to pleadings in a summary manner in respect of minor amendments.
- (3) A party that amends its pleadings shall file the amended pleading in the Registry and shall serve a copy of the amended pleading on every party with proof of service.
- (4) The Court shall not grant leave to amend pleadings if -
 - (a) the amendment sought involves the addition or substitution of a new cause of action which does not arise out of the same or substantially the same facts as the cause of action already pleaded; or
 - (b) the amendment is sought to be made after the expiry of the period of limitation pertinent to the particular cause of action pleaded.
- (5) Where leave to amend is granted by the Court -

- (a) the applicant shall, within fourteen days of the date of the Court's order, file with the Court the amended pleadings and serve a copy on every party to the proceedings, unless the Court orders otherwise; and
 - (b) the respondent shall be afforded an opportunity to reply or otherwise respond to the amendment within fourteen days of service.
- (6) In the event of any variance between the issues contained in the pleadings and the issues proved at the hearing, the pleadings may by consent or by application be amended either at once or as the Court may order.

Rule 46

Format of Amended Pleadings

- (1) A pleading or document amended under this Rule shall be endorsed with the date of the amendment.
- (2) An amendment shall be shown by striking out the deleted words, in a manner as to leave them legible, and by inscribing the added words in red ink.
- (3) Colours other than red shall be used for further amendments to the same document.

Rule 47

Documents and Information

- (1) The Court may at any time require a Party to the proceedings to produce a document or to supply information which the Court considers relevant for the proper determination of the matter before it.
- (2) The Court may require a Member State, Institution, or legal or natural person, not being parties to the case, at any time during proceedings before it, to produce a document or supply information in its possession or control which the Court deems necessary for the proper determination of the case.

Rule 48

Interlocutory Applications

- (1) Subject to subrule (5), an application to the Court shall be by motion stating the grounds of the application, supported by an affidavit.
- (2) A motion shall not be heard without notice to all Parties.
- (3) The Court may, if satisfied that delay caused by proceeding in the ordinary manner would or might entail irreparable injustice, hear the motion and make an *ex parte*

order as the Court deems just.

- (4) The Court shall, upon making an *ex parte* order, set down the application for *inter partes* hearing within sixty days of the *ex parte* order.
- (5) The provisions of this Rule shall not apply to applications made -
 - (a) orally in the course of a hearing; or
 - (b) in writing, with the consent of the parties.
- (6) The applicant shall serve the notice of motion and copies of all affidavits on the parties to the case not more than fourteen days after filing.
- (7) A notice of motion shall be in accordance with Form E of the Second Schedule.

Rule 49

Affidavits in Reply to Interlocutory Applications

- (1) An interlocutory application shall be supported by one or more affidavits of persons having knowledge of the facts.
- (2) A person served with a notice of motion under Rule 48 may file one or more affidavits in reply no later than thirty days before the date of hearing and shall serve a copy of the affidavit in reply on the applicant no later than fourteen days before the hearing.
- (3) The Court shall determine the interlocutory application at the close of pleadings relating to the application.
- (4) All affidavits shall be in accordance with Form F of the Second Schedule.

Rule 50

Supplementary Affidavits

- (1) A party may, with the consent of the other party or with the leave of the Court, file one or more supplementary affidavits.
- (2) An application for leave to file one or more supplementary affidavits shall be made orally or in writing.

Rule 51

Appeal Against an Interlocutory Order

- (1) An appeal against an interlocutory order that does not dispose of the matter entirely shall only lie with leave of the Appellate Division.

- (2) A Party who seeks to appeal against an interlocutory order that disposes of the matter entirely may appeal against the order without leave.
- (3) An application for leave to appeal shall be made to the Appellate Division.

Rule 52

Application to Set Aside

- (1) An application may be made to set aside an *ex parte* order, proceedings, or judgment.
- (2) The application to set aside shall be by way of motion made within thirty days from the date of service of the *ex parte* order or judgment and shall be filed in accordance with Rule 48.
- (3) The Court may, on application-
 - (a) grant an order for a stay of execution of an *ex parte* order or judgment pending its decision on any application to set aside, or
 - (b) allow execution subject to the provision of security in an amount and of a nature to be fixed in light of the circumstances, which security shall be released if no application to set aside is made or if the application fails.
- (4) Any security that is deposited with the Court shall not attract any interest.
- (5) The Principal Judge or Presiding Judge shall determine a period within which the other party may reply to the application.
- (6) The Principal Judge or Presiding Judge shall determine after the application to set aside has been served whether the application is to be disposed of by way of an oral hearing or written submissions.

Rule 53

Stay of Proceedings

- (1) The Court may order a stay of proceedings -
 - (a) on its own motion;
 - (b) on an application by a Party to the proceedings; or
 - (c) on an application by a person who, not being a Party to the proceedings, establishes that it has a substantial interest in the subject matter of the action or shall be adversely affected by a decision in the matter.

- (2) The Court may stay proceedings where -
- (a) the Court or a national court or tribunal of a Member State, or an arbitral tribunal, are seized of a case which has a substantial bearing on the proceedings before it;
 - (b) a subsequent case for the same or substantially the same cause of action is brought before compliance with an order in respect of costs of a case discontinued under Rule 39;
 - (c) the Court orders costs to be paid or security to be given for costs by any Party in conformity with Rule 81, and the Party concerned fails to pay the costs or to furnish the security;
 - (d) a Party to the proceedings dies, is presumed or declared dead, bankrupt, or becomes mentally incapacitated;
 - (e) a legal entity is declared bankrupt, insolvent or dissolved;
 - (f) an agreement between the Parties provides for submission of the subject matter of the action to arbitration and a Party raises the issue of arbitration in its pleadings, demonstrates its preparedness to refer the subject matter to arbitration, and requests a stay of proceedings pending the completion of such arbitral proceedings;
 - (g) a party fails to comply with an order of the Court; or
 - (h) the Court deems fit.
- (3) Subject to subrule (6) of this Rule, the order shall be vacated upon expiry of the time for which it has been granted or the fulfilment of any conditions imposed, or on application to the Court in accordance with Rule 48.
- (4) The stay of proceedings shall take effect on the date indicated in the order or decision staying proceedings or, in the absence of such indication, on the date of that order or decision.
- (5) While proceedings are stayed, time shall cease to run for all Parties for the purpose of prescribed period.
- (6) Where the order or decision staying proceedings does not specify the length of stay, the stay of proceedings shall end on the date indicated by the order or decision of resumption or, in the absence of such indication, on the date of the order or decision of resumption.
- (7) From the date of resumption, time shall begin to run afresh for the purposes of prescribed period.

Rule 54

Discontinuance

- (1) The Court shall order the case to be removed from the cause list and make a decision as to costs if, before the Court has given its decision, the Parties file a consent agreement in settlement of their dispute and convey to the Court the abandonment of their claims in accordance with Form G of the Second Schedule.
- (2) Where the applicant informs the Court in writing that the applicant seeks to discontinue the proceedings, the Court may, after hearing the respondent, allow the discontinuance of the case.
- (3) Where the Court allows the discontinuance of a case, it shall mark the case as withdrawn and make a decision as to costs.
- (4) Where a case removed from the cause list contains a counterclaim, the counterclaim may proceed after the discontinuance of the reference.

SECTION II

SPECIAL FORMS OF PROCEDURE

Rule 55

Application for Suspension or for Interim Measures

- (1) An application to suspend the operation of a measure adopted by a Member State made pursuant to the Treaty shall be admissible only if the applicant is challenging that measure in proceedings before the Court.
- (2) An application to compel a Member State to adopt an interim measure shall be admissible only if it is made by a Party to a case before the Court and relates to that case.

Rule 56

Procedure on Application

- (1) An application under Rule 55 shall be by motion in accordance with Rule 48, supported by an affidavit and shall state the subject-matter of the proceedings, the circumstances giving rise to urgency and the points of fact establishing a *prima facie* case for the suspension or for the interim measures applied for.

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- (2) The applicant shall serve the application on the opposing party within thirty days of filing.
- (3) The party so served shall, within thirty days, file written submissions in response.
- (4) The Presiding Judge may grant the application before the submissions of the opposing party have been filed when there is sufficient justification to grant an *ex-parte* order, or if the opposing party fails to file written submissions.
- (5) A decision under subrule (4) shall be by a reasoned order.

Rule 57

Decision on the Application

- (1) The applicant and the opposing party may be heard on an application under Rule 55.
- (2) The Presiding Judge shall decide on the application or refer it to the Court for hearing.

Rule 58

Order for Suspension of Operation or for Interim Measures

- (1) The decision on an application under Rule 55 shall be by a reasoned order from which no appeal shall lie.
- (2) The enforcement of the order may be made conditional on the deposit by the applicant of security of an amount and nature to be determined by the Court in light of the circumstances.
- (3) Whenever a party is ordered to furnish security, the Court shall, by the same order, fix the time within which such security shall be furnished by the party.
- (4) Where the order is in respect of an interim measure, the order granting the application shall specify, where appropriate, a date on which the interim measure is to lapse.
- (5) Where the order does not specify the date on which the suspension or interim measure is to lapse, the suspension or measure shall lapse when final judgment is delivered.
- (6) The order shall have only an interim effect and shall be without prejudice to the decision of the Court on the substance of the case.

Rule 59

Change in Circumstances

- (1) The Court may at any time, on application by a party, vary or cancel an order for suspension of operation of a measure or for adoption of an interim measure, on account of a change in circumstances.
- (2) The Court shall, before it varies or cancels its order, give the opposing party an opportunity to respond to the application.

Rule 60

New Application on Rejection

The rejection of an application for an interim order shall not bar that applicant from making a further application based on new facts which could not, by reasonable diligence, have been discovered.

Rule 61

Suspension of Enforcement of a Decision

- (1) A party aggrieved by a decision of the Court on any measure adopted by a Member State may apply to suspend the enforcement of the decision.
- (2) Where an order is in respect of an interim measure, the order granting the application shall specify, where appropriate, a date on which the interim measure is to lapse.

