

Labour Institutions (Ethics and Code of Conduct for Mediators and Arbitrators)

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

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RULES
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Made under sections 15(1)(g) and 19(4)

THE LABOUR INSTITUTIONS AND CODE OF CONDUCT FOR MEDIATORS AND
ARBITRATORS) RULES, 2007

ARRANGEMENT OF THE RULES

<i>Citation</i>	<i>Title</i>
1.	Short title.
2.	Application.
3.	Interpretation.
4.	Objective.
5.	General Attributes of Mediators and Arbitrators.
6.	Conflict of interest and Disclosure.
7.	Conduct of hearing.
8.	Post Hearing.
9.	Confidentiality.
10.	Jurisdiction.
11.	Mediation by arbitrators.
12.	Reference materials.
13.	Agreement in writing.
14.	Avoidance of delays.
15.	Fees and Expenses.
16.	Competency.
17.	Violation of the Rules.

Labour Institutions (Ethics and Code of Conduct for Mediators and Arbitrators)

G.N. No. 66 (contd.)

THE LABOUR INSTITUTIONS ACT, 2004
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MEDIATORS AND ARBITRATORS) RULES, 2007

PART I

PRELIMINARY PROVISIONS

- Short title** 1. These Rules may be cited as the Labour Institutions (Ethics and Code of Conduct for Mediators and Arbitrators) Rules, 2007.
- Application** 2. These Rules shall apply to the Mediators and Arbitrators appointed by the Commission.
- Interpretation** 3. In these Rules unless the context otherwise requires—“Commission” means the Commission for Mediation and Arbitration.

PART II

GENERAL ATTRIBUTES

- Objectives** 4. These Rules are developed in order to—
- General Attributes**
- (a) ensure that the conduct of Mediators and Arbitrators is of the highest standard; and
 - (b) guide Mediators and Arbitrators appointed by the Commission on matters of professional conduct and practice generally.

Labour Institutions (Ethics and Code of Conduct for Mediators and Arbitrators)

G.N. No. 66 (contd.)

5. All Mediators and Arbitrators shall in the course of discharging their duties—

- (a) act with honest, impartiality, integrity, due diligence and be independent of any outside pressure;
- (b) uphold themselves in a fair manner to all parties and should not be subjected to personal interest or gain;
- (c) not solicit to be appointed as a Mediator or an Arbitrator provided that, this shall not preclude Mediators and Arbitrators to indicate willingness of serving in that capacity;
- (d) be reasonable by accepting appointments only where they believe that they are available and are competent to undertake the assignment;
- (e) avoid entering into any financial, business or social relationship likely to affect their impartiality;
- (f) not accept or be influenced by hospitality from either party or any other improper means; including gifts or other inducements even in the presence of the other;
- (g) ensure that a copy of any letter received from one party is sent to the other, either by the writer, Mediator or Arbitrator;
- (h) avoid having any communication except for the purpose of arranging the dates for meetings or hearing in which case the outcome of those conversations should be notified to both parties; and
- (i) avoid having any meeting with a party except in the presence of the other.

Labour Institutions (Ethics and Code of Conduct for Mediators and Arbitrators)

G.N. No. 66 (contd.)

Conflict
of
interest
and
disclosure

6.-(1) All Mediators and Arbitrators shall disclose any interest or relationship, likely to affect their impartiality or unbiasedness.

(2) Subject to the provision of sub-rule (1), Mediators and Arbitrators appointed to intervene in disputes shall, before accepting an appointment, disclose to the Commission any-

- (i) direct or indirect commercial or social interest in the matter in dispute; and
- (ii) existing or past commercial, social, professional relationship likely to affect impartiality or lead to biasness;

(3) Where circumstances requiring disclosure are not known to a Mediator or Arbitrator prior to accepting an appointment, disclosure shall be made immediately as circumstances become known and shall include the relationship between witnesses and Arbitrator in arbitration proceedings.

(4) After the disclosure, the Mediators and Arbitrators may be required to serve if desired by both parties but may withdraw, where conflict of interest exists, notwithstanding the views expressed by the parties.

(5) Where an agreement has not been reached between the parties on whether a Mediator or Arbitrator should withdraw or not, the following shall apply-

- (a) the applicable procedure to determine the challenges on the jurisdiction of the Mediator or Arbitrator;

Labour Institutions (Ethics and Code of Conduct for Mediators and Arbitrators)

G.N. No. 66 (contd.)

