

THE UNITED REPUBLIC OF TANZANIA



**THE EMPLOYMENT AND LABOUR RELATIONS  
(CODE OF GOOD PRACTICE) RULES  
G.N 42 OF 2007**

**EMPLOYMENT AND LABOUR RELATIONS  
(GENERAL REGULATIONS)  
G.N 47 OF 2017**

**THE LABOUR INSTITUTIONS (MEDIATION  
AND ARBITRATION) RULES, 2007  
G.N No. 64**

**THE LABOUR INSTITUTIONS (GENERAL  
REGULATIONS)  
G.N 45 OF 2017**

**THE LABOUR INSTITUTION AND CODE OF  
CONDUCT FOR MEDIATORS AND  
ARBITRATION RULES  
G.N 66 OF 2007**

**THE LABOUR INSTITUTIONS (MEDIATION  
AND ARBITRATIONS GUIDELINES) RULES  
G.N 67 OF 2007**

**THE LABOUR COURT RULES  
G.N 106 OF 2007**

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# **EMPLOYMENT AND LABOUR RELATIONS**

## ***(Code of Good Practice)***

GOVERNMENT NOTICE NO. 42 PUBLISHED ON 16/02/2007

THE EMPLOYMENT AND LABOUR RELATIONS ACT, 2004

(No. 6 of 2004)

RULES

Made under section 99 (1)

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THE EMPLOYMENT AND LABOUR RELATIONS ACT, 2004  
(No. 6 of 2004)

RULES

Made under section 99 (1)

THE EMPLOYMENT AND LABOUR RELATIONS (CODE OF GOOD  
PRACTICE) RULES, 2007

PART I  
PRELIMINARY PROVISIONS

Citation                    1. These Rules may be cited as the Employment and Labour Relations  
Citation (Code of Good Practice) Rules, 2007.

Applicati                    2. These Rules shall apply to all employees, employers, trade  
on                    unions, Application employer organizations, mediators, arbitrators,  
assessors, judges and shall include Government officials.

PART II  
(a) TERMINATION GENERALLY

*(i) Forms of Termination and Procedures*

Terminati                    3.-(1) For the purposes of these Rules, the termination of employment  
on of                    shall include-  
Employment                    (a) a lawful termination under the common law;  
ent                    (b) the employer made continued employment intolerable for the  
employee;

- (c) failure to renew a fixed term contract on the same or similar terms if there was a reasonable expectation of renewal of the contract;
- (d) failure to allow an employee to resume work after a maternity or paternity leave:  
and
- (e) failure to re-employ an employee where the employer has terminated the employment of a number of employees for the same or similar reasons and has offered re-employment only to some of those terminated.

2) A lawful termination of employment under the common law shall be as follows-

- (a) termination of employment by agreement;
- (b) automatic termination
- (c) termination of employment by the employee; or
- (d) determination of employment by the employee;

(3) The rules regulating the termination of a contract of employment shall depend on the duration of the contract.

(4) The agreed duration shall be applicable where there is-

- (a) an agreement to work for a fixed term in respect of a fixed time or upon completion of a task: or
- (b) an agreement to work without reference to limitation of time or task in accordance to the agreement.

Termination of  
Employment by  
Agreement

4-(1) An employer and employee shall agree to terminate the contract in accordance to agreement.

(2) Where the contract is a fixed term contract, the contract shall terminate automatically when the agreed period expires, unless the contract provided otherwise.

(3) Subject to sub-rule (2), a fixed term contract may be renewed by default if an employee continues to work after the expiry of the fixed term contract and circumstances warrants it.

(4) Subject to sub-rule (3), the failure to renew a fixed-term contract in circumstance where the employee reasonably expects a renewal of the contract may be considered to be an unfair termination.

(5) Where fixed term contract is not renewed and the employee claims a reasonable expectation of renewal, the employee shall demonstrate that there is an objective basis for the expectation such as previous renewals, employer's undertakings to renew.

(6) The provision of this rule shall not apply where-

(a) the size of the employer may justify a departure:

(b) the nature of the employment business may require strict adherence to rules than may normally be the case; or

(c) collective misconduct may justify a departure from the ordinary procedure rules provided that the employees are given a fair opportunity to make representations.

Automatic  
termination

5-(1) A contract of employment may be terminated automatically in certain circumstances such as death or loss of profession of the business (sequestration) of the employer.

(2) Subject to sub-rule (1), a person taking over the business in such circumstances, shall first consider the employment of the employees whose employment have been terminated as a result of the death or sequestration, before any other employees are hired.

(3) Unless the contract of employment provides otherwise, a contract of employment may terminate automatically when the employee reaches the agreed or normal age of retirement.

(4) Where there is no agreed retirement age the normal retirement age shall be implied from the employer's practice in the past and the practice in the industry.

(5) Where the employee continues to work after attaining the retirement age, the contract shall be renewed and the normal rules of termination of employment apply, unless the employee and the employer agreed to something different.

Resignation

6.-(1) Where an employee has agreed to a fixed term contract, that employee may only resign if the employer materially breaches the contract. If there is no breach by the employer, the employee may lawfully terminate the contract before the expiry of the fixed term by getting the employer to agree to an early termination.

(2) Where there is an indefinite contract, the employee may resign-

(a) by giving a notice of termination: or

(b) without notice, if the employer has materially breached the contract.

(3) A material breach means a serious breach that goes to the core of the contract.

(4) Conducts which shall amount to a material breach of a contract of employment and that may justify the summary termination of the contract by the employee are-

(a) the refusal to pay wages:

(b) verbal or physical abuse or sexual harassment

(c) unfair discrimination: or

(d) any other breach

(3) Notwithstanding section 41 of the Act, the minimum period of notice to be given by an employee on a lawful termination of contract, an employer and employee may agree to a longer notice.

Constructive  
termination

7.-(1) Where an employer makes an employment intolerable which may result to the resignation of the employee, that resignation amount to forced resignation or constructive termination.

(2) Subject to sub-rule (1), the following circumstances may be considered as sufficient reasons to justify a forced resignation or constructive termination-

- (a) Sexual harassment or the failure to protect an employee from sexual harassment and;
- (b) if an employee has been unfairly deal with, provided that the employee has utilized the available mechanisms to deal with grievances unless there are good reasons for not doing so.
- (3) Where it is established that the employer made employment intolerable as a result of resignation of employee, it shall be legally regarded as termination of employment by the employer.

Termination  
by an  
employer

**8-(1)** An employer may terminate the employment of an employee if he-

- (a) complies with the provisions of the contract relating to termination;
- (b) complies with the provisions of sections 41 to 44 of the Act concerning notice, severance pay, transport to the place of recruitment and payment;
- (c) follows a fair procedure before terminating the contract: and (d) has a fair reason to do so as defined in Section 37(2) of the Act.
- (d) has a fair reason to do so as defined in Section 37(2) of the Act.

(2) Compliance with the provisions of the contract relating to termination shall depends on whether the contract is for a fixed term or indefinite in duration. This means that-

- (a) where an employer has employed an employee on a fixed term contract, the employer may only terminate the contract before the expiry of the contract period if the employee materially breaches the contract;
- (b) where there is no breach to terminate the contract lawfully is by getting the employee to agree to early termination;

- (c) where the contract is for an indefinite duration, the employer must have a fair reason to terminate and follow a fair procedure.
- (d) the employer may terminate the contract
  - (i) by giving notice of termination; or
  - (ii) without notice, if the employee has materially breached the contract.

(3) Where an employer requires the employee to work the notice and the employee fails to do so, the employer may deduct from any money due to the employee the equivalent of the amount that would have been due to the employee had the employee worked.

(4) The amount of severance pay due to an employee shall be as specified under Rule 25.

Fair  
reasons and  
fair  
procedure

9-(1) An employer shall follow a fair procedure before terminating an employee's employment which may depend to some extent on the kind of reasons given for such termination.

(2) Notwithstanding the procedures used in these Rules the procedure which may be used in respect of incapacity or incapability shall be different.

(3) The burden of proof lies with the employer but it is sufficient for the employer to prove the reason on a balance of probabilities.

(4) The reasons which may justify termination by the employer are as follows-

- (a) conduct;
- (b) capacity;
- (c) compatibility; or
- (d) employer's operational requirements.



(5) The reason shall not only be one of the kinds of reasons considered fair but the reason in a particular case shall be sufficiently serious to justify termination.

Probationary  
employee

**10-(1)** All employees who are under probationary periods of not less than 6 months, their termination procedure shall be provided under the guidelines

(2) Terms of probation shall be made known to the employee before the employee commences employment.

(3) The purpose of probation is normally to enable the employer to make an informed assessment of whether the employee is competent to do the job and suitable for employment.

(4) The period of probation should be of a reasonable length of not more than twelve months, having regard to factors such as the nature of the job, the standards required, the custom and practice in the sector.

(5) An employer may, after consultation with the employee, extend the probationary period for a further reasonable period if the employer has not yet been able to properly assess whether the employee is competent to do the job or suitable for employment.

(6) During the period of probation, the employer shall-

(a) monitor and evaluate the employee's performance and suitability from time to time:

(b) meet with the employee at regular intervals in order to discuss the employee's evaluation and to provide guidance if necessary. The guidance may entail instruction. Training and counseling to the employee during probation.

(7) Where at any stage during the probation period the employer is concerned that the employee is not performing to standard or may not be suitable for the position the employer shall notify the employee of that concern and give the employee an opportunity to respond or an opportunity to improve.

(8) Subject to sub-rule (1) the employment of a probationary employee shall be terminated if-

- (a) the employee has been informed of the employer's concerns;
- (b) the employee has been given an opportunity to respond to those concerns;
- (c) the employee has been given a reasonable time to improve performance or correct behaviour and has failed to do so

(9) A probationary employee shall be entitled to be represented in the process

referred to in sub-rule (7) by a fellow employee or union representative.

*(ii) (Misconduct)*

Managing  
conduct

11.-(1) All employers shall implement disciplinary policies and it procedures that establish the standard of conduct required of their employees.

(2) The form and content of policies and procedures shall obviously vary according to the size and nature of the employer's business.

(3) An employer's rules in the application of discipline and standards of conduct shall be made available to the employees in a manner that is easily understood.

(4) Subject to sub-rule (3), discipline shall be corrective efforts and be made to correct employee behaviour through a system of graduated disciplinary measures such as counseling and warnings.

(5) The effect of a warning is to notify the employee that a further offence of a similar nature may result in more serious disciplinary action being taken.

(6) Procedures of invoking disciplinary measures specified shall be taken as in the schedule to these Rules.

Fairness  
of the  
reason

12.-(1) Any employer, arbitrator or judge who is required to decide as to termination for misconduct is unfair shall consider-

- (a) whether or not the employee contravened a rule or standard regulating conduct relating to employment;
  - (b) if the rule or standard was contravened, whether or not
    - (i) it is reasonable;
    - (ii) it is clear and unambiguous;
    - (iii) the employee was aware of it, or could reasonably be expected to have been aware of it;
    - (iv) it has been consistently applied by the employer; and
    - (v) termination is an appropriate sanction for contravening it.
- (2) First offence of an employee shall not justify termination unless it is proved that the misconduct is so serious that it makes a continued employment relationship intolerable.
- (3) The acts which may justify termination agree
- (a) gross dishonesty;
  - (b) willful damage to property;
  - (c) willful endangering the safety of others;
  - (d) gross negligence;
  - (e) assault on a co-employee, supplier, customer or a member of the family of, and any person associated with, the employer; and
  - (f) gross insubordination.
- (4) In determining whether or not termination is the appropriate sanction, the employer should consider -
- (a) the seriousness of the misconduct in the light of the nature of the job and the circumstances in which it occurred, health and safety, and the likelihood of repetition; or
  - (b) the circumstances of the employee such as the employee's employment record, length of service, previous disciplinary record and personal circumstances.
- (5) The employer shall apply the sanction of termination consistently with the way in which it has been applied to the same and other employees in the past, and consistently as between two or more employees who commit same misconduct.

Fairness  
of the  
procedu  
re

13.-(1) The employer shall conduct an investigation to ascertain whether there are grounds for a hearing to be held.

(2) Where a hearing is to be held, the employer shall notify the employee of the allegations using a form and language that the employee can reasonably understand.

(3) the employee shall be entitled to a reasonable time to prepare for the hearing and to be assisted in the hearing by a trade union representative or fellow employee. What constitutes a reasonable time shall depend on the circumstances and the complexity of the case, but it shall not normally be less than 48 hours.

(4) The hearing shall be held and finalized within a reasonable time, and chaired by a sufficiently senior management representative who shall not have been involved in the circumstances giving rise to the case.

(5) Evidence in support of the allegations against the employee shall be presented at the hearing. The employee shall be given a proper opportunity at the hearing to respond to the allegations, question any witness called by the employer and to call witnesses if necessary.

(6) Where an employee unreasonably refuses to attend the hearing, the employer may proceed with the hearing in the absence of the employee.

(7) Where the hearing results in the employee being found guilty of the allegations under consideration, the employee shall be given the opportunity to put forward any mitigating factors before a decision is made on the sanction to be imposed.

(8) After the hearing, the employer shall communicate the decision taken, and preferably furnish the employee with written notification of the decision, together with brief reasons.

(9) A trade union official shall be entitled to represent a trade union representative or an employee who is an office-bearer or official of a registered trade union, at a hearing.

(10) Where employment is terminated, the employee shall be given the reason for termination and reminded of any rights to refer a dispute concerning the fairness of the termination under a collective agreement or to the Commission for Mediation and Arbitration under the Act.

(11) In exceptional circumstances, if the employer cannot reasonably be expected to comply with these guidelines, the employer may dispense with them. An employer would not have to convene a hearing if action is taken with the consent of the employee concerned.

(12) Employers shall keep records for each employee specifying the nature of any disciplinary transgressions, the action taken by the employer and the reasons for the actions.

(13) In case of collective misconduct, it is not unfair to hold a collective hearing.

Termination  
of  
employment  
in unlawful  
strikes

14.-(1) Disciplinary action shall not be taken against an employee who participated in a strike that complies to the provisions of Part VII of the Act.

(2) Notwithstanding the provision of sub-rule (1) participating in a strike that does not comply to the provision under Part VII constitutes misconduct and may justify termination of employment after having considered-

- (a) the seriousness of the contravention of the Act and the attempts made to comply with the Act
- (b) whether or not the strike was in response to unjustified conduct by the employer;
- (c) whether the parties have made genuine attempts to negotiate the resolution of the dispute;
- (d) whether the employee have been given an ultimatum;
- (e) the manner in which the employee have conducted themselves during the strike, namely whether the strike was conducted in a peaceful manner or accompanied by violent behaviour of the employee; or
- (f) whether the viability of the business is seriously placed at risk.

(3) Prior to termination of the employee the employer shall, at the earliest opportunity, contact a trade union official to discuss the course of action it intends to adopt.

(4) The employer shall issue an ultimatum in clear and unambiguous terms which states what is required of the employee and what sanction shall be imposed if they do not comply with the ultimatum.

(5) The employee shall be allowed sufficient time to reflect on the ultimatum and respond to it, either by complying with it or rejecting it. What constitutes 'sufficient time' shall depend on the circumstances of each case, but normally would allow the employee to reflect on the ultimatum over night. .

(6) Where the employer cannot reasonably be expected to take these steps, the employer may dispense with them for the reason that the employee or his representative refuse to meet with the employer

(7) The employer may not discriminate between the striking employees by terminating the employment of some of them or, after having terminated their employment, re- instating some of them.

(8) Where the reason for difference in treatment is based on fair grounds such as participation in strike related misconduct, picket violence or malicious damage to property the termination may be fair.

*(iii)* Incapacity

Incapacity  
generally

15.-(1) An employee's incapacity may be due to ill health, injury or generally poor work performance.

(2) Each reason needs to be dealt with on its merits and a fair procedure applied in each case.

Managing  
work  
performance  
standards

16.-(1) It is important in determining the fairness of termination for poor work performance, that the performance standard is not only reasonable but is also known to the employees.

*(iv)* Poor work performance

Fairness of  
the reason

17.-(1) Any employer, arbitrator or judge who determines whether a termination for poor work performance is fair shall consider-

- (a) whether or not the employee failed to meet a performance standard;
- (b) whether the employee was aware, or could reasonably be expected to have been aware, of the required performance standard;
- (c) Whether the performance standards are reasonable;
- (d) the reasons why the employee failed to meet the standard; and
- (e) whether the employee was afforded a fair opportunity to meet the performance standard.

(2) Although the employer has the managerial prerogative to set performance standards, the standards shall not be unreasonable.

(3) Proof of poor work performance is a question of fact to be determined on a balance of probabilities.

Fairness of  
the  
procedure

18.-(1) The employer shall investigate the reasons for unsatisfactory performance. This shall reveal the extent to which is caused by the employee.

(2) The employer shall give appropriate guidance, instruction or training, if necessary, to an employee before terminating the employee for poor work performance.

(3) The employee shall be given a reasonable time to improve. For the purpose of this sub-rule, a reasonable time shall depend on the nature of the job, the extent of the poor performance, status of the employee, length of service, the employee's past performance record.

(4) Where the employee continues to perform unsatisfactorily, the employer shall warn the employee that employment may be terminated if there is no improvement.

(5) An opportunity to improve may be dispensed with if-

(a) the employee is a manager or senior employee whose knowledge and experience qualify him to judge whether he is meeting the standards set by the employer;

(b) the degree of professional skill that is required is so high that the potential consequences of the smallest departure from that high standard are so serious that even an isolated instance of failure to meet the standard may justify termination.

(6) Prior to finalizing a decision to terminate the employment of an employee for poor work performance, the employer shall call a meeting with the employee, who shall be allowed to have a fellow employee or trade union representative present to provide assistance.

(7) At the meeting, the employer shall outline reasons for action to be taken and allow the employee and/or the representative to make representations, before finalizing a decision.

(8) The employer shall consider any representations made and, if these are not accepted, explain why.

(9) The outcome of the meeting shall be communicated to the employee in writing, with brief reasons.

(v) III health or injury

Fairness of  
the reason

**19** -(1) An employer who is considering to terminate an employee on grounds of ill health or injury shall take into account the following factors to determine the fairness of the reason in the circumstances-

- (a) The cause of the incapacity;
- (b) The degree of the incapacity;
- (c) The temporary or permanent nature of the incapacity;
- (d) The ability to accommodate the incapacity;
- (e) The existence of any compensation or pension.

(2) Where an employee is injured at work or is incapacitated by a work-related illness (the cause), an employer shall go to greater lengths to accommodate the employee (the ability to accommodate).

(3) The employer shall be guided by an opinion of a registered medical practitioner, in determining the cause and degree of any incapacity and whether it is of a temporary or permanent nature.

(4) Where an employee is temporarily unable to work, the employer shall investigate the extent of the incapacity or the injury.

(5) Where the employee is likely to be absent for a time that is unreasonably long in the circumstances, the employer shall investigate possible ways to accommodate the employee or to consider all possible alternatives short of termination.

(6) Possible alternatives short of termination shall include-

- (a) temporary replacement;
- (b) light duty;
- (c) alternative work;
- (d) early retirement;
- (e) pension; or
- (f) any other acceptable alternative.



- (7) The factors that may be relevant in this investigation include
- (a) the nature of the job;
  - (b) the period of absence;
  - (c) the seriousness of the illness or injury; and
  - (d) the possibility of securing a temporary replacement or adapting the job.
- (8) Where the cause of the incapacity is due to alcoholism or drug abuse, counseling and rehabilitation may be appropriate steps for an employer to consider.
- (9) Where the employee is permanently incapacitated, the employer shall ascertain the possibility of securing alternative employment for the employee or adapting the duties or work circumstances of the employee to accommodate the employee's disability.
- (10) Where the employee is incapacitated to a limited degree, the employer shall consider-
- (a) removing those duties the employee cannot perform and if possible adding less onerous tasks; or
  - (b) adapting the work environment to accommodate the disability.
- (11) The general test is whether in a particular case the employer can reasonably be expected to accommodate the employee's disability, having regard to –
- (a) the cost practicality and convenience of such steps; and
  - (b) the cause of the employee's incapacity (there is a more onerous duty on an employer where the incapacity arose out of a work-related injury or illness).

(12) Where it is established that the employee's work circumstances or duties cannot reasonably be adapted to accommodate the disability, the employer shall consider the availability of any suitable alternative work.

(13) Suitable alternative work will depend on the circumstances, and may include such factors as –

- (a) whether the incapacity was due to a work-related illness or injury
- (b) the employee's experience and qualification;
- (c) the employee's ability to adapt to a changed working environment.

(14) Where there is a vacancy which the employee could fill with training, such vacancy shall be offered to the employee.

**HIV/AIDS  
Status**

**20.-(1)** No employment shall be terminated merely on the basis of HIV/AIDS status.

(2) HIV/AIDS infected employees shall continue to work under normal conditions in their current employment for as long as they are medically fit to do so.

(3) Where HIV/AIDS infected employee cannot continue with normal employment because of HIV/AIDS related illness, the employer shall endeavour to find alternative employment without prejudice to that employee's benefits.

(4) When an employee becomes too ill to continue in employment, the provisions of this rule or any collective agreement dealing with incapacity on grounds of ill health shall be applied.

**Fairness of  
the  
procedure**

**21.-(1)** The employer shall investigate an employee's incapacity due to ill-health or injury.

(2) The employee shall be consulted in the process of the investigation and shall be advised of all the alternatives considered.

(3) The employer shall consider the alternatives advanced by the employee and, if not accepted, give reasons.

(4) The employee is entitled to be represented by a trade union representative or fellow employee in the consultations.

(5) Prior to decision to terminate the employment of an employee for ill-health or injury, the employer shall call a meeting with the employee, who shall be allowed to have a fellow employee or trade union representative present to provide assistance.

(6) The employer shall outline reasons for action to be taken and allow the employee and/or the representative to make representations, before finalizing a decision.

(7) The employer shall consider any representations made and, if these are not accepted, explain why.

(8) The outcome of the meeting shall be communicated of the employee in writing, with brief reasons.

#### *(vi)* Incompatibility

Incompatibility

22.-(1) Incompatibility constitutes a fair reason for termination. There are two types of incompatibility:-

- (a) unsuitability of the employee to his work due to his character or disposition;
- (b) incompatibility of the employee in his work environment in that he relates badly with fellow employees, clients or other persons who are important to the business.

(2) Incompatibility is treated in a similar way to incapacity for poor work performance.

(3) The steps required as set out in rule 18 of these Rules are applicable, read with changes required by the context. In particular, the employer shall-

- (a) record the incidents of incompatibility that gave rise to concrete problems or disruption;

- (b) warn and counsel the employee before termination. This should include advising the employee of unacceptable conduct; who has been adversely affected by that conduct; and what remedial action is proposed.
- (4) Before terminating employment on this ground, the employer shall give the employee a fair opportunity to-
  - (a) consider and reply to the allegation of incompatibility;
  - (b) remove the cause for disharmony; or
  - (c) propose an alternative to termination

Operational  
requirements

23.-(1) A termination for operational requirements (commonly known Operational as retrenchment) means a termination of employment arising from the requirements operational requirements of the business. An operational requirement is defined in the Act as a requirement based on the economic, technological, structural or similar needs of the employer.

- (2) As a general rule the circumstances that might legitimately form the basis of a termination are -
  - (a) economic needs that relate to the financial management of the enterprise:
  - (b) technological needs that refer to the introduction of new technology which affects work relationships either by making existing jobs redundant or by requiring employees to adapt to the new technology or a consequential restructuring of the workplace:
  - (c) structural needs that arise from restructuring of the business as a result of a number of business related 'causes such as the merger of businesses, a change in the nature of the business, more effective ways of working, a transfer of the business or part of the business.

(3) The courts shall scrutinize a termination based on operational requirements carefully in order to ensure that the employer has considered all possible alternatives to termination before the termination is affected.

(4) The obligations placed on an employer are both procedural and substantive.

The purpose of the consultation required by Section 38 of the Act is to permit the parties, in the form of a joint problem-solving' exercise, to reach agreement on -

- (a) the reasons for the intended retrenchment (i.e. the need to retrench);
- (b) any measures to avoid or minimise the intended retrenchment such as transfer to other jobs, early retirement, voluntary retrenchment packages, lay off etc;
- (c) criteria for selecting the employees for termination, such as last-in-first-out (LIFO), subject to the need to retain key jobs, experience or special skills, affirmative action and qualifications .
- (d) the timing of the retrenchments;
- (e) severance pay and other conditions on which terminations take place; and
- (f) steps to avoid the adverse effects of the terminations such as time off to seek work.

(5) The requirement which the employer is required to adhere to under subsection (1) of section 38.

(6) In order for it to be effective, the consultation process shall commence as soon as the employer contemplates a reduction of the workforce through retrenchment so that possible alternatives can be explored. The process shall allow the union to-

- (a) meet and report to employees;
- (b) meet with the employer; and
- (c) request, receive and consider all the relevant information to enable the trade union to inform itself of the relevant facts for the purpose of reaching agreement with the employer on possible alternative solutions.

(7) The more urgent the need by the business to respond to the factors giving rise to any contemplated termination of employment, the more truncated the consultation process may be. Urgency may not, however, be induced by the failure to commence the process as soon as a reduction of the workforce was likely. On the other hand, the parties who are required to reach agreement shall meet, as soon and as frequently, as may be practicable during the process.

(8) Section 38(2) of the Act provides that into agreement is reached between the parties, the matter shall be referred to mediation by the Commission for Mediation and Arbitration. An agreement reached between the employer and a trade union recognised as the exclusive bargaining agent, is binding on all employees within the bargaining unit in terms of Section 71 (3)( c) of the Act.

(9) The employer may not implement the retrenchment within 30 days of the referral to mediation, unless otherwise agreed between the parties. Once this period has passed, the employer may proceed with the retrenchment unilaterally. The fairness of the employer's actions may be disputed and referred to arbitration, once the mediation fails.

Selection  
criteria

24.-(1) Where one or more employees are to be selected for termination from a number of employees, the criteria for their selection shall be agreed with the trade union. If criteria are not agreed, the criteria used by the employer shall be fair and objective.

(2) Criteria that infringe a right protected by the Act when they are applied can never be fair. These include selection on the basis of union membership or activity, pregnancy or other discriminatory grounds.

(3) Selection criteria that are generally accepted as fair include length of service, the need to retain key jobs, experience or skills, affirmative action and qualifications.

preferen  
ce in  
re-hiring

25.-(1) Retrenched employees shall be given preference if the employer re-hires employees with comparable qualifications, subject to the following:-

- (a) the employee having expressed within a reasonable time from the date of termination, a desire to be re-hired; and
- (b) a time limit on preferential re-hiring shall also ideally form the subject of agreement between the employer and the union.

(2) Where the above conditions are met, the employer shall take reasonable steps to inform the employee, including notification to the representative trade union, of the offer of re-employment.

### (c) SEVERANCE PAY

#### Severance pay

**26.**-(1) When an employment contract terminates, the employer shall pay the employee severance pay at least equal to 7 days basic wage for each completed year of continuous service with that employer, up to a maximum of 10 years.

(2) The employer is not required to pay severance pay if the employment is terminated-

- (a) before the completion of the first year of employment;
- (b) fairly on grounds of misconduct;
- (c) on grounds of incapacity, incompatibility or operational requirements and the employee unreasonably refuses to accept alternative work with the employer or alternative employment with any other employer.

(3) What constitutes an "unreasonable refusal" in sub-rule 2(c) above will depend on the circumstances of each case.

### (d) SUSPENSION

#### Suspension

**27.**-(1) Where there are serious allegations of misconduct or incapacity, an employer may suspend an employee on full remuneration whilst the allegations are investigated and pending further action.

(2) The employee suspended shall be given a written letter of suspension, setting out the reason for the suspension and any terms of the suspension

(3) The reasons for suspension are the following-

- (a) the employee's presence at work may obstruct the investigation: and/or
- (b) the employee's ongoing performance of work duties may present a problem whilst the investigation takes place;

(4) The period of suspension must be reasonable, taking into consideration how long the investigation and the decision on any further action may take.

(5) Notwithstanding the provision of section 35 of the Act, an employee charged with a criminal offence may be suspended on full remuneration pending a final determination by a court and any appeal thereto, on that charge.

### PART III WORKPLACE DISCRIMINATION

#### Elimination of Discrimination

**28.-(1)** Subject to section 7(1) of the Act, the objective of this Part of these Rules is to eliminate discrimination at the workplace and promote equality of opportunity and treatment in employment.

(2) This Part shall guide employers in developing register plans as provided under the Act.

#### Prohibition of Discrimination

**29.-(1)** Employer shall not directly or indirectly, discriminate any employee in any employment policy or practice.

(2) Discrimination may include but not be limited to the list of actors stated under Section 7(4) of the Act.

(3) Harassment of an employee, whether of a sexual nature or otherwise, constitutes a form of discrimination.



(4) Not every differentiation based on one of the listed grounds under Section 7(4) of the Act constitutes discrimination. It is not discriminatory to -

- (a) take affirmative action measures consistent with the promotion of equality or the elimination of discrimination in the workplace;
- (b) distinguish, exclude or prefer any person on the basis of an inherent requirement of the job;
- (c) employ citizens in accordance with the National Employment Promotion Services

Developing  
plan

**30.-(1)** Every employer shall be required to develop and publish at the workplace its plan to prevent discrimination and to promote equal opportunity in employment.

(2) Where there is a recognised trade union in the workplace, the employer shall consult the union in developing the plan and, if possible, incorporate the plan in a collective agreement.

(3) Where there is no recognised trade union in the workplace, the employer shall invite representatives of the employees to participate in developing plan.

(4) The plan shall take into account, all employees entitled to equal opportunity and equal treatment, subject to an assessment of their abilities in relation to the employer's organisational needs.

(5) The plan shall address each of the employment policies or practices described under paragraph (c) of Section 7 (9) of the Act, and contain plans to eliminate any discrimination under each item as follow-

- (a) with regard to recruitment procedures, advertising and selection criteria, an employer may direct that interview panels as far as possible comprise men and women, job adverts highlight any affirmative action policies in existence, or that selection criteria be audited to ensure they strictly relate to the inherent requirements of a job;
- (b) with regard to appointments and the appointment process, an employer may direct that preference in selection be given to suitably qualified candidates from previously disadvantaged groups. These groups include, but

are not limited to, women and people with physical and/or mental disabilities;

- (c) with regard to job classification and grading, remuneration, employment benefits and terms and conditions of employment, the employer may require an audit to ensure these relate strictly to objective criteria, such as the inherent job requirements;
- (d) with regard to the working environment and facilities, the employer may audit that these are non discriminatory that employees with disabilities are not disadvantaged;
- (e) with regard to job assignments, training and development, performance evaluation systems, promotions and transfers, the employer may take steps to ensure these opportunities are determined objectively, without discriminating against any groups or classes of employees; and
- (f) with regard to demotion, termination of employment and disciplinary measures, the employer may audit that these are based on fair and objective criteria.

(6) Collective agreements shall not contain provisions which discriminate against employees in respect of any of the grounds specified under section 7(4) of the Act.

(7) Employers' association and trade unions may not discriminate in the admission or retention of membership or in conducting their affairs.

(8) The employer shall establish a committee, or task an existing committee, to promote the application of the employment discrimination plan in the workplace, including-

- (a) taking all practical measures to foster and communicate understanding and acceptance of the principle of non-discrimination and to promote equality among employees; and
- (b) investigating complaints that the plan is not being observed and, if necessary, making recommendations or decisions about the manner in which discriminatory practices may be corrected.

(9) Application of the plan shall not adversely affect special measures designed to meet the particular requirements of employees who, for reasons such as age, sex, race, disability or marital status, require special protection or assistance.

Direct and  
Indirect  
Discrimination

31.-(1) This Rule aims to eliminate both direct and indirect discrimination.

(2) Direct discrimination occurs where an employee is treated prejudicially on the listed grounds referred to in Rule 30.

(3) Indirect discrimination occurs where a requirement or condition, which on the face of it, appears to be neutral, has the effect of discriminating against a person or category or persons on the grounds listed in Rule 30.

Employer  
Responsibilities

32.-(1) It is primarily the employer's responsibility to ensure that there is equal opportunity in the work place.

(2) The employer shall adopt, communicate, implement, monitor and periodically review policies to eliminate discrimination.

Advertising

33.-(1) An employer shall not unfairly limit advertisements for employment to areas or publications which may exclude or disproportionately reduce the number of applicants on the grounds referred to in rule 30.

(2) An employer shall as far as possible avoid being too prescriptive in the advertised requirements for a job, unless the prescriptions are genuinely required for the position.

(3) An employer using recruitment agencies shall take all reasonable steps to ensure that those agencies subscribe to these Rules.

Selection

34.-(1) Selection criteria and tests shall be analysed from time to time to ensure that they genuinely relate to the job requirements and do not directly or indirectly discriminate against candidates.

(2) Where reasonably possible, the short-listing and interviewing of applicants shall not be done by only one person, and shall also be checked by someone at a more senior level.

(3) Persons responsible for short-listing, interview and selection of candidates shall be given guidance or training on the proper application of the principle of equal opportunity in selection and the dangers of indirect discrimination.

Training

35.-(1) Every employer shall ensure that criteria for selecting Training employees for training, whether for induction, promotion or skill training are not discriminatory.

(2) Every employer shall examine its policies periodically to avoid indirect discrimination.

Performance  
reviews

36.-(1) Every employer shall ensure that the assessment criteria do not discriminate indirectly.

(2) Every employer shall ensure that those responsible for conducting performance review evaluations do not discriminate.

Employee  
Responsibi  
lities

37.-(1) Every employee, in carrying out employment functions, shall not discriminate and shall take action to prevent any discrimination they come across in the workplace.

(2) In order to promote a non-discriminatory work environment, employees shall –

- (a) comply with the plan's measures to avoid discrimination;
- (b) notify the employer or the recognised trade union of any suspected discriminatory conduct; and
- (c) refrain from harassing or victimising employees.

Trade Union  
Responsibilities

38.-(1) Trade union officials and representatives play important roles on behalf of their members in preventing discrimination and in promoting equal opportunity and good employment relations.

(2) Trade unions shall not discriminate by unfairly refusing membership or offering membership or offering less favourable terms of membership on any discriminatory grounds such as those referred to in Section 7(4) of the Act.

(3) Trade unions shall accept that discriminatory conduct by their members may be treated as a disciplinary offence by employers.

(4) Trade unions shall provide training and information for officials and representatives on their responsibilities for equal opportunity, and must co-operate in developing, implementing and monitoring plans to eliminate discrimination and promote equality.

## PART IV

### STRIKES AND LOCKOUTS

Role of strikes  
and lockouts in  
collective  
bargaining

39.-(1) The role of strikes and lockouts in collective bargaining as the core for employer and employees is to resolve matters of mutual interest themselves without outside interference.

(2) Although a measure of last resort, strikes and lockouts are forms of lawfully sanctioned economic pressure in order to resolve disputes of interest between employers and their employees. A strike and a lockout are temporary applications of pressure in the collective bargaining process. Their purpose is not to unnecessarily damage the organisation.

Objective

40.-(1) The object of a strike or lockout is to settle a dispute and shall come to an end if the dispute that gave rise to it is settled.

(2) The dispute may be settled by an agreed compromise or a return to work. An agreed compromise normally shall take the form of a collective agreement.

Matters in respect of which a strike or lockout is permissible

41.-(1) The subject matter of a lawful strike or lockout is limited to disputes of interest only, although it is not normally permissible to strike or lockout in respect of disputes of interest in an essential service. Those disputes are referred to compulsory arbitration, if mediation fails.

(2) Subject to sub-rule (I), a dispute of interest on the other hand is a dispute over a labour matter in respect of which an employee does not have an enforceable legal right and the employee is trying to establish that right by getting agreement from the employer.

(3) For the purpose of this Part, a complaint is defined as a dispute arising from the application, interpretation or implementation of an agreement or contract with an employee, a collective agreement, a provision of the Act or any other Act administered by the Minister of which a dispute of right or a complaint concerns those labour matters that shall be decided by arbitration or the Labour Court:

Provided that, where an employer refuses to give the wage increase demanded by the employee, a dispute over that refusal is a dispute of interest and may only be resolved by an agreement that may be induced by the resort to industrial action.

(4) Dispute of interest may be:

- (a) a dispute over a new collective agreement or the renewal of an agreement;
- (b) a dispute over what next year's wages are going to be;
- (c) a dispute over shorter working hours or higher overtime rates; or
- (d) a dispute over a new retrenchment procedure or recruitment policy;

(5) Dispute of right or a complaint may be the

- (a) Failure to pay an agreed wage;
- (b) to failure to comply with a provision of an employment contract;

- (c) breach of a collective agreement; or
- (d) contravention of the Act.

Procedural  
requirements  
for a lawful  
strike or  
lockouts

42.-(1) Nothing prevents a registered trade union on the one hand and an employer or employers association on the other hand from concluding a collective agreement providing for an agreed procedure for a lawful strike or lockout. In such a case the procedure in the collective agreement shall be followed.

