

GOVERNMENT NOTICE No. 64 published on 23/3/2007

THE LABOUR INSTITUTIONS, ACT,  
(No. 7 OF 2004)

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**RULES**  
—

*Made under section 15(1)(e)*

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THE LABOUR INSTITUTIONS (MEDIATION AND ARBITRATION)  
RULES, 2007

*Citation Title*

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THE LABOUR INSTITUTIONS ACT, 2004  
(No.7 of 2004)

**RULES**

*Made under section 15(1)(e)*

THE LABOUR INSTITUTIONS (MEDIATION AND ARBITRATION)  
RULES, 2007

PART I  
PRELIMINARY PROVISIONS

Citation  
and com-  
mence-  
ment

1. These Rules may be cited as the Labour Institutions (Mediation and Arbitration) Rules, 2007.

Interpre-  
tation

2. In these rules unless the context requires otherwise—  
“Commission” means the Commission for Mediation and Arbitration established by section 12 of the Labour Institutions Act and shall include a mediator or an arbitrator appointed by the Commission;  
“day” means a calendar day;  
“deliver” means serve on other parties and file with the Commission;  
“Labour Court” means the Labour Division of the High Court established by section 50 of the Act and includes any Judge of the Court;  
“party” means any party to the proceedings before the Commission;  
“rules” means rules for the conduct of proceedings before the Commission for Mediation and Arbitration;  
“serve” means to serve in accordance with rule 6 and “service” has a corresponding meaning;  
“summons” means a formal document issued by the Commission commanding a person named therein to appear before it at a certain time and place for purposes specified therein;  
“taxing officer” means any person appointed as such by the Commission in terms of rule 34 of these Rules.

PART II  
FILING AND SERVICE OF DOCUMENTS

3.-(1) The offices of the Commission shall be open every day from Monday to Friday, except public holidays, between the hours of 07.30 and 15.30, or as may be determined by the Commission.

Opening hours of the offices of the Commission

(2) Documents may be filed with the Commission during the hours referred to in sub-rule (1).

(3) Notwithstanding sub-rule (2), documents may be faxed at all time to the Commission.

4.-(1) Subject to sub-rule (2), for the purpose of calculating any period of time in terms of these rules, the first day shall be excluded and the last day shall be included.

Calculation of time

(2) The last day of any period must be excluded if it falls on a Saturday, Sunday or public holiday.

5.-(1) A document shall be signed by the party or any other person entitled under the Act or these rules to represent that party in the proceedings.

Signing of documents

(2) Where proceedings are jointly instituted or opposed by more than one employee, documents may be signed by an employee who is mandated by the other employees to do so.

(3) Subject to sub rule (2) a list in writing, of the employees who have mandated a particular employee to sign on their behalf, must be attached to the document. The list must be signed by the employees whose names appear on it.

6.-(1) A party shall serve a document to the other party –  
(a) by delivering or handing a copy of the document to  
(i) the person concerned;  
(ii) a representative authorised in writing to accept service on behalf of the person;  
(iii) a person who appears to be at least 18 years old and in

Service of documents to other party

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*G. N. No. 64 (contd.)*

- charge of the person's place of residence, business or place of employment at the time;
- (iv) a person identified in sub-rule (2);
- (b) by leaving a copy of the document at—
- (i) an address chosen by the person to receive service;
  - (ii) any premises in accordance with sub-rule (3);
- (c) by faxing a copy of the document to the person's fax number, or a number chosen by that person to receive service;
- (d) by sending a copy of the document by registered post to the last-known address of the party or an address chosen by the party to receive service.
- (2) A document may also be served to—
- (a) a company or other body corporate by handing a copy of the document to the person in charge or acting on behalf of the person in charge at its registered office, its principal place of business within Tanzania or its main place of business within the area in which the dispute first arose;
  - (b) an employer by handing a copy of the document to the person in charge or acting on behalf of the person in charge at the workplace where the employees involved in the dispute ordinarily work or worked;
  - (c) a trade union or employers' organisation by handing a copy of the document to the person in charge or acting on behalf of the person in charge at the main office of the union or employers' organisation or its office in the area in which the dispute arose;
  - (d) a partnership, firm or association by handing a copy of the document to the person in charge or acting on behalf of the person in charge at the place of business of the partnership, firm or association or, if it has no place of business, by serving a copy of the document on a partner, the owner of the firm or the chairman or secretary of the managing or other controlling body of the association, as the case may be;

