

High Court (Commercial Division) Procedure (Amendment)

GOVERNMENT NOTICE No. 107 published on 1/2/2019

THE JUDICATURE AND APPLICATION OF LAWS ACT
(CAP. 358)

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RULES
—

(Made under section 4)

THE HIGH COURT (COMMERCIAL DIVISION) PROCEDURE (AMENDMENT) RULES,
2019

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THE JUDICATURE AND APPLICATION OF LAWS ACT
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RULES

(Made under section 4)

THE HIGH COURT (COMMERCIAL DIVISION) PROCEDURE (AMENDMENT) RULES,
2019

- | | |
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| Citation

GN. No. 250 of
2012 | 1. These Rules may be cited as the High Court (Commercial Division) Procedure (Amendment) Rules, 2019 and shall be read as one with the High Court (Commercial Division) Procedure Rules, 2012 hereinafter referred to as the “principal Rules.” |
| Amendment of
rule 1 | 2. The principal Rules are amended in rule 1 by deleting the word “rules” appearing between the words “These” and “may” and substituting for it the word “Rules”. |
| Amendment of
rule 3

GN. No. 249 of
2012 | 3. The principal Rules are amended in rule 3 by inserting in the appropriate alphabetical order the the following new definition-

“Court Fee Rules” means the High Court of Tanzania (Commercial Division Fees) Rules, 2012;” |
| Amendment of
rule 4 | 4. The principal Rules are amended by deleting rule 4 and substituting for it the following-
“Administration
Cap. 33
4. In administering these Rules, the Court shall seek to give effect to the overriding objective as provided for under sections 3A and 3B of the Code.” |
| Amendment of
rule 5 | 5. The principal Rules are amended by deleting rule 5 and substituting for it the following- |

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| "Jurisdiction of
Commercial
Division of
High Court | 5. The Commercial Division of the High Court of Tanzania established under the High Court Registry Rules, shall be vested with both original and appellate jurisdiction over commercial cases." | |
| Amendment of
rule 6 | 6. The principal Rules are amended in rule 6 by deleting subrule (2) and substituting for it the following-
“(2) The Commercial Court Users’ Committee shall consist of-
(a) the Judges of the Court;
(b) two advocates nominated by the Tanganyika Law Society;
(c) two State Attorneys nominated by the Attorney General;
(d) five other persons nominated by lawfully established organizations representing the business community;
(e) the Court Administrator attached to the Court; and
(f) the Registrar, who shall be the secretary to the Committee.” | |
| Amendment of
rule 7 | 7. The principal Rules are amended by deleting rule 7 and substituting for it the following-

"Responsibility
of Commercial
Court Users’
Committee | 7. The Commercial Court Users’ Committee shall be responsible for advising the Court on matters of court practice and appointing persons who are knowledgeable in commercial matters to serve as assessors.” |
| Amendment of
rule 8 | 8. The principal Rules are amended in rule 8 by deleting subrule (2) and substituting for it the following-
“(2) The remuneration of assessors determined under subrule (1) shall be as set out in Part I of the Fourth Schedule to these Rules.” | |
| Amendment of
rule 9 | 9. The principal Rules are amended in rule 9 by-
(a) deleting the word “compansated” appearing in subrule (3) and substituting for it the word | |

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- “compensated”;
- (b) deleting subrule (4) and substituting for it the following-
- “(4) The remuneration of mediators determined under subrule (3) shall be as set out in Part II of the Fourth Schedule to these Rules.”
- Amendment of rule 15 10. The principal Rules are amended in Rule 15 by deleting the figure “19” appearing in that rule and substituting for it figure “20”.
- Amendment of rule 17 11. The principal Rules are amended in rule 17(1) by deleting the word “disclose” and substituting for it the word “disclosed”.
- Amendment of rule 20 12. The principal Rules are amended in rule 20(1) by deleting the figure “14” and substituting for it figure “15”.
- Amendment of rule 22 13. The principal Rules are amended in rule 22 by deleting subrule (1) and substituting for it the following-
- “(1) Where any party required to file written statement of defence fails to do so within the specified period or where such period has been extended in accordance with sub-rule (2) of rule 20, within the period of such extension, the Court may, upon proof of service and on application by the plaintiff in Form No.1 set out in the Schedule to these Rules accompanied by an affidavit in proof of the claim, enter judgment in favour of the plaintiff.”
- Amendment of rule 23 14. The principal Rules are amended in rule 23-
- (a) in subrule (1) by deleting the word “in” appearing before the word “pursuant”;
- (b) in subrule (2)(a) by deleting the word “with” appearing between the words “court” and “the period” and substituting for it the word “within”; and
- (c) in subrule (3) by inserting the word “the” between the words “where” and “judgment” appearing at the beginning of that subrule.
- Amendment of rule 27 15. The principal Rules are amended in rule 27 by deleting the word “and” appearing between the words “plaintiff”