- (b) where the Mediator or Arbitrator after carefully considering the matter determines that-
- (i) the reason for the challenge is not substantial;
 - (ii) it is possible to be impartial and fair; and
 - (iii) a withdrawal may cause unfair delay or may be contrary to the ends of justice, then that Mediator or Arbitrator shall not withdraw.

7.- (1) Every Mediator and Arbitrator shall in the course of conducting proceedings, act fairly, diligently and in an equal manner and shall not communicate with any of the parties, representatives, witnesses and all participants in the proceedings, without the presence or knowledge of the other.

Conduct
of hearing

(2) Every Mediator and Arbitrator shall conduct proceedings in a patience and courteous manner to the parties and their representatives or witnesses, and shall encourage at all times similar behavior by all participants in the proceedings.

(3) Every Mediator and Arbitrator shall not conduct a hearing without all parties being present, except where satisfied that adequate notice of the time, place and purpose of the hearing have been served to the parties.

Labour Institutions (Ethics and Code of Conduct for Mediators and Arbitrators)

G.N. No. 66 (contd.)

(4) In circumstances where more than one person act as Mediators or Arbitrators, they shall afford each other opportunity to participate in the proceedings.

(5) Mediators and Arbitrators shall not delegate their functions in any matter to any person, without prior notice to and the consent of the Commission.

Post
hearing

8.-(1) Mediators and Arbitrators shall not in any way, disclose an award to any party prior to it being distributed to both parties.

(2) The award shall be definite, certain and concise.

(3) Mediators and Arbitrators shall not interpret or clarify an award without the consent of both parties and shall if deemed necessary, afford each party an opportunity to be heard.

(4) Where a party other than the applicant fails to attend at the mediation hearing, a Mediator may issue an award deciding on a complaint.

Confide-
ntiality

9. Every Mediator and Arbitrator shall observe confidentiality of information disclosed in the course of proceedings and shall not in any way disclose such information except where authorization to do so, has been obtained.

Labour Institutions (Ethics and Code of Conduct for Mediators and Arbitrators)

G.N. No. 66 (contd.)

10.-(1) Mediators and Arbitrators shall strive to observe their competency on jurisdictional issues as conferred upon by the Acts. Jurisdiction

(2) Each Mediator or Arbitrator shall accept an agreed settlement by the parties of some or all issues in a dispute, at any stage of the proceedings.

11.-(1) An Arbitrator may, suspend proceedings and resolve the dispute by way of mediation if the parties to the dispute consent. Mediation
by
Arbitrators

(2) In any circumstance, an Arbitrator may suggest to the parties to consider mediation if there is a reasonable possibility of a settlement.

(3) Where parties have not agreed to settle their dispute, an Arbitrator shall not pursue to resolve the dispute.

12.-(1) When issuing awards, Mediators and Arbitrators may have regard to previous awards, decided cases or an independent research but shall assume full responsibility for decisions reached. Reference
materials

(2) Every Mediator and Arbitrator shall not have regard to authorities, if submissions have not referred upon them, if found appropriate, a hearing can be reconvened for this purpose.

13. Mediators and Arbitrators shall reduce all settlement agreements in writing and require the parties to sign. Agreement
in writing

14.-(1) All Mediators and Arbitrators shall plan their work schedules to ensure an expeditious settlement of disputes. Avoidance
of delays

(2) In order to avoid delays, Mediators and Arbitrators shall co-operate with the parties and the Commission.

(3) Upon completion of a hearing, Arbitrators shall adhere to the prescribed time limits for issuing an award.

15.-(1) Mediators and Arbitrators shall be governed by the contractual agreements between them and the Commission and shall at all times make sure not to enter into an agreement with the parties in respect of fees or payment. Fees and
expenses

Labour Institutions (Ethics and Code of Conduct for Mediators and Arbitrators)

G.N. No. 66 (contd.)

(2) All Mediators and Arbitrators shall be required to prepare and maintain records in support of the service fees and expenses, and shall account to the Commission in the time prescribed.

Competency 16.-(1) Every Mediator and Arbitrator shall decline appointment, withdraw or request appropriate assistance, if they believe the dispute is beyond their competence.

(2) Mediators shall strive to understand issues which are part of the dispute, before assisting the parties with the settlement of the dispute.

(3) At the commencement of the process, Mediators shall spend time to understand the positions, needs and expectations of the parties to the dispute.

Violation of the Rules 17. A Mediator or Arbitrator who violates any provisions of these Rules commits an offence and may be liable for removal from office.

Dar es Salaam,
9th March 2007

ADAM NJANGA SIMBEYE,
Chairperson of the Commission