(2) Subject to sub-rule (1), Sections 80 and 82 of the Act contemplate the procedure outlined hereunder in sub-rules (3) to (14) of this rule, before an employer may embark on a lawful lockout or employees may embark on a lawful strike:

(3) The dispute shall be referred to the Commission for Mediation and Arbitration. The Commission shall appoint a mediator who shall attempt to resolve the dispute through mediation within 30 days of the referral.

(4) Where the dispute is resolved, the mediator shall reduce the settlement to writing. The parties to the dispute shall sign the settlement agreement.

(5) Where the mediator at any stage issues certificate that the dispute is unresolved or the dispute remains unresolved for more than 30 days, a party may give the required notice of its intention to commence a strike or lockout in terms of the Act.

(6) The 30 days mediation period is calculated from the date that the dispute is referred. The mediator may extend that period by a further 30 days if the party referring the dispute fails to attend the mediation meeting.

(7) The mediator may shorten the 30 days period if the other party fails to attend. Nothing prevents the parties to the dispute from agreeing between them to lengthen the period.

(8) Where the strike is called by a trade union, the union shall conduct a ballot of its members being called out on strike. A trade union is only permitted to call a strike if a majority of those who voted supported the strike.

(9) The party initiating the action shall give at least 48 hours notice of the commencement of the strike or lockout to the other party. The notice may be given only after the mediation period contemplated in sub-rule( 6) has expired.

(10) The mediator retains jurisdiction over the dispute until the dispute is settled and must continue to try and settle the dispute by mediation after the notice or during the strike or lockout.

(11) Once a dispute has been referred and the procedural requirements of Section 86 of the Act have been complied with, either party to the dispute may commence industrial action, whereas, a trade union may strike in respect of a dispute referred by the employer and an employer may lockout in respect of a dispute referred by the employees, provided they give the required notice referred to in sub-rule (8).

(12) It is possible to have a strike and a lockout at the same time. If the employees engage in a partial stoppage, the employer may institute a lockout in response.

(13) The notice of commencement of the strike or lockout shall state the date and time of the strike or lockout. The object of the notice to strike is to ensure that the employer has the opportunity to shut down the' business without unnecessary harm being done to it.

(14) Where the strike does not commence at the stated time and date or suspended and the employees return to work, a fresh notice shall be given. The object of the notice to lockout is to ensure the employees know in advance from when they shall be prevented from working and not be paid.

(15) Where the intended strike or lockout is to be intermittent, the notice of the commencement of the strike or lockout shall include the dates and times of each stoppage.



(16) Where a strike or lockout is a fresh notice shall be given if the strike or lockout is resumed. That notice shall state the date and time of the resumption of the strike.

Rules  
regulating the  
conduct of  
strikes and  
lockout

**43.-(1)** Where an interest dispute is not resolved at mediation, the mediator shall try to get the parties to agree on rules to regulate the conduct of the strike or the lockout.

(2) The rules shall address the following matters-

- (a) the conduct of strike ballot;
- (b) the notice of the commencement of the strike or lockout;
- (c) places, times and conditions for strikers or locked out employees to assemble on the premises during the strike or lockout
- (d) appointment of representatives responsible for ensuring compliance with the rules and their contact details;
- (e) security of the employer's premises during the strike or lockout;
- (f) commitment to take steps to ensure compliance with the provisions of the Act, this code and any agreed rules; and
- (g) mediation during the strike or lockout in terms of Section 86(8) of the Act.

(3) Even if the mediator doesn't assist the parties in trying to agree these rules, the parties themselves shall attempt to agree on rules to regulate the type of matters set out in sub-rule (2).

Procedure  
for engaging  
in a  
secondary  
strike

**44.-(1)** A secondary strike is a solidarity strike in support of other employees who are on strike (called the primary strike) or who may be subject to a lockout by their employer.

- (a) it is in support of a lawful primary strike;
- (b) it opposes a lockout imposed by another employer against its employees;
- (c) the trade union has given 14 days notice of the commencement of the strike;

- (d) there is a relationship between the secondary employer and the primary employer; and
- (e) the secondary strike is proportional.

(3) The secondary strike shall be lawful if the primary strike is lawful. In order to be lawful, the primary strike shall comply with the provisions of Section 80 of the Act.

(4) The lawfulness of a secondary strike does not depend on the lawfulness of a lockout. A secondary strike may be called in respect of both a lawful and an unlawful lockout.

(5) There shall be a relationship between the secondary employer and the primary employer which may take a range of the following forms:

- (a) the secondary employer may be a supplier or a client of the primary employer;
- (b) the employers may be in the same group of companies; or
- (c) the secondary employer may have shares in the primary employer.

(6) The test in establishing a relationship is always the capacity of the secondary employer to place pressure on the primary employer. It is the necessary pre-requisite for assessing the proportionality of the secondary strike.

(7) The secondary strike shall be proportional taking into account two factors:-

- (a) the effect of the strike on the secondary employer; and
- (b) the possible effect that the secondary strike may have in resolving the dispute giving rise to the primary strike or the lockout.

(8) The trade union calling a secondary strike shall tailor the secondary strike in such a way as to limit the harm to the secondary employer, while applying pressure on the primary employer.

Termination of  
strikers

**45.-(1)** Subject to section 83 (2) of the Act, protection against termination does not extend to strike related misconduct such as violence, malicious damage to property.

(2) The ordinary Rules relating to termination of employment for misconduct shall apply to an employee charged with this kind of misconduct.

(3) It may be fair to terminate the employment of a striker engaged in unlawful strike. The fairness of the termination depends on a number of factors provided under these Rules.

Role of the  
Police

**46.-(1)** The police shall apply any policy and guidelines on strikes and lockouts issued by the Minister responsible for public safety and security.

(2) As a general rule, police shall only intervene if there is a breach of the peace or law, particularly if there is a threat of violence or damage to property.

(3) The police shall have no responsibilities of enforcing the Act or orders of the Labour Court. Enforcement of a court order is a matter for the courts and its officers, although the police may assist officers of the court in serving the order if there is a breach of the peace.

(4) The police may arrest persons who engage in violent conduct or are armed with dangerous weapons and take steps to protect the public, if they are of the view that the strike or lockout is not peaceful and is likely to lead to violence. It shall not be the function of the police to take any view of the merits of the dispute giving rise to the strike.

Role of private  
security  
personnel

**47.-(1)** Private security personnel may be employed to protect the property of the employer and to ensure the safety of people on the employer's premises.

- (2) The private security personnel shall have no responsibility of enforcing the Act or any order of the Labour Court.
- (3) Enforcement of a court order is a matter for the courts and its officers

Information  
and education

**48.-(1)** The Minister shall ensure that-

- (a) Copies of these Rules are accessible and available to all, especially the employees and employers to whom it applies; and
- (b) these Rules are known by, and available to, organs responsible for enforcement of public order

(2) Employers and employers' associations shall include the subject of strikes and lockouts in their orientation, education and training programmes of employees.

(3) Trade unions shall include these subjects in their education and training programmes for shop stewards, officials and members.

**PART V**  
**COLLECTIVE BARGAINING**

Applying the  
Rules

**49.-(1)** The purpose of these Rules, is to guide trade unions, employers and their associations on how to exercise their rights and give effect to their obligations to bargain collectively by -

- (a) summarizing the important provisions of the law; and
- (b) providing guidelines on good practice.

(2) Employees, employers, trade unions, employer's organisations, mediators, arbitrators, assessors, Judges and officials in the Ministry on interpreting or applying the law shall take the Rules into account.

(3) The provisions of these Rules do not impose any hard and fast obligations on any party, the legal obligation may be to justify a departure from the provisions of a Rule.

(4) A party may depart from these provisions if circumstances warrant it, but it have to justify the departure.

(5) Subject to sub-rule (4), justification for departure may be-

(a) the size of the employer, if employer with only one employee would not be expected to enter into a recognition agreement;

(b) the nature or location of the employer's premises may justify special rules in respect of organisational rights, there may have to be special rules regulating trade union access where the employees reside on the premises; or

(c) the nature of the employer's business there may have to be special rules regulating trade union access to high security premises such as a diamond mine.

(6) Resolution of labour disputes may be solved through negotiation and collective bargaining.

(7) Collective bargaining may take place at one workplace or at a number of workplaces, and may involve one employer, a number of employers or an employers' association.

(8) A trade union that represents the majority of employees is entitled to be recognised as the exclusive bargaining agent.

(9) A collective agreement may determine the bargaining unit in a manner that is different to the rules suggested in this Rule, but the agreement may not do away the right to be recognised as the exclusive bargaining agent.

**(a) RECOGNITION**

**Recognition  
and objectives**

**50.**-(1) All employer or employer's association shall recognise a trade union as a collective bargaining agent of its employees.

(2) A recognised trade union engages with the employer or employers' association with the following objectives to -

- (a) represent employees in their dealings with their employer;
- (b) negotiate and conclude collective agreements; and
- (c) prevent and resolve labour disputes.

(3) A bargaining unit or a recognised constituency may be restricted to the trade union's members or it may be for specific categories of employees with similar economic or business interests, in which employees with similar agree on an appropriate bargaining unit.

(4) It is only trade union entitled to represent the employees in the bargaining and where if two unions together represent the majority of the employees in the bargaining unit and they seek recognition jointly as the exclusive bargaining agent. the exclusivity shall applies to both trade unions.

(5) Members of senior management who by virtue of their position are responsible for determining policy on behalf of the employer and who are authorised to conclude collective agreements on behalf of the employer shall not be member of a trade union.

(6) Nothing in the Act prevents registered trade unions, on the one hand, and employers or employer associations, on the other, from establishing their own collective bargaining arrangements by collective agreement.

(7) An employer may recognise a registered trade union without the union being a majority.

Provided that if the bargaining unit attain majority membership, all employees including those who are not belonging to the trade union shall be members of the trade union.

Applying for  
recognition

**51.-(1)** A registered trade union before being recognised as an exclusive bargaining agent in respect of a proposed bargaining unit, it shall fill in the prescribed form and service it to in employer or employer association.

(2) In the application, a registered trade union shall-

- (a) describe the proposed bargaining unit, taking into account the factors referred to in sub-rule 5: and
- (b) provide documentary proof that it is representative, and may attach an authorizations to deduct trade union dues signed b employees in the bargaining unit, other documentary proof of membership or by a petition signed by employees.

(3) The employer shall meet with the trade union to discuss the application within 30 days and, if possible, conclude a collective agreement recognising the trade union as specific in a model recognition agreement as a guide for the parties to discuss, set out in the schedule to these Rules.

(4) Where the employer does not meet within the 30 days or the employer and trade union fail to conclude a collective agreement, the union may refer the dispute to the Commission.

(5) The employer may refuse to recognise the union on the following grounds-

- (a) the union does not represent a majority of the employees in the bargaining unit;
- (b) the employer and the union cannot agree on the appropriate bargaining unit;
- (c) the Labour Court has authorised the withdrawal of recognition in terms of Section 69 of the Act and the period contemplated in the order has not expired; or
- (d) the employees that the union seeks to represent are members of senior management.



(6) The term "Senior Management" means an employee who, by virtue of that employee's position makes policy on behalf of the employer and is authorised to conclude collective agreement on behalf of the employer.

(7) Where the dispute remains unresolved after 30 days of the referral, the union may refer the dispute to the Labour Court for its decision in terms of Section 67 of the Act.

(8) Where the dispute concerns the representativeness of the union, the Court may direct the Commission to conduct a ballot, the Court has the power to make a recognition order compelling an employer to recognise a representative and registered trade union within a determined bargaining unit.

(9) The process for recognition in respect of a number of employers or an employers' association is the same as that outlined above.

Determination  
of a  
bargaining  
unit

**52.-(1)** When recognising a trade union as an exclusive bargaining agent, the issue of which employees the union is to represent in collective bargaining inevitably arises.

(2) There may be separate bargaining units for professional and non-professional employees.

(3) For the purpose of avoiding conflicts of interest senior managers who are responsible for determining policy and authorized to conclude collective agreements with a union are normally excluded from a bargaining unit.

(4) The facts identified to assists unions, employers, mediators, arbitrators and the courts in determining an appropriate bargaining unit are the following-

- (a) the wishes of the part;
- (b) the bargaining history of the party;

- (c) the size and significant of membership of union organisation in certain categories of employees;
- (d) the employees shares similar terms of employment or similar conditions of work, that points to a single bargaining unit;
- (e) the employer has separate workplaces and the terms and conditions are left to the discretion of the managers of those workplaces, which points to separate bargaining units. If however the decisions are made at head office, that points to a single unit;
- (f) the employer's operations effectively divided into separate business (pointing to a single unit); and
- (g) An employer has several separate places of work close together that points to a single unit. But if the places of work are far away from each other or in different towns, that points to separate bargaining units.

Withdrawal  
of recognition

53.-(1) Where a registered trade union is recognised as an exclusive bargaining agent and it no longer represents the majority of the employees in the unit, the employer shall give the union an opportunity to acquire a majority within 3 months.

(2) Where it does not acquire a majority, the employer shall withdrawal recognition as an exclusive bargaining agent.

(3) Notwithstanding the provision of sub-rule (2) the employer may continue to recognise the trade union in respect of its members but not as an exclusive bargaining agent in respect of all employees within the bargaining unit.

(4) Subject to Section 69(4) of the Act, the Commission may be called upon to conduct a ballot, of the effected person.

(5) Where a party to a recognition agreement or recognition order materially breaches the agreement or Labour Court order, the other party may apply to the Commission for Mediation and Arbitration for mediation. If mediation fails, any party may refer the dispute to the Labour Court for an appropriate order.

(6) A material breach includes-

- (a) the refusal to negotiate in good faith
- (b) the refusal or failure to comply with an arbitration award or an order of the Labour
- (c) the refusal or failure to comply with a collective agreement

Duty to  
bargain in  
good faith

**54.-(1)** Bargaining in good faith requires the parties to explore issues with an open mind and with the intention to reach an agreement.

- (2) Subject to sub-rule (2), conduct is consistent with bargaining in good faith in-
- (a) respecting the representatives of the parties:
  - (b) preparing for negotiations in advance, which entails developing proposals and securing mandates for those proposals:
  - (c) retaining consistent representation during the negotiation process, unless there are good reasons for not doing so;
  - (d) attending meetings timely:
  - (e) motivating any proposals made:
  - (f) considering proposals made by the other party and, if not accepted, give reasons why they are not accepted;

(3) Where parties cannot be compelled to reach agreement, conduct which leads to an inference that the party concerned has no genuine desire to reach agreement may, constitute bargaining in bad faith. Bargaining in bad faith may be inferred from the conduct-

- (a) making grossly unreasonable demands;
- (b) refusing without good reason, to make concessions;
- (c) refusing to disclose relevant information that is reasonably required for collective bargaining;
- (d) being insulting, derogatory or abusive in negotiations;
- (e) delaying negotiations unnecessarily;
- (f) imposing unreasonable conditions for negotiations to proceed;
- (g) by-passing the representatives of the parties in the collective bargaining process;
- (h) engaging in unilateral action such as the unilateral alternation of terms and conditions or industrial action before negotiations have been exhausted.

(4) Negotiations are exhausted if both parties agree or one party declares deadlock after-

- (a) that party has genuinely sought to reach agreement but failed to do so after a reasonable period;
- (b) the other party conducts itself in a manner from which it may be inferred that it no longer wishes to bargain; and
- (c) the other party bargains in bad faith.

(5) A party that bargains in bad faith may not rely on its own conduct to terminate the bargaining process and declare deadlock.

(6) Where the innocent party does not declare a deadlock, the defaulting party may not implement its proposals or engage in industrial action.

(7) Any party in the bargaining process may refer a dispute concerning a failure to bargain in good faith to the Commission for mediation.

(8) Where the dispute is not settled through mediation, the dispute may be referred to the Labour Court for its decision.

(9) Where a party bargains in bad faith, the other party need not continue negotiations and its duty to bargain in good faith is met.

**Bargaining  
matters**

**55.**-(1) Subject to the provisions of Section 68 of the Act, bargaining matters include-

- (a) wages, salaries and other forms of remuneration;
- (b) terms and conditions of employment;
- (c) allowances and employment benefits;
- (d) employment policies and practices concerning the recruitment, appointment, training, transfer, promotion, suspension, discipline and termination of employees;
- (e) the collective bargaining relationship including
  - (i) organisational rights;
  - (ii) negotiation and dispute procedures;
  - (iii) grievance, disciplinary and termination of employment procedures; and
- (f) any other agreed matters.

- (a) the terms stated or implied in a contract or employment such as the hours of work, leave, duration, notice periods; and
- (b) the conditions normally associated with employment such as rules regulating behaviour in the workplace, canteen facilities, health and safety.

(3) The greater involvement of the trade union in employer's decisions that affect employees carries with it the additional responsibilities of co-operation and confidentiality.

(4) Where however the decision may have an employment related consequence such as retrenchment, the employer shall negotiate or consult with the union over the employment related consequences.

Disclosure of  
information

**56.-(1)** An employer is to disclose to a recognised trade union all the relevant information that is reasonably required to allow the union to represent its members in consultations and collective bargaining with the employer or employers' association.

(2) An employer shall not be required to disclose information that-

- (a) is legally privileged;
- (b) the employer cannot disclose without contravening a prohibition imposed on the employer by any law or court;
- (c) is confidential and, if disclosed, may cause substantial harm to the employee or the employer; and
- (d) is an employee's private personal information, unless the employee consents to the disclosure of that information.

(3) The purpose of disclosure is to make the negotiation or consultation process as rational as possible, to ensure good faith during bargaining and to develop trust between the bargaining parties.

(4) As a general rule, the employer is obliged only to disclose information that is relevant. Information is generally relevant if it is likely to influence a party's views on a matter being discussed.

(5) The following information may be relevant in negotiations-

(a) remuneration and benefits issues:-

- (i) reward policies and systems;
- (ii) job evaluation systems and grading criteria;
- (iii) earnings according to grade, department, workplace, sex, race, casual workers, giving if appropriate the distributions and make-up of remuneration showing any additions to the basic rate;
- (iv) the total wage bills; and
- (v) details of fringe benefits and total labour costs;

(b) Conditions of service issues-

- (i) policies on recruitment, redeployment, redundancy, training, affirmative action, promotion and appraisal systems; and
- (ii) health, welfare and safety matters;

(c) performance issues-

- (i) productivity and efficiency records;
- (ii) savings from increased productivity and output;
- (iii) return on capital invested; and
- (iv) sales and state of order book;

(d) labour force issues:-

- (i) number of employees analysed according to grade, department, location, age, sex, race or any other appropriate criterion;
- (ii) labour turnover;
- (iii) absenteeism;
- (iv) overtime, short-time;
- (v) lay-offs;
- (vi) planned changes in work methods, materials or equipment; and
- (vii) available manpower plans;

(di) Confidential information is information that the employer regards as confidential in order to protect its interests or the interests of those associated with its business such as its employees, customers, suppliers and investor.

(7) Information shall be confidential if when disclosed may cause substantial harm to an employee or employer such as-

- (a) the employer losing customers to competitors;
- (b) suppliers refusing to supply necessary material or services;
- (c) banks refusing to grant loans; or
- (d) the employer not being able to raise funds to finance the business.

(8) The employer may not disclose private personal information found in an employee's employment file unless the employee consents or an arbitrator or court requires it to do so.

(9) Trade unions shall identify and request information in advance of negotiations, if practical.



(10) In order to avoid misunderstandings and cause unnecessary delays, trade unions shall-

- (a) frame their requests for information in writing and as precisely as possible;
- (b) include motivating for the information taking into account the matters raised in this Rule;
- (c) give the employer sufficient time to prepare and submit the information requested, taking into account whether there is likely to be a dispute over disclosure.

(11) Any dispute over the disclosure of information shall be referred to the Commission as provided under Section 70 of the Act, which shall refer that dispute for mediation.

(12) Where the dispute is not settled, any party may refer the dispute to the Labour Court for a decision.

#### Duty of fair representation

**57-(1)** The duty to bargain in good faith places a responsibility on a recognised trade union to fairly represent employees within the recognised bargaining unit.

(2) The duty of fair representation imposes the following duties on a recognised trade union in respect of employees within the bargaining unit who are non union member:-

- (a) the union cannot refuse to represent non-union members;
- (b) the union may not discriminate against non-union members; and
- (c) the union may not enter in collective agreements that favour its members at the expense of non-union members.

(3) Any dispute over fair representation shall be processed as a dispute about the duty to bargain in good faith, and shall be referred to the Commission.

(4) Where the dispute is not settled, any party to the dispute may refer the dispute to the Labour Court for a decision.

## (b) COLLECTIVE AGREEMENTS

### Agency of shop agreements

**58.-(1)** As a consequence of a duty of fair representation imposed on a recognised trade union, the union and the employer may agree to implement an agency shop agreement within a recognised unit, in terms of which employees within that unit who are non union members may be obliged to pay an agency fee to the trade union of not more than the amount of the union subscription.

(2) In order for an agency shop agreement to be binding it has to comply with the following requirements that-

- (a) the agency fees collected from non-union members shall be paid into a separate account administered by the union;
- (b) the monies in that account may only be used to advance and protect the socio-economic interests of the employees in that workplace;
- (c) the socio-economic interests of workers including labour matters affecting employment or labour relations, worker education, scholarships, contributions to political parties or any person standing for public office is prohibited.

(3) An agency shop agreement shall be suspended if the trade union is not a representative and its recognition is withdrawn in terms of Section 69 of the Act, the agency shop is automatically terminated.

SCHEDULE

CONTRACT OF EMPLOYMENT

This agreement is made

BETWEEN

.....  
(hereinafter referred to as the "Employer")

Physical, Postal and e-mail Address  
of the Employer: .....  
.....

AND

.....  
(hereinafter referred to as the "Employee")

Age: ..... Sex:.....

Physical, Postal and e-mail Address of the  
Employee:.....

1. COMMENCEMENT

This contract shall commerce on ..... and continue until  
lawfully

2. PLACE OF RECRUITMENT

.....

### 3. PLACE OF WORK

.....

### 4. JOB DESCRIPTION

4.1 Job title:.....

4.2 Duties:.....

.....

.....

.....

### 5. PROBATION

This contract is subject to a probationary period of ..... weeks/months starting from the commencement date of employment. The purpose of this probationary period is to assess whether the employee has the capacity or compatibility required for the job. Where the contract is terminated during the first month of employment, seven days' written notice is required.

### 6. REMUNERATION

6.1 The employee's basic wage shall be... ..... per day/week/month.

6.2 The employee shall be entitled to the following allowances/payments in kind/bonuses:.....

.....

6.3 The remuneration shall be .....per day/week/month.

6.4 The wage period is weekly/monthly and the wages shall be paid on

.....

6.5 The employee agrees to the following deductions:

.....

### 7. HOURS OF WORK

7.1 The ordinary daily working period shall be from.....a.m to... p.m

7.2 The ordinary working commences on.....and  
ends on.....

7.3 Overtime may be worked when agreed.

7.4 The employee shall be paid overtime at the following rate:-

.....

### WORK DURING REST PERIODS

Where the employee works during a weekly rest period, the employee shall be paid double the basic wages for the period worked.

### PUBLIC HOLIDAYS

9.1 The employee shall be entitled to a basic pay for each paid public holiday.

9.2 Work on a paid public holiday shall be agreed

9.3 Where the employee works on a public holiday, the employee shall be paid double the basic wage for each hour worked on that day.

### ANNUAL LEAVE

10.1 The employee is entitled to 28 consecutive days paid leave during each leave cycle. These days shall be inclusive of any public holidays falling within the leave period. A leave cycle for the purpose of annual leave means a period of 12 months consecutive employment from the commencement date of employment or the completion of the last leave cycle.

10.2 The employee's leave shall be taken from.....to ..... or at other time determined by the employer after consultation with the employee.

10.3 The number of days may be reduced by the number of days of occasional leave granted at the request of the employee.

10.4 Leave pay shall be paid in advance of leave.

10.5 The employer shall not require nor permit an employee to work for the employer during any period of annual leave.

### SICK LEAVE

11.1 Subject to Section 32 of the Act, the employee is entitled to 126 days paid sick leave in any leave cycle, if supported by a medical certificate on each occasion when sick leave is taken. Payment by the employer shall however not be required if the employee is entitled to paid sick leave under any law, fund or collective agreement.

11.2 Payment for sick leave shall be calculated as follows:-

- (a) the first 63 days shall be paid at the basic wage; and
- (b) the second 63 days shall be paid at half the basic wage.

11.3 For the purposes of sick leave, a leave cycle means a period 36 months consecutive employment from the commencement of date of employment commenced or the completion of the last 36 month leave cycle.

11.4 The employee shall notify the employer as soon as possible in the event of absence from work through illness.

### 12. PATERNITY AND MATERNITY LEAVE

The employee shall have the rights to maternity or paternity leave

### 13. TERMINATION OF EMPLOYMENT

13.1 This contract may be terminated by either party giving the other ..... weeks/months notice.

13.2 Notice shall be given in writing than the minimum period specified stating the reasons for termination and the date on which the notice is given.

13.3 Upon termination of the contract of employment, the employer must furnish the employee with a prescribed certificate of service.

14. SEVERANCE PAY

14.1 The employee shall be entitled to severance pay of not less than seven days basic wage for each completed year of continuous service up to a maximum of ten years, where employment is terminated by the employer and the employee has completed a minimum of 12 months continuous service.

14.2 The employee shall not be entitled to severance pay if the termination of employment was on grounds of-

14.2.1 misconduct; or

14.2.2 incapacity, incompatibility or operational requirements, and the employee unreasonably refuses to accept alternative work or employment.

15. OTHER CONDITIONS OF EMPLOYMENT OR BENEFITS

16. APPLICATION OF THE ACT

16.1 This Agreement shall be interpreted and applied in accordance with the provisions of the Act.

16.2 Where any conflict arise between this Agreement and the Act.  
The provisions of the Act shall apply as if it is a term of this Agreement.

16.3 The employee shall be entitled to any other benefits stipulated by the Act even if not stated in this Agreement or as agreed between the parties.

SIGNED:

\_\_\_\_\_  
EMPLOYEE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
EMPLOYER

\_\_\_\_\_  
DATE

- This contract shall be produced in two authentic copies, to be signed by both parties, one by the employer and the other by the employee.



Form No.....

RECOGNITION AGREEMENT  
CONCLUDED  
BETWEEN

\_\_\_\_\_("The Employer")

AND

\_\_\_\_\_("The Union")

GENERAL PRINCIPLES

1.--(1) The employer and the union enter into this agreement to facilitate co-operative labour relations and to give effect to the parties' rights and obligations.

(2) The employer and the union agree that fair labour relations are essential for the effective functioning of the organization and for the benefit of the parties to this agreement and all employees.

(3) The parties agree that, whilst their interests may differ, they will use their best efforts through discussion, consultation and negotiation to resolve any differences or disputes which may occur. They agree to deal with each other in good faith in accordance with this agreement, in seeking mutually acceptable solutions to differences or disputes which occur.

(4) The parties endorse the principle of freedom of association and recognize the right of employees to belong to the union of their choice. No action shall be taken by either party to interfere with these rights.

(5) The employer recognises the right of the union to run its own affairs in accordance with its constitution, and to work for improved conditions of employment for its members. In doing so, the union shall comply with the terms of this agreement and any other agreement between the parties obligations imposed by law.

(6) The union recognises the employer's rights to manage its business. In doing so, the employer will comply with the provisions of this agreement and any other agreement between the parties obligations imposed by law.

(7) The parties undertake not to discriminate on any ground or any other arbitrary ground such as union membership.

(8) The parties recognise that it is their common objective to ensure the efficient running and growth of the organisation from which all parties shall benefit.

(9) The employer's management and the union leadership, including union representatives, undertake to encourage their constituencies to act in the following ways:-

- (a) to treat one another with respect and courtesy
- (b) to act in ways which develop trust;
- (c) to be participative and proactive in responding to challenges
- (d) to work as partners to develop outcomes which benefit all.

(10) The union acknowledges its responsibilities to ensure that union members and officials understand and comply with all agreements between the union and the employer. The employer acknowledges its responsibilities to ensure that management also understands and complies with all these agreements.

(11) For the purposes of this agreement -

- (a) "days" means all days excluding Saturdays, Sundays and statutory public holidays.
- (b) Unless specifically provided otherwise, words shall be interpreted in terms of the Act.

### RECOGNITION AND REPRESENTATION

2.-{1) For the purposes of this agreement, the "bargaining unit" means employees, other than fixed term contract and casual employees, employed in the following grades/categories - (insert/amend wording if appropriate).

(2) The employer recognizes the union as the exclusive bargaining agent of employees within the bargaining unit provided that the union represents in excess of 50 percentum of employees within the bargaining unit.

(3) The parties agree that the number of valid instructions to deduct union dues from employees' salaries which are being processed by the employer on the union's behalf at any time, shall be the sole measure of the union's representation for the purposes of this agreement'.

### TRADE UNION DUES

3.-{1) A union member may authorize the employer in writing to deduct union subscriptions from his/her salary in terms of the prescribed form.

(2) The employer shall pay the union on or before the seventh day of the next month, the aggregate amounts deducted each month.

(3) The subscriptions collected by the employer shall be forwarded to the union, together with a monthly schedule reflecting-

- (a) a list of names, in the prescribed form of all members from whose salary the employer has made deductions;
- (b) details of the amounts deducted, the employees' place of work and period to which the deduction relates; and
- (c) a list of any employees who have ceased to be contributors since the previous schedule provided, specifying the reasons for the cessation of contributions.

(4) Where the union increases its subscriptions or if it wishes to collect additional levies from its members, the employer shall agree to implement provided that the union gives thirty days notice in writing to the employer and to its members, which shall expire prior to the month in which the increase or the levy is to become effective.

(5) The employer shall not be responsible for the collection of any arrears of subscriptions unless the arrears are the employer's fault.

(6) A union member may cancel the authorization referred to in sub clause (1), by addressing a written instruction to the employer and the union, subject to thirty days notice. The employer shall forward to the union the next monthly schedule referred to in sub clause (3) and a copy of any cancellation instructions received.

### ACCESS

4.-(1) Union officials shall, subject to any conditions regarding time and place that are reasonable and necessary to safeguard life or property or to prevent undue disruption of work. have access to the employer's premises to -

- (a) recruit members;
- (b) communicate with members;
- (c) meet members in dealings with the employer;
- (d) hold meetings of employees on the premises;
- (e) arrange voting in any ballot under the union constitution.

(2) The Union shall obtain the consent of management in advance, to hold general meetings with employees at the employer's premises. Union officials must notify management in advance of their intention to visit the premises.

(3) The employer agrees in principle to make reasonable facilities available to the union for the conduct of its business. The detail of these arrangements shall be discussed between the parties, and any agreements shall be recorded in writing. A notice board shall be provided at the employee's entrance to the employer's premises. for the union's use.

## RECOGNITION OF THE TRADE UNION REPRESENTATIVES

5.-(1) The employer acknowledges the right of union representatives elected in terms of the union's constitution and in accordance with sub clause (2) of this agreement, to represent the interests of union members by performing the functions provided under in Section 62(4) of the Act. (2) All union representatives shall act in a manner that attempts to promote the objectives of this agreement.

(2) All union representatives shall act in a manner that attempts to promote the objectives of this agreement.

(3) A union representative shall obtain the consent of a manager, in advance where duties as a union representative will take the representative away from normal work duties. This consent shall not be unreasonably withheld.

(4) Subject to the provisions of this agreement, a union representative shall at all times comply with terms and conditions of employment, and shall be subject to the same standards of discipline and performance that are applicable to other employees.

## ELECTION

6.-(1) Union representative shall be elected to represent union members at the Employer's premises in terms of the constituencies set out in annexure A. The union constitution shall govern the nomination, election and term of office of the Union representatives, provided that Union representatives elected shall be employed within the bargaining unit.

(2) Elections shall be held during working hours by a secret ballot on the Employer's premises. The arrangements for conducting the elections shall be agreed between the union and management prior to elections.

(3) Management may observe ballot proceedings but undertakes not to interfere in the election of union representatives. Elections may be conducted by a union official or any other union office bearer as defined in its constitution.

(4) The number of women trade union representatives shall be broadly in accordance with the level of women representation within the bargaining unit.

(5) Whenever a union representative vacates his position during a term of office, a by election shall be held. The union representative elected to take that person's place will hold office for the unexpired term of office.

## RIGHTS

7.-(1) Union representative shall have the right to represent union members during working hours in terms of this agreement, without loss of pay or fear of victimization. Union representatives shall be entitled to reasonable paid time off to perform the functions specified in Section 62(4) of the Act.

(2) Union representatives shall be entitled to hold a meeting with union members on the employer's premises during working hours once a month and that meeting shall not last longer than one hour. Union representatives shall be entitled to meet for one hour during working hours during the week preceding the meeting, to prepare.

(3) The employer shall provide union representatives with the use of an office to perform their duties in terms of this agreement.

(4) A union representative shall not be subjected to a disciplinary hearing, unless live days prior written notice has been given to the union.

### LEAVE

8.-(1) Each union representative shall be entitled to take paid leave for union business including training, conventions and conferences, for a maximum of ..days' per annum, provided the union's written confirmation of the reason for the leave is provided and management's consent has been granted in terms of sub clauses (2). Additional leave may be granted whether paid or unpaid or by agreement between the parties.

(2) Union representatives shall obtain written consent from management if they wish to take time off in terms of sub clause (1), at least five days prior to the date on which leave is required, and this permission shall not be unreasonably withheld.

### JOINT LABOUR RELATIONS TRAINING

9.-(1) The employer and the union agree in principle to joint labour relations training for managers and union representatives, and shall meet to discuss such training. They shall attempt to agree on the content of joint labour relations courses and the facilitators to be used.

10.-(1) The employer shall disclose to the union all relevant information that will allow the union to engage effectively in consultation and/or negotiation<sup>4</sup> and to perform its functions in terms of this agreement.



- (2) Any request for information by the union shall be made in writing.
- (3) The employer is not required to disclose information that:-
  - (a) is legally privileged;
  - (b) the employer cannot disclose without contravening a prohibition imposed on it by any law or order of Court;
  - (c) is confidential and, if disclosed, may cause substantial harm to an employee or to the employer; and
  - (d) is private personal information relating to an employee, unless that employee consents in writing to the disclosure of that information.

### NEGOTIATION AND CONSULTATION

11.-(1) A meeting between the Union representatives and management shall be held once every month, provided that this may be varied by an agreement between the parties.

- (a) the purpose of these meetings is to enable the parties to communicate, consult and negotiate on issues affecting the employment of the Union's members.
- (b) the parties shall provide written notification to each other at least five days before the date of a meeting (unless otherwise agreed between them), of the issues they wish to raise, thereby enabling both parties to adequately prepare for the meeting. At the beginning of each meeting, the parties shall discuss and attempt to reach an agreement on the agenda for that meeting.
- (c) meetings shall take place on the employer's premises and shall

commence during normal working hours. Management shall record the minutes of the meetings and circulate them within five days after the meeting, and these minutes shall be approved at the next meeting.

- (d) union officials shall be entitled to attend these meetings, provided that at least two days prior written notice has been given to management.

(2) Negotiations shall take place once a year between the union (represented by its officials and representatives) and the employer, unless agreed otherwise between the parties, for the purposes of negotiations on wages and other substantive conditions of employment:-

- (a) the parties agree to commence wage negotiations at least two months before the normal annual wage review date.
- (b) the parties shall, at least ten days before the date of the first negotiating meeting "(unless agreed otherwise between them), provide written notification to each other of issues they wish to raise, thereby enabling them to adequately prepare for the negotiations.
- (c) annual wage negotiations shall take place at the Employer's premises and shall commence during normal working hours. Management shall record the minutes of each meeting and circulate them within five days after the meeting, and these minutes shall be approved at the next meeting.

(3) In monthly meetings (sub-clause (1) above) and the annual wage negotiations (sub-clause (2) above), the parties shall meet as often as they agree to be necessary to resolve issues. The parties agree to work together to ensure the efficient conduct of these meetings. Any agreements concluded shall be reduced to writing and signed by the representatives of the parties and shall be binding for the period stipulated in the agreement.

(4) Union representatives shall provide feedback to union members on negotiations and any agreements concluded, in terms of sub-clause (2) of this Agreement. Additional feedback meetings on company premises may be agreed between the parties. A copy of any agreements reached between the parties shall be displayed on the notice board referred to in clause 4(3) of this Agreement, unless otherwise agreed between the parties. The employer shall have the right to communicate with its employees at any stage.

(5) The parties shall use their best endeavours to reach a consensus during negotiations as quickly and as effective as possible. If a consensus has not been reached or concluded within a minimum of two meetings, either party may declare a dispute in terms of clause 12 below provided that the parties may agree to continue to meet without declaring a dispute, notwithstanding two or more meetings having being held.

### DISPUTE PROCEDURE

12-(1) The Employer and the Union shall negotiate in good faith and use their best endeavours to reach mutually acceptable solutions to all disputes which arise between them and they shall consult each other when they anticipate that disputes may arise.