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- (e) a statutory body, by handing a copy to the secretary or similar officer or member of the board or committee of that body, or any person acting on behalf of that body; or
- (f) the Ministry or local government authority, by handing a copy to the person in charge or acting on behalf of the person in charge at its head office or its office in the area in which the dispute arose.

(3) Where a person identified in sub-rule (2) is not willing to accept service, such service may be effected by affixing a copy of the document to the main door of the premises concerned.

(4) The Commission may order service in any appropriate manner other than those prescribed in this rule.

7.—(1) A party shall prove that a document was served in terms of these rules by providing the following:

Proof of  
service  
of  
docu-  
ment

- (a) proof of mailing the document by registered post to the other party;
- (b) the telefax transmission report indicating the successful transmission to the other party of the whole document; or
- (c) if a document was served by hand—
  - (i) with a copy of a receipt signed by, or on behalf of, the other party clearly indicating the name and designation of the recipient and the place, time and date of service; or
  - (ii) with a statement confirming service signed by the person who delivered a copy of the document to the other party or left it at any premises.

(2) Where proof of service in accordance with sub-rule (1) is provided, it shall be presumed until the contrary is proved otherwise, that the party on whom it was served has knowledge of the contents of the document.

(3) A party shall serve on the other party the original of a document filed by him through fax if such other party requested to be served through fax.

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*G. N. No. 64 (contd.)*

(4) A party shall be required to comply with such a request within seven days of the request

(5) Subject to sub-rule (3) the Commission may accept proof of service in a manner other than those prescribed in this rule, if the Commission believes it is sufficient.

Filing  
of docu-  
ments  
with the  
Commis-  
sion

8.-(1) A party shall file documents with the Commission at its head office or office in the area in which the dispute arose—

- (a) by handing the document to that office;
- (b) by sending a copy of the document by registered post to that office; or
- (c) by faxing the document to that office

(2) A document shall be said to have been filed to the Commission when —

- (a) it is handed to the office as specified in rule 7(1);
- (b) it is sent by registered post and received by the office as specified in rule 7(1); or
- (c) the transmission of a fax to the office specified in rule 7(1) is completed.

(3) A party shall only file the original of a document filed by fax, if requested to do so by the Commission. A party shall comply with a request to file an original document within seven days of the request.

Docu-  
ments  
and  
notices  
sent by  
regis-  
tered  
post

9. Any document or notice sent by registered post by a party or the Commission may be presumed, within seven days after it was posted to have been received by the person to whom it was sent.

Time  
limits for  
referring  
disputes

10.-(1) Disputes about the fairness of an employee's termination of employment must be referred to the Commission within thirty days from the date of termination or the date that the employer made a final decision to terminate or uphold the decision to terminate.

(2) All other disputes must be referred to the Commission within sixty days from the date when the dispute arose.



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*G. N. No. 64 (contd.)*

11.-(1) This rule applies to any dispute, referral document or application delivered outside the applicable time prescribed in the Act or these Rules.

Seeking of condonation for documents delivered late

(2) A party shall apply for condonation, by completing and delivering the prescribed condonation form when delivering the document or application to the Commission. This form must be served on all parties to the dispute.

(3) An application for condonation shall set out the grounds for seeking condonation and shall include the referring party's submissions on the following—

- (a) the degree of lateness;
- (b) the reasons for the lateness;
- (c) its prospects of succeeding with the dispute and obtaining the relief sought against the other party;
- (d) any prejudice to the other party; and
- (e) any other relevant factors.