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and “be” and substituting for it the word “shall”.

Amendment of
rule 29

16. The principal Rules are amended in rule 29-
- (a) in subrule (1) by deleting the figure “24” and substituting for it the figure “28”;
 - (b) in subrule (2) by deleting the word “issuses” and substituting for it the word “issues”; and
 - (c) in subrule (3) by deleting the figure “24” and substituting for it the figure “28”.

Amendment of
rule 31

17. The principal Rules are amended in rule 31 by-
- (a) deleting paragraph (c) of subrule (1) and substituting for it the following-
 - “(c) upon proof by witness statement or otherwise, enter an *ex parte* judgment; or”
 - (b) deleting subrule (3) and substituting for it the following-
 - “(3) Subsequent to the first adjournment, where all parties fail to attend the pre-trial conference, the Court shall not allow any further adjournment.”

Amendment of
rule 32

18. The principal Rules are amended in rule 32 by deleting sub rule (3) and substituting for it the following-
- “(3) Before the expiry of the time prescribed under subrule (2), any party to the proceedings may orally apply to the Court for extension of the life span of the case, and the Court may, upon sufficient reasons adduced, grant the application and the party in favour of whom the extension is made shall bear the costs of such extension, unless the Court directs otherwise.
 - (4) The Court may, at any time, on its own motion extend the life span of the case on such terms as it may deem just.”

Amendment of
rule 33

19. The principal Rules are amended in rule 33 by deleting the figure “32” and substituting for it the figure “31”.

Amendment
rule 36

20. The principal Rules are amended by deleting rule 36 and substituting for it the following-

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“Failure to attend

36. Where it is not practicable to conduct a scheduled mediation session because a party fails without good cause to attend within the time appointed for mediation, the mediator shall remit the file to the trial judge who, upon hearing the parties, may-

- (a) dismiss the suit, if the non-complying party is a plaintiff, or strike out the defence, if the non-complying party is a defendant;
- (b) order a party to pay costs; or
- (c) make any other order he deems just.”

Amendment of rule 37

21. The principal Rules are amended by deleting rule 37 and substituting for with the following-

“Restoration of mediation discontinued for non appearance

37.-(1) Where the trial judge does not dismiss the suit or strike out the defence under rule 36, he may-

- (a) order the defaulting party to apply within seven days in Form No.4 set out in the Schedule to these Rules, for restoration of mediation upon payment of fees as provided by the Court Fees Rules; or
- (b) make such other orders as he deems fit.

(2) Upon the defaulting party paying fees and costs for restoration of mediation, the trial judge shall remit the file to the mediator who shall issue a notice for mediation and conduct mediation accordingly.

(3) Where the defaulting party fails to comply with an order made under subrule (1), the trial judge shall dismiss the suit or strike out the defence or the

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counter-claim, as the case may be.

Amendment of
rule 44

22. The principal Rules are amended in rule 44 by-
- (a) deleting the words “applications that have been submitted and remain outstanding” appearing in subrule (1)(b) and substituting for them the words “application that has been submitted and is still pending”; and
 - (b) deleting the word “adevocate” appearing in subrule (2) and substituting for it the word “advocate”.