They agree to use the procedure below in an attempt to settle disputes which arise through negotiations in terms of this clause.

(2) Either party may declare a dispute in writing to the other party setting out the nature of the dispute and a proposed settlement.

(3) The party receiving a declaration of dispute in terms of sub clause (2), shall within five days respond in writing, setting out its understanding of the nature of the dispute and its proposed settlement.

(4) Within ten days of the declaration of the dispute or on a mutually agreed date, a meeting shall be held between the parties in an attempt to resolve the dispute. Further meetings may be held by mutual agreements between them and the parties shall use their best endeavours to resolve the dispute.

(5) The parties recognize their commitment in terms of clause 13 to minimize the possibility of industrial action and undertake to consider referring unresolved disputes to mediation, arbitration (whether of a binding or advisory nature), or any other constructive method for resolving a dispute.

(6) Notwithstanding anything else contained in this Agreement, either party may use the dispute procedures of the Act: -

- (a) if negotiations are deadlocked and both parties agree to use those procedures; or
- (b) since the dispute was declared, the parties have met on at least two occasions or fifteen days have elapsed, and agreement still has not been reached; or
- (c) if the other party is in breach of its obligations in terms of this Agreement or in law.

(7) The parties shall use their best endeavours to resolve disputes between themselves without having to resort to the Act. Even if the dispute machinery in the Act has been invoked, the parties may continue to meet in an attempt to resolve the dispute.

### STRIKES AND LOCKOUTS

13.-(1) The employer and the union agree that they shall not cause, take part in or support any industrial action, without first exhausting the negotiation and dispute procedures in this agreement and thereafter having complied with the requirements of the Act. For the purposes of this agreement, "industrial action" means a strike or lockout as defined in the Act.

(2) The union undertakes to take all reasonable steps to ensure that its officials and members do not breach the provisions of this agreement, and the employer similarly undertakes to take all reasonable steps to ensure that its management does not breach the provisions of this agreement. Both parties agree to take all reasonable steps to remedy any breach that may occur.

(3) Either party shall be entitled to exercise its rights to deal with misconduct or criminal conduct or serious breaches of this agreement during industrial action.

(4) Where the union engages in a strike in accordance with Part VII of the Act, it shall:-

- (a) allow non-striking employees to continue working without unlawful interference:
- (b) allow the employer to continue with its ordinary business, including access to

and exit from the employer's premises by staff, customers, suppliers and any other third parties;

- (c) not, either on or of the employer's premises, intimidate, threaten or harass any non-striking employees or any other persons;

(5) The union and/or its members shall, during industrial action, leave the employer's premises immediately if requested to do so by the employer. The union and/or its members shall not unlawfully occupy the employer's premises.

(6) The parties agree that it is vital that contact be maintained between the employer and the union during any industrial action. For this purpose, the employer and the union shall within 24 hours of any notification of industrial action having been given advise each other of the name and telephone contact details of their duly authorized representative(s) who will be contactable at all times during any industrial action.

(7) Where union members participate in a strike in contravention of this agreement or the Employment and Labour Relations Act, 2004 then the following shall apply-

- (a) the employer shall as soon as possible advise the union, and shall afford the union an opportunity to remedy the breach;
- (b) the employer may issue an ultimatum in clear and unambiguous terms, stating what is required of the employees concerned and what sanction will be imposed if they do not comply with the ultimatum. The employees should be allowed sufficient time to 'reflect on the ultimatum and respond to it.

(8) Where repeated or intermittent industrial action occurs, or if circumstances are such that the employer cannot reasonably be expected to do so, the employer shall not be required to comply with the requirements set out in clause 9(7).

(9) Where either party causes, participates in or supports industrial action which is unlawful or in breach of this agreement, the other party shall have the right to use any lawful means to protect its interests.

### **BREACH AND TERMINATION**

14.-(1) This agreement shall come into operation effective on the date of signing

(2) This agreement may be terminated as follow;

- (a) after the expiry of three calendar months of either party giving the other written notice of termination of the agreement; or
- (b) if the employer gives written notice to the Union that its representation may have fallen below 50 percentum of the bargaining unit, and the union fails to substantiate its membership as being in excess of 50 percentum within three calendar months, the employer shall be entitled to summarily terminate this agreement by way of a written notice to the union.

(3) If a party (the defaulting party) fails to fulfill any of its obligations in terms of this agreement and subsequently fails to remedy the breach within five days of receiving written notice of the breach from the other party (the aggrieved party), the aggrieved party shall be entitled to refer a dispute to mediation by the Commission. If mediation is unsuccessful, either party may refer the dispute to the Labour Court.

## ADDRESSES AND NOTICES

15.-(1) For the purposes of this Agreement, the giving of notices and the serving of legal processes, including requests for meetings the parties choose the physical localities at which documents may be served:<sup>5</sup>

EMPLOYER:.....

UNION:.....

(2) The parties may at any time change their stated address by notice in writing, provided that it includes a physical address at which documents may be served.

(3) Any document served in connection with this Agreement shall be delivered by hand, sent by prepaid registered post, or sent by fax. If sent by registered post, it shall be deemed to have been received on the 7<sup>th</sup> day after posting.

## GENERAL

16.-(1) No relaxation or indulgence which the employer or the union may grant to the other party shall constitute a waiver by the former of any of its rights under this agreement.

(2) This agreement constitutes the entire agreement between the parties and no amendments shall be binding unless the amendment is reduced to writing and signed by both parties.

Dated at.....This .....day of.....



WITNESSES:

1. \_\_\_\_\_
2. \_\_\_\_\_

.....  
For and on behalf of the  
Union

WITNESSES:

3. \_\_\_\_\_
4. \_\_\_\_\_

.....  
For and on behalf of the  
Union

\_\_\_\_\_  
Details must be inserted

## **GUIDELINES FOR DISCIPLINARY, INCAPACITY AND INCOMPATIBILITY POLICY AND PROCEDURES**

### **INTRODUCTION**

1.-(1) The purpose of these guidelines is to provide for a fair procedure to be applied-

- (a) if the conduct of an employee is unacceptable;
- (b) if an employee is incapable of rendering satisfactory service due to ill health injury or poor work performance; or
- (c) in cases of incompatibility,

(2) Employees are expected to carry out their duties effectively and conduct themselves in a reasonable manner so that any act shall at all time be in accordance with the policies and rules existing within an organization.

(3) An employer shall apply disciplinary measures where possible in a corrective manner, and ensure that employees comply with the rules and policies governing their employment.

(4) This procedure serves as a guide and should be implemented in a specific not provided for in these rules in a flexible manner. Management may deviate from it in appropriate circumstances if a specific offence is not provided for in the Rules.

(5) These guidelines does not provide procedures to be followed in the event of unlawful strikes, That action must be dealt with in accordance with applicable legislation and the Rules,

### **COUNSELLING AND VERBAL WARNINGS**

2.-(1) The primary aim of disciplinary measures is to correct employees' behaviour in order to ensure that the conduct themselves in an acceptable manner The primary means of achieving this objective should be the counselling of employees by supervisors or managers who should explain to employees what is expected of them, If this does not achieve the desired objectives, stronger action may be required.

(2) If an employee commits minor misconduct or performs poorly, the action taken should be a verbal reprimand coupled with an instruction from the employee's

manager to correct the behaviour, These reprimands constitute informal corrective action and will not be reflected on the employee's personal file.

### WRITTEN WARNINGS

3.-(1) A written warning may be issued by a supervisor or manager, if the work performance or conduct of an employee has not improved following counseling or verbal warnings or if the misconduct or work performance requires stronger action than a verbal warning.

(2) The Manager should inform the employee of the reasons for the action, and to give the employee an opportunity to make representations. During this process, the employee may have a representative appointed to be present. This process should not be constituted as a formal hearing.

(3) After having considered any representations made, the Manager should decide whether or not to give the employee a written warning. Any warning should be issued to an employee personally and in accordance with the prescribed form, and a copy of the completed form should be given to the employee.

(4) Where an employee is aggrieved by a written warning, the employee may complete the appropriate part relating to appeal of the employee's copy of the warning form within five working days after receipt, and hand it to the Manager who issued the warning.

(5) The appeal should be referred to the next level of management above the level of the manager who issued the warning.

(6) The Manager considering the appeal should consider the written representations contained on the form and may speak to the persons concerned to obtain additional information, but no formal hearing should take place.

(7) The Manager considering the appeal should personally advise the employee of the outcome of the appeal within five working days from the date of receipt. The Manager should record the outcome on the appropriate part of the original warning form and the employee's copy and return it to the employee.

## DISCIPLINARY HEARING

4.-(1) Senior manager should be appointed as chairperson to convene a disciplinary hearing in the event of –

- (a) further misconduct following a written warning or warnings; or
- (b) repeated written warnings for different offences; of
- (c) allegations of serious misconduct such as those referred to the Rules relating to termination of employment, and which could on their own justify a final written warning or dismissal.

(2) The chairperson of the hearing should be impartial and should not, if possible, have been involved in the issues giving rise to the hearing. In appropriate circumstances, a senior manager from a different office may serve as chairperson.

(3) The employee should be advised in writing of the allegations and the time and date of the proposed hearing, giving the employee a reasonable opportunity to prepare for the hearing.

(4) The employee should be informed of the right to choose another employee to present him at the hearing to provide assistance. The employee providing assistance may be a trade union representative.

(5) The employee and the representative or representatives are entitled to be present at all times during the hearing and should be informed of the facts of the case against the employee. An interpreter should be provided by the employer, if required.

(6) A management representative should present the case in support of the allegations against the employee and the employee should be given an opportunity to respond to the allegations at the hearing parties shall have the right to call witnesses and question any witnesses called by the other party.

(7) After hearing the evidence, the chairperson should make a decision based on a balance of probabilities as to whether the employee is guilty of the allegations or not. If the chairperson is undecided, the employee should be given the benefit of the doubt.

(8) The question of guilt and the penalty to be imposed should be considered separately and the employee or the representative is entitled to make representations in regard to an appropriate penalty. Mitigating and aggravating factors to be considered should include the-

- (a) seriousness of the offence and the likelihood of repetition;
- (b) employee's circumstances (including personal circumstances, length of service and previous disciplinary record);
- (c) nature of the employee's job (including health and safety considerations); and
- (d) circumstances of the infringement itself

(9) The chairperson should inform the employee of the outcome of the hearing as soon as possible, but not later than five working days after the hearing, giving brief reasons for a decision. The chairperson should sign the disciplinary form and give a copy to the employee.

(10) Where the employee is given a final written warning, it should be made clear that any further misconduct, of a similar nature whilst the final written warning is operative, may result in termination of employment. In appropriate circumstances, the chairperson may issue a comprehensive final written warning, which specifies that any further misconduct of whatever nature whilst the final warning is operative, may result in termination of employment

(11) Termination of employment should only take place in cases of serious or repeated misconduct, when the employer is justified in concluding that the misconduct has made the employment relationship intolerable to be continued. When considering whether a termination for misconduct is fair, the chairperson should consider the following-

- (a) whether the employee contravened a rule or standard regulating conduct relating to employment.
- (b) whether such a rule or standard contravened was-
  - (i) reasonable;

- (ii) clear and unambiguous;
- (iii) known, or ought to have been known, by the employee;
- (iv) consistently applied; and
- (v) sufficiently serious to justify dismissal.

(12) An employee may appeal against the outcome of a hearing by completing the appropriate part of the copy of the disciplinary form and give it to the chairperson within five working days of being disciplined, together with any written representations the employee may wish to make. The chairperson must within five working days refer the matter to the more senior level of management, with a written report summarizing reasons for the disciplinary action imposed. The appealing employee must be given a copy of this report.

(13) The Manager considering the appeal must take into consideration the documents provided. An appeal should not constitute a re-hearing of the entire case but it should focus specifically on the grounds for appeal and be decided on the basis of the written submissions provided. The Manager considering the appeal may however arrange a further hearing to consider evidence and argument relating to the appeal, in this event the employee may be assisted by a representative.

(14) The Manager considering the appeal must record the outcome of the appeal in the appropriate part of the original disciplinary form and return the copy to the employee.

(15) An employee wishing to challenge the outcome of the appeal, may utilize dispute mechanisms contained in the Employment and Labour Relations Act. The time period within which to exercise these rights shall commence from the date the employee is advised of the outcome of the appeal.

## SUSPENSION

5.-(1) In circumstances of serious misconduct or incapacity a senior manager may suspend an employee from work pending an inquiry. An employee may be suspended if the employee's presence would obstruct the investigation into the alleged offence or if the employee's presence could create difficulties at the workplace. An employee who is suspended by management under these circumstances must be paid basic wage for the period of suspension.

(2) Management may, in appropriate circumstances and with the consent of the employee, suspend an employee without pay for a maximum period of thirty days, as a form of disciplinary action. This suspension should be accompanied by a final written warning, which runs from the time the employee recommences employment. Suspension without pay should be used for offences which justify a more serious penalty than a final written warning, but where the employment relationship has not irreparably broken down.

(3) An employee should be given a written notice of any suspension, which should briefly describe the reasons for the suspension and any conditions applicable.

### INCAPACITY: POOR WORK PERFORMANCE

6.-(1) In cases of alleged poor work performance by an employee, a Manager should consult the employee to identify and analyze the problem. The employee should be given an opportunity to account for the poor work performance.

(2) Where the Manager believes that it is a matter constituting misconduct, it should be dealt with in terms of the procedures outlined the Rules.

(3) Where the manager believes it is a matter constituting incapacity on the part of the employee concerned, a process of consultation and counseling between management and the employee should take place in an attempt to rectify the problem. The process include appropriate evaluation, training, instruction, guidance or counseling and should provide for a reasonable period of time for improvement.

(4) Where the employee continues to perform unsatisfactorily, the employer should warn the employee that employment may be terminated if there is no improvement. An opportunity to improve may be dispensed with if-

- (a) the employee is a manager or senior employee whose knowledge and experience qualify him or her to judge whether he or she meets the standards set by the employer; or
- (b) the degree of professional skill that is required is so high that the potential consequences of the smallest departure from that high standard are so serious that even an isolated instance of failure to meet the standard may justify termination.

(5) Prior to decision making to terminate the employment of an employee for poor work performance management should call a meeting with the employee, who should be allowed to have a fellow employee or trade union representative present to provide assistance. At the meeting management should provide reasons for the action to be taken and allow the employee and/or the representative to make representations, before making a decision. Management should consider all representations made and if these are not accepted, explain why. The outcome of the meeting should be communicated to the employee in writing with brief reasons.

(6) When considering whether a termination for incapacity in respect of poor work performance is fair, management should consider the following-

- (a) whether or not the employee failed to meet a performance standard;
- (b) if the employee failed to meet the required standard, whether or not-
  - (i) the employee was aware or ought to have been aware, of the standard;
  - (ii) the performance standards are reasonable;
  - (iii) the employee was given a reasonable opportunity to meet the standard and the reason for the failure to meet the standard; and
  - (iv) the dismissal was the appropriate sanction.

#### INCAPACITY: ILL-HEALTH AND INJURY

7.-(1) In cases of alleged incapacity of an employee due to ill health or injury, a Manager should consult the employee to identify and analyse the problem. The manager should be guided by the opinion of a registered medical practitioner in determining the cause and degree of any incapacity and whether it is of a temporary or permanent nature.

(2) The parties should use their best endeavours during this process to agree on solutions to the problem. Consideration should be given to the extent of the incapacity and whether it is temporary or permanent, and possible alternatives to termination should be considered.

(3) Prior to decision making termination of the employment of an employee for ill health or injury, management should call a meeting with the employee, who should be allowed to have a fellow employee or trade union representative present to provide assistance. At this meeting, management should provide reasons for the action to be



taken and allow the employee and/or the representative to make representations, before decision making. Management should consider any representations made and if not accepted, explain why. The outcome of the meeting should be communicated to the employee in writing with brief reasons.

(4) When considering whether a termination arising from ill health or injury is fair, management should consider the following-

- (a) whether the employee is able to perform the work; and
- (b) if the employee is incapable-
  - (i) the extent to which the employee is unable to perform the work:
  - (ii) the extent to which the employee's work circumstances might be adapted to accommodate the disability or if not possible, the extent to which the employee's duties might be adapted: and
  - (iii) the availability of any suitable alternative work or employment.

**8-(1)** Incompatibility may constitute a fair reason for termination of employment. There are two types of incompatibility-

- (a) unsuitability of the employee to his or her work due to his or her character or disposition: and
- (b) incompatibility of the employee in his or her work environment, in that he or she relates badly with fellow employees, clients or other persons who are important to the business.

(2) Incompatibility is treated in a similar way to incapacity for poor work performance.

(3) The steps required in Clause 6 are applicable, read with changes required by the context. In particular, the employer should -

- (a) record the incidents of incompatibility that gave rise to concrete problems or disruption: and
- (b) warn and counsel the employee before termination. This should include

advising the employee of the conduct who has been adversely affected by that conduct, and the remedial action proposed.

(4) Before terminating employment on this ground, the employer should give the employee a reasonable opportunity to-

- (a) consider and reply to the allegation of incompatibility;
- (b) remove the cause for disharmony: or
- (c) propose an alternative to termination.

9.-(1) Disciplinary action should be recorded on the prescribed forms. An employee's signature on any form shall not be an admission of guilt and is merely an acknowledgement that the employee has received the form.

(2) Written warnings and final written warnings should be kept on an employee's personal file and should remain operative for six months.

(3) Where an employee or a representative unreasonably frustrates or delays the implementation of the processes provided in the Rules, management is entitled to proceed in their absence.

(4) The levels of responsibility for managing discipline as indicated in the Rule may have to be varied in cases where senior managers are being disciplined. Appropriate senior managers should be used for these purposes, and consideration may also be given in certain circumstances of bringing in outside persons to fulfil functions such as chairing inquiries involving senior managers.

(5) It is recognized that an employee's misconduct may in certain circumstances result in criminal proceedings being instituted against the employee (e.g. cases of theft or assault). A clear distinction should be made between criminal proceedings and internal disciplinary proceedings. Disciplinary action should be instituted and decided fairly, irrespective of the process and outcome of any criminal proceedings instituted.

## DISCIPLINARY PROCEDURE

This Disciplinary procedure applies to all employees and is a guide for appropriate disciplinary action. As such, it does not detract from management's right to depart from it depending on the circumstances of each case it aims to achieve flexibility and consistency, and to ensure fairness in the application of disciplinary actions.

The list of offences is not exhaustive and an employer may discipline any employee for good cause even though the specific offence may not be stated in this procedure.

The penalties relate to the commission of the offence in isolation. The existence of any previous warnings and other material factors should be taken into account in deciding on the appropriate disciplinary action.

## OFFENCES FOR WHICH WARNINGS MAY BE GIVEN

### ABSENCE

1. Late for work, leaving work place without permission or general time keeping offences.
2. Absence from work without permission or without acceptable reason for up to five working days.

### INSTRUCTIONS

3. Failure to carry out reasonable instructions of the employer.

### WORK PERFORMANCE

4. Poor work performance without acceptable reason.
5. Doing unauthorized private work or matters at the workplace.
6. Causing damage or loss to the employer's property or other property (e.g. property belonging to other employee, customer, client or members of the public), either through negligence or failure to carry out instructions.
7. Misuse or neglect of the employer's property.

### BEHAVIOUR

8. Unacceptable behaviour towards customers, clients, fellow employees or members of the public.

## GENERAL

9. General offences and breaches of organizational rules.

## OFFENCES WHICH MAY CONSTITUTE SERIOUS MISCONDUCT AND LEADING TO TERMINATION OF AN EMPLOYEE

### ABSENCE

1. Absence from work without permission or without acceptable reason for more than five working days.

### INSUBORDINATION

2. Commission of serious or repeated act of insubordination at the employer or during working hours against the employer.

### POOR WORK PERFORMANCE

3. Habitual, substantial or willful negligence in the performance of work.
4. Unacceptable work performance, behaviour or consistent work performance below average despite at least two written warnings.
5. Dishonest or any other major breach of trust.
6. Gross incompetence or inefficiency in the performance of work.
7. Lack of skill, which the employee expressly or impliedly claimed to possess.

### PROPERTY

8. Causing serious damage (real or potential) to or loss of the employer's property or other property (e.g. belonging to other employees, customers or clients), either through gross negligence or wilful damage.
9. Theft or unauthorized possession of the employer's property or other

property (e.g. belonging to other employees, customers, clients).

10. Fraud or misappropriation of organizational funds.

### BEHAVIOUR

11. Abusive behaviour, assaults, threatened assaults or other unacceptable conduct towards other employees, customers, clients, or members of the public.
12. Being under the influence of alcohol or drugs whilst at work or consuming alcohol or drugs whilst on duty.

### GENERAL

13. Other serious breaches of organizational rules or policy which have the effect of causing an irreparable break down in the employment relationship.
14. Criminal convictions relating to an offence which impacts directly or indirectly, on the employment relationship.

## PART 1 HEARING

### FORM

(To be completed by the manager conducting the hearing)

1. Name of employee:.....
2. Name of chairperson:.....
3. Summary of allegations against employee:.....  
.....  
.....
4. Date and time which the employee was informed of the hearing:.....
5. Date and time of hearing:.....
6. Persons present at hearing (excluding witnesses) and their designations:  
.....  
.....  
.....
7. (a) Employee does/does not wish to have a representative present (delete whichever does not apply). Name of representative:  
.....  
.....  
.....
7. (b) Employee does/does not wish to have an interpreter (delete whichever does not apply). Name of the interpreter:  
.....  
.....  
.....
8. Brief summary of employee's response to allegations:  
.....

- .....
- .....
- .....
- .....
9. Summary of evidence, main points of evidence (names and designations of witnesses giving the evidence) (additional paper to be used if sufficient space is not available on this form:
- .....
- .....
- .....
- .....
- .....
- .....
10. Manager's findings, based on the evidence presented:
- .....
- .....
- .....
11. Relevant factors to be taken into account in deciding on the appropriate penalty:
- .....
- .....
- .....
12. The outcome of hearing:.....
- .....
- .....
- .....
13. Manager's
- signature:.....date:.....
14. Employee's signature:.....date:.....

## PART II

### EMPLOYEE

(To be completed within five working days of action having been taken, by an employee wishing to appeal)

I.....wish to appeal against the outcome of the hearing for the following reasons:

.....  
.....  
.....

In terms of this appeal, I ask that the following action be taken wherefore, I ask for the following actions to be taken:

.....

Employee's signature:.....date:.....

Received by the manager on this .....day of .....20....

Signature:.....

## PART III

### EMPLOYER

(To be completed by the Senior Manager hearing the appeal)

Date received:.....

Findings of the appeal:

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....



.....  
.....  
.....  
.....  
.....  
.....

Outcome of the appeal:.....  
.....  
.....  
.....  
.....

Senior Manager's signature:.....date:.....

Employee's signature:.....date:.....

## GRIEVANCE PROCEDURE

### INTRODUCTION

1.-(1) These guidelines for grievance procedure is a guidance and shall be applicable employers and employees and their organizations.

(2) The objectives of these procedures are-

- (a) to provide for a process for resolving employee's grievances;
- (b) to settle grievances as near as possible to their point of origin;
- (c) to ensure that the employer treats grievances serious and resolves them as quickly as possible; and
- (d) to ensure that employees are treated fairly and consistently by the employer.

(3) Management and employees, at all levels within an organization, shall give

Careful consideration to grievances raised and should use their conflict resolution skills to resolve grievances.

(4) All employees and managers shall treat one another with sensitivity and respect.

(5) Where a grievance is lodged an employee's employment should not be prejudiced in any way whatsoever.

(6) The employee has a right to be accompanied and assisted by a fellow employee or by a trade union representative in dealing with a grievance at all stages.

### INFORMAL GRIEVANCE PROCEDURE

2.-(1) An employee should be entitled to use this procedure when it is within a reasonable period from when the grievance occurred.

(2) In the interests of maintaining good working relations, an aggrieved employee is encouraged to first discuss any grievance verbally with his immediate manager provided that. This shall not be required if it would be unreasonable to expect the employee to do so. Where the grievance concerns that immediate manager, the employee may proceed directly to stage one of this procedure.

(3) Where the manager fails to resolve the grievance to the employee's satisfaction within five working days or any other agreed period between them. The aggrieved employee may complete a formal grievance form and refer the matter to stage one, to be dealt with by a much senior manager.

### FORMAL GRIEVANCE PROCEDURE STAGE ONE

3.-(1) The employee must outline the grievance in writing and suggest for a possible remedy in the prescribed formal grievance form. The Manager who dealt with the grievance in the informal grievance stage must fill, the steps taken to resolve the grievance, comment: and any suggested remedies.

(2) Where the employee's immediate manager deals with grievances at Stage two

of this procedure, the employee should discuss the grievance verbally with that person in terms of sub clause (2) of clause before completing a formal grievance form. Stage two of this procedure shall be dealt with by a senior manager.

## STAGE TWO

4.-(1) Once the Manager dealing with the grievance in stage two has received a formal grievance form, should invite the aggrieved employee to attend a grievance meeting to discuss the matter and should use best endeavours to resolve the grievance within ten working days or any other period agreed between them.

(2) The Manager dealing with the grievance in this stage may agree with the employee and the employee's representative, on the appropriate procedure to followed in each case This may involve calling a meeting of aggrieved parties, and facilitation of mediation, arbitration, a commission of inquiry or any other procedure that may be deemed appropriate .in the circumstances.

(3) Where it happens that the employee is still aggrieved notwithstanding the efforts to resolve the disputes in terms of sub clause 2 the employee may use means available in law for the protection for the employee's rights.

## FORMAL GRIEVANCE FORM

(To be completed by the employee lodging the grievance in terms of stage 2 of the grievance procedure)

Name of the employee:.....sex.....

Cause of the grievance:.....  
.....  
.....  
.....

Solution sought:  
.....  
.....

The signature of the employee:.....date:.....

The signature of the employee's

representative.....

Date:.....

## PART II

(To be completed by the Manager who dealt with the grievance in the informal grievance stage and stage one of the formal grievance procedure)(unless not applicable in term of clause 2 (2) of the informal grievance stage)

.....  
.....

Date received:.....

Name of the manager:.....

Steps taken to resolve grievance:.....

.....  
.....

Comments about the grievance:.....

.....  
.....

Remedy proposed by the Manager dealing with the grievance.....

.....  
.....

Outcome:.....

.....  
.....

Manager's

signature:.....date:.....

## PART III MANAGER

(To be completed by the manager dealing with the grievance in terms of stage two of the informal grievance procedure)

Date received:.....

Senior Manager's comments:.....

.....  
.....

.....

.....

Outcome:.....

.....

.....

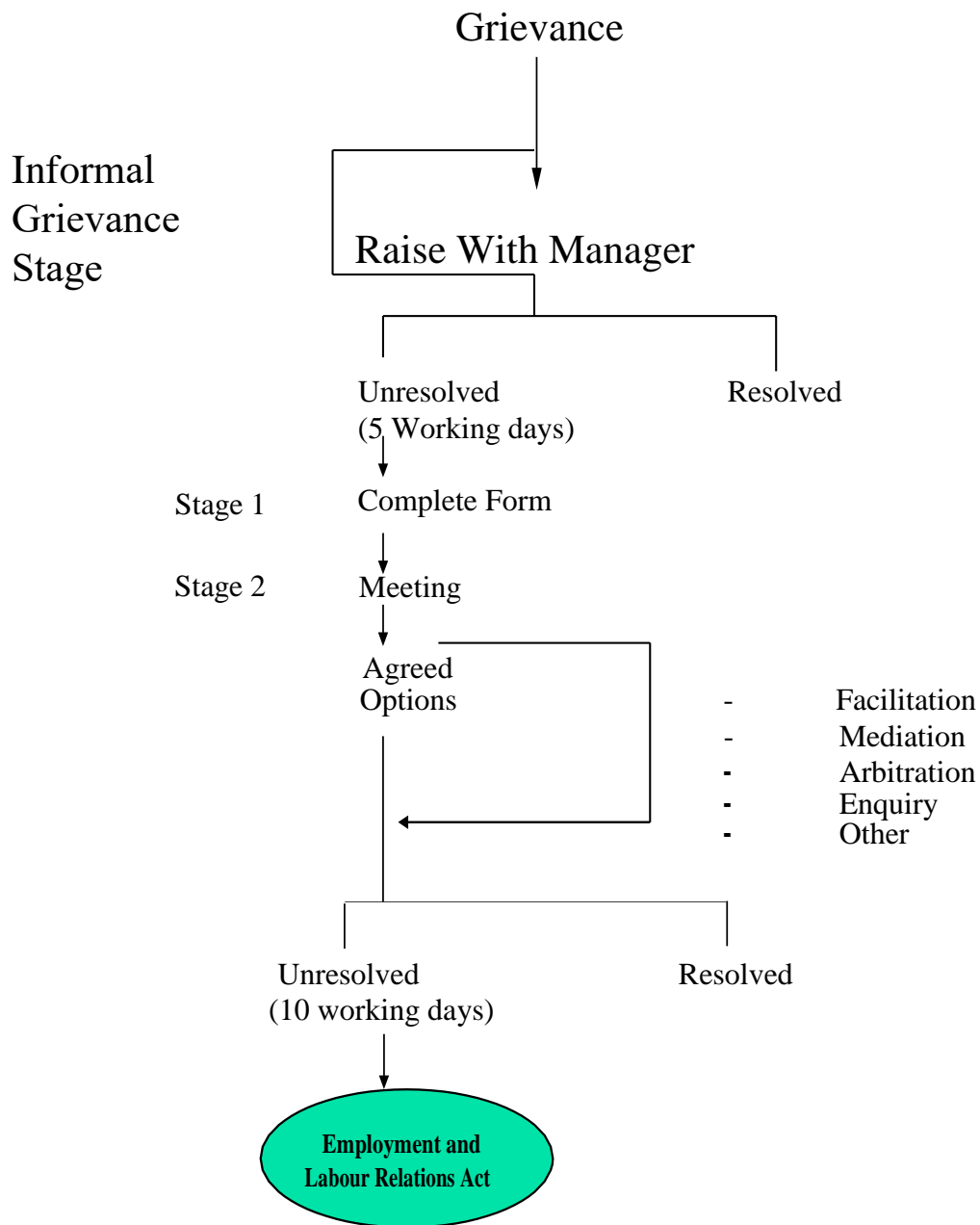
The signature of the Senior

Manager.....date.....

The signature of the employee.....date.....

The signature of the employee's  
representative.....date.....

## GRIEVANCE PROCEDURE OUTILINE



## RETRENCHMENT PROCEDURE

### INTRODUCTION

1.-(1) This procedure shall apply where an employer contemplates to terminate the employment of employees on the basis of operational requirements.

(2) For the purpose of this procedure, retrenchment means a termination of employment based on operational requirements such as economic, technological, structural or similar needs of an employer.

(3) An employer shall strive to implement this procedure having regard to the sensitivity of the needs and interests of employees.

### CONSULTATION

2.-(1) Where an employer contemplates to retrench the employees for operational requirements, the management shall notify in writing the employees likely to be affected and to consult with the trade union which includes-

- (a) any union recognized as the exclusive bargaining agent if retrenchment is contemplated within the bargaining unit;
- (b) any other union having members who will be affected, if they do not fall within a bargaining unit for which a union is recognized as the exclusive bargaining agent; and
- (c) any affected employees who are not represented under (a) or (b) above

(2) Subject to sub-clause (1), management's written notice shall state the employer's views on the following-

- (a) the reason for the intended retrenchment
- (b) any measures to avoid or minimize the intended retrenchment;
- (c) the selection for the employees to be retrenched;
- (d) the timing of the retrenchment;

- (e) severance pay in respect of the retrenchment; and
- (f) any additional retrenchment package.

(3) The management should consult the parties referred to in sub-clause I of as soon as possible after the employer contemplates retrenchment to explore possible alternatives and the issues to be consulted about shall include issues as specified in sub-clause 2.

(4) The management shall allow the consulting parties referred to in Clause 2.1, an opportunity to prepare and to make representations on matters being consulted on.

(5) The management shall consider and respond to any representations made and, if management disagree with them state reasons for disagreeing and the management shall have to respond in writing to any representations made in writing.

### DISCLOSURE OF INFORMATION

3.-(1) The management shall disclose to the consulting parties referred to above, all the relevant information on the intended retrenchment to enable meaningful consultation to take place on the range of issues referred to in Clause 2.

(2) Notwithstanding sub-clause (1), the management shall not be required to disclose confidential or privileged information and the information shall be confidential or privileged if-

- (a) it is legally privileged;
- (b) the employer may not disclose that information without contravening a law or an order of court;
- (c) it is confidential and if disclosed may cause substantial harm to an employee or the employer;
- (d) it is a private and personal information relating to an employee and the employee has not consented to its disclosure.



## SELECTION CRITERIA

4.-(1) Employee to be retrenched shall be selected according to the criteria that agreed or which are fair and objective.

(2) These criteria shall take into account factors such as the following-

- (a) the employees' length of service with employees being selected according to the LIFO principle (last-in-first-out);
- (b) the need for the efficient operation of the organization;
- (c) the need to retain key jobs and skills; or
- (d) the ability, experience, skill or occupational qualifications of employees or affirmative action criteria.

## SEVERANCE BENEFITS

5.-(1) Subject to Section 42 of the Act, an employer shall pay severance pay to a retrenched employee at least equivalent to seven days' basic wage for each completed year of continuous service with that employer up to a maximum of ten years.

(2) Notwithstanding the provision of sub-clause (1) severance pay shall not be paid to an employee who has not completed twelve months of continuous service.

(3) The employer's obligation to pay severance pay shall fall away where the employee unreasonably refuses to accept alternative work with that employer or alternative employment with any other employer.

## THE WORK OPPORTUNITIES FOR PREFERENTIAL RE-EMPLOYMENT

6.-(1) Retrenched employees expressing an interest in future re-employment shall be given preference in re-employment if the employer within two years of retrenchment seeks to re-recruit employees in comparable occupations.

(2) In these circumstances, the management must take reasonable steps to inform the retrenched employees any union existing workplace and any registered union with members employed by the firm, of these employment opportunities.

### DEPARTURE FROM THE PROCEDURE

7.-(1) Subject to Section 99(3) of the Act, these procedures shall not be applied in an inflexible manner and management may deviate from them in appropriate circumstances.

(2) Where the management departs from these procedures shall justify the grounds for departure.

(3) The management shall at all time act in a fair manner and to consider the interests of the employees to be retrenched.

### RETRENCHMENT PROCEDURE OUTLINE

#### RETRENCHMENT PROCEDURE OUTLINE

POSSIBLE RETRENCHMENT

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CONSULTATION

SECTION CRITERIA

RETRENCHMENT PACKAGE

RETRENCHMENT

OPPORTUNITIES FOR PREFERENTIAL RE-EMPLOYMENT

**THE EMPLOYMENT AND LABOUR  
RELATIONS (GENERAL)  
REGULATIONS, 2017**

GOVERNMENT NOTICE NO. 47 published on 24/02/2017

THE EMPLOYMENT AND LABOUR RELATIONS  
(GENERAL) REGULATIONS, 2017

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## REGULATIONS

(Made under section 98(1))

# PART I

## PRELIMINARY PROVISIONS

Interpretation	2. In these Regulations, unless the context otherwise requires-
Cap. 366	<p>“Act” means the Employment and Labour Relations Act;</p> <p>“child” has the meaning ascribed to it under the Act;</p> <p>"collective agreement" has the meaning ascribed to it under the Act;</p> <p>"contract of service" means any written contract to employ an employee for any period of time or number of days to be worked or to execute any task or specific task, to perform any journey and includes a foreign contract of service;</p> <p>“Council” has the meaning ascribed to it under the Act;</p> <p>“employer association” has the meaning ascribed to it under the Act;</p> <p>“employment” has the meaning ascribed to it under the Act;</p> <p>“executive officers” means the leaders of the organization;</p> <p>“federation” has the meaning ascribed to it under the Act;</p> <p>“hazardous work” means any work for earning, performed by a child in any of the sectors prescribed in the First Schedule to these Regulations;</p>
Cap. 300	“Labour Commissioner” has the meaning ascribed to it under the Labour Institutions Act;
Cap.300	“Labour Officer” has the meaning ascribed to it under the Labour Institutions Act;

- Cap. 300      “organization” has the meaning ascribed to it under the Act;  
“plan” means the plan for elimination of discrimination at work place referred to in section 7 of the Act;  
“Registrar” has the meaning ascribed to it under the Labour Institutions Act;  
“trade union” has the meaning ascribed to it under the Act.

## PART II CHILD LABOUR PROHIBITION

Prohibition of employment of children      **3.-(1)** No person shall employ or cause to be employed a child under the age of fourteen.

(2) Without prejudice to the provisions of sub-part A of Part II of the Act, a child of fourteen of age and above may be employed to perform light work which is not listed in the List of Hazardous Works for Children in a manner set out in the First Schedule to these Regulations.

Circumstances permitted to employ child      **4.-(1)** Subject to sub-regulations (2) and (3), no child who is still attending school shall be required or permitted to work in any establishment in excess of three hours per day.