(4) The application condonation shall be processed in accordance with Rule 29 of these Rules.

(5) Where the Commission's prescribed form is correctly completed, served on all parties to the dispute and delivered to the Commission, the application shall be deemed to have been properly lodged in terms of rule 29 of these Rules.

(6) The Commission may assist a referring party to comply with this rule.

PART III  
MEDIATION

12.-(1) A party shall refer a dispute to the Commission for mediation by completing and delivering the prescribed form ("the referral document").

Method of referring disputes to the Commission

(2) The referring party shall—

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*G. N. No. 64 (contd.)*

- (a) sign the referral document in accordance with rule 5;
- (b) attach to the referral document; a written proof, in accordance with rule 6, that the referral document was duly served on the other parties to the dispute;
- (c) if the referral document is filed out of time, attach an application for condonation in accordance with rule 10.

(3) The Commission shall refuse to accept a referral document until the requirements of sub-rule (2) has been complied with.

Notice of  
the  
mediation  
hearing

13.—(1) The Commission shall give the parties at least 14 days notice in writing of the mediation hearing unless the parties agree to a shorter period of notice.

(2) The parties shall be given at least seven days notice of any further meetings, although the parties may agree to a short period of notice.

(3) The notice inviting the parties shall state the date, time and place of attendance.

Other  
means of  
dispute  
resolution  
prior  
to the  
commence-  
ment of  
mediation

14. The Commission may contact the parties by telephone or other means, prior to the commencement of the mediation, in order to seek to resolve the dispute.

Jurisdiction  
to  
mediate  
the  
dispute  
Issuing  
of certificate  
of settlement  
or non-  
settlement

15. Where it appears during mediation proceedings that a jurisdictional issue relating to mediation has not been determined, the mediator shall require the referring party to prove that the Commission has the jurisdiction to mediate the dispute.

16.—(1) The mediator shall issue a certificate as soon as is practicable after mediation has been finalised, stating whether the dispute has been settled or not.

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*G. N. No. 64 (contd.)*

(2) The mediator shall, in the certificate, identify the nature of the dispute for the purposes of determining what rights the parties have in terms of the Employment and Labour Relations Act.

Act.  
No.6  
of 2004

(3) Where the dispute remains unresolved, irrespective of what was stated in the dispute referral form, the mediator's certificate shall determine the nature of a dispute.

(4) The mediator shall issue the certificate within the 30 days period referred to in section 86(4) of the Employment and Labour Relations Act.

17.-(1) No person may refer to anything said at mediation proceedings during any subsequent proceedings, unless the parties agree in writing.

Non -  
disclo-  
sure  
of medi-  
ation  
proceed-  
ings

(2) No person, including a mediator, may be called as a witness during any subsequent proceedings in the Commission or in any court to give evidence about what transpired during mediation.

PART IV

COMBINED MEDIATION AND ARBITRATION PROCEEDINGS

18.-(1) Subject to section 19(7) of the Act and section 88(3) of the Employment and Labour Relations Act, the Commission may set down a combined mediation arbitration process on the same date which may be conducted by the same person.

Combin-  
ed medi-  
ation and  
arbitra-  
tion.

(2) The Commission shall give parties at least fourteen days' notice in writing that a dispute has been set down as a combined mediation arbitration procedure, and the notice must specifically state that it is a combined processing.

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6 of  
2004

(3) The parties may agree to a shorter period of notice.

(4) The appointed person shall determine the duration of the process in an attempt to resolve the dispute through mediation. The parties shall clearly be advised when the mediation terminates and commences of arbitration.

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*G. N. No. 64 (contd.)*

(5) Nothing said during the mediation phase shall in any way be used as evidence in the arbitration proceedings, unless it is agreed between the parties in writing.

(6) Where the same person is to conduct both mediation and arbitration that person shall conduct the mediation process in a manner that does not compromise that person's ability to arbitrate the dispute.