Amendment of
rule 46

23. The principal Rules are amended in rule 46 by deleting sub-rule (2) and substituting for it the following -

“(2) Notwithstanding the provisions of sub-rule (1), the Court may, at any stage, for exceptional reasons adduced by the applying party, adjourn the hearing beyond the next day:
Provided that-

- (a) the party applying for adjournment pays to the Court the fees for adjournment sought as provided by the Court Fees Rules whether or not condemned to pay costs for adjournment and unless the Court considers fit to waive the costs or fees under this rule, the same shall be paid before the next hearing;
- (b) no adjournment shall be granted at the request of a party or parties except where the circumstances are beyond the control of the party or parties, as the case may be;
- (c) the fact that the advocate of a party is engaged in another court shall not be a ground for adjournment unless that advocate is appearing before a superior court;
- (d) where illness of an advocate or his inability to conduct the case for any reason other than his being engaged in another court is put forward as a ground for adjournment, the Court shall not grant adjournment unless it is satisfied that the party applying for adjournment could not have engaged another advocate in time; or
- (e) in the event of an adjournment at the instance of the Court, the reason for the adjournment

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shall be recorded and the Court shall strive to fix the hearing date within the shortest period possible but not more than thirty days.”

Amendment of rule 48

24. The principal Rules are amended by deleting rule 48 and substituting for it the following-

“Hearing of suit and power of court to control evidence

48. Notwithstanding the provisions of subrule (1) of rule 49, the Court shall, at the final pre-trial conference, determine the manner in which evidence is to be given at any trial or hearing by giving appropriate directions as to-

- (a) the issues on which evidence is required; and
- (b) the way in which any matter is to be proved.”

Amendment of rule 49

25. The principal Rules are amended in rule 49 by deleting subrule (2) and substituting for it the following-

“(2) The statement shall be filed within fourteen days of the completion of the final pre-trial conference and served as directed by the Court:

Provided that, the obligation of a party to serve a witness statement shall be independent of the other party’s obligation to file and serve his respective statement.”

Amendment of rule 50

26. The principal Rules are amended by deleting rule 50 and substituting for it the following-

“Witness statement

50.-(1) A witness statement shall-

- (a) be made on oath or affirmation;
- (b) contain the name, address and occupation of the witness;
- (c) so far as reasonably practicable, be in the

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- intended witness own words;
- (d) efficiently identify any documents to which the statement refers without repeating its contents unless this is necessary in order to identify the document;
 - (e) not include any matters of information or belief which are not admissible and where admissible, shall state the source of any matters of information or belief;
 - (f) neither contain lengthy quotation from documents or engage in legal or other arguments;
 - (g) be dated and signed or otherwise authenticated by the intended witness;
 - (h) include a statement by the intended witness that he believes the statements of fact in it to be true, and
 - (i) be in numbered paragraphs.
- (2) The witness statement shall be substantially in the Form prescribed in the Third Schedule to these Rules.”

Amendment of rule 52

27. The principal Rules are amended in rule 52 by deleting the marginal note and substituting for it the following-
“Evidence in suits commenced by originating summons.”

Amendment of rule 54

28. The principal Rules are amended in rule 54 by deleting subrule (4) and substituting for it the following-
“(4) Notwithstanding the provisions of subrule (1), where a witness is not conversant with the language of the Court but can make

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himself understood and can understand the written language of the Court, the statement need not be in his own words:

Provided that, these matters are indicated in the statement itself and shall be written so as to express as accurately as possible the substance of his evidence.”

Amendment of rule 55

29. The principal Rules are amended by deleting rule 55 and substituting for it the following-

“Consequences of failure to serve witness statement

55. Where the statement of an intended witness is not served on the other party within the time prescribed by these Rules, the statement shall, unless the court extends time for such service, be struck out.”

Amendment of rule 56

30. The principal Rules are amended in rule 56 by deleting the word “stament” appearing in subrule (2) and substituting for it the word “statement”.

Amendment of rule 58

31. The principal Rules are amended in rule 58 by deleting the word “application” appearing at the end of that rule and substituting for it the word “applicant”.

Amendment of rule 60

32. The principal Rules are amended in rule 60 by deleting the word “provide” appearing in subrule (1) and substituting for it the word “provided”.