Rule 62

Intervention

- (1) A Member State, the Secretary-General, an Institution or a person who is 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 the case by filing an application containing the grounds which justify the intervention.
- (2) An intervention shall be limited to evidence supporting or opposing the arguments of a party to the case.

Rule 63

Application for Intervention

- (1) An application to intervene shall be by motion supported by affidavit and served on the parties to the case within fourteen days from filing.
- (2) The application shall contain -
 - (a) a description of the case;
 - (b) a description of the parties;
 - (c) the name, telephone number, address and residence of the intervener;
 - (d) the physical and electronic address of service, and telephone number of the intended intervener's Counsel;
 - (e) the relief sought by one or more of the parties, in support of or in opposition to which the intervener is applying for leave to intervene;
 - (f) grounds for intervention establishing the intended intervener's interest in the result of the case;
 - (g) a Special Power of Attorney in accordance with Form A of the Second Schedule; and
 - (h) a valid practicing certificate for Counsel of the applicant.
- (3) The intervener shall be represented in accordance with Rule 12 and Rule 13.

Rule 64

Procedure for Intervention

- (1) The parties to the case shall submit their response to the application for intervention within thirty days from service of the application.
- (2) The Court shall give the parties an opportunity to file their written submissions or make oral submissions before deciding on the application.
- (3) Where the Court grants the application for intervention, the Registrar shall serve on the intervener a copy of every document in the case.
- (4) The Court may, on application by one of the parties, for sufficient cause shown, omit classified or confidential documents from being served on the intervener.
- (5) The intervener shall proceed with the case as it stands at the time of intervention.
- (6) The Court shall determine a period within which the intervener shall submit a

statement of intervention.

- (7) The statement of intervention shall contain -
 - (a) a statement of the relief sought by the intervener in support of, or opposition to, the relief sought by one of the parties, whether in whole or in part;
 - (b) the facts and arguments relied upon by the intervener; and
 - (c) the evidence relied upon.
- (8) The parties may file a reply to the statement of intervention and serve the same within thirty days from service of the statement of intervention on them.

Rule 65

Consolidation of cases

- (1) The Court may, at any time on its own motion or on application by a party, order that two or more cases concerning the same subject matter and between the same parties, on account of the connection between them, be consolidated.
- (2) The Court may, for sufficient cause shown, separate cases.

Rule 66

Joinder of Causes

- (1) The Court may, at any time on its own motion or on application by a party, order that two or more causes, in exceptional circumstances, be joined.
- (2) The Court may, for sufficient cause shown, disjoin causes.

Rule 67

Joinder of Parties

- (1) The Court may, at any stage of the proceedings, on application by a party or on its own motion, and on terms as may appear to the Court to be just, order that a person who ought to have been joined as a respondent, or whose presence before the Court may be necessary in order to enable the Court to adjudicate upon and settle all the issues involved in the reference or matter, be joined as a party to the case.
- (2) The Court shall stipulate a time for pleadings to be amended to enable the party to be joined.

Rule 68

Misjoinder of Parties

The Court may, at any stage of the proceedings, on its own motion or on application by a party, and on terms as may appear to the Court to be just, order that the name of any party improperly joined, be struck out.

Rule 69

Alteration of Parties

- (1) The death, bankruptcy, insolvency or incapacity of a party shall not cause the proceedings before the Court to abate, subject to any applicable law by which any right or cause of action is extinguished by the death, bankruptcy, insolvency or incapacity of the party.
- (2) The dissolution of a legal entity which is a party shall not cause the proceedings before the Court to abate, subject to any applicable law by which any right or cause of action is extinguished by the dissolution of the legal entity.
- (3) A duly appointed representative of the party may take over and continue the proceedings where the death, bankruptcy, insolvency or incapacity of a party, or dissolution of a legal entity occurs during the continuance of proceedings.
- (4) The surviving party may, with leave of the Court, and after serving notice to proceed at the last known address of the deceased, proceed *ex parte* where no legal representative of the former party is appointed within a reasonable time.

Rule 70

Third Party Claims

- (1) A respondent who seeks to make a claim against a person who is not party to a reference shall show -
 - (a) some contribution or indemnity;
 - (b) that a relief or remedy relating to or connected with the original subject matter of the reference is substantially the same as some relief or remedy claimed by the applicant; or
 - (c) that a question or issue relating to or connected with the subject matter is substantially the same question or issue arising between the applicant and the respondent, and that the question or issue should be properly determined not only as between the applicant and the respondent, but also as between the applicant, the respondent and the third party, or between any of them.

- (2) The respondent, may with leave of Court, issue a third party notice and the application shall be made *ex parte* supported by an affidavit.
- (3) The third party notice shall be filed with the Registrar and served on the third party by the respondent in accordance with Rule 15.
- (4) The third party notice shall -
 - (a) be in accordance with Form H of the Second Schedule with such variations as circumstances require;
 - (b) state the nature and grounds of the claim; and
 - (c) unless otherwise ordered by the Court, be served within fourteen days from the date of filing.
- (5) The third party notice shall be accompanied by a copy of the respondent's claim against the third party and a copy of every document in the case.
- (6) A third party who has a claim against another person referred to in subrule (1) may apply to the Court for leave to issue a notice to that person.
- (7) The expressions "third party notice" and "third party" numerically identified shall respectively apply to every notice issued, and every person served with a notice.
- (8) The provisions of subrule (4) shall apply to any subsequent person made a party to the claim or reference.

Rule 71

Amicus Curiae

- (1) A person who is not a party to a case may apply, with leave of the Court, to appear as *amicus curiae* before the Court.
- (2) The provisions of Rule 47 to 49 shall apply with necessary modification.

SECTION III

ORAL PROCEEDINGS

A. PRE-TRIAL PROCEEDINGS

Rule 72

Pre-Trial Memorandum and Scheduling Conference

- (1) The parties shall, within twenty-one days of the closure of pleadings, jointly prepare a pre-trial memorandum detailing the issues, evidence and witnesses they intend to present during the trial, in accordance with Form P in the Second Schedule.
- (2) Where the parties fail to agree on the issues, each party shall file a pre-trial memorandum detailing the issues, evidence and witnesses they intend to present during the trial, and the trial Court shall frame the issues for determination.
- (3) The Registrar shall, within fourteen days after the filing of the pre-trial memorandum, hold a scheduling conference to ascertain and agree on -
 - (a) the issues for determination by the Court;
 - (b) the feasibility of Alternative Dispute Resolution;
 - (c) whether evidence shall be adduced orally or by affidavit;
 - (d) the discovery and inspection of documents;
 - (e) whether parties have further witness statements to be produced;
 - (f) whether there is need for interpreters at the oral hearing;
 - (g) whether final legal submissions shall be written or oral, or both;
 - (h) the estimated length of the hearing;
 - (i) recording of admissions by the parties;
 - (j) fixing of a calendar for the hearing;
 - (k) on a date prior to the hearing to review the status of compliance with the orders of directions given at the scheduling conference; and
 - (l) any other matter as the Court may deem necessary.
- (4) The Registrar shall, within seven days, prepare and serve a report of the scheduling conference on the parties.
- (5) Where during the scheduling conference, the Registrar finds other forms of Alternative Dispute Resolution feasible, the Registrar shall, where the parties agree, direct that the case proceeds for Alternative Dispute Resolution.
- (6) The parties shall, within fourteen days of the directive under Subrule (5), submit to the Registrar in writing their decision on the Alternative Dispute Resolution process

including where applicable the name(s) of the Alternative Dispute Resolution professional chosen from the Alternative Dispute Resolution Roster.

- (7) The Court shall prescribe the time within which the parties shall file their written legal submissions where there is no need for oral evidence.

Rule 73

Alternative Dispute Resolution

- (1) Parties may apply for an order of the Court to proceed with Alternative Dispute Resolution, at any time after filing their pleadings but not later than twenty-one days after the scheduling conference.
- (2) Nothing in these Rules shall prevent parties who have brought a dispute to the Court under Articles 27 and 28 of the Treaty from applying for an order of the Court to proceed with Alternative Dispute Resolution under these Rules.
- (3) Each party shall bear the costs and expenses incurred in connection with the Alternative Dispute Resolution mechanism chosen by the parties, unless agreed otherwise by the parties or ordered by the Court.

Rule 74

Mediation and Conciliation

- (1) Where the matter is referred for mediation or conciliation, the parties shall jointly appoint one mediator or conciliator from the Alternative Dispute Resolution Roster.
- (2) Where the parties fail to agree on the mediator or conciliator to be appointed, the Presiding Judge shall appoint the mediator or conciliator from the Alternative Dispute Resolution Roster.
- (3) The parties or the Presiding Judge shall consider the following when appointing a mediator or conciliator-
 - (a) whether the prospective mediator or conciliator is impartial and independent; and
 - (b) the residence of the parties, the residence of the Counsel for the parties, the residence of the mediator or conciliator, the language of the parties and the nature of the issues in dispute.
- (4) A mediator or conciliator appointed shall issue a decision within twenty-one days after commencement of the mediation or conciliation process and may for sufficient cause shown extend the time for a period not exceeding fourteen days.

- (5) If the mediation or conciliation settles the case or resolves some of the issues in dispute, the parties or their legal representative shall sign the settlement agreement.
- (6) The parties shall register and file the mediation or conciliation agreement with the Registrar within fourteen days from signing the settlement agreement.
- (7) The settlement agreement shall have the same force and effect as a judgment, order or decision of the Court.
- (8) The Presiding Judge shall make an order that the case or the issues that have not been settled or resolved proceed to trial where the mediation or conciliation fails or partially succeeds.