(7) Where a party fails to arrive at the process, the provisions of section 87 of the Employment and Labour Relations Act, 2004 shall apply.

(8) The mediation and arbitration phases of the proceedings shall be governed by the provisions of these rules applicable to the mediation and arbitration phases respectively.

PART V  
ARBITRATION

Notice of  
an arbi-  
tration  
hearing

19. The Commission shall give the parties at least fourteen days' notice in writing of an arbitration hearing, unless the parties agree to a shorter period.

Determi-  
nation of  
jurisdic-  
tional  
issue

20. Where during the arbitration proceedings it appears that a jurisdictional issue has not been determined, the arbitrator shall require the referring party to prove that the Commission has jurisdiction to arbitrate the dispute.

Postpone-  
ment of  
arbitra-  
tion

21.—(1) An arbitration may be postponed by—  
(a) an agreement between the parties in terms of sub-rule (2); or  
(b) an application in terms of sub-rule (3); or  
(c) an arbitrator for good reasons.

(2) The Commission shall postpone an arbitration without the parties appearing if—

(a) all the parties to the dispute agree in writing to the postponement; and

*Labour Institutions (Mediation and Arbitration)*

*G. N. No. 64 (contd.)*

*G. N. No. 64 (contd.)*

(b) the written agreement for the postponement is received by the Commission more than seven days prior to the scheduled date of the arbitration.

(3) Where the conditions of sub-rule (2) are not met, any party may apply in terms of rule 29 to postpone arbitration by serving an application on the other parties to the dispute and filing a copy with the Commission.

(4) After considering the written application, the Commission may –

- (a) without convening a hearing, postpone the matter; or
- (b) convene a hearing to determine whether to postpone the matter.

PART VI

RULES THAT APPLY TO MEDIATION, ARBITRATION AND COMBINED PROCEEDINGS

22.–(1) A dispute shall be mediated or arbitrated by the Commission at its office having responsibility for the area in which the cause of action arose, unless the Commission directs otherwise.

Venue for mediation and arbitration proceedings

(2) The Commission shall determine the venue for mediation or arbitration proceedings.

23.–(1) A member an official of a party's trade union, employers' association or an advocate, may represent a party in mediation or arbitration proceedings.

Representation before the Commission

(2) For the purposes of the Act, an advocate means a person currently registered to practice as an advocate in Tanzania mainland.

24.–(1) The Commission may join any number of persons as parties in proceedings if their right to relief depends substantially on the same question of law or fact.

Joinder or substitution of parties to proceedings

(2) The Commission may make an order joining any person as a party in the proceedings if the person to be joined has a substantial interest in the subject matter of the proceedings.

*Labour Institutions (Mediation and Arbitration)*

*G. N. No. 64 (contd.)*

- (3) A mediator or arbitrator may make an order in terms of sub-rule (2)–
- (a) of own accord;
  - (b) on application by a party; or
  - (c) if a person entitled to join the proceedings applies at any time during the proceedings to intervene as a party.

(4) Where in any proceedings it becomes necessary to substitute a person for an existing party, any party to the proceedings may apply to the Commission for an order of substituting that person.

(5) An application in terms of this rule shall be made in terms of rule 29.

(6) When making an order in terms of sub-rule (2) or (4), a mediator/arbitrator may–

- (a) give appropriate directions as to the further procedure in the proceedings; and
- (b) make an order of costs in accordance with these rules.

(7) An application to join any person as a party to proceedings or to be substituted for an existing party shall be accompanied by copies of all documents previously delivered during the proceedings, unless the person concerned or that person's representative is already in possession of the documents.

(8) Subject to any order made in terms of sub-rule 6, a joinder or substitution in terms of this rule does not affect any steps already taken in the proceedings.

Correc-  
tion of  
error or  
defect

25.–(1) Where a party to any proceedings has been incorrectly or defectively cited, any party may apply to the Commission and give notice to the parties concerned for correction of error or defect.

(2) Subject to sub-rule (1), the application shall be made in accordance with Rule 29.

