

## **GAZETTE NOTICE NO. 3137**

### **PRACTICE DIRECTIONS FOR THE PROTECTION OF JUDGES, JUDICIAL OFFICERS, JUDICIARY STAFF, OTHER COURT USERS AND THE GENERAL PUBLIC FROM THE RISKS ASSOCIATED WITH THE GLOBAL CORONA VIRUS PANDEMIC**

WHEREAS on the 11th March, 2020, the World Health Organization (WHO) characterized the Coronavirus Disease (COVID-19) as a pandemic and called on all countries to take urgent and aggressive measures to combat the pandemic;

TAKING cognizance that in response to the WHO call, the Government of Kenya established the National Emergency Response Committee on Coronavirus, which in the interests of the public, has announced various national measures to mitigate the pandemic;

APPRECIATING the urgent need for the Judiciary to adopt measures to guarantee continued access to justice and expeditious disposal of cases in an environment that is not conducive to the spread of the pandemic

NOW the Chief Justice, in consultation with the Rules Committee, and pursuant to Articles 48 and 159 of the Constitution, sections 1A, 1B and 81 (3) of the Civil Procedure Act, section 10 of the Judicature Act, sections 29 and 38 of the Court of Appeal (Organization and Administration) Act, 2015, section 5 of the Judicial Service Act, 2011, sections 13 and 16 of the High Court (Organization and Administration) Act, 2015, section 24 of the Environment and Land Court Act, 2011, section 27 of the Employment and Labour Relations Act, 2011, section 14 of the Magistrates Court Act, 2015, and Rule 51 of the Supreme Court Rules, 2011, issues the following Practice Directions-

**1.Objective of the Practice Directions:**  
The objective of the Practice Directions shall be to attain the following aims—

- (a) the just determination of the proceedings;
- (b) the efficient disposal of the business of the Court;
- (c) the efficient use of the available judicial and administrative resources;
- (d) the timely disposal of proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and
- (e) the use of suitable technology.

#### **2.Application:**

These Practice Directions shall apply to all civil appeals, civil applications, judicial

review and constitutional petitions in the superior courts and subordinate courts. These Practice Directions shall apply for a period of thirty days. The Chief Justice may extend the period during which the Practice Directions shall apply taking into account the prevailing circumstances.

**3.Filing:**

Parties and advocates shall comply with the provisions of Order 1 Rule 26 of the Civil Procedure Rules, 2010, on the disclosure and furnishing of contact information. Every document filed in court shall contain the email address and mobile telephone number of the party and that of his or her advocate or firm of advocates, or contact persons where parties are not represented by an advocate, as the case maybe.

**4.Pleadings to be stamped:**

Parties or advocates shall present their pleadings to the court Registry for filing during which each page thereof shall be stamped. The parties or their advocates shall then scan the stamped pleadings into PDF format and email the scanned copies to the other parties or advocates and the court or division.

**5.Service of documents and court process:**

During this period, parties are directed, whenever possible and unless otherwise directed by the court, to serve court documents and processes through electronic mail services and mobile enabled messaging applications as provided for under Order 5 Rules 22B and 22C of the Civil Procedure Rules.

**6. Civil appeals, civil applications, judicial review and constitutional petitions may be canvassed through written submissions:**

The Court may, in accordance with these Practice Directions and the provisions of Order 42 Rules 13 and 16, and Order 52 Rule 16 of the Civil Procedure Rules, 2010, direct that the final address after the hearing shall be made and that the appeal, application, judicial review or constitutional petition shall be canvassed through written submissions in such format and length as the Court may direct taking into account the nature of the case.

**7. Court may direct parties to highlight sections of submissions:**

Notwithstanding paragraph 6, the Court may, on its own motion or at the request of a party or the party's advocate, direct that the other party or parties shall highlight sections of that other party's or parties' submissions and may prescribe the period within which the party or parties shall comply with its directions.

**8.Form of written submissions:**

Where the Court has directed that the matter shall be canvassed through written submissions, the parties, where represented and in appropriate cases, unrepresented parties, shall furnish the Court and the opposite parties or their advocates on record with copies of the submissions in electronic format indicating the case number and the Court before which the matter is. The submissions shall be in Microsoft Word with a minimum font size used of 12 and 1.5 spacing. The electronic documents shall be sent to the email address of the Court before which the matter is.