Rule 75

Arbitration

- (1) The parties may, by agreement, appoint a sole arbitrator or three arbitrators where the matter is referred for arbitration.
- (2) Where a sole arbitrator is to be appointed -
 - (a) the parties may do so by agreement; or
 - (b) the Presiding Judge may, at the request of a party, appoint a sole arbitrator, where the parties fail to agree on a sole arbitrator.
- (3) Where three arbitrators are to be appointed -
 - (a) each party shall appoint one arbitrator, and the two arbitrators shall select the third arbitrator;
 - (b) the Presiding Judge shall appoint the third arbitrator where the two arbitrators fail to agree on a third arbitrator to be appointed from the Alternative Dispute Resolution Roster; or
 - (c) Where the two arbitrators fail to agree on the third arbitrator to be appointed, the Presiding Judge shall appoint the third arbitrator from the Alternative Dispute Resolution Roster.
- (4) The three arbitrators shall select the chairperson from amongst themselves.
- (5) The parties, the Presiding Judge or arbitrators shall consider the following when appointing arbitrators -
 - (a) whether the prospective arbitrator is impartial and independent; and
 - (b) the residence of the parties, the residence of the Counsel for the parties, the residence of the arbitrator, the seat of the arbitration, the language of the parties and the nature of the issues in dispute.

- (6) An award shall be issued within sixty days after commencement of the arbitration process.
- (7) The arbitrator may extend the period for the issuance of the award by not more than fourteen days, on reasonable grounds.
- (8) If the arbitration settles the case or resolves some of the issues in dispute, the parties or their legal representative shall sign the arbitral award.
- (9) The parties shall register and file the arbitral award with the Registrar within fourteen days from signing the arbitral award.
- (10) The arbitral award shall have the same force and effect as a judgment, order or decision of the Court.
- (11) The Presiding Judge shall make an order that the case or the issues that have not been settled or resolved proceed to trial where the arbitration fails or partially succeeds.

Rule 76

Establishment of Alternative Dispute Resolution Roster

- (1) The Court shall establish and maintain an Alternative Dispute Resolution Roster of professionals from Member States with the relevant expertise and certification in Alternative Dispute Resolution.
- (2) The Court shall send a call for applications for Alternative Dispute Resolution professionals to Member States for consideration and approval by the Administrative Meeting of the Court.
- (3) Member States shall nominate eligible Alternative Dispute Resolution professionals and forward their details to the Court within the period specified in the call for application.
- (4) The minimum qualifications for an applicant shall be as follows -
 - (a) professional licence appropriate to the area of expertise;
 - (b) have ten years professional experience in Treaty-related dispute resolution, including international trade and investment law, or labour law; and
 - (c) training, certification and accreditation from internationally recognised bodies, and experience in Alternative Dispute Resolution.
- (5) The Court shall shortlist the nominees submitted by Member States and constitute an Alternative Dispute Resolution Roster.

Rule 77

List of Authorities

- (1) A party who intends to rely on a ruling or a judgment in any reported case, or to quote from a publication shall file with the Registrar not less than fourteen days before the hearing, a list and complete copies of cases and relevant extracts of the publications, including -
 - (a) citations of cases;
 - (b) the names, authors and editions of the publications;
 - (c) reference to the portion of the case or publication relied on;
 - (d) any electronic copy or link to access the case or publication; and
 - (e) translation into the language of the case as directed by the Registrar.
- (2) The list and copies of cases and publications shall be filed physically or electronically with the Registrar.
- (3) A supplementary list of authorities may, when necessary, be produced at the time of the hearing.

Rule 78

Opening of Oral Proceedings

- (1) The Court shall fix the date for the opening of the oral proceedings to take place within a period not exceeding three months from the close of pleadings unless the Court is satisfied that there is adequate justification for a longer period.
- (2) The Court shall, when fixing the date for the opening of the oral proceedings or postponing the opening or continuance of proceedings, have regard to -
 - (a) the need to hold the hearing without unnecessary delay;
 - (b) any special circumstances, including the urgency of the case or other cases on the cause list; and
 - (c) the views expressed by the parties.
- (3) Nothing contained in this Rule limits the power of the Court to change the hearing dates on its own motion or at the request of a party.
- (4) After the date for opening of oral proceedings is fixed, the Registrar shall issue a notice stating the date and place of hearing and cause the notice to be served on the parties.

- (5) A notice under this Rule shall be in accordance with Form I in the Second Schedule.

Rule 79

Summoning Witnesses

1. The Court may, on the application of a party in a reference, summon a person whose attendance is required to give evidence or to produce a document, or both.
2. Subject to subrule (1), a witness from whom a written statement was not recorded may not give evidence without leave of the Court.
3. A summons shall -
 - (a) specify the time and place of attendance;
 - (b) specify whether attendance is required for the purpose of giving evidence or to produce a document, or both; and
 - (c) describe the document required to be produced.
4. The Court may, on its own motion, summon a person to give evidence or to produce any document if in the opinion of the Court the evidence or document is essential for the just determination of a matter in dispute.
5. The Court shall impose a fine not exceeding One Thousand COMESA Dollars where a person summoned to give evidence or produce a document fails to appear or refuses to give evidence or to produce the document, unless reasonable excuse is provided.
6. A fine imposed under this Rule shall be enforceable as an order of the Court.
7. Summons under this Rule shall be in accordance with Form J in the Second Schedule and shall be served in the manner prescribed for service of a notification.

Rule 80

Letter of Request to Examine Witnesses

- (1) The Court may, on its own motion or on application by a party, issue a letter of request for the examination on interrogatories or otherwise of -
 - (a) a person resident within the limits of its jurisdiction who, due to sickness, infirmity or for any other sufficient cause shown is unable to attend Court;
 - (b) a person resident beyond the limits of its jurisdiction;
 - (c) a person who is about to leave the limits of its jurisdiction, before the date on which the person is required to be examined in Court; or
 - (d) a civil or military officer of a government of a Member State, or a servant

of the Common Market, who in the opinion of the Court cannot attend without detriment to the service.

- (2) The Court shall satisfy itself that the evidence of a person is necessary before issuing a letter of request where an application is made for the examination of a person residing outside the jurisdiction of the Court.
- (3) Where a letter of request has been duly executed, it shall be returned, together with the evidence taken under it, to the Court, and the letter of request and the evidence taken under it shall form part of the record of the proceedings.
- (4) The Court may, before issuing any letter of request, order a party at whose instance or for whose benefit the letter of request is issued, to pay into Court a sum deemed necessary for obtaining the evidence.

Rule 81

Expenses of Witnesses

- (1) A party calling a witness shall be responsible for the expenses of the witness.
- (2) A party applying for summons shall, before the summons is issued, pay into Court a sum of money as appears to the Registrar to be sufficient to -
 - (a) defray the travel, subsistence and accommodation expenses of a witness, including an expert; and
 - (b) cover a reasonable attendance allowance for an expert.
- (3) Where the Court, on its own motion, issues a summons for an expert to give evidence, the Court -
 - (a) shall cover the travel, subsistence and accommodation expenses together with a reasonable attendance allowance for that expert; or
 - (b) may recover costs paid to the expert from a party who, in the opinion of the Court, should have called the expert.
- (4) The Registrar may require the party who applied for the summons to pay a further sum which is deemed necessary on that account where the Registrar is satisfied that the money deposited into Court to cover witness expenses or reasonable remuneration is insufficient.
- (5) In case of default in payment of the sum under subrule (4), the Court may-
 - (a) order the sum to be levied by attachment and sale of the movable property of the defaulting party;

- (b) discharge the person summoned without requiring the person to give evidence; or
- (c) order the levy of the sum and discharge the person.

B. TRIAL PROCEEDINGS

Rule 82

Proceedings to be Held in Open Court

- (1) Proceedings of the Court shall be held in open court, except where the Court, on its own motion or on application by a party, orders the proceedings to be held in closed session.
- (2) Proceedings heard in closed session shall be recorded but not published.
- (3) The Court may, if satisfied that the interest of justice so requires, direct that any person or category of persons be excluded or removed from the Court.

Rule 83

Hearing and Consequence of Non-attendance

- (1) The Court may strike out an application or a reference and make an order as it deems fit on the day fixed for hearing if neither party attends.
- (2) If on the day fixed for hearing the applicant does not appear and the respondent appears, the application or reference may be struck out and any counterclaim may proceed, unless the Court deems it fit to adjourn the hearing.
- (3) Where the application or reference is struck out under subrule (2) or a counterclaim proceeds, the Court may, on application by the applicant, restore the application or reference for hearing and may rehear the counterclaim, if satisfied that the applicant was prevented by sufficient cause from appearing.
- (4) If on the day fixed for hearing the respondent does not appear and the applicant appears, the hearing may proceed in the absence of the respondent and any counterclaim may be struck out, unless the Court deems it fit to adjourn the hearing.
- (5) Where the reference proceeds under subrule (4) or the counterclaim is struck out, the Court may, on the application of the respondent, rehear the reference or restore the counterclaim for hearing upon sufficient cause shown that the respondent was prevented from appearing.
- (6) An ex parte judgment or order made under subrule (3) or (4) shall be set aside where

the Court orders that a reference, counterclaim, or application be restored for hearing or be reheard.

- (7) Where under subrule (3) or (4) a reference, counterclaim or application is struck out and an application for its restoration is disallowed, no fresh reference, counterclaim or application shall be brought for the same cause of action.
- (8) An application for restoration under subrule (3) or (4) shall be made within thirty days of the decision of the Court and the Court may for sufficient cause shown extend the period.

Rule 84

Right to Begin

- (1) At the hearing, the applicant shall have the right to begin unless the respondent admits facts alleged by the applicant and the Court is satisfied that, on a point of law or on some additional facts alleged by the respondent, the applicant is not entitled to any part of the relief sought, in which case the respondent shall have the right to begin.
- (2) The Court shall direct the party on whom the greater burden of proof lies to begin the case where -
 - (a) there are several issues; and
 - (b) there is a dispute as to which party is to begin.

Rule 85

Opening Statements and Production of Evidence

- (1) At the hearing, the applicant or the party with the right to begin may make an opening statement followed by the other party.
- (2) The party with the right to begin shall then adduce evidence in support of the issues which that party is bound to prove, followed by the other party.

Rule 86

Examination of Witnesses

- (1) A witness shall, before giving evidence, take an oath or affirmation in accordance with Form K in the Second Schedule.
- (2) A witness shall be examined-in-chief by the party who called the witness and may be cross-examined by any other party and re-examined by the party who called the witness.