(3) The Commission may correct the error or defect on its own accord, after giving notice to all parties concerned.

*Labour Institutions (Mediation and Arbitration)*

*G. N. No. 64 (contd.)*

26. The Commission on its own accord or on application in accordance with Rule 29 may consolidate more than one dispute so that the disputes may be dealt with in the same proceedings.

Consolidation of disputes

27.-(1) Any party may on application in accordance with Rule 29 or at any stage during the proceedings, request a mediator or arbitrator to make an order as to the disclosure of relevant information and production of documents.

Disclosure of information and production of documents

(2) The parties may agree on the disclosure of information and production of documents.

28.-(1) A mediator is entitled to dismiss a complaint, if the complaint fails to attend a mediation hearing during the initial thirty days period set for mediation in terms of Section 86(4) of the Employment and Labour Relations Act.

Dismissal of proceedings for non-appearance Act No. 6 of 2004

(2) An arbitrator is entitled to dismiss a complaint if the referring party fails to attend an arbitration hearing.

(3) The mediator or arbitrator dismissing the complaint, shall satisfy himself that the parties were properly notified of the date, time and venue of the proceedings, before making any decision in terms of sub-rule (1) and (2).

(4) Where a matter is dismissed, the Commission shall send a copy of the ruling to the parties.

PART VII  
APPLICATIONS

29.-(1) Subject to Rule 10, this Rule shall apply, to any of the following-

Applications

- (a) condonation, joinder, substitution, variation or setting aside an award;
- (b) jurisdictional dispute;
- (c) other applications in terms of these Rules.

(2) An application shall be brought by notice to all persons who have an interest in the application.

*Labour Institutions (Mediation and Arbitration)*

*G. N. No. 64 (contd.)*

(3) The party bringing the application shall sign the notice of application in accordance with Rule 5 and shall contain—

- (a) the title of the matter;
- (b) the case number;
- (c) the relief sought;
- (d) the address for service and delivery of documents and proceedings;
- (e) that any party that intends to oppose the matter shall deliver a notice of opposition and an affidavit within fourteen days after the application has been delivered to it;
- (f) that the application may be heard in the absence of a party that does not comply with sub-paragraph (e); and
- (g) that a schedule is included listing the documents that are material and relevant to the application.

(4) The application shall be supported by an affidavit setting clearly and concisely the following—

- (a) the names, description and addresses of the parties;
- (b) a statement of the material facts in chronological order, on which the application is based and sufficient details to enable any person opposing the application to reply to the facts;
- (c) a statement of legal issues that arise from the material facts, sufficiently to enable any party to reply to the document;
- (d) grounds for condonation in accordance with rule 10 where the application is filed out of time; and
- (e) certificate of urgency if filed, shall state reasons why the matter cannot be dealt with in accordance with the time frame prescribed in these Rules.

(5) Any party opposing the application may deliver—

- (a) a notice of opposition and a counter affidavit within fourteen days from the day on which the application was served on that party; and
- (b) a notice of opposition and a counter affidavit shall contain the information required by sub-rules (3) and (4) respectively.

(6) The party initiating the proceedings may deliver—

- (a) a reply to counter affidavit within seven days from the day on which any notice of opposition and a counter affidavit were served; and



- (b) a reply to counter affidavit shall address only issues raised in the counter affidavit and may not introduce new issues of fact or law.
- (7) The Commission may permit the affidavits referred to in this rule to be substituted by a written statement.
- (8) In an urgent application, the Commission—
- (a) may dispense with the requirements of these rules; and
  - (b) may grant an order against a party that has had reasonable notice of the application.
- (9) The Commission shall allocate a date for the hearing of the application once an affidavit is delivered, or once the time limit for the delivering a counter affidavit has lapsed, whichever occurs first.
- (10) Subject to sub-rule (9), the Commission shall notify the parties of the date, time and place of the hearing of the application and the applications may be heard by way of motion.
- (11) Notwithstanding this rule, the Commission may determine an application in any manner it deems proper.