(2) A child of fourteen years and above who-

(a) is on leave;

(b) has completed his studies; or

(c) is not in school for any justifiable reason,

may be employed to work in an establishment for not more than six hours per day:

Provided that the employer shall be responsible for the safety of the child so employed at the work place.

(3) Notwithstanding the provisions of sub-regulation (1), no child shall be required or permitted to work during school hours.

Time for rest      **5.** Notwithstanding the provisions of regulation 4(2), a child shall not work for more than three consecutive hours, without at least, an hour rest.

- Hours of work                      **6.** No child shall be required or permitted to work-
- (a) overtime; or
  - (b) between 8p.m and 6a.m.
- Lifting of objects                      **7.**-(1) It shall be a condition of employment of any child whose employment is permitted under the provisions of the Employment and Labour Relations Act, that-
- (a) a child of fourteen upto sixteen years shall not be permitted to carry any load weighing more than 15 kilograms;
  - (b) a child of above sixteen years shall not be permitted to carry any load weighing more than 20 kilograms.
- (2) Notwithstanding the provision of sub-regulation (1), where a child is subjected to the conditions prescribed therein, the employer shall have the burden to prove that the load or object does not exceed the ability of the child.
- (3) Notwithstanding anything in this regulation, the Labour Commissioner or any labour officer shall have the power by order to prohibit the employment of children in any case if he is satisfied that the conditions of employment of children are unsatisfactory.
- Employer to keep register                      **8.**-(1) Every employer shall keep and maintain a register in respect of children employed in his work place.
- (2) The register referred to in sub-regulation (1) shall contain the following particulars:
- (a) name of the child;
  - (b) date of employment;
  - (c) date of birth and present age of the child;
  - (d) place of domicile;
  - (e) level of education;
  - (f) type of work performed by child;
  - (g) particulars of parents or guardians; and
  - (h) school attendance status of each child.
- (3) In addition to the particulars mentioned under sub-regulation (2) the employer shall be required to attach-
- (a) certified copies of birth certificates or any other evidence as to the age of the child from relevant authority of all children working at his work place; and
  - (b) evidence in writing as to the consent of-



- (i) a parent;
- (ii) a guardian; or
- (iii) a relative.

Mode of remuneration      **9.** In remunerating a child, the employer shall comply with wage rates set by the Minister from time to time.

Contract of employment for the child      **10.-(1)** Subject to regulation 4, an employment of a child granted under these Regulations shall be in writing and the child shall be entitled to a copy of the contract before commencing the employment.

Cap. 443  
Cap. 13  
GN. No. 42 of 2007      (2) The contract under sub-regulation (1) shall take into consideration the provisions of the Act, these Regulations, the Law of Contract Act and the Law of the Child Act, and shall be in a manner set out in the Schedule to the Employment and Labour Relations (Code of Good Practice) Rules, 2007.

### PART III EMPLOYMENT STANDARDS

Contract for specified period      **11.** A contract for a specified period referred to under section 14(1)(b) of the Act, shall not be for a period of less than twelve months.

Statement of employees rights      **12.** Statement of employee's rights provided for in section 16 of the Act shall be in the manner prescribed in form LAIF. 9 set out in the Second Schedule to these Regulations.

Payment of remuneration      **13.-(1)** Notwithstanding the type of contract or the basis of employees' remuneration, payment thereof shall be done monthly or in any other period agreed by the parties basing on the nature or technical requirements of the job.

(2) Subject to the provision of section 27(2) of the Act, every employee shall be entitled to receive a written statement of particulars that supports remuneration paid.

(3) A written statement of particulars issued under this regulation shall be contained with the following particulars:

- (a) name of employee;
- (b) date, month and year of payment in respect of which payment is made;
- (c) name of employer or logo;
- (d) employment or check number;
- (e) statutory deductions;
- (f) other deductions;
- (g) gross or basic salary; and
- (h) net salary.

**Annual leave**            **14.**-(1) Subject to the provision of section 31 of the Act, employee shall comply with procedures for applying an annual leave which shall be set by employer.

(2) Notwithstanding an agreement to work for payment in lieu of annual leave in terms of section 31 (6) of the Act, an employer shall ensure that no employee is continuously working in any leave cycle without applying for annual leave.

**Breast feeding during working hours**            **15.** Subject to the provision of section 33 (10) of the Act, a female employee shall, for a period of not less than six consecutive months after maternity leave, be allowed to leave the office for a maximum of two hours of his convenience during the working hours for breast feeding the child.

**Subsistence expenses**            **16.**-(1) The subsistence expenses provided for under section 43(1)(c) of the Act shall be quantified to daily basic wage or as may, from time to time, be determined by the relevant wage board.

**Cap. 300**            (2) In determining the subsistence expenses, the conditions prescribed under section 37 of the Labour Institutions Act shall apply.

(3) The tonnage entitlement for an employee shall be at least one and a half tones.

(4) The rate of tonnage allowance shall be determined by the prevailing transportation costs of that particular time.

**Certificate of service**            **17.** Certificate of service provided for in section 44(2) of the Act shall be as prescribed in a form LAIF. 10 set out in the Second Schedule to these Regulations.

## TRADE UNIONS, EMPLOYERS' ASSOCIATIONS AND FEDERATIONS

- (c) the titles and names of executive officers and trustees at the time of registration; and
- (d) the date of registration.

Registration of federation and confederation      **21.** Federation or confederation shall be registered upon application to the Registrar using the prescribed form TUF. 3 set out in the Third Schedule to these Regulation.

Establishment of *bona fide* motive      **22.** Organization, federation or confederation shall not be registered unless it sets clearly a *bona fide* motive of its establishment by giving the Registrar any information as he may require for such purpose or do anything that he may consider necessary.

Area of recruitment      **23.**-(1) Subject to the provisions of sections 9 and 47 of the Act, a trade union or an employer's association shall expressly state in its constitution the areas from which it recruits its members.  
(2) A trade Union or an employer's association which is recruiting members from areas other than specified in its constitution, commits an offence.

Notice of refusal to register      **24.** Where the Registrar refuses to register an organization, federation or confederation, he shall, within thirty days, notify the applicant in writing the reasons of such decision, as prescribed in the form TUF. 4 set out in the Third Schedule to these Regulations.

Certificate of registration      **25.** The Registrar shall issue a certificate of registration in the forms TUF. 5, TUF. 6 and TUF. 7 in a manner set out in the Third Schedule to these Regulations.

Loss of certificate      **26.**-(1) Where the certificate of registration under these Regulations is lost or destroyed, the respective executive officer shall, in writing, report to the Registrar for re-issuance of a new certificate.  
(2) The Registrar shall, upon being satisfied of such loss or destruction, and on receipt of the prescribed fee, re-issue a new certificate.  
(3) Subject to sub regulation (2), the applicant shall produce—  
(a) in case of a lost certificate, a loss report issued by Police; and  
(b) in case of a destroyed certificate, a copy of such certificate.

Notice of intention to cancel registration	<b>27.</b> The Registrar shall issue a notice of intention to cancel registration in a form TUF. 8 prescribed in the Third Schedule to these Regulations.
Notice of intention to change name, constitution and rules	<b>28.</b> Any organization or federation wishes to change the name, constitution or rules of organization shall notify the Registrar and fill in a prescribed form TUF. 9 set out in the Third Schedule.
Notice of refusal to approve change of name, constitution and rules	<b>29.</b> The registrar shall, in writing, notify an organization or federation, of his approval or refusal to approve any change of name, or change to the constitution and rules of a registered organization, in a relevant form prescribed form TUF. 10 and 11 as set out in the Third Schedule.
Public notice	<b>30.</b> -(1) The register and documents thereof shall be open to public and may be accessible upon making a written request and on payment of the prescribed fee specified in the Fourth Schedule to these Regulations. (2) Subject to sub regulation (1), copies of or extracts may be issued by the Registrar within three days from the date of the request.
Notice of affiliation	<b>31.</b> Where an organization or federation affiliates with an international organization it shall, prior to such affiliation, notify the Registrar in writing specifying the nature and condition of it, in a prescribed form TUF. 12 set out in the Third Schedule to these Regulations.
Notice of change of registered office, address or	<b>32.</b> Registered organization or federation shall, in writing, notify the Registrar of any change made under section 52 (2) (c) and (d) of the Act, as prescribed in a form TUF. 13 set out in the Third Schedule to these Regulations.

office  
bearers  
Cap. 366

**Fees**                      **33.** Fees specified in the Fourth Schedule to these Regulations shall be paid to effect the carrying out of the provisions and principles of these Regulations:

Provided that, Government Departments and Institutions shall be exempted from payment of fees under these Regulations.

**Forms**                      **34.**-(1) The forms set out in the Third Schedule to these Regulations shall be used in all matters to which they refer.

(2) The forms made under these Regulations may be modified, adopted or altered by the Minister in expression to suit the purpose for which they were intended.

## PART V MISCELLANEOUS PROVISIONS

**Offence and penalties**                      **35.** A person who contravenes provisions of these Regulations commits an offence and upon conviction shall be liable to a fine not exceeding one million shilling or imprisonment for a term of one year or both.

**Specific penalty**                      **36.** A person who contravenes provisions of these Regulations, where no specific penalty is provided under the Act or these regulations, shall upon conviction, be liable to a fine not exceeding one million shilling or imprisonment for a term of one year or both.

**Agency fee**                      **37.**-(1) The agency fee deducted under this regulation shall-

- (a) be deducted from the membership fee paid to his union at the rate agreed by the union concerned;
- (b) not exceed half the fee paid by the employee to his union; and
- (c) in any way not more than the union fee paid by members.

(2) Nothing in this regulation shall be construed to prevent a deduction of agency fee from an employee who is not a member of a Trade Union.

Compliance to the Act	<p><b>38.</b>-(1) The relevant authorities or businesses shall, in their dealings, comply with the provisions of the Act, these Regulations, Labour Laws and any other written laws.</p> <p>(2) Where the compliance under sub regulation (1) is effected by mutual agreement, it shall be binding and legally acceptable terms contained therein shall form part of the employment standards or conditions.</p> <p>(3) For the purpose of this regulation, “employment standards” means the standards specified under the Act.</p> <p>(4) mutual agreement under sub-regulation (1), shall-</p> <ul style="list-style-type: none"><li>(a) specify the implications of non-compliance;</li><li>(b) engage employers participation in the social corporate responsibility by contributing and support to enforce voluntary initiatives for compliance in workplaces;</li><li>(c) set specific timelines and make arrangements for-<ul style="list-style-type: none"><li>(i) self-assessments, using the Compliance Checklist made under the Labour Institutions (General) Regulations, 2016 and send periodical returns to labour office; and</li><li>(ii) statutory workplace inspections and audits of employers’ self-assessment to be undertaken by the Labour Officer.</li></ul></li></ul> <p>(4) In auditing the compliance pursuant to sub-regulation (1), the parties shall align with Labour Officer.</p>
Exemptions Cap. 366	<p><b>39.</b> The Minister shall, in exercising his powers of exemption, use a prescribed form LAIF. 11 in a manner set out in the Second Schedule to these Regulations.</p>
Grievance procedures	<p><b>40.</b>-(1) Grievance procedure prescribed in the Schedule to the Employment and Labour Relations (Code of Good Practice) Rules, 2007 shall be included in the workplace employment policy, practice, rules or regulations and be displayed in a conspicuous place.</p> <p>(2) Employer shall ensure that employees are made aware and sensitized of the grievance procedures mentioned in sub regulation (1).</p>
Revocation of G.N No. 65 of 2007	<p><b>41.</b> The Employment and Labour Relations (Forms) Rules, 2007 are hereby revoked.</p>

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**SCHEDULES**

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## FIRST SCHEDULE

*Made under Regulation 3(2)*

### Hazardous Work For Children

#### LIST OF HAZARDOUS WORK FOR CHILDREN

##### A: AGRICULTURE

Tasks	Hazards	Physical and/or Psychosocial harm
<ul style="list-style-type: none"> <li>• Planting, weeding</li> <li>• Applying pesticides including fertilizers</li> <li>• Preparation of seed beds</li> <li>• Pruning</li> <li>• Harvesting and sorting</li> <li>• Operating farm machinery</li> <li>• Driving farm Vehicle,</li> </ul>	<ul style="list-style-type: none"> <li>• Heavy strenuous physical work</li> <li>• Exposure to pesticides/ fumigant</li> <li>• Exposure to adverse weather condition</li> <li>• Long working</li> <li>• Use of sharp equipment and tools</li> <li>• Inappropriate working tools and equipment</li> <li>• Lack of proper PPE</li> <li>• Poor sanitation in the farms</li> </ul>	<ul style="list-style-type: none"> <li>• Musculoskeletal injuries and diseases</li> <li>• Pesticide Poisoning</li> <li>• Food Poisoning</li> <li>• Dehydration, colds and respiratory illnesses</li> <li>• Cuts and Abrasions</li> <li>• Gastrointestinal illnesses</li> <li>• Noise induced hearing loss</li> </ul>

Task	Hazards	Physical and/or Psychosocial harm
<ul style="list-style-type: none"> <li>• Assisting technicians in farm workshops</li> <li>• Carrying harvest to transport trucks</li> <li>• . Carrying water bucket</li> <li>• Carrying wastes for disposal</li> <li>• Feeding farm animals</li> <li>• Cleaning animal houses</li> <li>• Cleaning spraying equipment</li> <li>• Fetching and carrying fire wood</li> <li>• Cooking for farm Workers</li> </ul>	<ul style="list-style-type: none"> <li>• Inadequate and poor meals</li> <li>• Exposure to excessive noise</li> <li>• Contaminant drinking water</li> <li>• Fires</li> <li>• Snakes and insects</li> <li>• Poor/awkward work posture</li> <li>• Poisonous plants</li> <li>• Farm machinery</li> <li>• Excessive noise</li> <li>• Exposure to organic dusts</li> <li>• Livestock and wild animals</li> </ul>	<ul style="list-style-type: none"> <li>• Burns and scalds</li> <li>• Poor physical and mental development</li> <li>• Fatal or permanent disability due to injuries</li> <li>• Respiratory diseases e.g. asthma, farmers lung, bysinosis, etc</li> <li>• Allergic reactions from plant poisons</li> <li>• Skin diseases from infections animal wastes</li> <li>• Chemical poisoning from chemicals used in workshops</li> <li>• Depression</li> <li>• Loss of self esteem</li> <li>• Malnutrition</li> <li>• Fertility disorders</li> </ul>

**B: FISHERY**

<b>Tasks</b>	<b>Hazards</b>	<b>Physical and/or Psychosocial harm</b>
<ul style="list-style-type: none"> <li>• Placing and hauling fishnets</li> <li>• Repairing nets</li> <li>• Sorting fish carrying fish baskets</li> <li>• Cooking</li> <li>• Carrying ice blocks</li> <li>• Degutting de-scaling, Bisecting fish</li> </ul>	<ul style="list-style-type: none"> <li>• Strenuous work</li> <li>• Long working hours</li> <li>• Repetitive work</li> <li>• Extreme weather</li> <li>• Sharp knives</li> <li>• Lack of adequate meals</li> <li>• Physical assault</li> <li>• Insect bite</li> <li>• Explosives</li> <li>• Lack of adequate rest</li> <li>• Harsh supervision</li> <li>• Poisoning fish</li> </ul>	<ul style="list-style-type: none"> <li>• Physical and mental fatigue</li> <li>• Injury related to fishing gear, explosion</li> <li>• Cuts and abrasions from knives, equipment</li> <li>• Carpal Tunnel Syndrome</li> <li>• Heat and cold stem</li> <li>• Poisoning from certain fish</li> <li>• Assault by fellow fishermen</li> </ul>
<ul style="list-style-type: none"> <li>• Fish salting and drying</li> <li>• Draining boats</li> <li>• Deep sea fishing</li> </ul>	<ul style="list-style-type: none"> <li>• Working underwater</li> <li>• Falling from vessel</li> <li>• Lack of clean water</li> <li>• Exposure to burning sun</li> <li>• Inappropriate tools, equipment and PPE</li> <li>• Poor technical condition of fishing vessel</li> <li>• Noise</li> <li>• Vibration</li> <li>• Over exertion</li> </ul>	<ul style="list-style-type: none"> <li>• Malnutrition/under nutrition</li> <li>• Skin diseases</li> <li>• Salt water boils</li> <li>• Allergic reaction due to cattle fish and weed</li> <li>• Conjunctivitis from sun glare</li> <li>• Physical injuries by fish (teeth, gills)</li> <li>• Alcohol and drug abuse</li> <li>• Noise induced hearing loss</li> <li>• Musculoskeletal disorders</li> <li>• Decompression sickness</li> <li>• Fatalities relate to accident at sea eg drowning</li> <li>• Poor physical and mental development</li> </ul>

**C: MINING AND QUARRYING**

<b>Tasks</b>	<b>Hazards</b>	<b>Physical/ Mental /Psychosocial harm</b>
<ul style="list-style-type: none"> <li>• Shaft, drift or trench digging</li> <li>• Carrying ore from shaft</li> <li>• Drilling and blasting</li> <li>• Crushing ore</li> <li>• Grinding ore Sifting ore</li> <li>• Panning wet and dry sand</li> <li>• Carrying water</li> <li>• Amalgamation and treating the mineral</li> </ul>	<ul style="list-style-type: none"> <li>• Handling heavy loads</li> <li>• Entering narrow passages</li> <li>• Using inappropriate tools</li> <li>• Falling blocks of ore</li> <li>• Collapsing tunnel</li> <li>• Falling down shaft</li> <li>• Lack of oxygen</li> <li>• Dust</li> <li>• Noise</li> <li>• Flooding and drowning</li> <li>• Heat and Cold</li> <li>• Insufficient light</li> <li>• Physical effort</li> <li>• Awkward work posture</li> </ul>	<ul style="list-style-type: none"> <li>• Injuries, death, or permanent disability</li> <li>• Musculoskeletal disorders</li> <li>• Fatigue</li> <li>• Noise induced hearing loss</li> <li>• Under nutrition</li> <li>• Lung diseases</li> <li>• Sunburn, skin cancer</li> <li>• Water – borne diseases</li> <li>• Mercurial poisoning</li> <li>• Sexually transmitted diseases including HIV/AIDS</li> </ul>
<ul style="list-style-type: none"> <li>• Stone crushing in quarry</li> <li>• Loading stones in quarrying sites</li> </ul>	<ul style="list-style-type: none"> <li>• Toxic Gases</li> <li>• Explosives</li> <li>• Long time exposure to sun and water</li> <li>• Mercury fumes</li> <li>• Long working hours</li> <li>• Harsh supervision</li> <li>• Physical violence</li> <li>• Sexual harassment</li> <li>• Low or no incomes</li> <li>• Vibration</li> <li>• Lack of health service, clean water and family and community support</li> </ul>	<ul style="list-style-type: none"> <li>• Alcohol and drug abuse</li> <li>• Carpal Tunnel Syndrome</li> <li>• Low self esteem</li> <li>• Depression</li> <li>• Physical assault</li> <li>• Poor physical and mental development</li> <li>• Heat stress</li> </ul>

**D: CONSTRUCTION**

<b>Tasks</b>	<b>Hazards</b>	<b>Physical and/or Psychosocial harm</b>
<ul style="list-style-type: none"> <li>• Cement mixing</li> <li>• Painting</li> <li>• Brick making (clay or cement)</li> <li>• Trenching</li> <li>• Carrying water</li> <li>• Carrying bricks</li> <li>• Excavation operation</li> <li>• Demolition operations</li> <li>• Motor vehicle helper</li> </ul>	<ul style="list-style-type: none"> <li>• Absence of sanitary facilities</li> <li>• Strenuous physical work</li> <li>• Fire in kiln</li> <li>• Manual lifting of heavy loads</li> <li>• Exposure to extreme weather conditions</li> <li>• Poor scaffolds and ladders</li> <li>• Inadequate or improper PPE</li> </ul>	<ul style="list-style-type: none"> <li>• Poor physical and mental development</li> <li>• Muscular skeletal disorders</li> <li>• Physical and mental fatigue</li> <li>• Infections diseases eg TB</li> <li>• Malnutrition</li> <li>• Falls causing Injuries and fatalities</li> <li>• Heat or cold stress</li> <li>• Depression</li> </ul>
<ul style="list-style-type: none"> <li>• Stone crushing in quarries and transportations to site</li> <li>• Carpentry</li> <li>• Plumbing</li> <li>• Welding</li> <li>• Masonry work</li> </ul>	<ul style="list-style-type: none"> <li>• Working at height</li> <li>• Poor inadequate meals</li> <li>• Poor wages</li> <li>• Poor working tools</li> <li>• Long working hours without break</li> <li>• Harsh supervision</li> <li>• UV exposure</li> <li>• Trench –cave-in</li> <li>• NOISE</li> <li>• DUST Vibrating</li> <li>• Vibrating tools</li> <li>• Physical violence</li> <li>• Sexual abuse</li> <li>• Migrant workers</li> </ul>	<ul style="list-style-type: none"> <li>• Dermatitis: HIV/AIDS</li> <li>• Reproductive ill – health</li> <li>• Respiratory illness asthma, cancer</li> <li>• Back injuries</li> <li>• Noise induced deafness</li> <li>• Vibration associated disorders</li> <li>• Alcohol and drug use</li> <li>• Depression</li> <li>• Assault</li> </ul>

**E: SERVICE SECTOR**

<b>Tasks</b>	<b>Hazards</b>	<b>Physical and/or Psychosocial harm</b>
<ul style="list-style-type: none"> <li>• Preparing food</li> <li>• Cleaning kitchen equipment and utensils</li> <li>• Washing clothes,</li> <li>• Hauling market supplier,</li> <li>• Cleaning equipment furniture and furnishings including toilets</li> <li>• Maintaining outside area</li> <li>• Repairing equipment and dwellings</li> </ul>	<ul style="list-style-type: none"> <li>• Sharp utensil</li> <li>• Hot oils/water</li> <li>• Fuels – burning</li> <li>• Low or no pay</li> <li>• Long working hours, few hours sleeping</li> <li>• Strenuous physical work</li> <li>• Poor meals</li> <li>• Work in awkward position</li> <li>• Lack of PPE</li> <li>• Repetitive physical work</li> <li>• Chemical exposure – disinfectants/cleaners</li> <li>• Wet work</li> <li>• Harsh supervision</li> <li>• Physical violence</li> </ul>	<ul style="list-style-type: none"> <li>• Cuts and abrasions</li> <li>• Scalds and Burns</li> <li>• Low morale/depression with multiple mental health problems</li> <li>• Poor mental and physical development</li> <li>• Muscular skeletal illnesses</li> <li>• Chemical poisoning</li> <li>• Skin diseases</li> <li>• Infection eg TB</li> <li>• Pregnancies</li> <li>• STD/HIV/AID</li> <li>• Injuries/ permanent disability even death</li> </ul>
<ul style="list-style-type: none"> <li>• Giving personal assistance and care</li> <li>• Hauling firewood and other fuel</li> <li>• Providing security</li> </ul>	<ul style="list-style-type: none"> <li>• Sexual abuse</li> <li>• Contact with infectious material</li> <li>• Working at height with ladders</li> <li>• Work with domestic animals or birds</li> </ul>	<ul style="list-style-type: none"> <li>• Contagious diseases</li> <li>• Physical and mental fatigue</li> <li>• Malnourishment</li> <li>• Prostitution</li> <li>• Allergies</li> </ul>

**F: RESTAURANTS/HOTELS/BARS/GUEST HOUSE WORK**

<b>Tasks</b>	<b>Hazards</b>	<b>Physical and/or Psychosocial harm</b>
<ul style="list-style-type: none"> <li>• Utensils equipment cleaning</li> <li>• Scrubbing floors</li> <li>• Window cleaning</li> <li>• Cleaning toilets</li> <li>• Bed making</li> <li>• Washing beddings and furnishing maintaining outside areas</li> <li>• Carrying water</li> </ul>	<ul style="list-style-type: none"> <li>• Low or no wages</li> <li>• Long working hours</li> <li>• House dust</li> <li>• Strenuous physical work</li> <li>• Chemical exposure</li> <li>• Awkward work posture</li> <li>• Repetitive physical work</li> <li>• Working at height</li> <li>• Harsh supervision</li> <li>• Wet work</li> <li>• Contact with infective agents</li> </ul>	<ul style="list-style-type: none"> <li>• Low morale/depression with multiple mental health problem</li> <li>• Poor physical and mental development</li> <li>• Musculoskeletal illnesses</li> <li>• Chemical related skin diseases</li> <li>• Inflectional (skin) (fungal/bacteria)</li> </ul>
<ul style="list-style-type: none"> <li>• Fetching fire wood</li> <li>• Cooking food (street food stalls)</li> </ul>	<ul style="list-style-type: none"> <li>• Physical violence</li> <li>• Sexual abuse</li> <li>• Poor inadequate meals</li> <li>• Street dust</li> <li>• Motor vehicle exhausts</li> </ul>	<ul style="list-style-type: none"> <li>• Fall Injuries</li> <li>• Mental and Physical fatigue</li> <li>• STD/HIV AIDS</li> <li>• Early pregnancy</li> <li>• Physical assault</li> <li>• Physical and mental fatigue, Malnourishment</li> <li>• Alcohol and abuse</li> <li>• Respiratory diseases</li> <li>• Burns and scalds</li> </ul>

**G: SERVICE SECTOR - COMMUNITY SERVICES**

<b>Tasks</b>	<b>Hazards</b>	<b>Physical and/or Psychosocial harm</b>
<ul style="list-style-type: none"> <li>• Cobblers</li> <li>• Electrical repair</li> <li>• Auto repair</li> <li>• Painting</li> <li>• Refuse collection</li> <li>• Tyre repairing</li> <li>• Laundry shops</li> <li>• Tailoring shop</li> <li>• Hair Dressing Salon</li> <li>• Barber shop</li> <li>• Shoe polishing</li> </ul>	<ul style="list-style-type: none"> <li>• Low income</li> <li>• Inappropriate equipment and tools</li> <li>• Lack of proper PPE</li> <li>• Heavy strenuous work</li> <li>• Poor working posture</li> <li>• Lack of good sanitation</li> <li>• Poor irregular meals</li> <li>• Physical violence</li> <li>• Inadequate ventilation and lighting</li> <li>• Chemical expose</li> </ul>	<ul style="list-style-type: none"> <li>• Poor mental and physical development</li> <li>• Physical and mental fatigue</li> <li>• Malnourishment</li> <li>• Skin and respiratory diseases</li> <li>• Injuries from sharp objects</li> <li>• Fall from heights</li> <li>• Dehydration</li> <li>• Depression with associated mental health problem</li> </ul>
<ul style="list-style-type: none"> <li>• Water vending</li> <li>• Scavenging</li> <li>• Street food vending</li> </ul>	<ul style="list-style-type: none"> <li>• Exposure to infectious agents</li> <li>• Working at night</li> <li>• Exposure to adverse weather</li> <li>• Long hours in the sun</li> </ul>	<ul style="list-style-type: none"> <li>• Physical assault</li> <li>• Alcohol and drug use</li> <li>• Heat/cold stress</li> <li>• Chemical intoxications</li> <li>• Musculoskeletal disorders</li> </ul>



**H: TRADE SECTOR**

<b>Tasks</b>	<b>Hazards</b>	<b>Physical and/or Psychosocial harm</b>
<ul style="list-style-type: none"> <li>• Carrying and selling merchandise in the streets</li> </ul>	<ul style="list-style-type: none"> <li>• Heavy manual lifting/carrying</li> <li>• Working long hours in adverse weather – hot/cold weather</li> <li>• Exposure to dust and motor vehicle exhaust</li> <li>• Violent/difficult customers</li> <li>• Physical violence</li> <li>• Improper meals</li> <li>• Low financial returns</li> <li>• Poor living condition</li> </ul>	<ul style="list-style-type: none"> <li>• Poor mental and physical development</li> <li>• Physical and mental fatigue</li> <li>• Dehydration</li> <li>• Undernourishment</li> <li>• Heat cold stress</li> <li>• Physical assault</li> <li>• Respiratory diseases</li> <li>• Depression</li> <li>• Diarrhoeal diseases</li> <li>• Drug/alcohol use</li> </ul>

**I: OTHER INFORMAL SECTOR OPERATIONS**

<b>Tasks</b>	<b>Hazards</b>	<b>Physical and/or Psychosocial harm</b>
<ul style="list-style-type: none"> <li>• Carpentry and Fixture workshop</li> <li>• Cotton ginning processing and production of hosiery goods</li> <li>• Detergents manufacturing</li> <li>• Jute textile manufacture and coir making</li> <li>• Lime kilns and manufacture of lime</li> </ul>	<ul style="list-style-type: none"> <li>• Wood dust</li> <li>• Noise</li> <li>• Work posture</li> <li>• Strenuous physical work</li> <li>• Chemical exposures</li> <li>• Hot surfaces</li> <li>• Naked wires</li> <li>• Lack of first aid</li> <li>• Poor ventilation</li> <li>• Lack of sanitation</li> <li>• Lack of sufficient light</li> <li>• Heavy manual lifting</li> </ul>	<ul style="list-style-type: none"> <li>• Physical and mental fatigue</li> <li>• Poor physical and mental development</li> <li>• Musculoskeletal disorders</li> <li>• Heat stress</li> <li>• Electrocution</li> <li>• Fertility problems</li> <li>• Depression</li> <li>• Visual fatigue</li> <li>• Infectious diseases</li> <li>• Physical assault</li> </ul>

<ul style="list-style-type: none"> <li>• Redamation of lead</li> <li>• Manufacturing of cement products</li> <li>• Manufacture of dye and dye stuff</li> <li>• Manufacture of and handling of pesticides</li> <li>• Pottery and ceramic manufactures</li> <li>• Metal fabrication</li> <li>• Welding</li> <li>• Shoe making</li> </ul>	<ul style="list-style-type: none"> <li>• Low or no information on safe work practices</li> <li>• Dangerous machines</li> <li>• Lack of PPE</li> <li>• Harsh supervision</li> <li>• Welding fumes</li> <li>• Exposure to excessive heat</li> <li>• Sharp objects</li> <li>• Long working hours</li> <li>• Exposure to organic dust</li> <li>• Exposure to chemicals</li> <li>• Noise</li> </ul>	<ul style="list-style-type: none"> <li>• Necrologies diseases</li> <li>• Noise induced hearing loss</li> <li>• Cancers</li> <li>• Heavy metal poisoning</li> <li>• Chronic lung diseases</li> <li>• Allergic disorders</li> <li>• Injuries, deformities and even deaths</li> </ul>
<ul style="list-style-type: none"> <li>• Carpet and mattress making</li> <li>• Cloth printing and Dying wearing garments</li> <li>• Hand and Power looms</li> <li>• Chemical Formulation</li> <li>• Foundry</li> <li>• Tanning</li> <li>• Gradation and cashew nuts descaling and processing</li> </ul>	<ul style="list-style-type: none"> <li>• Metal fumes</li> <li>• Radiation</li> <li>• Vibration</li> <li>• Repetitive work</li> <li>• Silica dust</li> <li>• Infectious materials</li> </ul>	

**F: TRANSPORT SECTOR**

Tasks	Hazards	Physical and/or Psychosocial harm
<ul style="list-style-type: none"> <li>• Auto repair workshops</li> <li>• Service station</li> <li>• Garage</li> <li>• Carrying luggage</li> <li>• Cleaning vehicles</li> <li>• Loading goods into vehicles</li> </ul>	<ul style="list-style-type: none"> <li>• Strenuous physical work</li> <li>• Inappropriate tools and equipment</li> <li>• Lack of proper PPE</li> <li>• Poor irregular meals</li> <li>• Poor sanitation</li> <li>• Falls from heights</li> <li>• Working with dangerous machinery</li> <li>• Motor vehicle exhaust fumes</li> <li>• Manual handling</li> <li>• Chemical exposure</li> </ul>	<ul style="list-style-type: none"> <li>• Poor mental and physical development</li> <li>• Musculoskeletal disorders</li> <li>• Chemical poisoning</li> <li>• Infertility disorders</li> <li>• Infections diseases</li> <li>• Respiratory diseases</li> <li>• Injuries/death</li> <li>• Skin diseases</li> <li>• Poor mental and physical fatigue</li> <li>• Under-nutrition</li> </ul>
	<ul style="list-style-type: none"> <li>• Asbestos exposure</li> <li>• Oils/lubricants</li> <li>• Exposure</li> <li>• Physical violence</li> <li>• Low pay</li> <li>• Welding fumes</li> <li>• Flying objects</li> <li>• Insects and vermin</li> <li>• Harsh supervision</li> <li>• Long working hours</li> </ul>	<ul style="list-style-type: none"> <li>• Depression</li> <li>• Asbestosis/cancer</li> <li>• Cold/heat stress</li> <li>• Vector borne diseases</li> <li>• Physical assault</li> </ul>

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## SECOND SCHEDULE

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### FORMS

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LAIF. 9

#### EMPLOYEES' RIGHTS FORM

*(Made under Regulation 12)*

##### PART I: RIGHTS UNDER THE ACT

1. Right to exercise freedom of association
2. Right to be supplied with the Contract of Service/Statement of Particulars
3. Right to annual leave
4. Right to maternity/paternity/sick leave
5. Right to certificate of service on termination
6. Right to remuneration and written statement of particulars supporting each payment of remuneration
7. Right to payment for the overtime worked and night work allowance
8. Right to daily and weekly rest periods as provided for in the Act
9. Right to be repatriated to place of recruitment on termination
10. Right to daily subsistence allowance between termination date and the date of transporting an employee and family to the place of recruitment
11. Any other rights as provided for under the Act .....

##### PART II: GENERAL RIGHTS UNDER CONTACT OF SERVICE

.....  
.....

##### PART III: GENERAL RIGHTS UNDER COLLECTIVE AGREEMENT

.....  
.....

Name: ..... Signature: .....

Designation: ..... Date: .....

Employer's Common Seal: .....

**\*NOTE: Employer shall display dully filled copy of this form, in a conspicuous place at workplace**

---

**CERTIFICATE OF SERVICE**

*(Made under Regulation 17)*

.....  
(Employer's Name and Address)

This is to certify that ..... (employee), has been working  
with us in the position of.....  
from..... to .....

Name: ..... Signature: .....

Designation: ..... Date: .....

Employer's Common Seal/Stamp.....

\_\_\_\_\_



THE UNITED REPUBLIC OF TANZANIA

**MINISTER'S EXEMPTION**

*(Made under Regulation 39)*

P. O. Box .....,  
.....

Ref. No. ....

To .....,  
.....,  
.....

Pursuant to powers conferred upon me under the provisions of section 100 (1) of the Act, having considered your application for an exemption from the employment standards contained in section (s)....., I hereby grant/refuse to grant the same, on the following grounds and/or conditions;-

.....  
.....  
.....

This exemption shall be effective within a period of ..... days/week(s)/month (s)/year (s) from..... and will involve the following employer(s) or category of employers;-

.....  
.....  
.....

Signed at ..... this..... day of..... (month), 20.....

(Name and Signature).....

**MINISTER RESPONSIBLE FOR LABOUR**

**Copy to:** Trade Union Representative/Representative of the Affected Employees

Area Labour Officer

### THIRD SCHEDULE

#### FORMS

(Made under Regulation 18)

TUF. 1

#### APPLICATION FOR REGISTRATION OF A TRADE UNION

(Made under Regulation 20 (1))

This form is filled by the Secretary of the Trade Union and submitted to the Registrar of Organizations.

The form must be accompanied by a certified copy of the attendance register and minutes of its establishment meeting and a certified copy of its constitution and rules.

#### DETAILS OF THE TRADE UNION

We .....,  
(Name of the Trade Union), apply for registration of this Trade Union.

The position, names and addresses of national office bearers and union officials are:

**POSITION ..... NAME ..... WORK ADDRESS .....**

We have ..... members

Date this ..... day of ....., 20..... at .....

.....

**Secretary**

(Name, Signature and Official Stamp)

#### DETAILS OF THE REGISTRAR OF ORGANISATIONS

I, ....., (name of official), duly authorized thereto in terms of Section 43(2) Labour Institutions Act No. 7 of 2004; and satisfied that the information is substantially correct.

The application was lodged with the Registrar on .....  
(Date)

TUF. 2

## APPLICATION FOR REGISTRATION OF EMPLOYERS' ASSOCIATION

(Made under Regulation 20(2))

This form is filled by the Secretary of the Employers' Association and submitted to the Registrar of Organisations.

The form must be accompanied by a certified copy of the attendance register and minutes of its establishment meeting and a certified copy of its constitution and rules.

### DETAILS OF THE EMPLOYERS' ASSOCIATION

We .....,  
(Name of the Employers' Association), apply for registration of this employers' association.

The position, names and addresses of national office bearers and employers' association Officials are:

**POSITION ..... NAME ..... WORK ADDRESS .....**

We have ..... members

Date this ..... day of ....., 20..... at .....

.....