Amendment of rule 62

33. The principal Rules are amended in rule 62 by deleting the word “Duratiopn” appearing in the marginal note and substituting for it the word “Duration”.

Amendment of rule 63

34. The principle Rules are amended by deleting rule 63.

Amendment of rule 66

35. The principal Rules are amended in rule 66 by deleting the figure “18” appearing in subrule (2) and substituting for it the figure “19”.

Amendment of rule 67

36. The principal Rules are amended in rule 67 by deleting subrule (1) and substituting for it the following-

“(1) At the conclusion of hearing, the Court shall deliver its decision within sixty days,

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in case of a judgment or thirty days, in case of a ruling.”

Amendment of rule 69

37. The principal Rules are amended in rule 69 by deleting sub-rules (5) and (6) and substituting for them the following-

“(5) The subordinate court from which the intended appeal originates shall, upon receipt of the notice of appeal and upon payment of the prescribed fee, supply to the appellant certified copies of the proceedings, judgment, ruling, decree or order as the case may be.”

(6) As soon as the certified copies are ready, the subordinate court from which the intended appeal originates shall notify the appellant and the respondent in the Form No. 6 set out in the Schedule that the documents are ready for collection upon payment of the prescribed fee.”

Amendment of rule 70

38. The principal Rules are amended in rule 70 by deleting the figure “68” appearing in subrule (1) and substituting for it the figure “69”.

Amendment of rule 71

39. The principal Rules are amended in rule 71 by deleting the word “appeallant” appearing in the second line and substituting for it the word “appellant”.

Amendment of rule 73

40. The principal Rules are amended in rule 73 by deleting the words “Part IV” and substituting for it the words “Part V”.

Amendment of First Schedule

41. The principal Rules are amended in the First Schedule by-

- (a) deleting the enabling provisions appearing immediately below the heading “FORMS”;
- (b) deleting the enabling provision appearing in Form No.1 and substituting for it “Rule 22(1)”;
- (c) deleting the enabling provision appearing in Form No.2 and substituting for it “Rule 30(1)”;
- (d) deleting the enabling provision appearing in Form No.3 and substituting for it “Rule 34(1)”;
- (e) deleting the enabling provision appearing in Form

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- No.4 and substituting for it “Rule 37(1)”;
- (f) deleting the enabling provision appearing in Form No.5 and substituting for it “Rule 69(2)”;
- (g) deleting Form No.6 and substituting for it the following:

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FORM No. 6

IN THE DISTRICT/RESIDENT MAGISTRATE'S COURT OF

.....

AT.....

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

BETWEEN

..... PLAINTIFF/APPELLANT

AND

..... DEFENDANT/RESPONDENT

NOTICE THAT CERTIFIED COPIES OF PROCEEDINGS, JUDGMENT, RULING, DECREE
OR ORDER ARE READY

(Rule 69(6))

To:

..... Plaintiff/Appellant/Defendant/Respondent,

Take notice that the certified copies of proceedings and judgment are ready and that a sum of
Tshs.....is liable to be paid by you as costs of preparing the certified copies.

Dated this.....day.....of 20....

.....
District/Resident or Magistrate in-Charge.”; and

(h) deleting the enabling provision appearing in Form No.7
and substituting for it “Rule 72(4)”.

Addition of
Fourth
Schedule

42. The principal Rules are amended by adding immediately
after the Third Schedule the following Fourth Schedule by-

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“FOURTH SCHEDULE

PART I

(Rule 8(2))

REMUNERATION OF ASSESSORS

ITEM	PARTICULARS	AMOUNT (TZS)
	Remuneration for time spent, transport costs and all reimbursables per appearance.	250,000/=

PART II

(Rule 9(4))

REMUNERATION OF MEDIATORS

ITEM	PARTICULARS	AMOUNT (TZS)
	Remuneration for time spent, transport costs and all reimbursables for conducting mediation upon-	
	(a) total success	500,000/=
	(b) partial success	350,000/=
	(c) unsuccessful mediation	250,000/=

Dar es Salaam,
22nd January, 2019

IBRAHIM HAMIS JUMA
Chief Justice