30.—(1) An application by a party to correct or set aside an arbitration award in terms of Section 90 of the Employment and Labour Relations Act shall be made within fourteen days from the date on which the applicant became aware of the arbitration award.

Correction and setting aside of arbitration awards

(2) An arbitrator may on his own accord correct an award in terms of Section 90 of the Act, within the time period stipulated in sub-rule (1) and shall re-issue the corrected award with a written explanation of the correction.

Act. No. 6 of 2004

PART VIII  
MISCELLANEOUS PROVISIONS

31. The Commission may condone any failure to comply with the time frame in these rules on good cause.

Condonation for failure to comply with the rules

*Labour Institutions (Mediation and Arbitration)*

*G. N. No. 64 (contd.)*

Record  
of arbi-  
tration  
proceed-  
ings

32.-(1) An arbitrator shall keep a record of the arbitration proceedings with legible hand-written notes or by other means of electronic recording.

(2) Where the arbitrator records the proceedings through hand written notes, the arbitrator may not be required to record the proceedings word by word.

(3) The arbitrator is entitled to summarise the evidence and arguments submitted by the parties and record all key issues relating to the dispute.

(4) A party may request for a copy of the hand-written notes or the transcript of an electronic record or a portion of a record kept in terms of sub-rule (1), upon payment of the costs of the transcription.

(5) After the transcript maker of the electronic record has certified that it is correct, the record shall be returned to the Commission.

(6) The transcript of an electronic record certified as correct in terms of sub-rule (4) shall be presumed to be correct, unless the Labour Court decides otherwise.

Issuance  
of sum-  
mons

33.-(1) Any party who requires the Commission to summon a person in terms of Section 20 of the Labour Institutions Act, shall complete and file the prescribed form with the Commission together with a written reasons setting out why the evidence of the person to be summoned is necessary.

(2) An application in terms of sub-rule (1), shall be filed with the Commission at least fourteen days before the hearing or as directed by the Commissioner hearing the dispute.

(3) The Commission may refuse to issue a summons if—

- (a) the party does not establish why the evidence of the person is necessary;
- (b) the party summoned has not been given a reasonable period in which to comply with the summons;

(4) A summons shall be served on the witness by the person who has requested the issuance of the summons or by a person appointed by the Commission, at least seven days before the scheduled date of the hearing.

*Labour Institutions (Mediation and Arbitration)*

*G. N. No. 64 (contd.)*

34.-(1) The arbitrator may make an order for costs in an arbitration in terms of Section 88(8) of the Employment and Labour Relations Act, if a party or person representing a party acted in a frivolous or vexatious manner.

Taxation  
of bill  
of costs

(2) The Commission may appoint taxing officers to perform the functions of a taxing officer in terms of these rules.

(3) The taxing officer shall tax any bill of costs for services rendered in connection with proceedings in the Commission on the prescribed Commission's tariff, unless the parties have agreed to a different tariff.

(4) During the taxation of any bill of costs, the taxing officer may call for any book, document, paper or account that, in the taxing officer's opinion, is necessary to properly determine any matter arising from the taxation.

(5) Any person requesting a taxation shall complete the prescribed taxation form and shall satisfy the taxing officer –

- (a) that party's entitlement to be present at the taxation; and
- (b) that the party liable to pay the bill has been served with a notice of the date, time and place of the taxation.

(6) Notwithstanding notice may not be necessary to be given to a party–

- (a) which failed to appear or to be represented at the hearing; or
- (b) which consented in writing to the taxation taking place in that party's absence.

(7) Any decision by a taxing officer shall be subject to review by the Labour Court.

35.-(1) Proceedings before the Commission may be conducted in either English or Swahili languages.

Language  
of the  
Commi-  
ssion

(2) The award shall be delivered in the language of the proceedings.

Dar es Salaam,  
9<sup>th</sup> March, 2007

ADAM NJANGA SIMBEYE,  
*Chairperson of the  
Commission*