**Secretary**

(Name, Signature and Official Stamp)

### DETAILS OF THE REGISTRAR OF ORGANISATIONS

I, ....., (name of official), duly authorized thereto in terms of Section 43 (2) Labour Institutions Act No. 7 of 2004; and satisfied that the information is substantially correct.

The application was lodged with the Registrar on .....  
(Date)

Dated this ..... day of ....., 20..... at .....

.....

**Registrar of Organizations**

(Name, Signature and Official Stamp)

TUF. 3



**APPLICATION FOR REGISTRATION OF FEDERATION/CONFEDERATION**  
(Made under Regulation 21)

To: The Registrar of Organisation:

1. We, the several persons whose names are subscribed below on behalf of ..... (Federation/Confederation), hereby make application for the registration under the Employment and Labour Relations Act of a Federation/Confederation to be known as—

.....

2. (i) The situation of the registered office of the Federation/Confederation is:

.....

(ii) The registered postal address of the Federation/Confederation is:

.....

(iii) The aforesaid Federation/Confederation was established on the ..... day of ....., 20.....

(iv) The purposes of the Federation/Confederation are—

.....

.....

(v) We enclose herewith—

(a) Two copies of the Constitution and Rules of the Federation/Confederation, signed by us.

(b) Statement I showing the names, occupations and addresses of the executive officers making this application.

(c) Statement II showing the titles, names, ages, addresses and occupations of the officers and trustees of the Federation/Confederation.

3. We have been duly authorized by the Federation/Confederation to make this application on its behalf by a General meeting held at ..... on the ..... day of .....

**STATEMENT I: NAMES OF PERSONS MAKING APPLICATION FOR THE REGISTRATION**

Name Organisation	Occupation	Name and Address of Represented
.....	.....	.....
.....	.....	.....

**NOTE:** This application must be signed by at least five numbers of the body applying for registration.

**STATEMENT II: NAME OF OFFICERS FOR THE  
FEDERATION/CONFEDERATION**

To: The Registrar of Organisations,

Dated this ..... day of ....., 20..... at .....

<b>Title of Officer in the Trade Union</b>	<b>Name</b>	<b>Age</b>	<b>address</b>	<b>Occupation</b>

Dated this ..... day of ....., 20..... at .....

.....

**Secretary**

(Name, Signature and Official Stamp)



TUF. 4

**THE UNITED REPUBLIC OF TANZANIA  
NOTICE OF REFUSAL TO REGISTER  
ORGANISATION/FEDERATION/CONFEDERATION**

*(Made under Regulation 24)*

I ..... from the powers conferred upon me under section 48(4) (b) of the Act, hereby notify ..... that the registration of..... as Organization/Federation/Confederation is refused, on the following grounds:

.....

Dated this ..... day of ....., 20..... at .....

.....

**Registrar of Organizations**

(Name, Signature and Official Stamp)



TUF. 5

THE UNITED REPUBLIC OF TANZANIA  
**CERTIFICATE OF REGISTRATION OF A TRADE UNION**

*(Made under Regulation 25)*

This is to certify that ..... (name of the trade union) has been registered as a trade union, pursuant to Section 48 (5) (b) of the Labour Institutions Act. No.7 of 2004; with effect from ..... (date)

Dated this ..... day of ....., 20..... at .....

.....  
**Registrar of Organizations**  
(Name, Signature and Official Stamp)



TUF. 6

THE UNITED REPUBLIC OF TANZANIA  
**CERTIFICATE OF REGISTRATION OF AN EMPLOYERS' ASSOCIATION**

*(Made under Regulation 25)*

This is to certify that ....., (name of the employers' association) has been registered as an employers' association, pursuant to Section 48 (5) (b) of the Labour Institutions Act. No.7 of 2004; with effect from ..... (date)

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

.....  
**Registrar of Organizations**  
(Name, Signature and Official Stamp)



TUF. 7

THE UNITED REPUBLIC OF TANZANIA

**CERTIFICATE OF REGISTRATION OF FEDERATION/CONFEDERATION**

*(Made under Regulation 25)*

This is to certify that the ..... (name of a federation/confederation) has been registered pursuant to section 48 of the Employment and Labour Relations Act as a Federation/Confederation with effect from ..... (date)

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

.....  
**Registrar of Organizations**  
(Name, Signature and Official Stamp)

TUF .8

**NOTICE OF INTENTION TO APPLY FOR CANCELLATION OF  
REGISTRATION OF ORGANISATIONS//FEDERATION/CONFEDERATION**

*(Made under Regulation 27)*

To: .....

This is to notify you pursuant to section 55(1) of the Act, that on expiry of 30 days from the date hereof, I intend to apply for cancellation of the registration of ..... as an Organisation/Federation/Confederation under the Act, unless cause is shown to my satisfaction on why such registration should not be cancelled. The grounds for such an intention are:

.....  
Dated this ..... day of ....., 20..... at .....

.....  
**Registrar of Organizations**  
(Name, Signature and Official Stamp)

TUF. 9

**NOTICE OF CHANGE OF NAME, CONSTITUTION AND RULES  
OF ORGANIZATION OR FEDERATION**

*(Made under Regulation 28)*

To: The Registrar of Organisations,

1. We, the Secretary and members of the above named organisation/federation hereby give notice that by a resolution passed at a General Meeting of the Organization/Federation held at..... it was resolved, in accordance with provisions of section 50(2)(a) of Act, that the name/constitution/rules of the ..... (Organization/Federation) be changed from ..... to ..... and we hereby request that the same be altered in your Register, accordingly, as hereby attached.
2. This Organization/Federation has ..... members and ..... members voted in favour of the resolution.

Dated this ..... day of ....., 20..... at .....

.....

**Secretary**

(Name, Signature and Official Stamp)

1. ....
2. ....
3. ....
4. ....
5. ....
6. ....

**Note:** This application must be signed by the Secretary and at least four members of the Organizations/Federation in case of employers and by the Secretary and at least six members of the Organization/Federation in case of employees.

TUF. 10

**NOTIFICATION OF REFUSAL TO REGISTER A CHANGE OF  
NAME/CONSTITUTION OR RULES OF ORGANIZATION/FEDERATION**

*(Made under Regulation 29)*

This is to notify you that registration of the change of name/constitution/rules of the  
..... (name of organizations/federations) to that of  
..... (proposed name/constitution/rules  
of Organizations/Federation) is refused, on the following grounds:

.....

Dated this ..... day of ....., 20..... at .....

.....  
**Registrar of Organizations**  
(Name, Signature and Official Stamp)



TUF. 11

THE UNITED REPUBLIC OF TANZANIA

**CERTIFICATE OF REGISTRATION OF CHANGE OF  
NAME/CONSTITUTION/ RULES OF ORGANIZATIONS/FEDERATION**

*(Made under Regulation 29)*

This is to certify that the change of the name/constitution/rules of .....  
(original name of Organizations/Federation/ Confederation) to .....  
(new name/constitution/rules of Organizations/Federation/Confederation) has been  
approved and registered pursuant to section 50(4) of the Act.

Dated this ..... day of ....., 20..... at .....

.....  
**Registrar of Organizations**  
(Name, Signature and Official Stamp)

TUF. 12

## NOTICE OF AFFILIATION

*(Made under Regulation 31)*

To: The Registrar of Organisations

This is to notify you that the following registered Organization/Federation/Confederation ..... was affiliated to ..... (Federation/Confederation) based in ..... (place) on the ..... day of ....., 20.....

Important Details of the Federation/Confederation affiliated to are: .....

Dated this ..... day of ....., 20..... at .....

.....

**Secretary**

(Name, Signature and Official Stamp)

TUF. 13

## NOTICE OF CHANGE OF REGISTERED OFFICE, OFFICIAL ADDRESS OR OFFICE BEARERS

*(Made under Regulation 32)*

To: The Registrar of Organisations

This is to notify you pursuant to section 52 (2) (c) and (d) of the Act, that the location of the Registered Office of the ..... Organization/Federation is moved from ..... to ..... and/or that the Registered Official Address of the said Organizations/Federation is no longer ....., rather .....; and/or the office bearers will be as follows: .....; with effect from the ..... day of .....

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

.....

**Secretary**

(Name, Signature and Official Stamp)

## NOTIFICATION TO EXERCISE ORGANISATIONAL RIGHTS

*(Made under Regulation 34(1))*

DETAILS OF EMAIL AND PHYSICAL ADDRESS, TELEPHONE NOS. AND FAX NOS. OF HEAD OFFICE AND AREA OFFICES OF THE COMMISSION TO BE INSERTED HERE

### READ THIS FIRST:

#### A. PURPOSE OF THE FORM

This form must be completed by a registered trade union that seeks to notify an Employer in terms of Section 64 of the employment and Labour Relations Act, that It seeks to exercise an organization right conferred under the Act.

#### B. WHO FILLS IN THE FORM?

The registered trade union seeking to exercise organization rights, must complete the form.

#### C. HOW TO SERVE THE FORM?

The form must be served on the employer that the trade union has notified of its intention

To exercise organization rights. The form may be served by hand, registered post or fax.

The following constitutes proof of service:-

- By hand:- receipt signed by the party or a person who appears to be at least 18 years old and in charge of the party's place of residence or place of employment, or a signed statement by the person who served the document;
- By registered post:- proof of posting from postal authorities;
- By fax:- fax transmission slip confirming the fax was successfully transmitted.

#### D. WHAT HAPPENS AFTER THE FORM IS SERVED?

The employer must meet with the trade union within 30 days of receipt of this form, to attempt to conclude a collective agreement granting the organizational rights and regulating the manner in which the rights are to be exercised. If there is no agreement or the employer fails to meet with the union within 30 days, the union may refer a dispute to the Commission for Mediation and Arbitration. The Commission shall then refer the dispute to mediation.



## 1. UNION'S DETAILS

Union Seeking to exercise  
Organizational rights  
details

Full Name: \_\_\_\_\_  
Registration No: \_\_\_\_\_  
enters Any acronym: \_\_\_\_\_ Date of reg. \_\_\_\_\_  
Postal address: \_\_\_\_\_  
\_\_\_\_\_  
Physical address: \_\_\_\_\_  
\_\_\_\_\_  
Contact Persona: \_\_\_\_\_  
Tel: \_\_\_\_\_ Fax: \_\_\_\_\_  
Cell: \_\_\_\_\_ Email: \_\_\_\_\_

Union insert employer's  
details here.

## 2. EMPLOYER/EMPLOYER ASSOCIATION DETAILS

Full Name: \_\_\_\_\_  
Registration No: \_\_\_\_\_  
Any acronym: \_\_\_\_\_ Date of reg. \_\_\_\_\_  
Postal address: \_\_\_\_\_  
\_\_\_\_\_  
Physical address: \_\_\_\_\_  
\_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Tel: \_\_\_\_\_ Fax: \_\_\_\_\_  
Cell: \_\_\_\_\_ Email: \_\_\_\_\_

If this applies to a  
number of  
Workplaces attach  
details on  
Separate paper

## 3. WORKPLACE DETAILS

Describe the physical address/Locality of workplace(s)  
at which the Union seeks to exercise organizational rights:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Possible rights in the  
ELRA Include:

- access (section 60)
- access to facilities

## 4. ORGANISATIONAL RIGHTS

Describe in detail the organisational rights that  
the Union seeks to exercise in respect of the Section 60(3) )

- Establishing a field branch (section 60(2) )
- deducting union dues (section 61)
- union representatives (section 62)

Employer:

\_\_\_\_\_  
\_\_\_\_\_

- paid time off for representatives (section 62 (5) ) \_\_\_\_\_
- disclosure of information (section 62(6) ) \_\_\_\_\_
- paid leave (section 63) \_\_\_\_\_

Attach additional paper if insufficient space here \_\_\_\_\_

Section 64(3) of the ELRA requires the parties to meet within 30 days to attempt to conclude an agreement

#### 5. PROPOSED DATES FOR MEETING

The Union proposes a meeting with the Employer to discuss this Application on any of the following dates:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Insert any other relevant information here

#### 6. GENERAL

Any other matter which the Union wishes to bring to the Employer's attention:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: \_\_\_\_\_

Name of Signatory: \_\_\_\_\_

Capacity: \_\_\_\_\_

Date: \_\_\_\_\_

**EMPLOYEE INSTRUCTION TO EMPLOYER TO DEDUCT DUES OF A  
REGISTERED TRADE UNION FROM EMPLOYEE'S WAGES**

*(Made under Regulation 34(1))*

EMPLOYEE'S NAME: \_\_\_\_\_  
EMPLOYEE NUMBER: \_\_\_\_\_  
EMPLOYER NAME: \_\_\_\_\_  
TRADE UNION NAME: \_\_\_\_\_  
INITIAL MONTHLY UNION DUES: \_\_\_\_\_

1. I the abovementioned employee hereby instruct my employer to deduct monthly  
From my wages, trade union dues owing to my union.
2. I agree that the amount deducted may from time to time be increased, provided that I am  
Given written notification of this in advance.
3. I confirm my understanding that I am entitled at any stage to cancel this instruction by  
Giving one month's written notice to my trade union and my employer.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness Name and Signature

\_\_\_\_\_  
Date

**PRESCRIBED LIST OF UNION MEMBERS TO ACCOMPANY MONTHLY  
REMITTANCE BY EMPLOYER TO TRADE UNION OF TRADE UNION DUES  
DEDUCTED**

*(Made under Regulation 34(1))*

**PURPOSE OF THE FORM**

An Employer that deducts the dues of a registered trade union from its employees' wages, is obliged to complete this form monthly and forward it to the trade union. A copy of any notice of revocation given by an employee to cancel the authorization to deduct union dues, must accompany this form.

EMPLOYER NAME: \_\_\_\_\_

UNION NAME: \_\_\_\_\_

Employee Name	Employee Number	Employee Workplace	Date Deducted	Amount Deducted
			<b>TOTAL AMOUNT DEDUCTED</b>	

**PERSON RESPONSIBLE FOR COMPLETING THIS FORM:**

Signature: \_\_\_\_\_

Name of Signatory: \_\_\_\_\_

Capacity: \_\_\_\_\_

Date: \_\_\_\_\_

*(Made under Regulation 34(1))*

Address of Employer: .....

[illegible]

TUF. 18

**LIST OF MEMBERS TO BE KEPT BY AN EMPLOYERS'  
ORGANIZATION/FEDERATION**

*(Made under Regulation 34(1))*

This is the prescribed form for an employers' association to keep records of their members as given by Section 52 (1) (a) in the Act.

(a) Full name and address of employer:	..... ..... ..... .....
(b) Name and telephone No. of contract person:	..... ..... .....
(c) Sector(s) in which engaged	..... ..... .....
(d) Number of employees in each sector	..... ..... .....

## **RECOGNITION AS EXCLUSIVE BARGAINING AGENT**

*(Made under Regulation 34(1))*

DETAILS OF EMAIL AND PHYSICAL ADDRESS, TELEPHONE NOS. AND FAX NOS. OF HEAD OFFICE AND AREA OFFICES OF THE COMMISSION TO BE INSERTED HERE

### **READ THIS FIRST:**

#### **A PURPOSE OF THE FORM**

This form must be completed by a registered trade union that intends to notify an employer or employer's association of its intention to seek recognition as the exclusive bargaining agent within an appropriate bargaining unit, as prescribed in Section 67 (3) of the Employment and Labour Relations Act.

#### **B WHO FILLS IN THE FORM?**

The registered trade union seeking recognition as a exclusive bargaining agent, must complete this Form.

#### **C HOW TO SERVE THE FORM?**

The Form may be served by a hand, registered post or fax. The following constitutes proof of service:

- by hand:- receipt signed by the party or a person who appears to be at least 18 years old and in charge of the party's place of residence or place of employment, or a signed statement by the person who served the document;
- by registered post:- proof of posting from postal authorities;
- by fax:- fax transmission slip confirming the fax was successfully transmitted.

#### **D WHAT HAPPENS AFTER THE FORM IS SERVED?**

The employer and the trade union must meet within 30 days of the notice having been served to attempt to conclude a collective agreement recognizing the trade union. This is prescribed by Section 67 (4) of the Employment and Labour Relations Act. If there is no agreement or the employer fails to meet with the trade union within the 30 days, the union may refer a dispute to the Commission for Mediation and Arbitration, which then refers it to mediation. The period of 30 days may be extended by agreement between the employer and the union.

## 1. UNION'S DETAILS

Union applying for recognition enters Full Name: \_\_\_\_\_

Details. If more than 1  
Union applying jointly, attach  
details on separate paper

Registration No: \_\_\_\_\_  
Any acronym: \_\_\_\_\_ Date of reg. \_\_\_\_\_  
Postal address: \_\_\_\_\_

Physical address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Tel: \_\_\_\_\_ Fax: \_\_\_\_\_

Cell: \_\_\_\_\_ Email: \_\_\_\_\_

## 2. EMPLOYER/EMPLOYER ASSOCIATION DETAILS

Union inserts employer's  
Details here.

Full Name: \_\_\_\_\_  
Registration No: \_\_\_\_\_  
Any acronym: \_\_\_\_\_ Date of reg. \_\_\_\_\_  
Postal address: \_\_\_\_\_

Physical address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Tel: \_\_\_\_\_ Fax: \_\_\_\_\_

Cell: \_\_\_\_\_ Email: \_\_\_\_\_

## 3. WORKPLACE DETAILS

If this applies to a number of  
Workplaces, attach details on  
separate paper.

Describe the physical address/Locality of workplace(s)  
At which the Union seeks recognition as exclusive  
Bargaining agent:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

E.g. insert the job  
grades or Job descriptions  
of employees

## 4: BARGAINING UNIT DETAILS

Describe the categories of employees that the Union  
proposes should constitute the bargaining unit:



---

---

---

Union must represent a majority of employees to be an exclusive bargaining agent. Documentary proof may be required by the employer to prove this (e.g signed union deduction forms, membership unit? forms etc)

## 5. UNION MEMBERSHIP DETAILS

5.1 How many employees within the bargaining unit (estimate)?

5.2 How many Union members within the bargaining unit?

5.3 Insert method used to determine Union membership

5.4 Is documentary proof available to substantiate this?

YES		NO	
-----	--	----	--

Section 67(4) of the ELRA requires the parties to meet within 30 days to attempt to conclude an agreement.

## 6. PROPOSED DATES FOR MEETING

The Union proposes a meeting with the Employer to discuss this Application on any of the following dates:

---

---

---

Insert any other relevant Information here.

## 7. GENERAL

Any other matter which the Union wishes to bring to The Employer's attention:

---

---

---

Signature: \_\_\_\_\_

Name of Signatory: \_\_\_\_\_

Capacity: \_\_\_\_\_

Date: \_\_\_\_\_

## **REFERRAL OF A DISPUTE TO THE COMMISSION FOR MEDIATION AND ARBITRATION**

*(Made under Regulation 34(1))*

**DETAILS OF EMAIL AND PHYSICAL ADDRESS, TELEPHONE NOS. AND FAX NOS. OF HEAD OFFICE AND AREA OFFICES OF THE COMMISSION TO BE INSERTED HERE**

### **READ THIS FIRST:**

#### **A. PURPOSE OF THE FORM**

This Form shall be completed if a party to a labour dispute intends to refer to dispute to the Commission in terms of section 86(1) of the Employment and Labour Relations Act.

#### **B. WHO FILLS IN THE FORM?**

The party wishing to refer the dispute – e.g. an employer, employee, union or employer's organization – must complete this form.

#### **C. WHERE DOES THE FORM GO?**

To the other party or the dispute and a copy to the Commission in the area where the dispute has arisen, together with proof of the Form having been served on the other party or parties.

#### **D. HOW CAN THE FORM BE SERVED?**

By hand, registered post or fax. Proof of service on any other party must accompany the Form served on the Commission. The following constitutes proof on service.

- by hand: - receipt signed by the party or a person who appears to be at least 18 years old and in charge of the party's place of residence or place of employment, or a signed statement by the person who served the document;
- by registered post:- proof of posting from postal authorities;
- by fax: fax transmission slip confirming the fax was successfully transmitted.

#### **E. WHAT HAPPENS WHEN THE FORM IS SUBMITTED?**

The Commission shall refer the dispute to mediation and advise all parties of the place, date and time of the first mediation meeting. Provide that the Commission may in certain circumstances refer the dispute direct to arbitration in terms of section 88 (3) of the Employment and Labour Relations Act.

**IMPORTANT**

THE RULES FOR MEDIATION AND ARBITRATION PUBLISHED BY THE COMMISSION REQUIRE A DISPUTE CONCERNING THE TERMINATION OF EMPLOYMENT TO BE REFERRED TO THE COMMISSION WITHIN 30 DAYS OF THE TERMINATION OR THE DATE THAT THE EMPLOYER MADE A FINAL DECISION TO TERMINATE OR UPHOLD THE DECISION TO TERMINATE. ALL OTHER DISPUTE TO BE REFERRED WITHIN 60 DAYS OF THE DISPUTE HAVING ARISEN. IF THIS DISPUTE IS REFERRED OUTSIDE THE TIME PERIODS STIPULATED, AN APPLICATION FOR CONDONATION FROM A PARTY TO THE DISPUTE SHALL ACCOMPANY THIS FORM. OTHERWISE THIS DISPUTE SHALL NOT BE PROCESSED

Tick the correct box      1.    DETAILS   OF   PARTY   REFERRING   THE  
DISPUTE

If you are an  
employee fill in (a)  
below

As the referring party, are you:

If you are an  
employer, union  
official or  
representative or an  
employers'  
organization, fill in  
(b) below

☐    An employee

☐    An employer

☐    A union official or representative

☐    An employers' organisation

(a)    **If the referring party is an employee**

Surname: \_\_\_\_\_

Fist Name: \_\_\_\_\_

Employee Identity Number: \_\_\_\_\_

Postal address: \_\_\_\_\_

Physical address: \_\_\_\_\_  
 \_\_\_\_\_

Tel.: \_\_\_\_\_ Cell: \_\_\_\_\_  
 Fax.: \_\_\_\_\_ Email: \_\_\_\_\_

(b) **If the referring party is** an employer, an employer, an employer's organization or union

Name: \_\_\_\_\_  
 Postal address: \_\_\_\_\_  
 Physical address: \_\_\_\_\_  
 Tel.: \_\_\_\_\_ Cell: \_\_\_\_\_  
 Fax.: \_\_\_\_\_ Email: \_\_\_\_\_  
 Contact person: \_\_\_\_\_

Tick the correct box 2. DETAILS OF THE OTHER PARTY (TO THE DISPUTE)

If there is more than one other party, write the details of the additional parties on a separate page and staple it to this form

- ☐ An employee
- ☐ An employer
- ☐ A union
- ☐ An employers' organization
- Name: \_\_\_\_\_
- Postal address: \_\_\_\_\_
- Physical address: \_\_\_\_\_
- Tel.: \_\_\_\_\_ Fax: \_\_\_\_\_
- Cell: \_\_\_\_\_ Email: \_\_\_\_\_
- Contact Person: \_\_\_\_\_

Tick the correct box 3. NATURE OF THE DISPUTE

☐ Application/interpretation/implementation of any law or agreement relating to employment

☐ Negotiations about terms and conditions of employment

☐ Discrimination

☐ Termination of employment

☐ Organization rights

☐ Recognition as exclusive bargaining agent

- ☐ Disclosure of information  
☐ Tort  
☐ Breach of contract  
☐ Other (please describe) \_\_\_\_\_

If the dispute concerns termination of employment complete Part B of this Form

Summaries the facts of the dispute you are referring (unless this is a termination dispute, in which case complete Part B of this Form)

If applicable, insert the amount

If this dispute is about a claim you are owed money, state the amount you believe you are owed:

The dispute arose on: \_\_\_\_\_  
 (give the date, day, month and year)

The dispute arose where: \_\_\_\_\_  
 (give the City/Town in which the dispute arose)

Suggest a fair solution to the dispute

#### 4. OUTCOME OF MEDIATION

What outcome do you seek?

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Tick the correct box

#### 5. INDUSTRY

Is the dispute in an essential service

Yes  
 No

Indicate the sector or service in which the dispute arose.

- ☐ Agriculture  
☐ Building & Construction  
☐ Cleaning  
☐ Communications  
☐ Contract  
☐ Distribution  
☐ Domestic

- ☐ Financial Services
  - ☐ Food & Beverage
  - ☐ Health
  - ☐ Mining
  - ☐ Private Security
  - ☐ Public Service
  - ☐ Retail Sector
  - ☐ Textiles
  - ☐ Transport
  - ☐ Other (Please describe)
- 

6. SPECIAL FEATURES/ADDITIONAL INFORMATION

The commissioner provides interpretation services for official languages only.

(a) Interpretation Service

Parties may, at their own cost, bring interpreters for languages other than official languages.

Do you require an interpreter at mediation?

YES ☐

NO ☐

If yes, please indicate for what language:

---

Special feature might be the urgency of the matter, the large number of people involved, important legal or labour issues etc.

(b) Other  
Briefly outline any special features/additional information the Commissioner needs to note:

---



---

7. APPLICATION FOR CONDONATION

A dispute concerning termination of employment to be referred to the Commission within

(a) Is an application for condonation for late filing of this dispute necessary? Tick the appropriate box  
YES ☐

30 days, and other  
disputes within 60 days of  
the dispute having arisen

NO ☐

If yes, an application for Condonation Form  
shall be attached.

Proof that a copy of this  
form has been sent could  
be:

- A registered slip form  
the Post Office
- A signed receipt if hand  
delivered
- A signed statement by  
the person delivering  
the form
- A fax slip

## 8. INFORMING THE OTHER PARTY

I confirm that a copy of this form has been sent to the  
other party/parties to the dispute and proof of this is  
attached to this form

\_\_\_\_\_  
Signature Name

\_\_\_\_\_  
Position

\_\_\_\_\_  
Date

## PART B

### ADDITIONAL FORM FOR TERMINATION OF EMPLOYMENT DISPUTES ONLY

Termination  
disputes shall be  
referred (i.e.  
received by the  
Commission) within  
30 days. If you are  
outside this period,  
you are required to  
apply for  
condonation.

#### (1) COMMENCEMENT OF THE EMPLOYMENT

When did you start working for your employer?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### (2) NOTICE OF TERMINATION

Please give the date of your termination

\_\_\_\_\_

How were you informed of your termination?

- ☐ By letter  
☐ At/After a disciplinary hearing  
☐ Verbally  
☐ Other (please describe)

\_\_\_\_\_

\_\_\_\_\_

(3) REASON FOR TERMINATION

Why was your employment terminated?

- ☐ Misconduct  
☐ Operation requirements (retrenchment)  
☐ Incapacity  
☐ Incompatibility  
☐ Unknown  
☐ Other (please describe)

\_\_\_\_\_

\_\_\_\_\_

(4) FAIRNESS/UNFAIRNESS OF TERMINATION

(a) **Procedural Issues**

Do you feel that the termination was procedurally unfair? (i.e. not in terms of a fair procedure)

YES ☐

NO ☐

If yes, why?

\_\_\_\_\_

\_\_\_\_\_

(b) **Substantive Issues**

Do you feel that the reason for termination was unfair?

YES ☐

NO ☐



**If yes, why?**

---

---

CMA F.2

**APPLICATION FOR CONDONATION OF LATE REFERRAL OF  
A DISPUTE TO THE COMMISSION FOR MEDIATION AND ARBITRATION**

*(Made under Regulation 34(1))*

DETAILS OF EMAIL AND PHYSICAL ADDRESS, TELEPHONE NOS. AND FAX NOS. OF HEAD OFFICE AND AREA OFFICES OF THE COMMISSION TO BE INSERTED HERE
---

**READ THIS FIRST:**

**A. PURPOSE OF THE FORM**

This form enables a party that has failed to comply with the time periods for referring a dispute to the Commission, to apply to have the dispute processed by the Commission. A dispute concerning termination of employment must be referred to the Commission within 30 days. All other disputes must be referred to the Commission within 60 days. The Rules for Mediation and Arbitration proceedings issued by the Commission set out the criteria to be applied in Determining condonation applications.

**B. WHO FILLS IN THE FORM?**

The party seeking application for condonation e.g. employer, employee, union or employers' organisation.

**C. WHERE DOES THE FORM GO?**

To the other party to the dispute and a copy to the Commission in the area where the dispute has arisen, together with proof of the form having been served on the other party.

**D. HOW CAN THE FORM BE SEVED?**

By hand, registered post or fax. Proof of service on any other party must accompany the form served on the Commission. The following constitutes proof of service:

- By Hand: receipt signed by the party or a person who appears to be at least 18 years old and in charge of the party's place of residence or place of employment,  
Or a signed statement by the person who served the document;
- By registered post: proof of posting from postal authorities;
- By fax: fax transmission slip confirming the fax was successfully transmitted.

#### **E. WHAT HAPPENS AFTER THE FORM IS SERVED?**

The other party to the dispute may within 14 days oppose the application by filling written

Submissions in accordance with the rules for Mediation and Arbitration proceedings. Thereafter the party seeking condonation may within 7 days submit a written reply to the opposition, in terms of the Rules.

A mediator appointed to deal with the dispute may decide the application for condonation

According to the criteria specified in the Rules either on the basis of the parties' written

Submissions or by calling the parties to a hearing to consider the matter.

#### **IMPORTANT**

**THE FORM REFERRING THE DISPUTE TO THE COMMISSION MUST ACCOMPANY THIS FORM**

Tick the correct box

#### **1. DETAILS OF PARTY REFERRING THE DISPUTE**

If you are an employee fill in  
(a) Below.

If you are an employer, union  
Official or representative or an  
Employers' organization, fill in  
(b) Below

As the referring party, are you:

An employee

An employer

A union official or representative

An employers' organisation

(a) If the referring party is an employee

Surname: \_\_\_\_\_  
First Name: \_\_\_\_\_  
Employee Identity Number: \_\_\_\_\_  
Postal address: \_\_\_\_\_  
\_\_\_\_\_  
physical address: \_\_\_\_\_  
\_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Tel: \_\_\_\_\_ Cell : \_\_\_\_\_  
Fax: \_\_\_\_\_ Email: \_\_\_\_\_

(b) If the referring party is an employer, an employer's  
Organization or union

Name: \_\_\_\_\_  
Postal address: \_\_\_\_\_  
\_\_\_\_\_  
physical address: \_\_\_\_\_  
\_\_\_\_\_  
Tel: \_\_\_\_\_ Cell: \_\_\_\_\_  
Fax: \_\_\_\_\_ Email: \_\_\_\_\_  
Contact person: \_\_\_\_\_

Tick the correct box

If there is more than one other  
Party, write the details of the  
Additional parties on a separate  
Page and staple it to this form

## 2. DETAILS OF THE OTHER PARTY (TO THE DISPUTE

An employee  
An employer  
A union  
An employers' organization Name: \_\_\_\_\_

Postal address: \_\_\_\_\_  
\_\_\_\_\_  
physical address: \_\_\_\_\_  
\_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Tel: \_\_\_\_\_ Cell: \_\_\_\_\_  
Fax: \_\_\_\_\_ Email: \_\_\_\_\_  
Contact person: \_\_\_\_\_

This may for example be the  
date that an employee was  
dismissed.

## 3. DATE THE DISPUTE AROSE

\_\_\_\_\_  
(give date, day, month and year)

Additional pages may be attached if the space below is Insufficient.

Provide details on the degree of lateness e.g how many days/weeks late is the application

Provide reasons why the Dispute was referred late

Comment on your prospects of Succeeding in obtaining the Outcome you seek, if the Dispute is processed by the Commission

Comment on how the parties to The dispute would be affected By a granting or a refusal of the Condonation application

Provide any other comments That may be relevant

Proof that a copy of this form Has been sent could be:

- A fax slip/a registered Slip from the post Office
- A signed receipt if hand Delivered is
- A signed statement by the Person delivering the form

4. SUBMISSION IN SUPPORT OF THE APPLICATION FOR CONDONATION, IN RESPECT OF THE FOLLOWING CRITERIA:-

(a) **degree of lateness**

---

---

---

(b) **reasons for lateness**

---

---

---

---

(c) **the referring party's prospects of success in the dispute referred**

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---

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(d) **Any prejudice to the other party**

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---

(e) **Any other relevant factors**

---

---

---

---

---

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5. INFORMING THE OTHER PARTY

I confirm that a copy of this form has been sent to the other party/parties to the dispute and proof of this attached to this form.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Positive

\_\_\_\_\_  
Date



THE UNITED REPUBLIC OF TANZANIA

**SUMMONS BEFORE THE COMMISSION FOR MEDIATION AND  
ARBITRATION  
(HATI YA WITO MBELE YA TUME YA USULUHISHI NA UAMUZI)**

*((Made under Regulation 34(1)) (Imetengenezwa Chini ya Kanuni ya 34(1))*

***Labour Dispute No. (Mgogoro wa kikazi Na.) .....***

***Between/Baina ya***

***..... Applicant (Mlalamikaji/Mwombaji)***

***And/Na***

***..... Respondent (Mlalamikiwa/Mjibu Maombi)***

***NOTICE TO ATTEND MEDIATION/ARBITRATION HEARING  
(TAARIFA YA KUITWA KUHUDHURIA KWENYE SHAURI LA  
USULUHISHI/UAMUZI)***

*Take notice that the above mentioned Mediation/Arbitration has been fixed for hearing on  
..... day of ....., year..... at .....  
hours, at ..... (Unaarifiwa kuwa shauri  
lililotajwa hapo juu, linalokuja kwa hatua ya Usuluhishi/Uamuzi, limepangwa kusikilizwa  
tarehe ..... Mwezi ..... Mwaka ....., saa .....mahali.....)*

*You are required to appear before the Commission in person and or accompanied by an  
Advocate/Personal representative as instructed, and produce on that day all relevant  
documents you intend to rely upon in support of your defence. You are further cautioned  
to remain in attendance until permitted by the Commission (Unatakiwa kufika binafsi ama  
kwa kuambatana na wakili/Mwakilishi wako mbele ya Tume kama ulivyoagizwa.  
Unapaswa kuleta vielelezo/nyaraka muhimu unazo kusudia kuzitumia katika utetezi wako.  
Unatahadharishwa usipuuze kutii wito huu na unatakiwa kubakia kwenye majengo ya  
Tume mpaka utakapo ruhuswa kuondoka na Tume).*

Given under my hand and seal of the Commission, this ..... day of ....., year .....  
(Imetolewa na kugongwa muhuri wa Tume leo tarehe ..... Mwezi ..... Mwaka, .....).

Name (Jina)..... Signature (Sahihi): .....

**Record Officer/Mediator/Arbitrator (Afisa Masijala/Msuluhishi/Muamuzi)**

Statement of the confirmation of service of summons (to be filled by a person who served the summons) (Uthibitisho wa kupokelewa kwa hati ya wito (itajazwa na mpelekaji wa hati ya wito):

.....  
Name (Jina): ..... Designation (Cheo): ..... Signature (Sahihi): .....  
..... Date (Tarehe): .....

**Particulars of the Person/Office/Official who is served with the summons (Taarifa za Mtu/Ofisi/Afisa aliyepokea Hati ya Wito)**

Name (Jina): ..... Designation (Cheo): ..... Place (Mahali): .....  
Time (Muda): ..... Signature (Sahihi): ..... Stamp (Muhuri): .....

CMA F.4



THE UNITED REPUBLIC OF TANZANIA

**SUMMONS FOR THE WITNESS TO APPEAR BEFORE THE ARBITRATION HEARING**  
(Made under Regulation 34(1))

**AT: .....**

**Name: .....**

**Address: .....**

.....

**LABOUR DISPUTE No: .....**

**BETWEEN**

..... **COMPLAINANT**

**AND**

..... **RESPONDENT**

Take NOTICE that the above mentioned Mediation/Arbitration has been fixed for hearing on ..... day of ..... year, ..... at ..... hours, at CMA Offices, located at .....

You are required to appear before the Commission as instructed, in person, to give evidence on the above dispute without fail. You are further continued to remain in attendance until permitted by the Commission.

Given under my hand and seal of the Commission, this ..... day of ..... year .....

.....  
**Mediator/Arbitrator**

CMA F.5

**AGREEMENT BY PARTIES TO EXTEND TIME FOR MEDIATION**  
*(Made under Regulation 34(1))*

**In the Dispute No. .... between:**

..... **(Applicant (s))**

**AND**

..... **(Respondent (s))**

We, parties to the above matter, have voluntarily agreed to extend time for Mediation. We shall appear for further Mediation on..... at ..... without fail.

Signature: .....

Name: .....

Date: .....

Signature: .....

Name: .....

Date: .....

**EMPLOYER/REPRESENTATIVE**

**EMPLOYEE/REPRESENTATIVE**

**Before me (Mediator's Name): .....**

**Signature: ..... Date: .....**



THE UNITED REPUBLIC OF TANZANIA

**CERTIFICATE OF SETTLEMENT/NON SETTLEMENT**

*(Made under Regulation 34(1))*

APPLICANT'S NAME: \_\_\_\_\_

RESPONDENT'S NAME: \_\_\_\_\_

LABOUR DISPUTE NUMBER: \_\_\_\_\_

DATE OF REFERRAL OF DISPUTE TO THE CMA: \_\_\_\_\_

NATURE OF DISPUTE: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

HAS THE DISPUTE BEEN RESOLVED?