Rule 87

Taking and Recording of Evidence

- (1) The official court reporter shall record the evidence of every witness, whether given orally in Court or by affidavit.
- (2) The record of each hearing shall be signed by the Presiding Judge and shall be kept and maintained by the Registrar.
- (3) The Court may at any stage of the hearing, on its own motion or on application by any party, recall any witness who has given evidence to be further examined, cross-examined and re-examined as the Court deems fit.
- (4) The Presiding Judge and the other Judges may during the hearing put questions to a witness.

Rule 88

Adjournments

- (1) Hearing of evidence shall continue from day to day until the witnesses in attendance have been examined unless the Court finds it necessary to adjourn and shall record the reason for the adjournment.
- (2) The Court may proceed to dispose of the case as provided for in Rule 83, where, on any day to which the hearing is adjourned, a party fails to appear.
- (3) The Court may proceed to determine the case where a party to whom time has been granted fails without reasonable excuse to -
 - (a) produce evidence;
 - (b) cause the attendance of its witness; or
 - (c) perform any other act necessary to the further progress of the case.

Rule 89

Final Submissions

- (1) Final submissions may be made orally at the close of the case for the respondent and any other party, if any, or on a later day, or in writing, as agreed by the parties or directed by the Court.
- (2) Counsel shall not, in final submissions, refer to authorities and documents not earlier disclosed and shall not produce them.
- (3) Subject to Rule 84, an applicant may make oral or written final submissions followed by the respondent.

- (4) The Court may allow the applicant or the party with the right to begin, to make a rebuttal on any new point raised in submissions by the other party.

SECTION IV

JUDGMENT

Rule 90

Deliberations of Judges

- (1) Judges shall deliberate in closed session immediately after the completion of the hearing provided that, in exceptional circumstances, the Presiding Judge may order that the deliberations be held on a later date.
- (2) Only Judges present at the trial shall take part in the deliberations.
- (3) Subject to subrule (4) of Rule 8, the trial shall not begin afresh by reason of a Judge being prevented from taking part in deliberations unless the parties request for a fresh hearing.
- (4) Judges taking part in the deliberations shall state their opinion and the reason for it.
- (5) A judge may give a reasoned dissenting opinion in the judgment.
- (6) The conclusions reached by a majority of the Judges after final deliberations shall be the decision of the Court.
- (7) Votes, if necessary, shall be cast in reverse order of the seniority of Judges.
- (8) Differences on the substance, wording or order of questions, or on the interpretation of a vote, shall be settled by decision of the Judges who took part in the deliberations

Rule 91

Delivery of Judgment

- (1) A judgment shall be delivered within three months from the conclusion of the hearing.
- (2) Notwithstanding subrule (1), where the Court is unable to deliver the judgment within three months, the period shall be extended for a further thirty days and shall be communicated to the parties.
- (3) A judgment shall be pronounced in open court, virtually or in hybrid format, unless the court considers that, in the special circumstances of the case, it is desirable to do so by circulation.

- (4) For matters held in closed session under Rule 82, the judgment shall be delivered in closed session.
- (5) The Court shall deliver only one judgment in respect of a matter before it.
- (6) A judgment may be pronounced in the absence of some Judges who composed the Court.
- (7) At the close of the hearing, the Court may deliver its judgment immediately, or on some future date which may be issued on that date or subsequently notified to the parties.
- (8) The Court may direct that only the decision of the Court shall be delivered in Court and that the reasons for the decision shall be given on a subsequent date to be notified to the parties by the Registrar not later than sixty days after the decision unless the Court, for good reason, is unable to do so.
- (9) The original of the judgment signed by all the Judges who took part in the deliberations shall be sealed by the Registrar and deposited at the Registry.
- (10) The Registrar shall record on the original of the judgment the date on which it was delivered and serve certified copies on the parties.
- (11) A judgment of the Court shall be translated into the languages of the Court within ninety days of delivery.
- (12) The Registrar shall cause the judgment to be published in the Official Gazette.

Rule 92

Contents of Judgment

A judgment shall include -

- (a) a statement that it is the judgment of the Court;
- (b) the date of its delivery;
- (c) the names of the Judges who heard the case;
- (d) the name of the Registrar;
- (e) the description of the parties;
- (f) the names of Counsel for the parties;
- (g) a statement of the relief sought by the parties;
- (h) a summary of the facts and the law;
- (i) the reasons for the decision; and
- (j) the decision, including any order as to costs.

Rule 93

Enforcement of Judgment

- (1) A judgment shall be binding from the date of its delivery unless otherwise stated by the Court.
- (2) The execution of an order, decision, ruling or judgment which imposes a pecuniary obligation on a party shall be governed by the rules of civil procedure in force in the Member State in which execution is to take place.
- (3) The order for execution shall be appended to the judgment of the Court which shall require only the verification of the authenticity of the judgment by the Registrar.
- (4) If the Court finds, on application by a party, that a party has deliberately defaulted in implementing the order, decision, ruling or judgment of the Court or otherwise defied it, the Court may impose on that party a fine to be paid to the Court.
- (5) The Registrar shall, upon proof of satisfaction that an order, decision, ruling or judgment entered in the Court register has been wholly satisfied or complied with, insert a note in the register to that effect against the record of the judgment, order or decision.

Rule 94

Rectification of Judgment

- (1) The Court may, of its own motion or on application by a party made within thirty days after delivery of a judgment, rectify clerical mistakes, errors in calculation and obvious slips in the judgment.
- (2) The Registrar shall duly notify the parties concerned of the rectification and the parties may file with the Registrar their written objections or observations within the period specified in the notice.
- (3) The Court shall, within thirty days of the parties filing their written objections or observations, give its decision on objections or observations.
- (4) The original of the rectification order shall be annexed to the original of the rectified judgment, and a note of the order shall be made in the margin of the original of the rectified judgment.

Rule 95

Omission in a Judgment

- (1) A party may, within thirty days after delivery of a judgment, apply to the Court to supplement its judgment if the Court omits to give a decision on a specific head of claim or on costs.
- (2) The application shall be served on the other party and that party may submit written submissions within fourteen days of service.
- (3) The Court shall, within thirty days of the parties filing their written submissions, decide both on the admissibility and on the substance of the application.

Rule 96

Revision of Judgment

- (1) A party may apply for revision of a judgment only if it is on account of -
 - (a) the discovery of some fact which by its nature might have had a decisive influence on the judgment if it had been known to the Court when the judgment was given, but which fact, at that time, was unknown to both the Court and the party making the application, and could not, with reasonable diligence, have been discovered by that party before the judgment was delivered; or
 - (b) some mistake or an error apparent on the face of the record.
- (2) The application for revision shall be made not more than ninety days from the date of delivery of judgment.
- (3) The application for revision shall be brought by motion supported by an affidavit.
- (4) The application shall -
 - (a) specify the judgment contested;
 - (b) indicate the points on which the judgment is contested;
 - (c) set out the facts on which the application is based;
 - (d) indicate the nature of the evidence and facts justifying revision of the judgment; and
 - (e) state that the time-limit laid down in subrule (2) has been complied with.
- (5) The application shall be made against the parties to the case in which the contested judgment was delivered.

Rule 97

Powers of the Court on Revision

- (1) The parties shall, upon making an application for revision of a judgment, file submissions in support of and opposing the application.
- (2) The Court shall, having heard the parties orally or on written submissions, give its decision on the admissibility of the application.
- (3) Where the Court finds the application admissible, it shall proceed to consider the substance of the application and give its decision.
- (4) The original of the decision shall be annexed to the original of the judgment revised.
- (5) A note of the decision shall be made in the margin of the original of the judgment revised.

Rule 98

Opposition Proceedings

- (1) A person who is of a view that the person should have been made a party to a reference and whose interests are affected by a judgment in the reference may file an opposition to the judgment.
- (2) An application initiating opposition proceedings shall be by motion supported by an affidavit in accordance with Rule 48 and shall -
 - (a) specify the judgment contested;
 - (b) state how that judgment is prejudicial to the rights of the applicant; and
 - (c) indicate the reasons for which the applicant was unable to take part in the original case.
- (3) The application shall be made against all the parties to the original case and shall be filed within sixty days of the publication of the judgment in the Official Gazette.
- (4) The Court may, on application by the applicant, order a stay of execution of the judgment and the provisions of Rules 48 to 53 shall apply.
- (5) After hearing the parties, the Court may vary the contested judgment.
- (6) The original of the judgment in the opposition proceedings shall be annexed to the original of the contested judgment.

PART III
COSTS

PART III

COSTS

Rule 99

Decision on Costs

- (1) The Court shall give a decision on costs in every order, decision, ruling or judgment delivered.
- (2) Unless a decision on costs made in the Appellate Division covers proceedings in the First Instance Division, each division of the Court shall only have authority to decide on costs in that division.
- (3) The Court shall order an unsuccessful party to pay the costs except as provided under subrule (4) and (5).
- (4) Where there are several unsuccessful parties, the Court shall decide how the costs are to be shared among the parties.
- (5) Where a party succeeds on some but fails on other heads, or where the circumstances are exceptional, the Court may order that the costs be shared or that the parties bear their own costs.
- (6) The Court may order a party, even if successful, to pay costs which the Court considers that party to have unreasonably or vexatiously caused the opposing party to incur.
- (7) Member States, the Secretary-General and Institutions which intervene in the proceedings shall bear their own costs.
- (8) The Court may order interveners including intended interveners other than those mentioned in subrule (7) to bear their own costs.
- (9) Where a party prays for costs, the party who discontinues or withdraws proceedings shall be ordered to pay the costs of the discontinued or withdrawn matter which may include costs in interlocutory proceedings ordered to be in the cause.
- (10) Upon application by a party or an intended intervener who discontinues or withdraws from proceedings, the costs may be borne by the other party if this appears justified by the conduct of that party.
- (11) Where the parties have come to an agreement on costs, the decision on costs shall be in accordance with that agreement.