**9.Email addresses of Courts:**

The email addresses of each Court shall be conspicuously and prominently displayed in the Court premises and provided on request by Court Assistants to any person.

**10.Failure to comply by parties or advocates:**

Where parties or advocates fail to comply with the directions given by the Court, the Court shall construe the failure as a failure to comply with, among others, section 1A (3) of the Civil Procedure Act or section 1B (3) of the Appellate Jurisdiction Act, as the case may be, and determine the matter on the basis of the documents on record and, where it deems appropriate, impose appropriate sanctions on the parties or advocates that failed to comply including the payment of costs or denial of costs. In this regard, advocates should take note of the provisions of section 56 of the Advocates Act.

**11. Certificates of Urgency:**

Where a matter is filed under a Certificate of Urgency and the Court is satisfied that the matter is urgent, the Court may grant interim orders or give directions in Chambers to the party filing the matter based on the pleadings or affidavits filed with the Certificate without holding a hearing on the matter. Where the Court determines that the matter is not urgent, the Court shall give appropriate directions for the handling of the matter.

**12.Ex parte applications:**

The Court may grant the orders sought in ex parte applications without hearing advocates or parties. However, where the Court is satisfied that orders being sought should not be granted, the Court shall make such orders and directions as may be appropriate and notify the parties of the same expeditiously.

**13.Applications under Order 49:**

In respect of applications under Order 49 of the Civil Procedure Rules, 2010, advocates or applicants shall indicate on the body of the application that the application ought to be placed before the Registrar. The advocate or applicant shall write on the top right corner of the face of the application an upper-case letter "R".

**14.Reservation of dates for delivery of judgments, rulings or orders:**

When the Court reserves the date for delivery of a judgement, ruling or order, it may also direct that the judgment, ruling or order shall be delivered by transmission to the parties or their advocates by email and the date when the judgment, ruling or order is transmitted shall be deemed to be the date of the delivery.

**15.Notice of the delivery of judgment, ruling or order:**

The Court shall notify parties or their advocates by email of the date reserved for the delivery of a judgment, ruling or order.

**16.Notice of inability to deliver judgment, ruling or order:**

Where the Court is not able to deliver the judgment, ruling or order on the date reserved, it shall promptly notify the parties or advocates and reserve a new date for

the delivery of the judgment, ruling or order and give further relevant directions as may be necessary in the circumstances.

**17.Execution:**

Upon receipt of a notice of the reservation of a date for the delivery of a judgment, ruling or order, the parties or their advocates may, either individually or by consent, propose a period within which the execution of the judgment, ruling or order may be suspended or stayed. A proposal to suspend or stay execution of a judgment, ruling or order shall be communicated to the Court by email at least three days before the date reserved for the delivery of the judgment, ruling or order, or as may otherwise be directed by the court. The Court may, on its own motion, either within the judgment, ruling or order, or as a separate order, direct the period for which the execution of the judgment, ruling or order shall be suspended or stayed. Notwithstanding the foregoing, there shall be an automatic stay of execution of the judgement, ruling or order for a period of fourteen days from the date of its transmission where no directions have been issued.

**18.Consents:**

Parties are highly encouraged to agree on suitable consents. Where parties have agreed on a consent, the consent shall be communicated by email and recorded as an order of the Court. It shall not be necessary that all the parties sign a consent as long as they confirm in writing or by email their concurrence to the terms thereof. Confirmation of concurrence shall be emailed to the Court and the Court shall print and file it together with the consent in the case file. The confirmation of concurrence to the terms of a consent shall indicate which of the terms of the consent that the party has concurred with.

**19. Teleconferencing, videoconferencing and other appropriate technologies:**

Where practicable and taking into account the prevailing circumstances, the Court may make use of teleconferencing, videoconferencing and other appropriate technologies to dispose of any matter.

**20.Practice Directions to supersede other Practice Directions:**

These Practice Directions shall supersede any other practice directions issued by any court or division regarding the operations of the court or division in response to the risks occasioned by the corona virus pandemic. Notwithstanding the foregoing, the practice directions issued by the Presiding Judge of the Commercial and Tax Division of the High Court shall continue to apply to matters filed in that Division.

**Dated the 20th March, 2020.**

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