YES		NO	
-----	--	----	--

MEDIATOR'S COMMENTS (IF ANY)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

NAME AND SIGNATURE OF THE APPLICANT:

\_\_\_\_\_

NAME AND SIGNATURE OF THE RESPONDENT:

\_\_\_\_\_

MEDIATOR'S NAME: \_\_\_\_\_

MEDIATOR'S SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_





THE UNITED REPUBLIC OF TANZANIA

**SETTLEMENT AGREEMENT UNDER MEDIATION**

*(Made under Regulation 34(1))*

**LABOUR DISPUTE No.** .....

**BETWEEN**

..... **(Applicant(s))**

**AND**

..... **(Respondent(s))**

**The above matter concerns a dispute on:**

.....  
.....

**Parties have agreed as follows;**

- ☐ .....
- ☐ .....
- ☐ .....
- ☐ .....
- ☐ .....
- ☐ .....
- ☐ .....
- ☐ .....
- ☐ .....

**This is a full/partial settlement of the dispute.**

.....

.....

**Applicant/Representative's Signature**

**Respondent/Representative's Signature**

**Before me (Mediator's Name):** .....

**Signature:** ..... **Date:** .....

CMA F.8

**NOTICE TO REFER A DISPUTE TO ARBITRATION**

*(Made under Regulation 34(1))*

**DISPUTE NO: .....**

.....

**APPLICANT**

.....

**RESPONDENT**

**(To be filled by the complainant, pursuant to Section 86 (7) (b) (i) of the Act)**

Reference is made to the certificate of non-settlement of the dispute issued by the Commission on..... Take notice that the applicant herein is desirous to refer the dispute to Arbitration. I pray that summons be issued to the respondent, and both of us be notified on the date of hearing.

Signed at: ..... this: ..... day of: ....., ..... (year)

.....

**RECORDS OFFICER**

**Copy to be served upon:**

.....

CMA F.10

**NOTICE OF INTENTION TO SEEK FOR REVISION OF AWARD**

*(Made under Regulation 34(1))*

**LABOUR DISPUTE No: .....**

**BETWEEN**

..... **APPLICANT**

**AND**

..... **RESPONDENT**

**TAKE NOTICE** that the Applicant/Respondent being dissatisfied with the Commission's award in the above mentioned Labour Dispute issued on ..... by Honourable ..... DO HEREBY intend to seek Revision/Review to the High Court of Tanzania (Labour Division) against the said award.

Please forward as expeditiously as possible certified copies of proceedings and award to the:

High Court of Tanzania,  
(Labour Division)  
..... (Place).

Dated at ..... this ..... day of .....

.....  
**Applicant**

Presented for filing this ..... day of ..... (year)

.....  
**Registry Clerk**

**Copy:**  
**Respondent**

---

**FOURTH SCHEDULE**

---

*(Made under regulation 33)*

---

**FEES**

The following fees shall be payable to Registrar:

1. Application of registration.....200,000/=
2. Alteration of rules, change of name, re-registration of officers...50000/=
3. For a copy of certificate of registration or for authentication not otherwise provided for .....30000/=
4. For inspection of register entries and documents filed by or with registrar relating to any organization ...30000/=
5. For a copy or extract from any document in the custody of the registrar 5000/= per page, in addition to the fee for authentication by the Registrar, where such authentication is required is 10000/=

Dar es Salaam,  
....., 2017

**JENISTA J. MHAGAMA,**  
*Minister of State, Prime Minister's Office,  
Labour, Youth, Employment and  
Persons with Disability*

**LABOUR INSTITUTION (GENERAL)  
REGULATIONS, 2017**

THE LABOUR INSTITUTIONS (GENERAL) REGULATIONS, 2017

ARRANGEMENT OF REGULATIONS

*Regulation Title*

PART I  
PRELIMINARY PROVISIONS

1. Citation.
2. Interpretations.

PART II  
APPOINTMENTS OF MEMBERS

(a) *Labour, Economic and Social Council*

3. Qualification for Chairman and members of the Council.

(b) *Commission for Mediation and Arbitration*

4. Qualification for chairman and members of the Commission.

(c) *Wage Boards*

5. Qualification for chairman and members of Wage Boards.
6. Tenure of office for wage board members.
7. Consultation with professional bodies.
8. Wage order review.
9. Outsource requirements.

PART III  
MISCELLANEOUS PROVISIONS

10. Compliance Certification.
11. Forms.

THE LABOUR INSTITUTIONS ACT, (CAP. 300)

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**REGULATIONS**

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*(Made under section 65)*

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THE LABOUR INSTITUTIONS (GENERAL) REGULATIONS, 2017

PART I

PRELIMINARY PROVISIONS

Citation                      1. These Regulations may be cited as the Labour Institutions (General) Regulations, 2017.

Interpretations            2. In these Regulations, unless the context otherwise requires-

“Act” means the Labour Institutions Act;

“wage board” means the board appointed by the minister pursuant to section 35(1) of the Act;

“Council” has the meaning ascribed to it under the Act;

“Minister” has the meaning ascribed to it under the Act;

PART II

APPOINTMENTS OF MEMBERS

*(a) Labour, Economic and Social Council*

Qualification  
for Chairman  
and members  
of the Council            3.-(1) The Chairman of the Council to be appointed by the Minister shall possess the following qualifications:

(a) academic qualifications of at least a masters’ degree  
in a relevant field;

- (b) working experience of at least five years in the labour or related field; and
- (c) general abilities and capacities in the relevant field and in managing national consultative bodies.

(2) Members of the Council to be appointed by the Minister shall possess the following qualifications:

- (a) working experience of at least three years in the labour or related field;
- (b) integrity; and
- (c) the expertise in Labour, Economic and Social fields.

(3) For the purpose of this regulation, the Minister shall ensure equal and fair representation prevail between registered trade unions and federations of trade unions and registered employers' associations and federations of employers' associations for employers and employees respectively.

*(b) Commission for Mediation and Arbitration*

Qualification  
for chairman  
and members  
of the  
Commission

4. Subject to section 16(1) and (2) of the Act and the provisions of regulation 3 of these Regulations, qualifications for appointment of Chairman and members of the Council, shall apply *mutatis mutandis* to the Chairperson and Commissioners of the Commission.

*(c) Wage Boards*

Qualification  
for chairman  
and members  
of Wage  
Boards

5. Subject to section 35 of the Act and the provisions of regulation 3 of these Regulations, qualifications for appointment of Chairman and members of the Council, shall apply *mutatis mutandis* to the Chairperson and members of wage board.

Tenure of  
office for  
wage board  
members

6. A member of the wage board shall hold office for a term not exceeding three years and may be re-appointed for a further one term not exceeding three years.



Consultation with  
professional  
bodies

7. The wage boards may, when conducting investigations, consult with the relevant authorities or professional bodies on economic, social and labour matters.

Wage order  
review

8. A wage order shall be reviewed within three years from the date of issue and shall provide for a more favourable wage, allowances, terms and conditions of employment to be negotiated annually between employers and employees at the workplace or at any level in the respective organization.

Outsource  
requirements

9.-(1) Outsource of service from another person shall be in a written contract committing compliance to Labour laws and any other written laws.

Cap. 366

(2) Remuneration, terms and conditions of employment for a person employed by one employer or in one sector and engaged to work to another person or in another sector, shall be as stipulated in the wage order taking into consideration the provisions of section 61 of the Act.

(3) Different treatment of employees for the work of equal value outsourced from different sources or arrangements shall be deemed as discrimination in accordance with the Employment and Labour Relations Act.

### PART III MISCELLANEOUS PROVISIONS

Compliance  
Certification

10.-(1) A labour officer may, where satisfied of compliance or non-compliance to Labour laws by an employer, recommend such person to the Labour Commissioner for a

respective certification as prescribed in a format set out in the Schedule to these Regulations.

(2) A certificate issued under this regulation shall be displayed in a conspicuous place.

(3) In assessing compliance, level to be used by a labour officer shall be as prescribed in the checklist set out in the Schedule to these Regulations, and may be subject to modification, from time to time, by the Labour Commissioner.

(4) Subject to this regulation, Labour Commissioner may compile, analyse and publish in a media or employers' compliance rankings based on a given statistics.

Forms

11. The prescribed forms set out in the Schedule to these Regulations shall be used in carrying out the provisions of these Regulations.

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## SCHEDULE

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**SCHEDULE**

*(Made under Regulation 11)*

**LAIF. 1**

**ORDER TO APPEAR BEFORE A LABOUR OFFICER**

*(Made under Regulation 11)*

P. O. Box.....,  
.....

Ref. No. ....

To. ....

Pursuant to powers conferred upon me by the provisions of section 45 (1) (b) of the Act, I hereby order you to appear before me at..... on  
..... at ..... a.m/p.m; for questioning or explanation  
regarding .....

Therefore, you are required to come with the following documents and/or records

.....  
.....

Take note that, non-compliance with this order is an offence under the provisions of sections 49 and 63 of the Act.

Given under my hand this..... Day of..... year .....

Name: ..... Signature: .....

Designation: ..... Official Stamp: .....

Saved upon me, this..... Day of..... year .....

Name: ..... Signature: .....

Designation: ..... Official Stamp: .....

**LAIF. 2**

**COMPLIANCE CERTIFICATION**

*(Made under Regulation 10 (1))*

P. O. Box.....,  
.....

Ref. No. ....

This is to certify that .....(Employer's  
Name and address) has been verified compliant/non-compliant following an  
inspection/assessment done on..... day of ..... (month), .....  
(year); and has been continuously educated, advised or guided.

This certification shall be valid until next inspection/assessment, but no later than  
12 months from the date of issue.

Name: ..... Signature: ..... Date: .....

Designation: ..... Official Stamp: .....

**Notes:**

Please take note that, an employer shall have an obligation to request for follow-  
up inspection or re-assessment, thirty days before the due date, for compliant  
employers or any time before in case of a non-compliant.

**LABOUR LAWS COMPLIANCE CHECKLIST**

*(Made under Regulation 10 (3))*

**PART I  
GENERAL INFORMATION**

1.     (a) Name and address of Establishment .....  
       (b) Name and Designation of the Contact Person.....  
       (c) Location (Street, Plot No., District, Region) .....
2. Nature of industry (e.g., Manufacturing, retail shop, hotel, hospital, school, bar,  
   private security, domestic services, cleaning services, etc.) .....
3. Name and signature of Interviewed Person (Employer/Representative(s)) .....
4. Date of Inspection/Assessment.....
5. Date of Previous Inspection/Assessment.....
6. Date of issuing the Compliance Order/Certificate/Contravention Letter.....

**PART II**  
**EMPLOYMENT STANDARDS, FUNDAMENTAL**  
**RIGHTS AND PROTECTION**

S/N	ITEM	COMPLIANCE		SCORE (%)		REMARKS/ ACTIONS
		YES	NO	ITEM SCORE	VERIFIED SCORE	
1.	(a) Are all employees issued with a copy of legally accepted employment contracts?			10		
	(b) Are the contracts of employment properly effected?			7		
2.	(a) Does the employer comply with the current wage order?			4		
	(b) Please state the minimum wage paid by employer; TZS..... (give 4 marks only if not Below the proper minimum wage)			4		
	(c) Does the employer pay any fringe			2		

*Labour Institutions (General)*

*G.N. No. 45 (contd.)*

	benefits, whether or not in cash?					
3.	Is there any person under the age of 18 years engaged in any of the activities prohibited by labour laws? (give 10 marks only if there is No one)			10		
4.	Is there any person forced by employer to perform or engage in any activity? (give 4 marks only if there is No one)			4		
5.	(a) Does the employer ensure equal opportunity for all without discrimination? (e.g. in recruitment, promotion, remuneration, treatment)			1		
	(b) Is there a "Plan" to promote equal opportunity and eliminate discrimination in line			2		

## *Labour Institutions (General)*

*G.N. No. 45 (contd.)*

	with labour laws?					
	(c) Does the “Plan” bring any impact on the practices?			3		
	(d) Are there foreign workers in this workplace?					
	(e) If yes in (d), do they have legally accepted work permits?			4		
	(f) If yes in (d), is there effective succession plan for nationals?			4		
6.	(a) Is there HIV and AIDS Workplace Policy?			3		
	(b) Is the Policy effectively implemented?			5		
7	(a) Is there a Collective			3		



*Labour Institutions (General)*

*G.N. No. 45 (contd.)*

	Bargaining Agreement?					
	(b) Is the agreement effectively implemented?			2		
	(c) Are the means of communication (spoken and written languages) at this workplace conversant to employees?			2		
	(d) Is there anything done in partnership between employer and workers or workers union, which intended to improve production, service delivery, productivity or their relations within the last 12 months?			2		

*Labour Institutions (General)*

*G.N. No. 45 (contd.)*

	(e) Is there a legally accepted Workplace Rules and Regulations Document?			2		
	(f) Is there a mechanism and document stipulating "Grievance Procedures"?			1		
	(g) Is the workers participation forum effectively			3		
8.	(a) Is there any employee who is a member of any trade union?			2		
	(b) Are employees allowed to form, join or participate in trade union activities During working hours?			2		
	(c) Is there effectively Operational Trade			2		

*Labour Institutions (General)*

*G.N. No. 45 (contd.)*

	Union Branch?					
9.	(a) Are the minimum requirements for Occupational Health and Safety observed?			1		
	(b) Is there any mechanism/measure to prevent/protect employees from injuries or diseases due to working environment or work process?			1		
	(c) Are events of accidents duly notified to proper authorities? (give 2 marks also if there is No event occurred)			2		
	(d) Are employees duly compensated for injuries or occupational diseases? (give			2		

*Labour Institutions (General)*

*G.N. No. 45 (contd.)*

	2 marks also if there is No event occurred)					
10.	(a) Are all employees registered to any of the pension schemes in the country?			5		
	(b) Is the employer properly contributing to respective scheme on monthly basis?			2		
	(c) Are the contributions dully remitted to respective scheme(s) on monthly basis?			3		
	<b>TOTAL SCORE</b>			<b>100</b>		

**Key:** Total Verified Score above 50% means compliant; below 50% means non-compliant; Total Verified Score from 50% to 80% means Best Performance; and above 80% means Distinction.

**PART III**

**REMARKS BY EMPLOYER'S REPRESENTATIVE**

.....  
NAME: .....TITLE: ..... SIGNATURE: ..... DATE: .....

**PART IV**

**REMARKS BY WORKERS' REPRESENTATIVE**

.....  
NAME: .....TITLE: ..... SIGNATURE: ..... DATE: .....

**PART V**

**GENERAL REMARKS AND RECOMMENDATIONS BY  
INSPECTING/ ASSESSING OFFICER**

.....  
RECOMMENDABLE STEPS/ACTIONS TO BE TAKEN

.....  
NAME: .....TITLE: ..... SIGNATURE: ..... DATE: .....

**PART VI**

**COMMENTS BY LABOUR OFFICER IN CHARGE  
(For Labour Office Use only)**

.....  
NAME: .....TITLE: ..... SIGNATURE: ..... DATE: .....

**COMPLIANCE ORDER**  
*(Made under Regulation 10(1))*

P. O. Box .....,  
.....

Ref. No. ....

To. ....

I ....., a Labour Officer duly appointed under section 43 of the Act, exercising powers conferred upon me by the provisions of section 45 of the Act, do hereby order you to comply with the following:

.....

Further, you are directed to ensure that measures to rectify the anomalies, be taken within .....days from the date you are in receipt of this order.

Given under my hand this.....Day of..... year 20.....

Name: ..... Signature: .....

Designation: ..... Official Stamp: .....

Saved upon me, this..... Day of..... year 20.....

Name: ..... Signature: .....

Designation: ..... Official Stamp: .....

**Copy to:** Labour Commissioner,  
Representative Trade Union,  
Affected Employee(s), Notice  
Boards.

**OBJECTION TO COMPLIANCE ORDER**

*(Made under Regulation 10(1))*

Ref. No.

.....  
.....  
.....  
.....

To: The Labour Commissioner,

I/We,....., having been aggrieved with the compliance order issued by the Labour Officer vide LAI F.3, with reference ..... Dated....., do hereby raise an objection on the following.....(please attach memorandum of objection with reasons).

I/We, therefore pray that you modify or cancel the order.

Name: ..... Signature: ..... Date: .....

Designation: ..... Official Stamp: .....

**Copy to:** Labour Officer,  
Representative Trade  
Union, Affected Employees,  
Notice Boards.

**LABOUR COMMISSIONER'S ORDER**

*(Made under Regulation 10(1))*

P. O. Box .....,  
.....

Ref. No. ....

To. ....

Pursuant to powers conferred upon me under the provisions of section 47 (3) – (8) of the Act, having considered your objection to the Labour Officer's Compliance Order issued to you on ..... vide LAI-F-3, with reference ....., I do hereby confirm/modify/cancel the order, for reasons stated hereunder:.....

This order should be complied within a period of .....days from the date you are in receipt of the order.

Take note that, non-compliance with this order, is an offence under the provisions of section 49 (1) (f) and 63 of the Act.

Given under my hand this..... Day of..... 20.....

..... (Name and Signature)

**LABOUR COMMISSIONER**

Saved upon me, this..... Day of..... year 20.....

Name: ..... Signature: .....

Designation: ..... Official Stamp: .....

**Copy to:** Area Labour Officer,  
Representative Trade Union,  
Affected Employees.



**LAIF. 7**

**RECEIPT FOR SEIZURE**  
*(Made under Regulation 10(1))*

P. O. Box .....,  
.....

Ref. No. ....

This is to certify that the following book(s)/document(s)/objects have  
been seized from ..... (Employer's Name):

1. ....
2. ....
3. ....
- .....

Reason(s) for seizure .....

Name: ..... Signature: ..... Date: .....

Designation: ..... Official Stamp: .....

**Notes:**

Please take note that, the seized book(s)/document(s)/objects may be returned  
to you upon submission of this receipt.

THE UNITED REPUBLIC OF TANZANIA

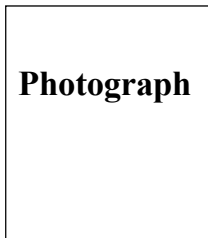
**LABOUR ADMINISTRATION AND INSPECTION SERVICES**

*(Made under Regulation 10(1))*

P. O. Box.....,

.....

Ref. No. ....



**CERTIFICATE OF AUTHORIZATION**

This is to certify that Mr/Mrs/Miss/Ms .....

(A Labour Officer, whose photograph appears above), is authorized to exercise the powers conferred upon me by virtue of the provisions of section 44 to 46 of Labour Institutions Act, No. 7 of 2004.

Holder's Signature..... Date of Issue.....

.....  
**LABOUR COMMISSIONER**

This Certificate is a property of Labour Administration and Inspection Services Department, issued to, and shall be used by the named person, in accordance with Sect. 45(1) (a) and 45 (4) and (5) of Act, No. 7, of 2004.

**If found, please return to:**

The Labour Commissioner,  
P. O. BOX 9014,  
**DAR ES SALAAM.**

Dar es Salaam,  
*24<sup>th</sup> February, 2017*

**JENISTA J. MHAGAMA,**  
*Minister of State, Prime Minister's Office,*  
*Labour, Youth, Employment and Persons with Disability*

**LABOUR INSTITUTIONS**  
*(Ethics and Code of conduct for Mediators  
and Arbitrators)*

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

**RULES**

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

THE LABOUR INSTITUTIONS (ETHICS 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.

THE LABOUR INSTITUTIONS ACT, 2004

(No.7 OF 2004)

**RULES**

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

THE LABOUR INSTITUTIONS (ETHICS AND CODE OF CONDUCT FOR  
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-<br>“Commission” means the Commission for Mediation and Arbitration.   |

PART II

GENERAL ATTRIBUTES

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

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:

(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;
- (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.

Conduct of  
hearing

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.

(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 behaviour 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.



(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.

Confident  
iality

**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.

Jurisdiction

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

(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.

Mediation  
by  
Arbitrators

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

(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.

Reference materials

**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.

(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.

Agreement in writing

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

Avoidance of delays

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

(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.

Reference materials

Fees and expenses

**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.

(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.

Competen  
cy                    **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,  
9<sup>th</sup> March, 2007

ADAM NJANGA SIM8EYE,  
*Chairperson of the Commission*

***LABOUR INSTITUTIONS***  
***(Mediation and Arbitration Guidelines)***

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

**RULES**

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

THE LABOUR INSTITUTIONS (MEDIATION AND  
ARBITRATION GUIDELINES) RULES, 2007  
ARRANGEMENT OF RULES

PART I  
PRELIMINARY PROVISIONS

*Rule Title*

1. Citation.
2. Application.

PART II  
MEDIATION

3. Mediation process.
4. Fundamental principles of mediation.
5. Powers of mediator.
6. Disputes requiring mediation.
7. Representation.
8. Confidentiality.
9. Stages of mediation process.
10. Mediator to read referral documents.
11. Information gathering stage.
12. Exploring options and developing consensus stage.
13. Mediator to keep records.
14. Consequences of failure to attend mediation.
15. Postponements.
16. Mediation during arbitration and a combined mediation or arbitration process.
17. Enforcement settlement agreements.

PART III  
ARBITRATION

18. Arbitration process.

19. Powers of arbitrator.
20. Disputes requiring arbitration.
21. Representation.
22. Stages of arbitration process.
23. Introduction stage.
24. Opening statements and narrowing of issues.
25. Evidence stage.
26. Closing argument.
27. Award stage.
28. Consequences of failure to attend the arbitration.
29. Postponements.

#### PART IV

#### MEDIATION DURING ARBITRATION AND A COMBINED MEDIATION ARBITRATION PROCESS

30. Consent of parties to the dispute.
31. Costs.
32. Remedies for unfair termination of disputes.
33. Correction awards.

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

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**RULES**

---

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

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THE LABOUR INSTITUTIONS (MEDIATION AND ARBITRATION  
GUIDELINES) RULES. 2007

PART I  
PRELIMINARY PROVISIONS

Citation            1. These Rules may be cited as the Labour Institutions (Mediation and Arbitration Guidelines) Rules, 2007 and shall come into operation on the date of publication in the *Gazette*.

Applicati  
on                    2.-(1) These Rules aim to guide Mediators and Arbitrators appointed by the Commission in the exercise of their powers and functions and assist parties to resolve disputes provided that every mediation and arbitration shall be considered on its own merit.

(2) Where there is any conflict between these Rules and the provisions of any legislation, the legislation shall apply and mediations or arbitrations shall be conducted in accordance with any rules for mediation or arbitration proceedings that may be published.

PART II  
MEDIATION

Mediation  
process            3.-(1) Mediation is a process in which a person independent of the process parties is appointed as mediator and attempts to assist them to resolve a dispute and may meet with the parties either jointly or separately, and through discussion and facilitation, attempt to help the parties settle their dispute.

(2) A mediator may make recommendations to the parties suggesting for settlement if, the parties to the dispute agree or the mediator believes it will promote settlement. Recommendations made are not binding on the parties; it is only persuasive and aims to assist the parties to settle a dispute.

(3) The mediator has 30 days from the time the dispute is referred to the Commission, to assist the parties in resolving the dispute.

*G.N. No. 67 (contd.)*

(4) The parties may extend this period by an agreement in writing.

(5) The mediator shall issue a certificate at the end of the mediation, identifying the nature of the dispute and stating whether the dispute has been resolved or not. This certificate may be issued within the 30 days period if, the mediator decides that mediation has failed.

Fundamental principles of mediation

**4.-(1)** It is a fundamental principle of mediation that the parties ultimately choose whether to settle the dispute or not. The recommendations of the mediators shall not be binding unless the parties agree.

(2) Whether the agreed parties have settled or not, the mediation under the employment and Labour Relations Act is compulsory and parties shall attend the mediation and attempt to resolve the dispute without strikes and lockouts or arbitration.

Powers of a mediator

**5.-(1)** A mediator has powers to determine how the mediation shall be conducted.

(2) The powers of the mediator include-

(a) to require further mediation meetings between the parties, after the initial hearing scheduled by the Commission, provided that the mediator may do this after the period set aside for mediation has expired and in deciding whether to require further meetings, the mediator may consider the following-

- (i) the prospects of progress towards settlement;
- (ii) the consequences of a settlement or non-settlement being reached;
- (iii) the interests of the parties; and
- (iv) the public interest generally.

(b) to respond in particular ways if a party or parties attend mediation hearings;

(c) to summon a person for questioning, attending a hearing, and order the person to produce a book, document or object relevant to the dispute if that person's attendance may assist in resolving the dispute.

Disputes requiring mediation

**6.-(1)** The Commission may refer a dispute to arbitration before it has been mediated or set down the mediation and arbitration hearing on the same date. In contemplating this, the Commission may consider the following-

- (a) the consequences of any delay in the mediation proceedings;
- (b) the prospects of settlement at mediation;
- (c) the effective utilization of the Commission's resources;



*G.N. No. 67 (contd.)*

- (d) the interests of the parties; and
- (e) the public interest generally.

(2) Parties may agree to submit a dispute to arbitration.

(3) Nothing shall prevent trade unions and an employer or employers' association to conclude collective agreements providing for the resolution of dispute outside of the Employment and Labour Relations Act.

(4) Subject to clauses 2 and 3, a mediator on convening the mediation and after allowing the parties to make submissions in this regard may, rule that the dispute has been wrongly referred to mediation through the Commission and the mediator may then dismiss the referral of the dispute to mediation.

Represent  
ation

- 7.-(1)** A party to a dispute may be represented by
- (a) a member or an official of that party's trade union or employers' association; or
  - (b) an advocate.

Confidenti  
ality

**8.-(1)** Without prejudice mediation is a confidential process aimed helping the parties to a dispute to reach an agreement.

(2) Information disclosed during mediation may not be used as evidence in any other proceedings, unless the party disclosing that information states otherwise.

(3) The mediator may not be compelled to be a witness in any other proceedings in respect of what happened during the mediation.

(4) The confidential nature of mediation proceedings prevents the Mediator, the parties and their representatives from disclosing any information obtained during mediation to any third party.

Stages of  
mediation  
process

**9.-(1)** Each mediation may vary depending on the parties involved, the style of the Mediator, the nature of the dispute and the circumstances involved and mediation may involve four distinct stages:-

- (a) introduction;
- (b) gathering information;
- (c) exploring options and developing consensus; and
- (d) conclusion.

Mediator  
to read  
referral  
documents

**10.-(1)** The Mediator shall be prepared, having read the referral documents and any law applicable to the dispute.

(2) The Mediator shall introduce and welcome the parties, determine the language in which proceedings are to be conducted and if there is a need for translation, ensure the presence of an interpreter.

(3) The Mediator shall declare conflict of interest if any before the mediation.

(4) The Mediator shall withdraw from the proceedings, whether or not there is an objection from the parties, if the Mediator believes there is a reasonable apprehension of bias or partiality.

(5) The Mediator should give the parties an outline of how the mediation will be conducted and dealt with any concerns or queries raised by the parties about the process.

(6) The Mediator shall inform the parties of any logistic arrangements, and in appropriate circumstances, obtain the commitment of the parties to certain ground rules during the process and these may include the understanding of the following-

- (a) that what is said in side meetings between the mediator and one of the parties shall not be conveyed to the other party unless it has been agreed;
- (b) that what is said during mediation will not be conveyed to anyone outside the process without the consent of all parties;
- (c) that the Mediator will not be called by any of the parties as a witness in any subsequent proceedings;
- (d) that the proceedings are off the record and conducted on a without prejudice basis;
- (e) a commitment from the parties to respect each other, the mediator and the process. They should accordingly give each other the opportunity to speak, as directed by the mediator and shall conduct the proceedings in a manner that maximises the possibility of a settlement being reached; and
- (f) that the parties determine whether or not they wish to settle, but the mediator controls the process and may decide when the parties may or meet in a joint session separately.

Information gathering stage

**11.** The mediator shall gather information about the dispute from the parties in a joint session.

- (a) inviting each party to give their views on the dispute
- (b) allowing each party an opportunity to ask questions for clarification and to respond to any version given;
- (c) asking questions to the parties in an attempt to understand the real interests of the parties, the causes of the conflict, and what the parties expect to achieve; and
- (d) summarising the issues that need to be addressed during the mediation.

Exploring  
options  
and  
developin  
g  
consensus  
stage

**12.**-(1) The Mediator may commence exploring options with the parties either in joint sessions or separately with any of the parties, depending on which options would best facilitate progress being made and may switch between these options and consider other process options such as-

- (a) establishing a sub-committee from the parties;
- (b) meeting with person or persons who provide a mandate to a party.

(2) The Mediator should consider the order in which issues are to be addressed and attempt to generate possible trade offs or concessions between different-issues.

(3) The Mediator should assist the parties to reflect on the consequences of the choices available to them and ensuring that they have considered all the implications involved.

(4) The Mediator should attempt to widen the possible range of solutions available to the parties.

(5) The Mediator should draw on the mediator's experiences in dealing with similar disputes in other industries or areas.

(6) The Mediator should ensure that the parties have in mind the consequences of a failure to reach an agreement and that they compare carefully the costs of settlement against the costs of stage of non-settlement.

Mediator  
to keep  
record

**13.**-(1) The Mediator shall carefully keep record of proposals and counter proposals made by all parties and at an appropriate stage, draft a document reflecting consensus between the parties.

(2) Where the parties have settled the dispute, the Mediator shall draft a settlement agreement.

(3) The settlement agreement shall ensure that it-

- (a) is clearly understood by all parties;
- (b) does not create further disputes;
- (c) is clear and concise;
- (d) includes a procedure for dealing with any disputes that may arise from the application or interpretation of the agreement;
- (e) caters for any ratification process required; and
- (f) is signed by all parties to the dispute.

(4) Where settlement of the dispute is not reached, the Mediator should ensure that -

- (a) the issues in dispute are narrowed down as much as possible, by getting the parties to agree in writing on those issues in dispute which have been eliminated;

(b) the parties are aware of their rights to process the dispute further in terms of the Act.

(5) The Mediator shall complete the necessary documentation at the end of the mediation, identifying the nature of the dispute and certifying that the dispute has been resolved or unresolved.

(6) The Mediator shall remember that the parties to the dispute are involved in an ongoing relationship and therefore the mediation process should accordingly be conducted in a manner that hopefully contributes to the growth of that relationship, irrespective of whether the particular dispute has been resolved or not.

Consequences of failure to attend mediation

**14.**-(1) Where a party is not present at the commencement date and time set, for the mediation, the Mediator shall wait for a reasonable time to give the party an opportunity to arrive.

(2) Where a party fails to appear at mediation, the mediator may do the following-

- (a) in the case of a complaint the Mediator may postpone the hearing in accordance with rule 15 or may-
  - (i) dismiss the complaint if the referring party fails to attend a mediation hearing during the initial 30 days period;
  - (ii) delist the complaint if the other party to complaint fails to attend a mediation hearing.
- (b) in the case of a dispute of interest, the mediator may postpone the hearing in accordance with rule 15 or may-
  - (i) extend the 30 days period by a further 30 days, where the party referring the dispute fails to attend a mediation hearing during the initial 30 days period; or
  - (ii) shorten the 30 days period where a party to the dispute other than party to the complaint fails to attend such a hearing.

(3) Subject to sub clause (2) (a) (ii), where the party has failed to attend a hearing, it does not warrant the Mediator to find in favour of the party present.

(4) Subject to sub-clause (2) (b) (ii), where the Mediator brings forward or delays a party's right to participate in a strike or lockout the Mediator may shorten the 30 days period to the date of the mediation hearing, thereby giving the party present the right to immediately commence the steps to engage in a lawful strike or lockout.

(5) A decision by a Mediator resulting from the failure of a party to attend mediation, may be reversed by the Commission if it believes there were good grounds for failure to attend.

(6) An application to the Commission for these purposes

shall be in the prescribed manner.

Postponement

**15.**-(1) Irrespective of whether or not there is an agreement between the parties, a Mediator shall postpone a hearing in the following circumstances-

- (a) there is a good reason to do so;
- (b) other parties to the dispute are not unduly prejudiced as a result; and
- (c) there are prospects that the dispute may be settled as a result of the postponement.

Mediation during arbitration and a combined mediation or arbitration process

**16.**-(1) Where the parties to the dispute consent, an Arbitrator may suspend proceedings and resolve the dispute through mediation.

(2) The same person may be assigned to both mediate and arbitrate a dispute.

(3) The person shall not meet with any of the parties separately during the mediation process, as this may create a perception of biasness or partiality.

(4) The person shall, during the mediation phase, attempt to focus process on areas of settlement as opposed to the factual issues in dispute.

(5) Where the person is not able to settle the dispute during mediation, an attempt shall be made to narrow down the issues in dispute as much as possible, to reduce the amount of evidence to be led during arbitration.

Enforcement settlement agreements

**17.**-(1) The Commission may, by an agreement between the parties or on application by a party, make any settlement agreement in respect of any dispute that has been referred to the Commission an arbitration award.

(2) An arbitration award can be served and executed in the Labour Court as if it was a decree of a court of law.

### PART III ARBITRATION

Arbitration process

**18.**-(1) Arbitration is a process in which a person appointed as an Arbitrator for resolving a dispute determines the dispute for the parties process

(2) The process involves a hearing where parties present evidence and argument.

(3) The Arbitrator's decision is provided with reasons in a written award.

(4) An arbitration award is binding on the parties to the dispute and is enforceable before the Court.

(5) No appeal shall lie against an arbitrator's award.

*G.N. No. 67 (contd.)*

(6) Notwithstanding the provision of sub-rule (5) an application may be made to the Court to set aside the award on the basis of irregularities in the arbitrator proceedings.

Powers of  
arbitrator

- 19.**-(1) An Arbitrator has the power to determine how the arbitration should be conducted.
- (2) The powers of the Arbitrator include to-
- (a) administer an oath or accept an affirmation from any person called to give evidence;
  - (b) summon a person for questioning attending a hearing, and order the person to produce a book, document or object relevant to the dispute, if that person's attendance may assist in resolving the dispute.

Disputes  
requiring  
arbitration

- 20.**-(1) Dispute shall first be resolved through mediation.
- (2) The Mediator may refer a dispute for arbitration before mediation or set down the mediation and arbitration hearing on the same date. In contemplating this, it may consider the-
- (a) consequences of any delay in the arbitration proceedings;
  - (b) prospects of settlement at mediation;
  - (c) effective utilization of the Commission's resources;
  - (d) interests of the parties; and
  - (e) public interest generally.
- (3) The types of disputes referred for arbitration include -
- (a) a dispute of interest if the parties to the dispute are engaged in an essential service;
  - (b) a complaint over the following-
    - (i) the fairness of an employee's termination of employment;
    - (ii) a contravention of labour legislation or breach of contract, in which the amount claimed is within the pecuniary jurisdiction of the Resident Magistrates' Court;
    - (iii) any dispute referred for arbitration by the Court.
- (4) A complaint means a dispute over the application, interpretation or implementation of rights emanating from an agreement, contract of employment or labour legislation and a dispute of interest means any labour dispute other than a complaint.

- Representation**      **21.**-(1) A party to a dispute may be represented by-
- (a) a member or an official of that party's trade union or employers' association; or
  - (b) an advocate.
- Stages of arbitration process**      **22.**-(1) Subject to the discretion of the Arbitrator as to the appropriate form of proceedings, a party to the dispute may give evidence, call witnesses, question witnesses and present arguments.
- (2) The arbitration process involve the following five stages-
- (a) introduction;
  - (b) opening statements and narrowing of issues; .
  - (c) evidence;
  - (d) argument; and
  - (e) award.
- Introducti on stage**      **23.**-(1) The Arbitrator shall introduce and welcome the parties, obtain a register of all parties in attendance, determine the language in which proceedings are to be conducted and if there is a need for interpretation, ensure the presence of an interpreter.
- (2) The Arbitrator shall explain the arbitration process to the parties particularly if they have no previous experience of the process answer any questions raised by the parties and ensure that the parties have a clear understanding of the process.
- (3) The Arbitrator shall disclose conflict of interest if any and whether has had any contact with any of the parties before the arbitration.
- (4) The Arbitrator shall withdraw from the proceedings, whether or not there is an objection from the parties, if the Arbitrator believes there is a reasonable apprehension of bias or partiality.
- (5) The Arbitrator shall clarify the manner and extent to which the arbitration proceedings are to be recorded, and ensure. That, the necessary recording takes place.
- (6) Prior to the commencement of the opening statements, an Arbitrator shall deal with preliminary issues that may arise.
- (7) The Arbitrator may equally have concerns in regard to some of the issues, having read through the documentation prior to the proceedings.
- (8) In the event of preliminary issues being raised each party shall be given the opportunity to present evidence and arguments.
- (9) The Arbitrator may elect to decide the preliminary point before proceeding with the arbitration or to conduct the arbitration and decide the preliminary point at the time of considering all the evidence in the matter.
- (10) In some instances it may be necessary to determine the preliminary points before proceeding with the arbitration.