- (12) If costs are not claimed, the parties shall bear their own costs.

Rule 100

Security for Costs

- (1) The Court may, on application by a party and for sufficient cause shown, require the other party to furnish security for costs.
- (2) Whenever a party is ordered to furnish security, the Court shall, by the same order, fix the time within which security shall be furnished by that party.

Rule 101

Costs in Certain Cases

Without prejudice to Rule 99 (6), in proceedings between the Common Market and its employees, the Common Market shall, unless the Court decides otherwise, bear its own costs.

Rule 102

Court Costs

- (1) Where a party has caused the Court to incur avoidable costs, the Court may order that party to refund the costs incurred.
- (2) Where copying or translation work is carried out at the request of a party, the costs shall, in so far as the Registrar considers them excessive, be paid by that party.

Rule 103

Court Fees

The Court may charge court fees for all matters commenced before it, based on a schedule of prescribed fees approved by the Council and published in the Official Gazette.

Rule 104

Recoverable Costs

- (1) The following shall be regarded as recoverable costs -
- (a) sums payable to witnesses and experts under Rule 81; and
 - (b) expenses incurred by the parties for the purpose of the proceedings, in particular travel and subsistence expenses.
- (2) The Court shall not consider any application or claim in relation to legal fees and costs of Counsel.

- (3) Where costs are disputed by a party, the party awarded costs by the Court may, within thirty days of the award, submit a bill of costs to the Registrar for taxation.
- (4) In taxing a bill of costs, the Registrar shall apply the party-to-party costs in accordance with the Third Schedule.
- (5) The Court may amend the scale of costs contained in the Third Schedule.

Rule 105

Dispute as to Recoverable Costs

- (1) Where there is a dispute concerning the costs to be recovered, the Registrar shall, on application by the party concerned and after hearing the opposing party, make an order on the matter.
- (2) A party who is aggrieved by the decision of the Registrar concerning the costs to be recovered may, within thirty days of the decision, file an appeal to the Court.
- (3) The appeal on costs shall be heard by a single Judge nominated by the President or the Principal Judge.
- (4) The decision of a Judge of the First Instance Division may be overturned or varied by the Appellate Division in an appeal on the main matter.
- (5) The decision of a Judge of the Appellate Division shall be final and binding.
- (6) The Registrar shall issue to the parties a certificate of taxation in accordance with Form O in the Second Schedule.

Rule 106

Enforcement Costs

Costs reasonably incurred by a party for the purpose of enforcing an order, decision, ruling or judgment of the Court shall be refunded by the opposing party on the scale in force in the Member States where the enforcement takes place.

Rule 107

Currency of Payment

- (1) A sum due to or from the cashier of the Court shall be paid in COMESA Dollars.
- (2) At the request of the person entitled to a sum referred to under subrule (1), the sum may be paid in the currency of the Member State where the expenses to be refunded were incurred or where the actions in respect of which payment is due were taken.

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- (3) Other payments shall be made in the currency of the transaction in issue.
 - (4) Conversions of currency shall be made at the prevailing market exchange rate on the day of payment at the Central Bank of the Member State where cause of action arose.

PART IV
TIME LIMITS

PART IV

TIME LIMITS

Rule 108

Time Limits

- (1) Unless otherwise expressly provided for in these rules, any act to be undertaken in relation to proceedings in Court shall be effected within 30 days from notice being given of such act.
- (2) Subject to Rule 110, the Registrar shall not accept any pleading or other document presented after the expiry of the time limits laid down under these Rules.
- (3) A period prescribed by the Treaty or these Rules for the taking of any procedural step shall be calculated as follows -
 - (a) a period expressed in days, weeks, months or years shall be calculated from the moment at which an event occurs, or an action takes place;
 - (b) the day during which the event occurs, or the action takes place shall not be counted as falling within the period in question;
 - (c) a period expressed in weeks, months or years shall end with the expiry of whichever day in the last week, month or year is the same day of the week, or falls on the same date, as the day during which the event or action from which the period is to be calculated occurred or took place;
 - (d) if, in a period expressed in months or years, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last day of that month;
 - (e) calculation of periods shall include official holidays, Fridays, Saturdays and Sundays;
 - (f) periods shall not be suspended during judicial vacations;
 - (g) if the period would end on a Friday, Saturday, Sunday or an official holiday, it shall be extended until the end of the first following working day; and
 - (h) a list of official holidays drawn up by the Court shall be published in the Official Gazette.

Rule 109

When Period of Time Commences

The period allowed for commencing proceedings against a Member State shall run from the day following the receipt by the person concerned of notification of the measure or, where the measure is published, from the fifteenth day after publication in the Official Gazette.

Rule 110

Exceptions to Time Limits

- (1) Unless otherwise expressly provided, a time limit fixed by these Rules or set by the Court may be extended or shortened by the Court.
- (2) Where a party is of the view there exists, reasonable circumstances preventing compliance with an applicable time limit, the party may request the Court for an extension of time or apply for leave to file a pleading or document out of time.

PART V
**APPEALS AGAINST DECISIONS OF THE
FIRST INSTANCE DIVISION**

PART V

APPEALS AGAINST DECISIONS OF THE FIRST INSTANCE DIVISION

SECTION I

APPEAL NOT TO OPERATE AS A STAY OF EXECUTION

Rule 111

Stay of Execution

- (1) An appeal shall not operate as a stay of execution of the judgment appealed against unless, on application, the Principal Judge so orders.
- (2) Where the Principal Judge declines to grant a stay of execution, the application may be made to the President.
- (3) The Principal Judge or President may nominate a single Judge of the First Instance Division or Appellate Division to hear the application for stay of execution.
- (4) No order of stay of execution shall be made unless the Presiding Judge is satisfied that -
 - (a) substantial loss may result to the party applying for stay of execution unless the order is made;
 - (b) the application has been made without unreasonable delay; and
 - (c) where appropriate, security has been provided by the applicant for the due performance of the judgment or order against which a stay is sought.
- (5) The Presiding Judge may order a stay of execution for any other sufficient cause shown.
- (6) No intermediate act or proceeding shall be invalidated except so far as the Court may direct.
- (7) An application for stay of execution shall be by motion supported by an affidavit.

SECTION II

WRITTEN PROCEDURE

Rule 112

Grounds of Appeal

An appeal shall lie from a decision of the First Instance Division to the Appellate Division on -

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

Rule 113

Language of the Appeal

The language of an appeal shall be the language of the order, decision, ruling or judgment of the First Instance Division against which the appeal is brought.

Rule 114

Application of Rules of Procedure in the First Instance Division to the Appellate Division

Subject to the provisions of the Rules in this Part, Rules 21, 30, 34, 35, 37, 38, 41, 44, 45, 47, 48, 49, 52, 53, 54, 62, 77, 81, 82, 83, 90, 92, 93, 94, 95, 96, 97, shall apply with necessary modifications, to the Appellate Division.

Rule 115

Notice and Memorandum of Appeal

- (1) A party wishing to appeal against an order, decision, ruling or judgment of the First Instance Division to the Appellate Division shall, within sixty days of the date of the decision appealed against, file a notice and memorandum of appeal with the Registrar.
- (2) The notice and memorandum of appeal shall be in accordance with Form L of the Second Schedule.
- (3) A notice and memorandum of appeal shall state -
 - (a) whether it is intended to appeal against the whole or only a part of the decision;

- (b) where it is intended to appeal against only a part of the decision, the part complained of;
 - (c) the name, designation, physical and electronic address for service, and telephone number of the appellant;
 - (d) the name, designation, address and residence of persons intended to be served with copies of the notice and memorandum of appeal;
 - (e) the grounds of appeal; and
 - (f) the relief sought by the appellant.
- (4) An appellant may seek the following relief -
- (a) to set aside, in whole or in part, the decision of the First Instance Division; or
 - (b) the same relief, in whole or in part, as that sought at first instance, and shall not seek a different relief.
- (5) Where more than one party to a decision in the First Instance Division files a notice and memorandum of appeal, the appeals may be consolidated.

Rule 116

Contents of Record of Appeal

- (1) The record of appeal shall be prepared by an appellant and shall contain the following matters in the order in which they are set out below-
- (a) a complete index comprising -
 - (i) the evidence and all proceedings and documents in the case showing the pages at which they appear;
 - (ii) the names and sequence of all the witnesses; and
 - (iii) the relevant pages of the record;
 - (b) a certificate of the record of appeal signed by the Registrar;
 - (c) the notice and memorandum of appeal;
 - (d) copy of the judgment appealed against;
 - (e) copies of the pleadings;
 - (f) copies of all affidavits and documents produced in evidence so far as they are material for the purposes of the appeal, and, if the documents are not in the language of the judgment, copies of certified translations thereof provided that -
 - (i) affidavits, together with copies of documents exhibited thereto, shall be arranged in the order in which they were originally filed; and
 - (ii) other documentary evidence shall be arranged in strict order of date,

without regard to the order in which the documents were submitted in evidence.

- (g) other documents, if any, as may be necessary for the proper determination of the appeal, including any interlocutory proceedings directly relevant to the appeal; and
 - (h) the record of proceedings of the First Instance Division.
- (2) Where an appellant fails to comply with this Rule, a respondent who has filed a cross-appeal may proceed with the cross-appeal.
- (3) Where a respondent wishes to proceed with a cross-appeal under subrule (2) the respondent shall, within the time the President may direct, file a record of appeal or a supplementary record of appeal and serve the appellant and all other parties to the appeal.

Rule 117

Service of Appeal

- (1) The notice and memorandum of appeal, and the record of appeal shall be served on all the parties to the proceedings by the appellant in accordance with Rule 30.
- (2) Where the appellant has not prepared a record of appeal within the applicable time limit and there is a cross-appellant, the record of appeal shall be prepared and served by the cross-appellant.