Opening  
statements  
and  
narrowing  
of issues

**24.**-(1) Each party to the dispute shall provide a concise opening statement containing the following-

- (a) a statement of the issue or issues in dispute;
- (b) a brief outline of the dispute; and
- (c) an indication of the outcome that party will seek at the conclusion of the arbitration.

(2) The Arbitrator shall emphasize to the parties that what is contained in their opening statements does not constitute evidence in respect of the issues in dispute, unless admitted between the parties.

(3) The first party to make an opening statement shall present its case first throughout the proceedings. If the parties do not agree about who shall start, the Arbitrator shall be required to make a ruling in this regard. Provided that, in a dispute over an alleged unfair termination of employment, the employer will be required to start as it has to prove that the termination was fair.

(4) At the conclusion of the opening statements, the Arbitrator shall attempt to narrow down the issues in dispute as much as possible and explain to the parties that the purpose of doing so is to eliminate the need for evidence in respect of factual disputes.

(5) Where an Arbitrator is required to determine a dispute in which no factual disputes occur, the parties may argue their respective cases or the basis of their agreed facts.

(6) Parties shall provide copies of each document intended to be used as evidence, for the Arbitrator and for each party to the dispute.

Evidence  
stage

**25.**-(1) The parties shall attempt to prove their respective cases through evidence and witnesses shall testify under oath through the following process-

(a) examination in chief: -

- (i) the party calling a witness who knows relevant information about the issues in dispute obtains that information by not asking leading questions to the person;
- (ii) parties are predicted to ask leading questions during an examination in chief.

(b) cross examination;-

- (i) the other party or parties to the dispute. may, after a witness has given evidence, ask any questions to the witness about issues relevant to the dispute;
- (ii) obtain additional information from the witness or challenge any aspect of the evidence given by the witness;  
leading questions are allowed at this stage of proceedings.

(c) re-examination, the party that initially called the witness has a further



*G.N. No. 67 (contd.)*

opportunity to ask questions to the witness relating to issues dealt with during cross-examination and the purpose of re-examination is to correct or clarify evidence-covered during cross-examination.

(2) Arbitrators are entitled to ask questions to a witness at any stage, but shall attempt to keep most of their questions until the end of the cross-examination of that witness.

(3) The Arbitrator shall give the party cross-examining, a further opportunity to ask questions arising from the Arbitrator's questions and the party conducting the re-examination may take into account all questions asked by the other party or the Arbitrator.

Closing arguments

**26.**-(1) Having presented the evidence parties are given opportunity to make closing arguments based on the facts admitted or presented to the Arbitrator.

(2) The Arbitrator may choose to alert the parties to specific issues to be canvassed during their closing arguments.

(3) The closing arguments shall contain the following-

- (a) a restatement of the issue or issues in dispute;
- (b) an analysis of the facts; and
- (c) submissions.

(4) Parties shall address the Arbitrator with persuasive versions supported by most legal principles or authorities shall be provided to support their case.

Award stage

**27 .**-(1) The Arbitrator shall write and sign a concise award containing the decision within the prescribed time with reasons.

(2) The award shall be served on all parties to the dispute in the manner specified in the rules for mediation and arbitration proceedings.

(3) An award shall contain the following-

- (a) details of the parties;
- (b) the issue or issues in dispute;
- (c) background information (i.e. information admitted between the parties)
- (d) summary of the parties' evidence and arguments;
- (e) reasons for the decision; and
- (f) the order (the precise outcome of the arbitration).

- Consequence  
of failure to  
attend the  
arbitration
- 28-(1)** When a party fails to attend an arbitration hearing, an Arbitrator may do the following-
- (a) where a party who referred the dispute to the Commission fails to attend the hearing, the Arbitrator may dismiss the matter or postpone the hearing.
  - (b) where a party against whom relief is sought fails to attend, the Arbitrator may proceed in the absence of that party or postpone the hearing.
- (2) Where an Arbitrator proceeds in the absence of a party, the party present has to prove its case and to present an opening statement, evidence, and any argument in support of its case.
- (3) In the absence of the opposing party there shall be no cross-examination of witnesses called and the Arbitrator may question witness or witnesses to enable the Arbitrator to decide whether the party present has proved its case.
- Postponement
- 29.-(1)** An Arbitrator shall postpone a hearing in the following circumstances:-
- (a) if there is a good reason to do so; and
  - (b) other parties to the dispute are not unduly prejudiced as a result of postponement.

#### PART IV MEDIATION DURING ARBITRATION AND A COMBINED MEDIATION ARBITRATION PROCESS

- Consent  
of parties  
to the  
dispute
- 30.-(1)** Where the parties to the dispute consent, an Arbitrator may suspend proceedings and resolve the dispute through mediation.
- (2) Same person may be assigned to both mediate and arbitrate a dispute.
- Costs
- 31.-(1)** An Arbitrator may not order for costs unless a party or a person representing a party acted in a frivolous or vexatious manner.
- (2) A party or person shall be acting in a frivolous manner if behaves in a manner that did not show appropriate respect for the arbitration process;
- (3) A party or person shall be acting in a vexatious manner if proceedings were instituted against another party on insufficient grounds with the intention of troubling that party.
- (4) Order for costs shall be granted in accordance with the rules for mediation and arbitration proceedings and the scale of costs provided.

- Remedies for unfair termination of disputes
- 32.**-(1) Where an arbitrator finds a termination to be unfair, the Arbitrator may order the employer to reinstate, re-engage the employee or to pay compensation to the employee.
- (2) The Arbitrator shall order re-instatement or re-engagement where-
- (a) the employee does not wish to be re-instated or re-engaged;
  - (b) the circumstances surrounding the termination are such that a continued employment relationship would be intolerable;
  - (c) it is not reasonably practical for the employer to re-instate or re-engage the employee; or
  - (d) the termination is unfair because the employer did not follow a fair procedure.
- (3) Re-engagement shall be subject to any terms of employment that the arbitration may decide.
- (4) For the purposes of these Rules re-instatement means that an employee shall be put back in the job unconditionally.
- (5) Subject to sub-rule (2), an Arbitrator may make an award of appropriate compensation based on the circumstances of each case considering the following factors-
- (a) any prescribed minima or maxima compensation;
  - (b) the extent to which the termination was unfair;
  - (c) the consequences of the unfair termination for the parties, including the extent to which the employee was able to secure alternative work or employment;
  - (d) the amount of the employee's remuneration;
  - (e) the amount of compensation granted in previous similar cases;
  - (f) the parties conduct during the proceedings; and any other relevant factors .
- Correction of awards
- 33.** (1) An Arbitrator may, on application by a party to the dispute or on the Arbitrator's own accord, correct any clerical mistake or error arising in the award from any accident slip or omission.
- (2) In carrying out the function provided in sub-rule (1), an Arbitrator shall follow the procedure set out in the Rules for mediation and arbitration proceedings.
- Arbitrators shall ensure that parties do not interfere with the final and binding nature of an award.

Dar es Salaam,  
9th March, 2007

ADAM NJANGA SIMBEYE.  
*Chairperson of the Commission*

THE LABOUR INSTITUTIONS (MEDIATION AND  
ARBITRATION) RULES, 2007  
G.N. No. 64

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

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

**RULES**

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

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

Interpretation      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

Opening hours of the offices of the Commission      3. (I) 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.  
(2) Documents may be filed with the Commission during the hours

referred to in sub-rule (I).

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

Calculation  
of time

4.-(I) 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.

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

Signing of  
documents

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.

(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.

Service of  
documents  
to other  
party

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 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;
  - (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.

proof of  
service of  
document

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

- (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.

(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  
documents  
with the  
Commission  
on

**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.

Documents and  
notices sent by  
registered 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 limit for  
referring  
disputes

**10.-(1)** Disputes about the fairness of a 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 arised.

Seeking of  
condonation  
for  
documents  
delivered

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

(2) A party shall apply for condonation, by completing and delivered delivering the prescribed condonation form when delivering the late 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

Method of  
referring  
disputes to the  
Commission

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

(2) The referring party shall:-

- (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.

**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 disputes	<p><b>15.</b> 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.</p>
Issuing of certificate of settlement or non-settlement	<p><b>16.</b>-(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.</p> <p>(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.</p> <p>(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.</p> <p>(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,.</p>
Non-disclosure of mediation proceedings	<p><b>17.</b>-(1) No person may refer to anything said at mediation proceedings during any subsequent proceedings, unless the parties agree in writing.</p> <p>(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.</p>

#### PART IV

#### COMBINED MEDIATION AND ARBITRATION PROCEEDINGS

combined mediation and arbitration	<p><b>18.</b>-(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.</p> <p>(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.</p> <p>(3) The parties may agree to a shorter period of notice.</p> <p>(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.</p> <p>(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.</p>
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(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 arbitration hearing         | <p><b>19.</b> 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.</p>   |
| Determination of jurisdictional issue | <p><b>20.</b> 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.</p>   |
| Postpone ment of arbitration          | <p><b>21.-(1)</b> An arbitration may be postponed by-</p> <ul style="list-style-type: none"><li>(a) an agreement between the parties in terms of sub-rule (2); or</li><li>(b) an application in terms of sub-rule (3); or</li><li>(c) an arbitrator for good reasons.</li></ul> <p>(2) The Commission shall postpone an arbitration without the parties appearing if -</p> <ul style="list-style-type: none"><li>(a) all the parties to the dispute agree in writing to the postponement; and</li><li>(b) the written agreement for the postponement <b>is received</b> by the Commission more than seven days prior to the scheduled date of the arbitration.</li></ul> <p>(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.</p> <p>(4) After considering the written application, the Commission may-</p> <ul style="list-style-type: none"><li>(a) without convening a hearing, postpone the matter; or</li><li>(b) convene a hearing to determine whether to postpone the matter.</li></ul> |

**PART VI**  
**RULES THAT APPLY TO MEDIATION, ARBITRATION**  
**AND COMBINED PROCEEDINGS**

- Venue for mediation and arbitration 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.  
(2) The Commission shall determine the venue for mediation of arbitration proceedings.
- Representation before the Commission      **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.  
(2) For the purposes of the Act, an advocate means a person currently registered to practice as an advocate in Tanzania mainland.
- Joinder or substitution of parties to proceedings      **24.**-( I) 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.  
(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.  
(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 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.

Correction  
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 (I), 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.

Consolidati  
on of  
disputes

**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.

Disclosure of  
information  
and  
production of  
documents

**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.

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

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

**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.

(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 (I) and (2).

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



PART VII  
APPLICATIONS

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

Correction  
and setting  
aside of  
arbitration  
awards

**30.-** (1) In 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.

(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

(I) and shall re-issue the corrected award with a written explanation of the correction.

## PART VIII

### MISCELLANEOUS PROVISIONS

Condonation  
for failure to  
comply with  
the rules

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

Record of  
arbitration  
proceedings

**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 (I), 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  
summons

**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 a 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.

Taxation of  
bill of costs

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

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

the taxing officer shall tax any bill of costs for service rendered in connection with proceedings in the Commission on the prescribed Commissions 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.

Language of  
the  
Commission

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

(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*

THE LABOUR COURT RULES

*G.N No. 106 of 2007*



**The United Republic of Tanzania**

**THE LABOUR COURT RULES**

**G. N. No. 106 of 2007**

**THE LABOUR COURT RULES, 2007**

**ARRANGEMENT OF RULES**

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SCHEDULE

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THE LABOUR INSTITUTIONS ACT, 2004

(No.7 OF 2004)

**RULES**

*(Made under section 55 (1))*

THE LABOUR COURT RULES, 2007

PART I

PRELIMINARY PROVISIONS

Citation	1. These Rules may be cited as the Labour Court Rules, 2007.
Interpretation	2.-(1) Unless the context otherwise requires, any expression in these Rules that is defined in the Labour Institutions Act, 2004 and the Employment and Labour Relations Act, 2004, has the same meaning as in those Acts.
Acts No. 6 of 2004 and 7 of 2004	(2) Without prejudice to subrule (1)- "Act" means the Labour Institutions Act, 2004; "Acts" means the Labour Institutions Act, 2004 and the Employment and Labour Relations Act, 2004; "application" includes an interlocutory application or any application directed by the Court; "association" means an unincorporated body of persons; "Commission" means the Commission for Mediation and Arbitration established under section 12 of the Act; "Council" means the Labour, Economic and Social Council established under section 3 of the Act;
Cap.1	"Court" means the Labour Court; "day" means any day as defined under the Interpretation of Laws Act; "document" includes any publication, and any matter written, expressed

- or described upon any substance by means of letters, figures, or marks, or by more than one of those means which is intended to be used for the purpose of recording that matter, document or record in electronic form; "electronic" means anything relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;
- "file" means filing of documents with the Registrar;
- "firm" means a business carried on by a sole owner or body corporate under a separate name;
- "Gazette" means the Government Gazette as defined in the Interpretation of Laws and General Clauses Act, Cap. 1 R. E. 2002;
- "Judge Chairman" means the Judge Chairman of the Labour Court appointed under section 50 of the Act;
- "Judge in-charge" means the Judge in-charge of the zonal centre of the Court appointed under Section 50 of the Act;
- "Judge" means a Judge of the Court, and includes an acting Judge; "Labour Court" means the Labour Division of the High Court; "notice" means a written notice;
- "notify" means to notify in writing;
- "party" means a party to Court proceedings and includes a person representing a party in terms of section 56 of the Act and section 88 of the Employment and Labour Relations Act 2004;
- "public holiday" means a day which is declared to be or proclaimed as a public holiday under the Public Holidays Act;
- "record" means a record in written or electronic form and includes tape recording;
- "Registrar" means the Registrar and the Deputy Registrar of the Court appointed in terms of section 54 of the Act and includes any other person authorized to act in the place of the Registrar or Deputy Registrar;
- "representative" means any person authorized under section 56 of the Act to represent a party; "Rules" means these Rules;
- "serve," means service on other parties;
- "service" has the meaning as ascribed in rule 9;

"tape recording" includes a sound track, film, magnetic tape, record or any other materials on which visual images, sound or other information can be recorded.

## PART II

### ADMINISTRATION AND PROCEDURES

Court of  
Record law,  
equity and  
mediation

**3.-(1)** The Labour Court shall be a court of record, law, equity and mediation and shall keep-

- (a) its judgments, rulings, orders, decrees or deeds of settlement given;
- (b) evidence given;
- (c) objections made to any evidence received or tendered;
- (d) on-the-spot inspection and any matter recorded as a result of that inspection and reports; and
- (e) proceedings generally.

(2) The record referred to in subrule (1), shall be kept in such forms as the Court may deem fit.

(3) A transcript of electronic recordings, a portion of the transcript or recording may be made to the Court upon request by any of the parties from time to time.

(4) Any transcript of electronic recordings shall be certified as correct, by the person making such notes or transcripts and shall be filed with the Registrar.

(5) A certified transcript of electronic recordings shall be deemed to be correct unless proven otherwise.

(6) A person may make copies of any document filed to the Court from time to time, and in the presence of the Registrar, unless directed otherwise by the Judge.

Language of  
the Court  
Gn No. 451  
of 1985

**4.-(1)** The language of the Court shall be bi-lingual in either English or Kiswahili or both, as the case may be.

(2) The proceedings, judgment, ruling, decision, order or decree shall be written in either language and may be translated to the other language by translators sworn or affirmed under rule 19 of these Rules as may be necessary.

Zonal centres  
of the Court

5. The Chief Justice may establish zonal centres and appoint a Judge in-charge of any such zonal centre as he may determine, and each zonal centre shall discharge the functions of the Court as may from time to time, be determined by the Judge Chairman.

Initiating  
proceedings  
referrals  
response and  
reply

6.-(1) A party initiating referral proceedings to the Court shall file a statement of complaint as prescribed in Form No. I of the Schedule to these Rules and shall-

- (a) have a heading containing the following information;-
  - (i) the title of the matter;
  - (ii) the case number assigned by the Registrar;
  - (iii) an address of the party filing the document at which that party will accept notices and service of all documents in the proceedings; and
  - (iv) a notice advising the other party that if he intends to oppose the matter, a response shall be filed in terms of subrule (3), within fifteen days of service of the statement of complaint, failure of which shall cause the matter to be set down for default judgment;
- (b) have a substantive part containing the following information-
  - (i) the names, description and addresses of the parties;
  - (ii) a clear and concise statement of the material facts and any legal issues that may arise, arranged in a chronological order, which the party relies, whereas the statement shall contain sufficient particulars to enable any opposing party to reply to the document; and
  - (iii) the reliefs sought;
- (c) be signed by the party to the proceedings;
- (d) express all dates, sums and numbers contained in the document in figures; and
- (e) be accompanied by a Schedule listing and attaching the documents that are material and relevant to the claim.

(2) Subject to the provisions of subsection (6) of Section 18 of the Act, where the matter is a referral by the Director of the Commission -

- (a) the party referring the dispute to the Director shall file a statement of complaint within fifteen days from the date which the Director notified the party of the referral of the dispute to the Court; and

(b) a statement of complaint shall be accompanied with a copy of the application for the referral'.

(3) A respondent on whom a statement of complaint is served may file a response to that statement.

(4) Subject to subrule (1), the response shall, with the modification as may be required by the context, contain the required information.

(5) The response shall be filed and served on all necessary parties within fifteen days from the date on which the statement of complaint was filed.

(6) The complainant may reply to the statement of the response within seven days from the date on which the response was filed.

Insurance of documents and the Registrar's duties

**7.-(1)** The Registrar shall assign consecutive case numbers to all documents that initiate proceedings.

(2) Proceedings initiated at any of the zonal centres shall be assigned the consecutive case numbers of that office.

(3) The Registrar shall ensure that every document subsequently filed in respect of the same proceedings is marked with the same case number.

(4) The Registrar may refuse to accept a document from any party if the document is not properly marked with the case number assigned by the Registrar.

(5) The Registrar may request a party to correct any apparent defect or error in any document that is filed.

(6) Subject to subrule (5), the Registrar shall forward the document to a Judge in chamber for directions where a party has refused to correct any document after such a request by the Registrar.

(7) The Registrar shall keep the Court's records and disallow them to be taken from the Court building without prior authorization by the

Mode of filing of documents

**8.-(1)** All documents may two filed with the Registrar in a sufficient number of copies by-

(a) handing the documents to the Registrar; or

(b) sending the copies of the documents by a registered mail; or

(c) faxing or e-mailing the documents.

(2) The document shall be deemed to have been duly filed with the Registrar on the date which that document has been;-

- (a) handed to the Registrar;
- (b) sent by a registered mail to the Registrar; or
- (c) transmitted by fax or e-mail.

(3) All documents filed with the Registrar shall be in original form, but in the case of documents filed by fax or email, the original document shall be filed within fifteen days following the date on which the documents faxed or emailed were filed.

Service of  
documents

**9.-(1)** A document required to be served on any other person, may be served by-

- (a) handing a copy of the document to the person(s) concerned;
- (b) leaving a copy of the document at the person's place of residence or business with any other person who is apparently 18 years old or above and in charge of the premises at the time;
- (c) leaving a copy of the document at the person's place of employment with any person who is apparently 18 years old or above and in authority;
- (d) faxing or e-mailing a copy of the document to the person, if the person has a fax number or an internet facility;
- (e) handing a copy of the document to any representative authorized in writing to accept service on behalf of the person;
- (f) leaving a copy of the document at that address or by faxing it or e-mailing it to that fax number or internet facility where the person has chosen an address or fax number or e-mail address for service;
- (g) sending a registered mail to the last known address of the party and it will be presumed that service was effected on the seventh day following the day on which the document was posted; or
- (h) a substituted service as may be authorized by the Court.

(2) Where the person to be served is a -

- (a) body corporate, by serving a copy of the document on a responsible employee of the body corporate at its registered office or its principal place of business within the United Republic or its main place of business within the geographical area in which the dispute first arose or, if there is no employee willing

- to accept service, by affixing a copy of the document to the main door of the office or place of business;
- (b) trade union or employers' organization, by serving a copy of the document on a responsible employee who at the time of service is apparently in charge of the main office of the union or employers' organization or the union's or employers' organization's office within the geographical area in which the dispute first arose, at that office or the union or employers' organization or, if there is no person willing to accept service, by affixing a copy of the document on the main door of that office;
  - (c) partnership, firm or association, by serving a copy of the document on a person who at the time of service is apparently in charge of the premises and 18 years of age or above, at the place of business of such partnership, firm or association or, if such partnership, firm or association 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 partner/director or other controlling body of such association, as the case may be;
  - (d) Local Authority, by serving a copy of the document on the Director, or any person acting on his behalf;
  - (e) statutory body, by serving a copy upon the secretary or an officer or member of the board or committee of that body, or any person acting on its behalf;
  - (f) Government or Regional Administration, by serving a copy on a responsible employee of that office and any other responsible officer of the Attorney General's Chambers; and
- (3) Proof of service shall be proven in Court by-
- (a) an affidavit of the process server or any other person who effected service;
  - (b) an affidavit of the person who effected service, which shall provide proof of the correct fax number or e-mail address and confirmation that the whole of the transmission was completed where service was effected by fax or e-mail;
  - (c) a signed acknowledgement of receipt by the party on whom the document is served where the person on whom the document has been served is already on record as a party; or



- (d) producing the receipt issued by the post office for the posting of the registered mail and an affidavit that the letter posted contained the document concerned.

(4) Where the Court is dissatisfied that service has taken place in accordance with this rule, it may make any order as to service that it deems necessary.

Pre-trial  
conference by  
the Registrar  
and Mediator

**10.-(1)** Where a response and any further reply thereto are filed the parties to the proceedings shall hold a pre-trial conference before the Registrar or the Mediator attached to the Court in terms of subrule (2) within fifteen days of the date of filing of the response and any further reply.

(2) During a pre-trial conference, the parties shall first attempt to reach an amicable settlement by any means available to the parties, including mediation on-

- (a) facts that are common cause;
- (b) facts that are in dispute;
- (c) the issues that the Court is required to decide upon;
- (d) the precise relief claimed and if compensation is claimed the amount of the compensation and its calculation;
- (e) discovery, exchange of documents and the preparation of a paginated bundle of documentation in a chronological order;
- (f) the manner in which documentary evidence is to be dealt with, including any agreement on the status of documents and whether these documents or parts of documents, will be admissible as evidence of what they purport to be;
- (g) whether evidence in respect of an affidavit will be admitted with or without the right of any party to file counter affidavit, reply to it or to cross-examine the deponent, with leave of the Court;
- ,  
(h) which party shall commence;
- (i) the necessity for any on-the-spot inspection;
- (j) securing the presence of any witness at Court;
- (k) the resolution of any preliminary points that are intended to be taken;
- (l) the exchange of witness statements;
- (m) expert evidence;
- (n) any other means by which the proceedings may be shortened;
- (o) an estimate of the time required for the hearing; and

(p) whether an interpreter is required or not, and if so, for which languages and the manner of securing his presence at Court;

(3) Where the parties have reached a settlement, the Registrar or Mediator shall draw a consented settlement order or award respectively to be signed by parties and their advocates if any, and the Registrar or Mediators which shall be deemed to be a decree of the Court.

(4) Where settlement has failed, the parties shall draw up and sign a non settlement order as set out in subrule (2) to this Rule.

(5) The Chief Justice may, after consideration of the prevailing economic and other relevant circumstances, prescribe, from time to time, such a remuneration to be paid to mediators attached to the Court sitting in any proceedings of the Court under this rule.

Judge's  
direction and  
powers on  
pre-trial  
matters

**11.**-(1) Subject to this subrule, where no settlement has been reached during the pre-trial conference, the Registrar shall forward the file to the Judge Chairman or Judge-in-charge of the Court for assignment and the presiding Judge, on receiving such file may direct-

- (a) the Registrar to enrol the matter for hearing if he is satisfied that the matter is ready for hearing; or
- (b) that an informal conference be held before the presiding Judge in chamber to deal with any of the pre-trial matters; or
- (c) the parties to convene a formal pre-trial conference at a date, time and place fixed by the Registrar, in which conference the presiding Judge shall, deal with any of the pre-trial matters.

(2) Subject to paragraphs (a) and (b) of subrule (1), the presiding Judge may, at a pre-trial conference held, make any appropriate orders for the further conduct of proceedings and any other orders necessary.

Non-  
compliance

**12.** Where a party fails to attend any pre-trial conference convened in terms of rules 10 (1), 11 (1)(a) or (b) or fails to comply with the directions made by the presiding Judge in terms of rule 11, the matter may be enrolled for an ex-parte hearing or dismissed, as the case may be, on the direction of the presiding Judge and the defaulting party shall not be permitted to appear at the hearing unless the Court, on sufficient cause shown, makes appropriate orders.

Enrolment for hearing	<p><b>13.-(1)</b> Where the presiding Judge decides that any directions given in terms of rules 6, 7, 8, 10, 11 and 12 have been satisfied, he shall direct the Registrar to enrol the matter for hearing.</p> <p>(2) Where the Registrar receives a direction under subrule (1), he shall enrol the matter and notify the parties of the time, date and place fixed for hearing.</p>
Discovery of documents	<p><b>14.</b> A document which has not been disclosed during the pre-trial conference may not, except with the leave of the Court, be granted on whatever terms the Court deems fit, be used for any purpose at the hearing by the person who was obliged to disclose it, except that the document or tape recording may be used by a person other than the person who was obliged to disclose it.</p>
Expert witness	<p><b>15.-(1)</b> Any party intending to call an expert witness shall serve a notice to that effect, together with a summary of the evidence and opinion of the expert witness, not less than fifteen days before the date appointed for hearing unless the Court directs otherwise:</p> <p>Provided that the Court may allow a shorter or longer period which is less or more than fifteen days.</p> <p>(2) Where a party fails to comply with the provisions of subrule (1), the Court may not admit the evidence or admit it only on sufficient cause being shown.</p>
Witness summons	<p><b>16.-(1)</b> Any party who requires a witness to attend any proceedings to give evidence on his behalf may have a summons issued by the Registrar for that purpose.</p> <p>(2) A summons shall be substantially in the Form No.3 in the Schedule to these Rules and shall be signed by the Registrar.</p> <p>(3) Where a witness is required to produce any document as evidence or any thing in the witness's possession, the summons shall specify the document or thing to be produced.</p> <p>(4) After the issuance of summons, it shall be served by the process server in any manner as prescribed in rule 9.</p> <p>(5) A witness who has been required to produce any document or thing at the proceedings shall hand it over to the Registrar as soon as practicable after service of the summons has been effected, unless the</p>

witness claims that the document or thing is privileged, in which case the presiding Judge shall decide on its admissibility during the trial.

(6) After the witness has handed over any document or thing to the Registrar, the Registrar shall cause that document or thing to be inspected by any party to the proceedings.

(7) Once the inspection is complete subject to the provisions of subrule (6), the Registrar shall return the document or thing to the witness after obtaining a copy thereof for record purposes.

Evidence and  
regulation of  
proceedings

**17.-(1)** The Court, for the purposes of dealing with any matter referred to it, shall be entitled to elicit all such information as in the circumstances may be considered necessary without being unreasonably bound by the rules of evidence in civil or criminal proceedings, which would have the effect of interfering or defeating the good ends of justice and may by order, require any person to-

- (a) furnish in writing or otherwise such particulars in relation to any matter as may be required; or
- (b) attend before the Court and give evidence on oath; or produce any document;
- (c) Provided that, if any witness refuses to furnish any particulars or to answer any question or to produce any document or thing on the grounds that it may incriminate him or any other lawful ground, he shall not be required to furnish such particulars or to answer such questions or to produce any document or thing nor shall he be liable to any penalty for refusing to do so.

(2) Except as is provided for in the Acts or Rules made hereunder, the Court as the case may be, may regulate the procedure in any proceedings as it shall deem fit.

Nomination  
of assessors  
and their  
opinion

**18.-(1)** Subject to the provisions of subsection (1)(a) and (b) of section 53 of the Act, the two panels of assessors shall be nominated by the Council, one panel of assessors representing the interest of Association of Tanzania Employers and the other one representing the interest of the Trade Union Congress of Tanzania.

(2) After assessors have been nominated the Chairman of the Council shall forward the names of the two panels of assessors to the Registrar.

(3) The panel of assessors nominated by the members of the Council shall be nominated in respect of the Court and every zonal centre of the Court which shall be reviewed by the members of the Council after an expiry of every two years.

(4) At the conclusion of proceedings before the Court, the presiding Judge shall-

- (a) seek and record the opinion of the assessors present, but shall not be bound by such opinion; and
- (b) where he disagrees with the opinion of any assessor, he shall give reasons.

(5) The Chief Justice may, after consideration of the prevailing economic and other relevant circumstances and in consultation with the Minister responsible for labour matters, prescribe from time to time, such amount of sitting allowance to be paid to assessors sitting in any proceedings of the Court.

Oath or  
affirmation of  
office by  
interpreters  
and  
translators

**19.** Before any interpreter or translator interprets or translates in Court or elsewhere in relation to court work, he shall take an oath or an affirmation as prescribed in Form No.2 in the Schedule to these Rules before a Judge of the Court:

Provided that any person admitted and enrolled as a sworn interpreter or translator of any division of the High Court of Tanzania shall be deemed to be a sworn or affirmed interpreter or translator for the Court.

Hearing of  
suit

**20.-(1)** The complainant has the right to begin unless the respondent admits the facts alleged by the complainant and contends either on a point of law or on some additional facts alleged by the defendant and where the complainant is not entitled to any part of the relief which he seeks, in which case the respondent has the right to begin.

(2) Except where both parties agree otherwise, the trial of a suit shall be with the aid of two assessors who are generally knowledgeable of the field concerning the trial suit,

(3) Where, in the course of the trial, one of the assessors is absent, the Court may proceed and conclude the trial with the remaining assessor as the case may be.

(4) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned-

- (a) the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove;
- (b) the other party shall state his case and produce his evidence if any, and may then address the Court generally on the whole case; and
- (c) the party having the right to begin may then reply generally on the whole case.

(5) Where there are several issues the burden of proof lies on the other party and the party having the right to begin may, either produce his evidence on those issues or reserve it by way of response to the evidence produced by the other party, and in the latter case, the party having the right to begin may produce the evidence and the other party may then reply specifically on the evidence so produced by the party having the right to begin, enter save that the party having the right to begin will then be entitled to reply generally on the whole case.

(6) The evidence of witnesses in attendance shall be taken orally in an open Court in the presence, personal direction and supervision of the presiding Judge.

(7) The evidence of each witness shall be taken down in the language of the Court, by or in the presence, personal direction and supervision of the presiding Judge, not ordinarily in the form of question and answer, but in that of a narrative and the presiding Judge shall sign and date the same.

(8) The Court may, on its own motion or on the application of any party or his advocate, take down any particular question and answer or any objection to any question, if there appears to be any special reason for so doing.

(9) Where any question asked to a witness is objected to by any party or his advocate and the Court allows the same to be asked, the presiding Judge may write down the question, the answer, the objection and the name of the person asking it, together with the decision of the Court thereon.

(10) The presiding Judge shall record such remarks as it deems necessary in respect to the demeanour of any witness while

under examination and may direct a court recorder to make a record of the whole, or any part of, or the substance of the evidence of any witness or other proceedings.

(11) A record made in accordance with subrule 10 shall, as soon as practicable, be processed by the same or any other court recorder who shall certify the script to be correct and complete and it shall form part of the record.

(12) For the purpose of this rule "court recorder" means any person appointed by the Judge Chairman to be a court recorder.

(13) Where a presiding Judge is precluded by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorandum written down or made under the foregoing rules as if such evidence or memorandum has been written down or made by him or under his direction under the said rules and may proceed with the suit from the stage it was left by his predecessor.

(14) Where a witness is about to leave the jurisdiction of the Court or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately the Court may-

- (a) upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness; or
- (b) if such evidence is not taken forthwith and in the presence of the parties, give such notice as it thinks sufficient, on the day fixed for the examination, to the parties.

(15) The Court may, at any stage of a suit-

- (a) recall any witness who has been examined and may ask him such questions as the Court deems fit;
- (b) inspect any property or thing arising from the question.

Judgment and  
decree

**21.**-(1) After the hearing of the case, the Court shall pronounce judgment in an open Court, either at once or at a future date of which, due notice shall be given to the parties or their advocates.

(2) The presiding Judge may pronounce a judgment written by his predecessor but not pronounced.

(3) The judgment shall be written by, or reduced into writing under the personal direction and supervision of the presiding Judge in the

language of the Court and shall be dated and signed by such presiding judge as of the date on which it is pronounced in an open Court and once signed it, shall not afterwards be altered or added save as provided by these Rules.

(4) The judgment shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision.

(5) The decree shall bear the date on which the judgment was pronounced and, when the Judge is satisfied that the decree has been drawn up in accordance with the judgment he shall then sign the decree.

(6) Where a Judge has vacated office after pronouncing judgment without signing the decree, a decree drawn up may be signed by his successor.

## Offences

**22.-(1)** Where members of the press are allowed to be present at any proceedings under the Act, a fair and accurate report or summary of proceedings including the evidence adduced thereat may be published:

Provided that, until the judgment, ruling, order, decree or award of the Court is delivered or pronounced by the Court, no comments shall be published of the proceedings on any evidence adduced thereat.

(2) A person who-

(a) before a judgment, order, ruling or decree of the Court has been delivered, disclose or publishes-

(i) the reliefs or outcome of the judgment, order; ruling or decree; or

(ii) any comment on the proceedings or any evidence adduced thereat;

(c) discloses or publishes the proceedings or part of the proceedings, evidence taken or deliberations of the Court held in camera or directed to be withheld from disclosure or publication; or

(d) speaks in a manner likely to threaten any witness or disrupt the proceedings of the Court or to intimidate any person summoned for giving evidence or producing a document, exhibit or anything required in Court,



commits an offence and upon conviction shall be liable to a fine not less than five hundred thousand shillings but not exceeding live million shillings or to imprisonment for a term of three months or to both.

(3) It shall be in the discretion of the Court to admit or exclude the public or members of the press, as the case may be, from any proceedings and from the premises where proceedings are taking place.

Dispute  
originating  
from the  
Court

**23.**-(1) Where any party desires to institute a dispute relating to any contravention of this Act or any other Labour laws or breach of a contract, common law, tort or vicarious liability arising out of an employment within the pecuniary jurisdiction of the High Court, he shall present a statement of complaint to the Court.

(2) Where the dispute or complaint is against the Government it shall be instituted in the Court and a copy of complaint shall be served on the Attorney General.

(3) Every statement of complaint or response shall be substantially in accordance with Form No.1 in the Schedule to these Rules.

(4) Where any dispute or matter originates in the Court, it shall proceed to inquire into such dispute or matter without causing undue delay within the meaning of rule 20.

(5) Without prejudice to subrule (3), the Court-

(a) shall receive, hear and consider any submissions, arguments or evidence made, presented or tendered by or on behalf of the-

(i) employees concerned;

(ii) trade union of which such employees are members;

(iii) employer concerned;

(iv) group of persons which in the opinion of the Court, represents the interest of the employers in Tanzania and of which the employer concerned is a member;

(b) may seek an opinion in such manner as it deems appropriate, from any Government department, person, institution or organization based in the United Republic on any aspect of financial, economic and

employment policies, research findings or any matter relevant to the dispute;

(c) shall make a judgment, ruling, 'decree or order and pronounce it to the parties in conformity with rule 21, except that-

(i) such a decision may be made to have a retrospective effect to any date which is not earlier than the date on which the dispute arose;

(ii) before the Court considers any of the needs under this subrule and in terms of section 52(1) of the Act, the parties to the proceedings shall be notified of such need and have an opportunity to give their opinion.

Application  
before the  
court

**24.**-(1) Any application shall be made on notice to all persons who have an interest in the application.

(2) The notice of application shall substantially comply with Form No.4 in the Schedule to these Rules, signed by the party bringing the application and filed and shall contain the following information-

- (a) the title of the matter;
- (b) the case number assigned to the matter by the Registrar;
- (c) the relief sought;
- (d) an address at which that party will accept notices and service of all documents in the proceedings;
- (e) a notice advising the other party that if he intends to oppose the matter, that party shall deliver a counter affidavit within fifteen days after the application has been served, failure of which the matter may proceed ex-parte; and
- (f) list and attachment of the documents that are material and relevant to the application.

(3) The application shall be supported by an affidavit, which shall clearly and concisely set out-

- (a) the names, description and addresses of the parties;
- (b) a statement of the material facts in a chronological order, on which the application is based;
- (c) a statement of the legal issues that arise from the material facts; and
- (d) the reliefs sought.

- (4) A notice of opposition, a counter affidavit or both shall-
- (a) be filed within fifteen days from the day on which the application is served on the party concerned.
  - (b) substantially be in conformity with the necessary changes required by the context of subrules (1) and (2).
- (5) The party initiating the proceedings may file a replying affidavit within seven days from the day on which a notice of opposition, counter affidavit or both are filed.
- (6) The replying affidavit shall only address the issues raised in the counter affidavit and shall not introduce new issues of fact or of law except with the leave of the Court.
- (7) The Registrar shall-
- (a) fix a date for the hearing of the application after a replying affidavit is filed or after the time limit for filing a counter affidavit or a replying affidavit has lapsed, whichever occurs first; and
  - (b) notify the parties of the date, time and place for the hearing of the application.
- (8) An application to make a settlement agreement or arbitration award or order of the Court which is unopposed shall be enrolled by the Registrar on notice to both parties and the Court may make any relevant order in the absence of the parties.
- (9) Notwithstanding the provisions of this rule, the Court may, where it deems fit, entertain an oral application or where the parties to the dispute consents to the order being made.
- (10) The Court shall deal with an application in any manner it deems fit, which may include-
- (a) making an order for holding the purposes of a pre-trial conference;
  - (b) referring a dispute for the hearing of oral evidence; and any other relevant orders.
- (11) The applications which shall be brought by way of a chamber summons supported by an affidavit are as follows-
- (a) interlocutory applications;

- (a) other applications incidental to or pending proceedings referred to in these Rules and not specifically provided for in these Rules; and
- (b) any other applications for directions.

(12) The requirement in paragraph (a) of subrule 12 that affidavits shall be filed, shall not apply to applications that deal only with procedural aspects.

Urgent relief  
under  
certificate of  
urgency

**25.-(1)** A party that applies for urgent relief shall file an application under a certificate of urgency that complies with the requirements of rule 24 and if applicable, rule 25.

(2) The affidavit in support of the application shall contain-

- (a) the reasons for urgency and the necessity of the relief sought; and
- (b) the reasons why the requirements of the Rules were not complied with, as the case may be.

(3) The party bringing the application shall sign the affidavit.

(4) The Registrar shall fix a date, time and place for the hearing of the application.

(5) As soon as the Registrar has fixed a date, time and place for the hearing, the party bringing the application shall serve a copy of the application, together with information obtained from the Registrar, on the respondent.

(6) The party bringing the application shall satisfy the Court when the application is heard that a copy of the application has been served on the respondent or that notice of the content of the application was served on the respondent for his attention by other means.

(7) Any party who intends to oppose the application or to make any representations relating to the application, shall file a counter affidavit immediately after the application has come to that party's notice, save that a presiding Judge may make such interim orders as may be necessary.

(8) Subject to the provisions of subrule (7), any other person who has not notified the Registrar may appear before the Court and be heard at the hearing:

Provided that, at any stage of the proceedings, on good cause being shown, the Court may allow any person who is not a party but is interested to appear to be heard on whatever terms the Court may decide.

(9) The Court shall deal with an urgent application in any manner it thinks just, and may make any necessary orders.

#### PART IV.

#### REVIEW, REVISION AND APPEAL TO THE COURT

Application  
for review of  
awards

**26.**-(1) A party seeking to review a decision or proceedings of a responsible person or body performing a reviewable function justifiable by the Court, shall file a chamber application of review to the body or person and to all other affected parties.

(2) The chamber application shall-

- (a) be made by a chamber summons supported by an affidavit setting out the factual and legal grounds upon which the applicant relies to have the decision or proceedings corrected or set aside;
- (b) call upon the responsible person or body to show cause why the decision or proceedings should not be reviewed or corrected; and
- (c) require the responsible person or body to dispatch, within ten days after receipt of the chamber application, to the Registrar the record of the proceedings sought to be corrected or set aside, together with such reasons as are required by law or desirable to provide, and to notify the applicant that this has been done.

(3) Subject to the provision of subrule (2), the responsible person or body upon whom a Chamber Application is served shall timeously comply with the direction in the Chamber Summons.

(4) Where the responsible person or body fails to comply with the direction or fails to apply for an extension of time to do so, any interested party may apply, on notice, for an order compelling compliance with the direction.

(5) The Registrar shall make available to the applicant the record which is received from a responsible person or body on such terms as the Registrar deems appropriate to ensure for its safety.

(6) The applicant shall-

- (a) make copies of such part of the record as may be necessary for the purposes of the review and certify each copy as true and correct; and
- (b) submit to the Registrar and each of the other parties a copy of the record or part of the record, as the case may be, and a copy of the reasons filed by the responsible person or body.

(7) The costs of transcription of the record, copying and service of the record, shall be met by the applicant.

(8) The applicant shall within fifteen days after the Registrar has made the record available amend, add to or vary the contents of the chamber application supported by an affidavit, by-

- (a) a notice accompanied by an affidavit; or
- (b) filing of a notice that the applicant stands by his Chamber

Application and service to the opposite party.

(9) Any person wishing to oppose the granting of the order prayed in the chamber application shall, within fifteen days after receipt of the notice of amendment or notice that the applicant stands by his Chamber Application, file a counter affidavit to the allegations made by the applicant.

(10) The applicant may file a reply to an affidavit within seven days after receipt of a counter affidavit.

(11) Notwithstanding the provisions of this rule, the Court may, where it deems it fit to do so, entertain an oral application or where the parties to the dispute consent to the order being so made.

Reviews of  
judgment in  
chambers

**27.-(1)** Any review shall be instituted by filing a written notice of review to the Registrar within fifteen days from the date the decision to be reviewed was delivered.

(2) Any person considering himself aggrieved by a judgment, decree or order from which-

- (a) an appeal is allowed, but from which no appeal has been preferred; or
- (b) no appeal is allowed, and who, from the discovery of any new and important matter or evidence which, after

the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the judgment or decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the judgment, decree or order made against him,

- (c) may apply for a review of the judgment, decree or order to the Court.

(3) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.

(4) A copy of the notice to review shall be served on all interested parties.

(5) The notice to review shall substantially be as prescribed in Form No.6 in the Schedule to these Rules.

(6) On receipt of a notice to review, the Registrar shall as soon as possible supply a certified copy of the decision sought.

(7) On receipt of a copy of the decision of the review, the applicant shall within fifteen days file a concise memorandum of review stating the grounds for the review sought without narratives or arguments.

(8) Any party on whom a notice to review has been served may, within fifteen days after the filing of the applicant's memorandum of review subject to subrule (7), file a concise statement of response in respect of the memorandum of review without narratives or arguments.

(9) Where the Registrar receives a statement of response in terms of subrule (8) or the time limit for filing of the statement of response lapses, whichever occurs first, the review shall, subject to the provisions of subsection (3) of section 50 of the Act, be placed before the presiding Judge and assessors who passed the decision for hearing and decision.

Revision of  
judgments

**28.-(1)** The Court may, on its own motion or on application by any party or interested person, call for the record of any proceedings which have been decided by any responsible person or body implementing

the provisions of the Acts and in which no appeal lies or has been taken thereto, and if such responsible person or body appears-

- (a) to have exercised jurisdiction not vested in it by law; or
- (b) to have failed to exercise jurisdiction so vested; or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity; or
- (d) that there has been an error material to the merits of the subject matter before such responsible person or body involving injustice,
- (e) the Court may revise the proceedings and make such order as it deems fit:

Provided that, any party to the proceedings or otherwise likely to be adversely affected by such revision shall be given an opportunity to be heard.

(2) Any order or direction given by the Court to the responsible person or body from which the proceedings being revised originated shall be complied with forthwith.

## Appeals

**29.** Any appeal to the Court under the Acts, shall be instituted by filing a notice of appeal with the responsible person or body whose decision is under appeal and a copy thereof shall be filed with the Registrar.

## Notice of appeal and records

**30.-(1)** Unless any of the Acts otherwise provides, the notice of appeal shall be substantially as prescribed in Form No.5 in the Schedule to these Rules to be filed within fifteen days of the date on which the person filing such notice is notified of the decision which is the subject of the appeal. --

(2) A copy of the notice of appeal shall be served on all interested parties.

(3) On receipt of notice of appeal, the responsible person or body whose decision is under appeal shall-

- (a) provide a written record of the proceedings and the reasons for the decision;
- (b) prepare and submit certified records of proceedings and reasons for the decision within fifteen days of the filing of the notice of appeal to the Registrar.



(4) Where the responsible person or body fails to comply with the direction or fails to apply for an extension of time to do so, any interested party may apply, on notice, for an order compelling compliance with the direction.

(5) The Registrar shall make available to the appellant the record which is received on such terms as he deems appropriate.

(6) The appellant shall make copies of such part of the record as may be necessary for the purposes of the appeal.

(7) The costs of transcription of the record, copying and service of the record shall be met by the appellant.

Memorandum  
of appeal

**31.**-(1) The appellant shall file a concise memorandum of the appeal and serve copies thereof to the other parties and respondent within fifteen days after receipt of the written record.

(2) A memorandum of appeal shall be accompanied by a certified copy of the decision appealed against.

(3) The memorandum of appeal shall set forth concisely and under distinct heads, without argument or narrative, the grounds of appeal to the decision appealed against, specifying the points which are alleged to have been wrongly decided, and such grounds shall be numbered consecutively.

(4) The respondent in an appeal may file a concise statement of response against the appeal within fifteen days after being served with the appellant's memorandum of appeal.

(5) Subject to the provisions of subrule (4), when the Registrar receives the statement of response or after the time limit for filing the statement of response lapses, whichever occurs first, he shall fix a date for the hearing of the appeal.

(6) The appellant shall not, except by the leave of the Court, argue or be heard in support of any ground of objection not set forth in the memorandum of appeal, save that the Court in deciding the appeal shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the Court under this rule:

Provided that, the Court shall not reach its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

Hearing of  
appeal

**32.-(1)** Except as to limitation of time, no appeal shall be defeated by reason only of non-compliance with any provision of these Rules.

(2) Unless the Court dismisses the appeal under subrule (3) it shall fix a day for hearing the appeal and such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such a fixed date.

(3) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.

(4) The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

(5) Where on the day fixed or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order for the appeal be dismissed.

(6) Where the appellant appears and the respondent does not appear, the appeal shall be heard ex parte.

(7) Where an appeal is dismissed under sub rule 4 or sub rule 5, the appellant may apply to the Court for the re-admission of the appeal and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-admit the appeal on such terms as it thinks fit.

(8) Where it appears to the Court at the hearing that any person who was a party to the suit in the court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the outcome the appeal, the Court may adjourn the hearing to a future date to be fixed by the Court and direct that such person be made a respondent.

(9) Where an appeal is heard ex-parte and judgment is pronounced against the respondent, he may apply to the Court to re-hear the appeal and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal as it thinks fit.

Constitution of the Court of Appeals	<p><b>33.</b> The Court shall be constituted by a presiding Judge sitting with not less than two assessors nominated by the presiding Judge from each of the panels appointed under subsection (2) of section 50 of the Act.</p>
Withdraws and postponement of matters	<p><b>34.-(1)</b> A party who has initiated proceedings and wants to withdraw the matter shall file a notice of withdrawal as soon as possible and the Court shall proceed to mark the matter accordingly, on such terms as to costs or otherwise in accordance with these rules.</p> <p>(2) Where the parties reach a settlement, the party who initiated the proceedings shall notify the Registrar of the settlement as soon as possible.</p> <p>(3) The parties may, with leave of the Court, agree to postpone the hearing, to such date as the Court may direct.</p>
Re-enrolment of postponed matters	<p><b>35.-(1)</b> Where a matter is postponed sine die, any party to the matter may apply to the Registrar for it to be re-enrolled, but no preference may be given to that matter on the roll, unless the Court orders otherwise.</p> <p>(2) The Registrar shall fix a time, date and place for the hearing and shall send a notice as prescribed in Form No.3 in the Schedule to these Rules.</p> <p>(3) Where a matter is postponed in Court to a specific date, the Registrar need not Send any notice to the parties.</p>
Matters struck of file	<p><b>36.-(1)</b> Where a matter is struck off the file due to the absence of a party who initiated the proceedings, the matter may be re-enrolled if that party provides the Court with a satisfactory explanation by an affidavit, for his failure to attend the Court.</p> <p>(2) The affidavit shall be filed in Court and the Registrar shall place it to be heard by a Judge in chambers to decide whether the matter may be re-enrolled or not.</p> <p>(3) The presiding Judge before whom the affidavit is placed may order that an application for re-enrolment be made and in that event, the application shall be in accordance with rule 24</p>

Default  
judgment

**37.-(1)** Where no response has been filed within the prescribed period or any extended period granted by the Court within which to file a response, the presiding Judge in Chamber may enter judgment by default provided that the respondent may request on good cause shown the presiding Judge to raise up the default judgment.

(2) Where a default judgment has been entered or an extension of time has been granted, the complainant or the respondent as the case may be may apply to the presiding Judge for-necessary orders.

Rescinding  
default  
judgment

**38.-(1)** The Court may, in addition to any other powers it may have, on its own motion, set aside, rescind or vary any order or judgment if such order or default judgment-

- (a) was erroneously sought or granted in the absence of any party affected by it upon showing good cause in accordance with subrule (2);
- (b) is ambiguous or has a patent error or omission, but only to the extent of such ambiguity, error or omission; or
- (c) was granted as a result of a mistake common to the parties or fraud committed by any party.

(2) Subject to the provisions of subrule (1), any affected party or person may, within fifteen days after acquiring knowledge of an order or default judgment granted in the absence of that party, apply on notice to all interested parties to set aside, vary or rescind the order or default judgment and the Court may, upon good cause shown, make such orders as it deems fit.

Consent  
orders

**39.-(1)** A party who opposes any proceedings may, at any time before a decision is made, consent to the whole or any part of the relief sought in the proceedings.

(2) Subject to the provisions of subrule (1), the consent may be oral or in writing, and if in writing, it shall be signed and dated by the parties consenting to the relief.

(3) Where the parties have consented under subrule (2), the presiding Judge in chamber with or without assessors shall make the necessary orders.

Grounds of arguments

**40.**-(1) The Court may, at any time call on the parties to specify concise grounds of argument in writing on the main points that they intend to argue.

(2) The grounds of argument shall-

- (a) include a chronology of the material facts;
- (b) contain, in its first reference to a factual allegation, a page and paragraph or line reference to the record or bundle of documents;
- (c) include a list of the authorities referred to;
- (d) specify, in its first reference to a text book, journal or article, the author, title, edition and page number, as the case may be; and
- (e) contain, in its first reference to a reported or unreported case, full citation of the case that is, the year, volume, commencement page, court, page and marginal reference to which specific reference is made, save that the unreported cases, certified copies referred thereof shall be attached.

Submissions by an *amicus curiae*

**41.**-(1) Any person interested in any proceedings before the Court may, on application to the presiding Judge, be admitted to the proceedings as an *amicus curiae* on the terms and conditions and with the rights and privileges determined by the presiding Judge.

(2) The Court on its own motion or on application from any party to the dispute may appoint an *amicus curiae* who shall abide by the provisions of this Rule.

(3) Subject to the provisions of subrule (1), the terms, conditions, rights and privileges may be amended in accordance with the directions of the presiding Judge.

(4) An application as required by subrule (1), shall be made not later than fifteen days prior to the hearing date.

(5) An application relating to the admission of an *amicus curiae* shall-

- (a) describe the interest of the *amicus curiae* in the proceedings;
- (b) identify the position to be adopted by the *amicus curiae* in the proceedings; and
- (c) clearly, succinctly and without unnecessary elaboration set out the submissions to be advanced by the *amicus curiae*, their relevance to the proceedings and that person's reasons for believing that

the submissions of amicus curiae will be useful to the Court and different from those advanced by the other parties.

(6) An amicus curiae has the right to lodge a written argument, provided that the written argument-

- (a) is clear, succinct and without unnecessary elaboration;
- (b) is not a repetition of any matter described in the argument of the other parties; and
- (c) raises new contentions that may be useful to the Court or good ends of justice.

(7) In the event of new matters or arguments being raised by the amicus curiae, any party will have the right to file a written argument within seven days from the date on which the argument of the amicus curiae was served on the parties.

(8) An order of the Court may be made providing for honorarium payment from the parties or any of them or any person or the Court, whoever calls for the intervention of the amicus curiae.

Partnership  
firms and  
associations

**42.**-(1) A partnership, firm or association may be a party to any proceedings in its own name and the proceedings may be initiated against it by any other party.

(2) A party in the proceedings against a partnership, firm or association shall not allege the names of the partners, owner, members or office bearers.

(3) Any party to the proceedings against a partnership, firm or association may, by a written notice require the other party to provide it within fifteen days of the service of the notice with the names and addresses of the partners, owner, members or office-bearers of the partnership, firm or association and a copy of its memorandum or constitution as at the date on which the cause of the proceedings arose.

(4) A partnership, firm or association that has been served with a notice in accordance with subrule (3) shall comply with it within the prescribed period and in the event of non-compliance or a dispute in respect of the identity of partners, owner, members or office-bearers, the Court may, on application, decide on the issue.

(5) Once the necessary information has been furnished, the partners, owner, members or office bearers shall become parties to the proceedings.

(6) Where proceedings are instituted against a partnership, firm or association and it appears that the partnership, firm or association has been dissolved, the proceedings may continue against the persons alleged to be or stated by the partnership, firm or association to be partners or members.

(7) The execution in respect of a judgment against a partnership, firm or association shall first be levied against its assets and if unsatisfied, the execution shall be levied against the private assets of any person held to be a partner or member, who shall be estopped from denying being such a partner or member as if a judgment had been entered against that person.

Representation  
of parties

**43.**-(1) A representative who acts on behalf of any party in any proceedings shall, by a written notice, advise the Registrar and all other parties of the following particulars-

- (a) the name of the representative;
- (b) the postal address and place of employment or business; and any available fax number, e-mail and telephone number.

(2) Any party who terminates a representative's authority to act and then acts in person or appoints another representative shall give a notice to the Registrar and all other parties concerned of the changes.

(3) Subject to the provisions of sub-rules (1) and (2), on receipt of a notice the address of the representative or the party, as the case may be, will become the address for notices to and for service on that party of all documents in the proceedings, save that any notice duly sent or any service duly effected elsewhere before receipt of that notice will, for all purposes be valid, unless the Court orders otherwise.

(4) A representative who ceases to act for a party in any proceedings shall-

- a. serve a notice to that effect to that party and all other parties concerned;
- b. after receipt of a notice, subject to the provisions of paragraph (a), the address of the party formerly represented shall become the address for notices to and for service on that party of all documents in the proceedings, unless a new address is furnished for that purpose.

Joinder of parties and representative suit

**44.**-(1) The Court may join any number of persons, whether jointly, jointly and severally, separately, or in the alternative, as parties in the proceedings, if the right to relief depends on the determination of substantially the same question of law or facts.

(2) Where there are numerous persons having the same interest in a suit, one or more of such persons may, with the permission of the Court appear and be heard or defend in such dispute, on behalf of or for the benefit of all persons so interested, except that the Court shall in such case give at the complainant's expenses, notice of the institution of the suit to all such persons either by personal service or where it is from the number of persons or any other service reasonably practicable, by public advertisement or otherwise, as the Court in each case may direct.

(3) The Court may on its own motion or on application and on notice to every other party-

- (a) make an order joining any person as a party in the proceedings if the party to be joined has an interest in the subject matter of the proceedings; and
- (b) when making an order under paragraph (a), give such further directions in the proceedings as it deems fit.

(4) Any person entitled to be joined as a party in any proceedings may, on notice to all parties, at any stage of the proceedings, apply for leave to intervene as a party and the Court may make an order or give such further directions in the proceedings as it deems fit.

(5) Where a party to any proceedings has been incorrectly or defectively cited or joined, the Court may, on application and on notice to the party concerned, correct the error or defect and make any other necessary order.

( 6) Where in any proceedings it appears necessary to substitute a person for an existing party, any party to such proceedings may, apply with notice to all other parties, to the Court for an order substituting that party for an existing party and the Court may make such order or give such directions in relation to the matter as it deems fit.

(7) An application to join any person as a party to the proceedings or to be substituted for an existing party. shall be accompanied by copies of all documents previously issued and submitted.



(8) No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may, in every suit, deal with the matter in controversy as regards to the right and interests of the parties actually before it.

Extension  
decrease

**45.**-(1) Where any interested party other than a decree or award holder, is of the opinion that it is desirable to extend any decree passed by the Court or the Commission in respect of any dispute between any other parties in a similar situation as his own, he may within sixty days after the decision submit a formal application to the Court which passed or executed the decree for such extension.

(2) Where an application is made to the Court under subrule (1), the Court shall proceed to hear the application and parties to the decree or award which is the subject matter of the intended extension shall be served and may be heard if they wish, and the Court may, if it is satisfied that the proposed extension is desirable, make an order extending the decree or award in such manner as it may direct.

Pagination

**46.**-(1) In all contested proceedings, including applications for urgent relief, the documents that are filed with the Registrar shall be paginated by the party initiating the proceedings.

(2) The party initiating the proceedings shall compile and serve an index on the other party before the matter is heard.

(3) The parties shall ensure that the copies of the documents filed with the Registrar are paginated in accordance with the index.

Consolidation  
of  
proceedings

**47 .**-(1) The Court may make an order consolidating any separate proceedings pending before it if it deems expedient and just to do so.

(2) Subject to the provisions of subrule (1), the Court may make an order on its own motion or upon an application by any interested party

Enforcement  
of Court  
orders  
Cap.33

**48.**-(1) Every decision of the Court shall be binding on the employer and employees to whom it relates from the date when it takes effect.

(2) It shall be an implied term of the contract between employers and employees to whom the decision relates that, the rate of the wages to be paid and the conditions of employment to be observed

under the contract shall be in accordance with that decision until it is varied by subsequent decision, agreement, or any written law.

(3) For the avoidance of any doubt, every decision of the Court notwithstanding that it has not yet been published in the Gazette, or that any party has a right of appeal or review, or intends to file an action in any court on grounds referred to in sub-rule (1), or that any party has a right of appeal or revision or reference or intends to file an action in any court to challenge the same decision, shall be enforced by the Court itself exercising the powers conferred by the provisions of Order XXI of the Civil Procedure Code Act, or in any other civil court of competent jurisdiction as if it was a decree of the Court.

(4) For the purpose of this rule, "decision" means any decision, judgment, award, decree, ruling, settlement agreement or Order made by the Court, the Labour Commissioner, Commission or other body authorized by law to have its decision or orders enforced by this Court.

(5) Every decision of the Court shall be published in the Gazette.

(6) Every decision shall take effect on the date on which it is specified in the decision except that if the date of decision is not specified therein, the decision shall take effect on the date of its delivery.

(7) Any decision of the Court may be made to have retrospective effect which is not earlier than the date covered by the facts from which the dispute arose.

(8) Where any question arises as to the interpretation of any decision of the Court, or the Labour Commissioner, or the Commission, any party to the decision may apply to the Court for a decision on such a question, and the Court shall decide the matter after hearing the parties and the decision of the Court shall be notified to the parties and shall be deemed to form part of and shall have the same effect in all respect as the main decision.

Enforcement  
of decisions  
and awards of  
the  
Commission  
and other  
responsible  
person or  
body

**49.**-(1) Subject to the provisions of subsection (4) of section 87 and subsection (2) of section 89 of the Act, where a decision of the Mediator or an award of an Arbitrator from the Commission is required to be enforced by the Court or where a decision of any other responsible person or body under any other provisions of the Acts, the Commission or such other responsible person or body may transmit-

(a) a copy of decision or award;

(b) a certificate setting forth the extent to which the decision or award has been executed by the Commission or such other responsible person or body and the whole or part of the decision or award which remains unsatisfied for the Court to execute to the full satisfaction of the decision or award.

(2) The decree holder, interested party, beneficiary or otherwise may apply formally to the Court for the execution of the decision or award of the Commission or such other responsible person or body as a decree of the Court.

Appeal review  
or revision on  
interlocutory  
or incidental  
decisions or  
orders

**50.** No appeal, review or revision shall lie on interlocutory or incidental decisions or orders, unless such decision has the effect of finally determining the dispute.

## PART V

### COST, FEES AND INTEREST

Cost, fees and  
interests in  
frivolous and  
vexatious  
proceedings

**51.** -(1) No costs, fees or interests whether commercial or court fees or interests whatsoever shall be payable before the Court in respect of any proceedings under the provisions of the Acts.

(2) Notwithstanding subrule (1), where any proceedings appear to the Court to be frivolous or vexatious, the Court may, in its discretion, order the party initiating such proceedings to pay general or specific costs incurred, or to pay fees or interest, as the Court deems fit and in case default of payment in a specific t.mc set by the Court, the said party shall be liable to distress on his assets and properties, failure in satisfaction of which, he shall be liable to imprisonment for a period not exceeding six months:

Provided that, such general or specific costs, fees or interest may be imposed upon the occasion of the trial without any action or proceedings for recovery.

PART VI

REFERENCE BY THE LABOUR COMMISSIONER AND  
APPEALS TO THE COURT OF APPEAL

Labour  
Commissioner's  
reference to the  
Court

**52.**-(1) Subject to the provisions of subsections (1) and (3) of section 58 of the Act, the Labour Commissioner in making any reference to the Labour Court shall draw a statement setting the facts of the case and the points of law arising there from upon which he desires to have the judicial opinion or decision to the Labour Court, which statement shall be served upon the Council and filed with the Registrar in accordance with rule 8.

(2) The Registrar shall record the reference in accordance with subrule (1),(4),(5) and (6) of rule 7 and shall send the reference to the Judge Chairman or Judge in-charge, as the case may be.

(3) The Judge chairman, Judge in-charge or presiding Judge, as the case may be shall hear the reference and make any decision, order or direction as he deems fit.

(4) Where such reference may be of interest to any party or person, such party or person, the Council, Attorney General and the Labour Commissioner shall be served with a copy of the reference and shall have a right of audience in the Court.

(5) Where any registered trade or employer's union, organization, association or federation intends to be joined as a party to the reference may do so and comply with paragraph (a) of subrule (3) of rule 44.

Certificate  
issued by the  
Court on  
labour  
Commissioners  
reference to the  
Court of  
Appeal

**53.**-(1) Subject to the provisions of subsection (2) of section 58 of the Act, the Labour Commissioner in making reference to the Court of Appeal of Tanzania shall draw up a statement of points of law from the cases and their full citation attaching certified copies of all such cases be considers are in conflict and refer the-same to the Judge chairman or any Judge in-charge or any presiding Judge assigned by the Judge chairman or Judge in-charge who shall certify the existence or non-existence of such points of law or make any comments found desirable for consideration by the Court of Appeal of Tanzania:

Provided that, the Court before issuing a certificate under this rule may invite the Attorney General, Labour Commissioner, an amicus curiae, and any interested party, including the parties in the conflicting decisions which is the subject of the reference to address the Court.

(2) For avoidance of any doubt, the Court, where it thinks it is unnecessary to be addressed by anybody, shall proceed to issue a certificate as it deems fit.

Appeals to the  
Court of  
Appeal of  
Tanzania

**54.** Subject to the provisions of section 57 of the Act, any appeal to the Court of Appeal of Tanzania shall be in conformity or as nearly as possible with the provisions of the Court of Appeal of Tanzania Rules, 1979.

## PART VII

### MISCELLANEOUS PROVISIONS

Procedures  
specifically  
not provide  
for

**55.-(1)** Where a situation arises in proceedings or contemplated proceedings which these rules do not provide the Court may adopt any procedure that it deems appropriate in the circumstances.

(2) In the exercise and performance of its powers and functions, or in any incidental matter, the Court may act in a manner that it considers expedient in the circumstances, to achieve the objects of the Act and, or the good ends of justice.

Extension of  
time limits  
and  
condonation

**56.-(1)** The Court may extend or abridge any period prescribed by these Rules on application and on good cause shown, unless the Court is precluded from doing so by any written law.

(2) Where a party fails to comply with any notice or direction given subject to the provisions of these Rules, any interested party may apply on notice for an order that the notice or directive be complied with within a period that may be specified, and that failure to comply with the order, the party in default will not be entitled to any relief in the proceedings.

(3) The Court may, on good cause shown, condone non-compliance with the period prescribed by the Court.

Reports  
submitted to  
the Chief  
Justice

**57.** The Judge chairman of the Court shall cause to be prepared and submit to the Chief Justice the report of the Court's operation and activities at such intervals as the Chief Justice may direct

—  
SCHEDULE  
—

FORMS

FORM NO.1

*(Rule 6)*

THE HIGH COURT OF TANZANIA

LABOUR DIVISION

STATEMENT OF COMPLAINT

1. In the matter of the Complaint/Application/Review/ Appeal/Reference/  
Revision No.....of 20 .....

BETWEEN

..... (Complainant)

AND

.....(Respondent)

2. Particulars of the party instituting proceedings

2.1 First applicant

Name: .....

Physical address: .....

Postal address: .....

Telephone Number: .....

Fax Number: .....

E-mail: .....

Representative (if any): .....

Name: .....

Physical address: .....

Postal address: .....

Telephone Number: .....

Fax Number: .....

E-mail: .....

(Or on record with Labour Court Code): .....

Reference number: .....

2.2 Other Applicants, if any: .....

Name: .....

Physical address: .....

Postal address: .....

Telephone Number: .....

Fax Number: .....

E-mail: .....

Representative (if any): .....

Name: .....

Physical address: .....

Postal address: .....

Telephone Number: .....

Fax Number: .....

E-mail: .....

(Or on record with Labour Court Code): .....

Reference number: .....

2.3 Nature of "complaint (e.g unfair dismissal/termination, breach of contract, tort etc)

.....  
Section of the law applicable in terms of which the proceedings are  
instituted.....  
Name and Section of other Acts .....

3. Particulars of the First and Second Respondent (if any)

3.1 First respondent:

Name: .....  
Physical address: .....  
Postal address: .....  
Telephone Number: .....  
Fax Number: .....  
E-mail: .....  
Representative (if any): .....  
Name: .....  
Physical address: .....  
Postal address: .....  
Telephone Number: .....  
Fax Number: .....  
(Or on record with Labour Court Code): .....  
Reference number: .....  
E-mail: .....

4. Other respondent(s)

Name: .....  
Physical address:.....  
Postal address: .....  
Telephone Number: .....  
Fax Number: .....  
(Or on record with Labour Court Code): .....  
Reference Number: .....  
E-mail: .....



1. The applicant ..... will accept notice and  
(specify first, second, third, e.t.c)

service of all documents in this matter at the following address:

2. If a respondent intends to oppose the matter, the response shall be filed within fifteen days of service of the statement of complaint contained herein below in terms of Rule 6 sub-rule (3) of the Labour Court Rules, failure of which the matter may be set down for default judgment or be heard in that party's absence.

3. Statement of the facts that will be relied upon to establish the applicant's claim.

.....  
.....  
.....  
.....  
.....  
.....

4. The legal issues that arise from the above facts

.....  
.....  
.....  
.....  
.....

5. Relief(s) sought:

.....  
.....  
.....

6. Schedule of documents:

Attached is a schedule of documents marked "Annexure " which are material and relevant to the issue.

Signed and dated at..... this ..... Day of ..... 20.....

(The surname and initials of  
the Applicant or duly  
authorized Representative)

(The signature of the Applicant  
or duly authorized representative)

Presented for filing this ..... day of ..... 20 .....

.....  
*Registrar*

FORM N0. 2

*(Rule19)*

Oath/Affirmation of Office of Interpreters and Translators

I, ..... (Full names)

do hereby swear/affirm that whenever I may be called on to perform the functions of an interpreter or translator in any proceedings in the Court, I will truly and correctly and to the best of my ability interpret or translate from the language I am called on to interpret or translate into one or other of the official languages and vice versa.

Signed and dated at ..... this ..... Day of  
..... 20 .....

The Surname and Initials of  
the Interpreter I Translator  
Sworn / Affirmed before me

The Signature of the  
Interpreter /Translator  
Official Stamp

Name: .....

Signature: .....

Judge of the Court: .....

Address: .....

**LCF 3**

Fomu Na. 3  
(Form No.3)

FORM N0.3

*(Rule 16)*

JAMHURI YA MUUNGANO WA TANZANIA  
(THE UNITED REPUBLIC OF TANZANIA)  
MAHAKAMA YA TANZANIA  
(THE JUDICIARY)

DIVISHENI YA MAHAKAMA YA KAZI  
YA MAHAKAMA KUU  
(LABOUR DIVISION OF THE HIGH COURT)



Kanuni 16  
(Rule 16)  
Samansi  
(Summons)

Lalamiko/Rufaa/Maombi/Mapitio/Marudio/Marejeo/ Na. .... ya mwaka .....  
(Complaint/Appeal/Application/Review/Revision/Referral (Reference) No. ....  
of year .....)

Baina ya

(Between)

..... Mlalamikaji/mwombaji  
..... (Applicant)

Na

(And)

..... Mlarnikiwa/Mjibu Maombi  
..... (Respondent)

Kwa .....

(To) .....

- 1.
- 2.
- 3.
- 4.

Taja majina, kazi, mahali pa biashara au makazi  
(State names, occupation and place of business or residence)

Unatakiwa kufika binafsi mbele ya Mahakama hii

Ikikaa .....

(You are required to appear in person before this Court at)

.....

Mnamo tarehe ..... Mwezi ..... 20 ..... saa ..... na kubakia Mahakamani

(On the) ..... (day of) ..... 20 ..... (at (time) ..... (and remain in attendance)

hadi uruhusiwe na Mahakama kuondoka, kwa ajili ya

(until excused by the Court, in order to) .....

kuhusiana na mambo yoyote unayoyafahamu juu ya tukio lililopo Mahakamani kama anavyodai kwamba:-

1. ....
2. ....
3. ....

(in regard to any matters within your knowledge relating to an action pending in the court in which ..... (claim that) ;-

1. ....
2. ....
3. .... (etc)

Toka kwa (Mdau/Wadau)

1. ....
2. ....
3. .... (nk)

(From the party /parties)

1. ....
2. ....
3. .... (etc)

Pia unatakiwa kuvileta na kuviwasilisha vizibiti Mahakamani .....(Eliza kwa usahihi, nyaraka, vitabu au kitu kinginecho kitakachowasilishwa).

(You are further required to bring and produce exhibits to the, Court) .....  
(Describe accurately each document, book or other thing to be produced).

Na unatahadharishwa kuwa usipuuze asilani kutii samansi hii vinginevyo  
utaadabishwa kwa kutozwa faini au kufungwa jela.

*(you are further cautioned that you shall on no account neglect to comply with this  
summons lest you render yourself "liable to a fine or Imprisonment).*

imesainiwa hapa ..... leo tarehe ..... Mwezi ..... Mwaka .....

*(Signed at) ..... (today this) .....(day of) .....20 .....*

Msajili

*(Registrar)*

LCF4

FORM N0.4

(Rule 24 (2))

### NOTICE OF APPLICATION

Held at .....

Application Number.....

Between

..... (Applicant)

and

..... (Respondent)

TAKE NOTICE THAT the Applicant intends to apply to the Court at a date and time  
fixed by the Registrar for an order in the following terms:

.....  
.....  
.....

AND TAKE NOTICE THAT the applicant appoints ..... as

Applicant's representative in this matter.

AND TAKE NOTICE THAT the Applicant will accept service of all the proceedings in the above matter at the address of the offices of the Applicant's representative, which is set out below:

AND FURTHER TAKE NOTICE THAT the affidavit of .....will be used in support of the application.

Signed and dated at..... this ..... day of .....20 .....

Applicant's representative Address: .....

..... Signature of the

..... Applicant's Representative

Telephone Number: .....

Fax Number: .....

Reference Number; .....

E-mail: .....

FORWARDED TO:

THE REGISTRAR:

Addres: .....

.....

.....

Telephone Number: .....

Fax Number: .....

Reference Number; .....

E-mail: .....

SERVED TO:

.....

Respondent's Representative:

Postal Address: .....

.....

Telephone Number: .....

Fax Number: .....

Reference Number; .....

E-mail: .....

Received copy hereby on this ..... day of ..... of ..... 20 .....

For respondent

**LCF 5**

FORM N0.5

*(Rule 29)*

**NOTICE OF APPEAL**

TAKE NOTICE that ..... being dissatisfied with the decision of

.....  
.....

Given at .....on the ..... Day of ..... 20 .....

Intends to appeal to the Labour Court against the whole of the said decision or part of the said decision:

.....  
.....

The address for service of the appellant is:

.....  
.....  
.....

It is intended to serve copies of this notice on:

.....  
.....  
.....

Dated on ..... Day of ..... 20 .....

Signature of the Appellant/Advocate/Representative for the Appellant

Filed in the High Court of Tanzania (Labour Division)

at .....

This ..... day of ..... 20 .....

.....

Registrar

**LCF 6**

FORMN0.6

*(Rule 27 (5))*

**NOTICE OF REVIEW**

TAKE NOTICE that ..... being dissatisfied with the  
decision. in complaint number ..... of 20 .....  
between ..... and .....

Given by ..... at ..... on  
the .....

day of ..... 20 ..... intends to seek for review to  
the Labour Court against the whole or part of the said decision:

The address for service of the applicant is:

.....  
.....  
.....

It is intended to serve copies of this notice on:

.....  
.....  
.....



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

Signature of the Applicant/Advocate/Representative for the Applicant

**To: The Registrar at:**

.....

Filed in the High Court of Tanzania (Labour Division) at .....  
this ..... day of. .... 20 .....

.....

***Registrar***

Dar es Salaam,  
....., 2007

BARNABAS A. SAMATTA,  
*Chief Justice*