Rule 118

Response to an Appeal

- (1) A party to proceedings before the First Instance Division may file a response to an appeal, with or without a cross-appeal, within thirty days of the date of service of the notice and memorandum of appeal.
- (2) A response shall contain -
- (a) the name, designation, physical and electronic address, and telephone number of the respondent;
 - (b) preliminary objections, if any;
 - (c) the date on which the notice of appeal was served on the party;
 - (d) the grounds of opposition and, where there is a cross-appeal, the grounds of the cross-appeal in accordance with Form M of the Second Schedule;
 - (e) the relief sought by the respondent; and

- (f) a physical and electronic address for service and telephone number of the respondent's Counsel.
- (3) A respondent may seek the following relief -
 - (a) to dismiss, in whole or in part, the appeal or to set aside, in whole or in part, the decision of the First Instance Division; or
 - (b) the same relief, in whole or in part, as that sought at First Instance Division, and shall not seek a different relief.
- (4) If the respondent fails to file a response to an appeal, the appeal may proceed to be heard *ex parte* after notice has been given to the respondent.
- (5) If the respondent fails to file a cross-appeal the right to cross-appeal shall be deemed to have been waived.

Rule 119

Supplementary Record of Appeal

- (1) Where the respondent is of the opinion that the record filed by the appellant is defective, the respondent may prepare and file with the Registrar, within thirty days of service on the respondent of the record of appeal, a supplementary record of appeal containing copies of further documents which may be required for the proper determination of the appeal.
- (2) A supplementary record of appeal shall be prepared by the respondent substantially in the same manner as a record of appeal in accordance with Rule 116.
- (3) A copy of the supplementary record of appeal shall be served by the respondent on the appellant and on all other respondents.

Rule 120

Inadmissible or Unfounded Appeals

The Appellate Division may, at any time, on its own motion or that of one of the parties, by reasoned order, dismiss the appeal or the cross-appeal in whole or in part, where an appeal or cross-appeal is, in whole or in part, inadmissible or unfounded.

Rule 121

Withdrawal of Appeal or Cross-Appeal

- (1) At any time before delivery of judgment, a notice of withdrawal of an appeal or cross-appeal may be filed with the Registrar in accordance with Form N in the Second Schedule and served on the parties to the appeal by the person filing the notice.

- (2) Where all parties to the appeal consent to the withdrawal of the appeal or cross-appeal without order of the Court -
 - (a) the appellant or the respondent may file the consent document signed by Counsel with the Registrar and the case shall be marked as withdrawn; and
 - (b) a sum paid into Court as security for the costs of the appeal or cross-appeal shall be refunded to the appellant or respondent.
- (3) Where all the parties to the appeal do not consent to the withdrawal of the appeal or cross-appeal, the appeal or cross-appeal, shall proceed to hearing on any issue outstanding between the parties, including costs, and for the making of an order as to the disposal of any sum paid into Court as security for the costs.
- (4) Where a party withdraws an appeal, the Court shall decide whether the withdrawal extinguishes the cross-appeal, if any.

SECTION III

HEARING OF APPEALS

Rule 122

Scheduling Conference

When an appeal is ready for hearing, the President or a Judge appointed by the President, shall hold a scheduling conference to ascertain -

- (a) points of agreement and disagreement;
- (b) whether legal arguments shall be written or oral, or both;
- (c) the estimated length of the hearing;
- (d) dates for the hearing;
- (e) consolidation of appeals, if any; and
- (f) any other matters as the Court may deem necessary.

Rule 123

Preliminary Objection in the Appellate Division

- (1) Where a respondent intends to raise a preliminary objection to an appeal or any part thereof, the respondent may raise the objection in the response to the appeal, or not less than fourteen days before the scheduling conference, with written notice to the Court and to the other parties to the appeal on the grounds of the objection.
- (2) Where an appellant intends to raise a preliminary objection to a cross-appeal or

any part thereof, the appellant may raise the objection in the response to the cross-appeal, or not less than fourteen days before the scheduling conference, with written notice to the Court and to the other parties to the cross-appeal, on the grounds of the objection.

- (3) A preliminary objection may be raised after the scheduling conference with leave of the Court.

Rule 124

Hearing Notice

1. The Registrar shall give the parties to an appeal, other than a party who has not filed a response, not less than fourteen days' notice of the date fixed for the hearing of an appeal.
2. A Hearing Notice under this Rule shall be in accordance with Form I in the Second Schedule.

Rule 125

Additional Evidence

The Appellate Division may, in exceptional circumstances and for a justifiable cause, hear additional evidence if it deems it necessary or may remit to the First Instance Division any matter for the taking of additional evidence.

Rule 126

Hearing

- (1) At the hearing of an appeal, no party shall, without the leave of the Court -
 - (a) submit that the decision of the First Instance Division should be reversed or varied except on a ground specified in the notice and memorandum of appeal or in a cross-appeal; or
 - (b) support the decision of the Court of First Instance Division on a ground not relied upon by that Court or specified in the notice and memorandum of appeal.
- (2) The Appellate Division shall not allow an appeal or cross-appeal on a ground not set forth in the notice and memorandum of appeal or cross-appeal, without affording the respondent, or any person who in relation to that ground should have been made a respondent or the appellant, an opportunity of being heard on that ground.

Rule 127

Order of Address

- (1) The Appellate Division shall, at the hearing of an application or appeal first hear the applicant or appellant, then the respondent, and then the applicant or appellant in reply.
- (2) At the hearing of an appeal where a cross-appeal has been filed, the Court shall ordinarily hear the appellant first on the appeal, then the respondent on the appeal and on the cross-appeal, then the appellant in reply on the appeal and cross-appeal.
- (3) The Appellate Division may dismiss, but shall not allow, a preliminary objection, application, appeal or cross-appeal without affording the opposing party a reasonable opportunity to reply.
- (4) After hearing the opposing party, the Appellate Division may allow, but shall not dismiss, any preliminary objection, application, appeal or cross-appeal without giving the objector, applicant, appellant or cross-appellant a reasonable opportunity to reply.

SECTION IV

JUDGMENT

Rule 128

Delivery of Judgment

- (1) A judgment shall be delivered within ninety days from the conclusion of the hearing.
- (2) Notwithstanding subrule (1), where the Court is unable to deliver the judgment within ninety days, the period shall be extended for a further thirty days and be communicated to the parties.
- (3) The provisions of Rules 91 to 97 shall apply with necessary changes to the Appellate Division.
- (4) A certified copy of the judgment shall be attached to the file of the case in the First Instance Division.
- (5) The Registrar shall cause the judgment to be published in the Official Gazette.

Rule 129

Costs on Appeal

- (1) Where the Court gives a decision or delivers a judgment, it shall make an order on the issue of costs.
- (2) In proceedings between the Common Market or Institutions and their employees -
 - (a) the Common Market or Institution shall bear their own costs;
 - (b) notwithstanding subrule (3) and (4) of Rule 99, the Court may, in appeals brought by employees of the Common Market or an Institution, order the parties to share the costs.
- (3) Where an appeal is withdrawn, subrule (9) of Rule 99 shall apply.

PART VI
PRELIMINARY RULINGS

PART VI

PRELIMINARY RULINGS

Rule 130

Preliminary Rulings

- (1) Matters under this Rule shall relate strictly to preliminary rulings under Article 30 of the Treaty.
- (2) Where the Court is requested to make a preliminary ruling in accordance with Article 30(1) of the Treaty, the procedure shall be governed by the provisions of these Rules, subject to modifications necessitated by the nature of the request or reference for a preliminary ruling.

Rule 131

Content of a Request for a Preliminary Ruling

- (1) A request for a preliminary ruling shall -
 - (a) be in writing;
 - (b) contain a summary of the subject-matter of the dispute as determined by the referring national court or tribunal;
 - (c) contain the national legal provisions applicable in the case and, where appropriate, the relevant national case-law; and
 - (d) contain a statement of the reasons which prompted the referring national court or tribunal to inquire about the application or interpretation of the Treaty or the validity of the regulation, directive or decision of the Common Market.
- (2) A request for a preliminary ruling under Article 30(1) shall be jointly presided over by the First Instance Division and the Appellate Division.
- (3) A reference under Article 30(2) shall be made to the First Instance Division.

Rule 132

Procedure for a Request for a Preliminary Ruling

- (1) The Registrar shall serve a request for a preliminary ruling on the Secretary-General, who may file written submissions.
- (2) Where a national court or tribunal of a Member state had granted confidentiality in proceedings before it, the national court or tribunal shall, in the request for a

- preliminary ruling, request the Court to maintain the confidentiality.
- (3) The Court shall decide on whether to hold an oral hearing or proceed by way of written submissions.
 - (4) The following persons shall be authorised to submit observations to the Court -
 - (a) the parties to the main proceedings in the national court or tribunal; and
 - (b) Secretary-General.
 - (5) Where a question referred to the Court for a preliminary ruling is substantially identical to a question on which the Court has already ruled, the Court may, after informing the national court or tribunal which referred the question to it and after hearing submissions, give its decision by reasoned order in which reference is made to the previous decision.
 - (6) The national court or tribunal making a request for a preliminary ruling shall decide the issue of costs incurred in obtaining the preliminary ruling.

Rule 133

Delivery of Preliminary Ruling

- (1) The Court shall deliver the preliminary ruling in open court in accordance with Rule 82.
- (2) The Judges who took part in the deliberations shall sign the preliminary ruling and the Registrar shall serve it on the national court or tribunal, the parties, the Secretary-General and all Member States.

PART VII
ADVISORY OPINIONS

PART VII

ADVISORY OPINIONS

Rule 134

Request for Advisory Opinion

- (1) A request by the Authority, Council, or a Member State for an advisory opinion under Article 32 of the Treaty shall be made to the Court through the Registrar.
- (2) The request shall be served by the Registrar on all Member States.
- (3) The President shall fix a period within which the Member States may submit their written observations.
- (4) The request for an advisory opinion shall be considered by the Court sitting with both the First Instance and Appellate Divisions.

Rule 135

Delivery of Advisory Opinion

- (1) The Court shall deliver its Advisory Opinion in open Court in accordance with Rule 82.
- (2) The Judges who took part in the deliberations shall sign the advisory opinion and the Registrar shall serve it on all the Member States and the Secretary-General.

PART VIII
MISCELLANEOUS

PART VIII

MISCELLANEOUS

Rule 136

Entry into Force

These Rules shall come into effect upon approval by the Council in accordance with Article 38(2) of the Treaty.

Rule 137

Revocation and Transitional Provisions

- (1) The Rules of Procedure of the COMESA Court of Justice, 2016 are hereby revoked.
- (2) These Rules shall apply from the day of their coming into force to all matters pending on that day and instituted thereafter.
- (3) Subject to subrule (2), a matter commenced under the Rules of Procedure of the COMESA Court of Justice, 2016, before the coming into operation of these Rules, shall be continued and concluded in accordance with these Rules.
- (4) For the purpose of subrule (3), a matter shall be deemed to have been commenced in respect of a -
 - (a) reference, upon filing of the reference;
 - (b) appeal, upon filing of the notice and memorandum of appeal;
 - (c) preliminary ruling, upon submission of a request for a preliminary ruling; and
 - (d) advisory opinion, upon submission of a request for an advisory opinion.

Made by the Court, with the approval of the Council of Ministers at Lusaka, Zambia, this 04th day of December, in the year two thousand and twenty-five in the Arabic, English and French languages, the three texts being equally authentic.



THE HONOURABLE LADY JUSTICE LOMBE P. CHIBESAKUNDA
JUDGE PRESIDENT
COMESA COURT OF JUSTICE

FIRST SCHEDULE

MANNER OF DRESS FOR COUNSEL

(Rule 12 (4))

1. Counsel for the parties shall appear before the Court in open court in plain black gowns, white winged shirts and bibs.
2. Counsel for the parties shall appear before the Court in chambers in formal dark coloured suits, formal shirts with neck ties, or blouses, and formal shoes.

SECOND SCHEDULE

COURT FORMS

- Form A - Special Power of Attorney for Counsel ((Rule 15 (2) (a), Rule 28 (2) (h), Rule 32 (2) (i), Rule 63 (2) (g))**
- Form B - Notification (29 (1))**
- Form C - Affidavit of Service (Rule 30 (1))**
- Form D - Memorandum of Appearance (Rule 16(2)(c))**
- Form E - Notice of Motion (Rule 48 (7))**
- Form F - Affidavit (Rule 49 (4))**
- Form G - Notice of Discontinuance (Rule 54 (1))**
- Form H - Third Party Notice (Rule 70 (4) (a))**
- Form I - Hearing Notice (Rule 78 (5), Rule 124 (2))**
- Form J - Summons to Witness (Rule 79 (7))**
- Form K - Witness Oath or Affirmation (Rule 86 (1))**
- Form L - Notice and Memorandum of Appeal (Rule 115 (2))**
- Form M - Cross-Appeal (Rule 118 (2) (d))**
- Form N - Notice of Withdrawal of an Appeal (Rule 121 (1))**
- Form O - Certificate of Taxation (Rule 105 (6))**
- Form P - Pre-Trial Memorandum (Rule 72 (1))**

FORM A - SPECIAL POWER OF ATTORNEY FOR COUNSEL

IN THE COMESA COURT OF JUSTICE

.....**DIVISION**

AT.....

CASE NO.OF 20.....

.....**APPLICANT**

VERSUS

.....**RESPONDENT**

SPECIAL POWER OF ATTORNEY

(Rule 15 (2) (a), Rule 28 (2) (h), Rule 32 (2) (i), Rule 63 (2) (g))

KNOW ALL PERSONS WHO IT MAY CONCERN THAT

I, (name of party), of (address), (designation),

by these presents do hereby ordain, nominate and appoint

(name of counsel), of (address, name of firm)

to be the Counsel of the (insert party appointing), acting solely or with such other Counsel as Counsel may choose, to represent and act for (me/the Applicant/Respondent) in all proceedings before the COMESA Court of Justice concerning all matters touching or having to do with Reference/Arbitration/Appeal No. ().

Given under my hand thisday of20.....

at (Address)

(Signature)

COMMISSIONER FOR OATHS/NOTARY PUBLIC

FORM B - NOTIFICATION

IN THE COMESA COURT OF JUSTICE

..... **DIVISION**

AT.....

CASE NO. OF 20.....

.....**APPLICANT**

VERSUS

.....**RESPONDENT**

NOTIFICATION

(Rule 29 (1))

To-

.....

.....

You are hereby notified that the above-named Applicant has commenced a reference against you, copy of which is annexed hereto. You are hereby required to file a written statement of defence withindays from the date of service hereof in default whereof the reference shall be heard and determined in your absence.

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

.....

REGISTRAR

FORM C - AFFIDAVIT OF SERVICE

IN THE COMESA COURT OF JUSTICE

..... **DIVISION**

AT.....

CASE NO.OF 20.....

.....**APPLICANT**

VERSUS

.....**RESPONDENT**

AFFIDAVIT OF SERVICE

(Rule 30 (1))

I ofand Counsel/ a process server of the Court/ a licensed process officer make oath and state as follows-

(1) On, 20at (time) I served the notification in this case on at (Place) by tendering a copy thereof to her/him and requiring a signature on the original. She/He signed/refused to sign the notification. She/He was personally known to me/identified to me by who is known to me.

(2) Not being able to find, the respondent on

....., 20..... at (time) I served the notification on (Name) an adult member of the family of the respondent who is residing with her/him.

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

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

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

.....

DEPONENT

SWORN by the saidthis day of, 20.....

BEFORE ME-

COMMISSIONER FOR OATHS/NOTARY PUBLIC



FORM D - MEMORANDUM OF APPEARANCE

IN THE COMESA COURT OF JUSTICE

..... **DIVISION**

AT.....

CASE NO.....OF 20.....

.....**APPLICANT**

AND

.....**RESPONDENT**

MEMORANDUM OF APPEARANCE

(Rule 31 (2) (c))

Enter an appearance forin Reference

Dated at the..... day of20..... . _____

Name of Respondent-

Telephone No.

Physical address.....

Postal address.....

Electronic address.....

Name of Counsel-

Business address.....

Telephone No.....

Physical address.....

Postal address.....

Electronic address.....

whose address for service is

whose postal address for service is.....

SIGNED.....

Counsel for the Respondent

FILED in the Registry at.....on the day of 20.....

.....

REGISTRAR

DRAWN AND FILED BY-

FORM E - NOTICE OF MOTION

IN THE COMESA COURT OF JUSTICE

..... **DIVISION**

AT.....

CASE NO.....OF 20.....

.....**APPLICANT**

AND

.....**RESPONDENT**

NOTICE OF MOTION

(Rule 48 (7))

TAKE NOTICE that this Honourable Court shall be moved on the.....day of20... at O'clock in the forenoon/afternoon or soon thereafter as Counsel for the applicant shall move the Court for orders that-

1.
2. And for an order that the costs of and incidental to this application abide the result of the application.

TAKE FURTHER NOTICE that the application shall be supported by the affidavit of.....
.....

Sworn onday of20....

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

Dated thisday of20....

SIGNED.....

Counsel for the Applicant

FILED in the Registry at.....on the day of 20.....

.....

REGISTRAR

DRAWN AND FILED BY-

FORM F - AFFIDAVIT

IN THE COMESA COURT OF JUSTICE

..... **DIVISION**

REFERENCE/APPLICATION NOOF 20.....

.....**APPLICANT**

VERSUS

.....**RESPONDENT**

AFFIDAVIT

(Rule 49 (4))

I of solemnly affirm/ make oath and state as follows-

(1) That.....

(2) That.....

(3) That.....

(4)That I do hereby verify that what is stated herein above is true to the best of my knowledge, information and belief.

AFFIRM/SWORN by the saidthis day of, 20..

.....

DEPONENT

BEFORE ME:

COMMISSIONER FOR OATHS/NOTARY PUBLIC

FORM G - NOTICE OF DISCONTINUANCE/WITHDRAWAL

IN THE COMESA COURT OF JUSTICE

..... **DIVISION**

REFERENCE/APPLICATION NOOF 20.....

.....**APPLICANT**

VERSUS

.....**RESPONDENT**

NOTICE OF DISCONTINUANCE / WITHDRAWAL

(Rule 54 (1))

TAKE NOTICE that the above-named Applicant and Respondent have reached a settlement of their dispute in the above stated reference on the day of 20..... and hereby declare the discontinuance/withdrawal of the same reference.

DATED this day of20...

SIGNED.....

.....

Counsel for Applicant

Counsel for Respondent

FILED in the Registry aton theday of20..

FORM H - THIRD PARTY NOTICE

IN THE COMESA COURT OF JUSTICE

FIRST INSTANCE DIVISION

REFERENCE/APPLICATION NOOF 20.....

.....**APPLICANT**

VERSUS

.....**RESPONDENT**

THIRD PARTY NOTICE

(Rule 70 (4) (a))

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

To- of (address) **TAKE NOTICE** that this action has been brought by the applicant against the respondent. In it the applicant claims against the respondent in accordance with the attached reference.

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

(* And take notice that if you wish to dispute the applicant's claim against the respondent, or the respondent's claim against you, you shall file your statement of defence within thirty days after the service of this notice on you, otherwise you shall be taken to have admitted the applicant's claim against the respondent or the respondent's claim against you and you shall be bound by any judgment given in the suit.

Dated this day of, 20.....

Counsel for the Respondent.

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

FORM I - HEARING NOTICE

IN THE COMESA COURT OF JUSTICE

..... **DIVISION**

AT.....

CASE NO.....OF 20.....

.....**APPLICANT**

VERSUS

.....**RESPONDENT**

HEARING NOTICE

(Rule 78 (5), Rule 124 (2))

TAKE NOTICE that the above case has been fixed for hearing on..... day of
.....20..... at O'clock before Court/Justice(s).....

YOU ARE required to appear in this Court without fail and you shall produce on that day all
the documents upon which you intend to rely in support of your case.

GIVEN under my Hand and Seal of the Court this..... day of.....20.....

.....

REGISTRAR

TO BE SERVED UPON-

- 1.
.....
- 2.
.....

FORM J- SUMMONS TO WITNESS

IN THE COMESA COURT OF JUSTICE

..... **DIVISION**

AT.....

CASE NO......**OF 20**.....

..... **APPLICANT**

VERSUS

.....**RESPONDENT**

SUMMONS TO WITNESS

(Rule 79 (7))

To-

WHEREAS your attendance is required to give evidence and/or produce documents described as on behalf ofthe applicant/ respondent in the above stated case/reference, you are hereby required (personally) to appear before this Court on theday of20, at..... O'clock in the forenoon, and/ or on such other date or dates to which the case may stand adjourned, and not to depart without leave of the Court.

If you fail to comply with this order without reasonable excuse, the Court may fine you not exceeding one thousand COMESA Dollars (COM\$ 1,000).

GIVEN under my hand and seal of this Court, thisday of..... 20...

.....

REGISTRAR

NOTICE- (1) Funds to cover your travel by road/air and other expenses amounting to have been deposited in Court and shall be paid to you by the Registrar when you attend.

To be signed by person to whom summons is addressed-

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

SignatureDate.....

This summons was served by me on the above named on the day of 20....

atO'clock by delivering a copy thereof to her/him and requiring her/his signature as the acknowledgement of service.

(1) I effected service as aforesaid in the presence ofOfby whom the said was pointed out to me.

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

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

.....

PROCESS SERVER

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

.....

COMMISSIONER FOR OATHS/NOTARY PUBLIC

FORM K - WITNESS OATH/AFFIRMATION

WITNESS OATH/AFFIRMATION

(RULE 86 (1))

Before giving evidence, a witness shall take oath or affirm as follows--

"I..... solemnly swear that I shall tell the truth, the whole truth and nothing but the truth. So help me God."

or

"I..... solemnly affirm that I shall tell the truth, the whole truth and nothing but the truth."

FORM L - NOTICE AND MEMORANDUM OF APPEAL

IN THE COMESA COURT OF JUSTICE

APPELLATE DIVISION

AT.....

APPEAL NO.....OF 20.....

IN THE MATTER OF

BETWEEN

..... APPELLANT

AND

..... RESPONDENT

(Being an Appeal from the() of the First Instance Division*

*at(Justice (s)) dated.....20..... in
.....Reference/ Application/ No.....of 20.....)*

NOTICE AND MEMORANDUM OF APPEAL

(Rule 115 (2))

TAKE NOTICE thatbeing dissatisfied with the decision of the First Instance Division (Justice (s)given aton the day of 20..., appeals to the Appellate Division of the COMESA Court of Justice against the whole of the said decision/such part of the said decision as decided that

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

It is intended to serve copies of this notice on

the above-named appellant appeals to the Appellate Division against the whole/part of the above-mentioned decision as decided thaton the following grounds -

(1).....

(2)

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

1.

2.

DATED this day of, 20.....

SIGNED-.....Counsel for the Appellant

Copies to be served on.....

FILED in the Registry at.....on theday of..... 20.....

.....

REGISTRAR

(* Insert judgment, ruling, or order as the case may be

**FORM M - NOTICE OF CROSS-APPEAL AND
MEMORANDUM OF CROSS-APPEAL**

IN THE COMESA COURT OF JUSTICE

APPELLATE DIVISION

AT.....

APPEAL NO.....OF 20.....

IN THE MATTER OF

BETWEEN

..... **APPELLANT**

AND

..... **RESPONDENT**

(Being an Appeal from the() of the First Instance Division*

*at(Justice (s)) dated.....20..... in
.....Reference/ Application/ No.....of 20.....)*

NOTICE AND MEMORANDUM OF CROSS-APPEAL

(Rule 118 (2) (d))

TAKE NOTICE thatbeing dissatisfied with the decision of the First Instance Division deliveredon the day of, 20..., cross-appeals to the Appellate Division of the COMESA Court of Justice against the whole of the said decision/such part of the said decision as decided thatThe address for service of the cross appellant is.....

It is intended to serve copies of this notice on

the above-named appellant appeals to the Appellate Division against the whole/part of the above-mentioned decision as decided thaton the following grounds -

(1).....

(2)

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

3.

4.

DATED this day of, 20.....

SIGNED-.....Counsel for the cross appellant

Copies to be served on.....

FILED in the Registry at.....on theday of..... 20.....

.....

REGISTRAR

(*) Insert judgment ,ruling, or order as the case may be

**FORM N - NOTICE OF WITHDRAWAL / DISCONTINUANCE
OF AN APPEAL**

IN THE COMESA COURT OF JUSTICE

APPELLATE DIVISION

AT.....

APPEAL NO.....OF 20....

BETWEEN

.....APPELLANT

AND

.....RESPONDENT

(being an appeal from the.....() of the First Instance Division
at(Justice(s)) dated..... 20....arising from
Reference/Application No. of 20.....)*

NOTICE OF WITHDRAWAL/DISCONTINUANCE OF APPEAL OR A CROSS-APPEAL

(Rule 121 (1))

TAKE NOTICE that the appellant / cross appellant

.....

(Name)

hereby withdraws / discontinues all further proceedings in the above-mentioned matter, or
such part thereof as relates to

(Set out)

DATED at..... this.....day of 20....

Counsel for the appellant / cross appellant

RULES OF PROCEDURE OF THE COMESA COURT OF JUSTICE 2025

Address for service

TO- THE REGISTRAR

The appellant / cross appellantof.....

(Name)

(Address of service)

The respondentof

(Name)

(Address of service)

FILED THISday of..... 20 at.....

.....

REGISTRAR

FORM O - CERTIFICATE OF TAXATION

IN THE COMESA COURT OF JUSTICE

..... **DIVISION**

AT.....

CASE NO.....OF 20.....

.....**APPLICANT**

AND

.....**RESPONDENT**

CERTIFICATE OF TAXATION

(Rule 105 (6))

I Registrar of the COMESA Court of Justice at DO HEREBY CERTIFY that the applicant's Bill of Costs dateddayof20..... is taxed as between the parties and allowed against the in the sum of

Dated at..... thisday of20.....

.....

REGISTRAR

FORM P - PRE-TRIAL MEMORANDUM

IN THE COMESA COURT OF JUSTICE

..... DIVISION

AT.....

CASE NO.....OF 20.....

.....APPLICANT

AND

.....RESPONDENT

PRE-TRIAL MEMORANDUM

(Rule 72 (1))

A. REPRESENTATION OF THE PARTIES

1. The Applicant
2. The Respondent

B. THE APPLICANT'S FACTS:

C. RESPONDENT'S FACTS:

D. AGREED FACTS:

E. DISAGREED FACTS:

F. PROPOSED ISSUES FOR TRIAL:

- 1.
- 2.

G. APPLICANT'S LIST OF DOCUMENTS:

- 1.
- 2.

H. RESPONDENT'S LIST OF DOCUMENTS:

- 1.
- 2.

I. APPLICANTS LIST OF WITNESSES:

- 1.
- 2.

J. RESPONDENT'S LIST OF WITNESSES:

- 1.

2.

K. APPLICANT'S LIST OF AUTHORITIES:

1.

2.

L. RESPONDENT'S LIST OF AUTHORITIES:

1.

2.

M. PROCEDURE AND SCHEDULE FOR THE HEARING:

Dated at this day of 20.....

.....

.....

Counsel for the Applicant.

Counsel for the Respondent .

THIRD SCHEDULE

PARTY AND PARTY COSTS

(Rule 104 (4))

1. Commencement of proceedings			AMOUNT (COM\$)
(1)	For letter of demand (per page) - -		0.90
(2)	Preparing, issuing, filing and service of the reference endorsed with the statement of claim and annexes		400.00
(3)	Preparing, issuing, filing and service of a third party notice		150.00
2. Preliminary applications and proceedings in chambers			
(1)	Preparing, issuing, filing and service of a preliminary application.		100.00
(2)	Preparation, issuing, filing and arranging for the execution of judgment.		80.00
(3)	Preparing any other documents (to include where necessary filing, service and delivery of any document not otherwise provided for including any document or application to amend any document).		80.00
(4)	Obtaining an order for service outside jurisdiction.		120.00
(5)	Request for, and particulars of any pleadings.		80.00
(6)	Preparation, issuing letters of request and filing of letters of request.		80.00
(7)	Preparing, filing and service of any order made in chambers, or any order or judgment made or passed in Court.		100.00

3. Attendance			
	(1)	Attendance in chambers or Court on the hearing of a preliminary application.	80.00
	(2)	Attend to conduct a case in Court.	100.00
	(3)	Attending generally including attending to hear reserved judgment or order of any decision.	80.00
4. Perusals			
	(1)	Perusal of any reference, defence, counterclaim, (if any) or any document in the matter.	100.00
	(2)	Perusal of any document, including perusal of Counsel's opinion or documents on inspection or any interlocutory process, other than a routine letter.	80.00
5. Drawing Documents			
	(1)	For drawing any order made in open Court.	100.00
	(2)	For drawing any document in the proceedings or any brief or opinion not provided for herein (per half page or part hereof).	40.00
	(3)	For a photographic, printed or carbon copy of any document being an exhibit to an affidavit or copies of the bundles.	25.00
	(4)	For drawing case for opinion of Counsel , advise on evidence or to settle any proceedings and affidavit for use as evidence (where Counsel's opinion is justifiably sought)(per page or part thereof)	80.00
7. Communications			
	(1)	For any letter, email, telefax, instant messaging applications or any other electronic communication for each page.	20.00
	(2)	Telephone per unit of three minutes or part thereof.	20.00
8. Summons			
		For preparing, issuing, filing and service of summons for each individual served	60.00

9. Adjournments			
	(1)	Costs to be paid by the party occasioning an adjournment where the case is not heard, and costs are ordered to be paid by that party. (per half hour or part thereof)	250.00
	(2)	Costs to be paid by the party who discontinues or withdraws from proceeding.	500.00







COMESA Court of Justice
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Email: info@comesacourt.org
Website: www.comesacourt.org