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**THE NATIONAL ENVIRONMENTAL TRIBUNAL PROCEDURE RULES**

CAP. 387

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Kenya

Environmental Management and Co-ordination Act

## The National Environmental Tribunal Procedure Rules

Cap. 387

Legislation as at 31 December 2022

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# ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT

## THE NATIONAL ENVIRONMENTAL TRIBUNAL PROCEDURE RULES

CAP. 387

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### Part I – PRELIMINARY

#### 1. Citation

These Rules may be cited as the National Environmental Tribunal Procedure Rules.

#### 2. Interpretation

In these Rules, unless the context otherwise requires—

"appellant" means a person who makes an appeal to the Tribunal under section 129 of the Act, and includes a duly authorized agent or legal representative of that person;

"Chairperson" means the person holding office or acting as Chairperson of the Tribunal;

"disputed decision" means a decision of the Authority against which an appeal is brought under these Rules and includes a failure or refusal to make a decision by the Authority or its officer or committee;

"hearing" means a sitting of the Tribunal for the purpose of enabling the Tribunal to reach or announce a decision, other than such a sitting in exercise of the power to determine an appeal without an oral hearing;

"party", in relation to an appeal, includes the appellant, the Authority and any person joined to the proceedings as an appellant or a respondent or an intervener;

"referral" means a reference by the Authority to the Tribunal pursuant to section 132 of the Act;

"register" means the register of appeals and decisions kept in accordance with these Rules;

"respondent", in relation to any proceedings before the Tribunal (including a referral before the Tribunal), means the Authority or any other party to the proceedings other than the appellant.

### Part II – APPEALS AND REFERRALS TO TRIBUNAL

#### 3. Appeals

Any person who is aggrieved by any determination or decision of the Authority or any of its Committees or officers as specified in subsections (1) and (2) of section 129 of the Act may appeal to the Tribunal in accordance with these Rules.

#### 4. Notice of appeal

- (1) An Appeal to the Tribunal shall be made by written notice, and where the Tribunal has approved a form of notice for the purpose, in the form so approved.
- (2) The appellant shall send or deliver six copies of the notice of appeal to the Tribunal so as to reach it not later than sixty (60) days after the date on which the disputed decision was given to or served upon him.
- (3) The notice shall include—
  - (a) the name and address of the appellant(s);
  - (b) the particulars of the disputed decision; and
  - (c) a statement of the purpose of the hearing and a short and precise statement of the grounds of the appellant's dissatisfaction with the decision which is the subject of the appeal.
- (4) The appellant or his representative shall sign the notice of appeal.
- (5) The Tribunal shall duly acknowledge receipt of the notice of appeal and will advise the appellant or his representative of any further steps required to enable the Tribunal to decide the appeal as well as the time and place of the hearing of the appeal.

#### 5. Additional matters

The appellant may include in his notice of appeal, or in a separate application to the Tribunal any of the following—

- (a) a request for an early hearing of the appeal, and the reasons for that request;
- (b) a notification that, at the hearing of his appeal, he intends to call an expert witness or witnesses and the name and address and description of the field of expertise of each such proposed witness;
- (c) a request that a particular expert, if any, who took part in the disputed decision shall attend the hearing of the appeal and give evidence.

#### 6. Registration of appeal

- (1) Upon receipt of a notice of appeal, the Tribunal shall—
  - (a) send to the appellant an acknowledgement of its receipt;
  - (b) enter the particulars of the appeal in a register kept by the Tribunal for the purpose;
  - (c) inform the parties in writing of the case number of the appeal as entered in the register; and
  - (d) advise the parties of the address to which notices and communications to the Tribunal shall be sent.
- (2) Subject to paragraph (2) of rule 8, the Tribunal shall, on request of a party, forthwith serve a copy of the notice of appeal and of any reply, together with any amendments or supplementary statements, written representations or other documents received from any party, on all the other parties to the proceedings and, if any person or body is subsequently joined as a party, upon that person or body.

#### 7. Application for extension of time

The Tribunal may for good reason shown, on application, extend the time appointed by these Rules (not being a time limited by the Act) for doing any act or taking any proceedings, and may do so upon such terms and conditions, if any, as appear to it just and expedient.

## **8. Documents to accompany appeal or reply**

- (1) Any party to proceedings before the Tribunal shall deliver to the Tribunal with his appeal or reply, as the case may be, a copy of every document including every map, plan, certificate or report upon which he intends to rely for the purposes of his appeal or reply:

Provided that where any such document is already in the possession of the Tribunal or the party or parties to the proceedings, the Tribunal may, on such terms as it thinks fit, excuse a party from the provisions of this rule.

- (2) If any document required to be delivered to the Tribunal under this rule, in the opinion of the party who has possession of the document, relates to his intimate personal or financial circumstances or is commercially sensitive and the party concerned seeks to restrict its disclosure, he shall inform the Tribunal of that fact and of his reasons for seeking such a restriction; whereupon the Tribunal shall serve the copies as provided in this rule only in accordance with the directions of the Chairperson.

## **9. Preliminary objections**

- (1) Any objection to the jurisdiction of the Tribunal or to the admissibility of an appeal or other objection, the Tribunal's decision upon which is requested before proceeding to consider the merits of the appeal, shall be made to the Tribunal in writing within thirty days from the date when the party objecting was notified of the appeal, and a copy of the preliminary objection shall be served on the appellant immediately.
- (2) On receipt of any preliminary objection, the Tribunal shall suspend the proceedings on merits and shall require the appellant to submit written observations and submissions on the objection within seven days from the date of service on him of notice of the objection.
- (3) The Tribunal shall suspend the proceedings on merits pending its ruling on the objection.

## **10. Amendment of appeal and delivery of supplementary grounds of appeal**

- (1) The appellant may, at any time before he is notified of the date of the hearing of the appeal, amend his notice of appeal or any statement of grounds of appeal or deliver a supplementary statement of grounds of appeal.
- (2) The appellant may, with the leave of the Tribunal, amend any notice of appeal or statement of grounds of appeal at any time after he has been notified of the date of the hearing of the appeal or at the hearing itself.
- (3) The Tribunal may grant such leave to amend the notice or statement on such terms as it thinks fit.
- (4) The appellant shall send or supply to the Tribunal, and the Tribunal shall serve on the respondent and any other party to the proceedings, a copy of every amendment and supplementary statement.

## **11. Referral of matter by Authority to Tribunal**

- (1) Where a matter is referred to the Tribunal for directions under section 132 of the Act, Authority shall provide the Tribunal with copies of all the relevant information relating to the matter and such other material as has been produced to or considered by the Authority in considering the matter.
- (2) The Authority shall within fourteen days give notice to the all parties affected by the matter of the referral to the Tribunal.

## 12. Notification and action on referrals

- (1) Upon receiving a notice of a referral from the Authority in which any person is named as a concerned party or in any capacity, the Tribunal shall immediately write to such person inviting him to state whether he wishes to take part in the proceedings and to furnish such information as is appropriate to the case.
- (2) Any person who receives a copy of a notice of a referral from the Authority or invitation from the Tribunal under this rule may give notice to the Tribunal that he wishes to take part in the proceedings and furnish such information as may be required or appropriate; and such notice to the Tribunal shall, if such person becomes a respondent to proceedings be treated as his reply thereto.

## 13. Appeal by minors and persons under disability

When the person by whom an appeal may be brought is a minor or is under a disability, the appeal may, subject to any conditions imposed by the Tribunal, be brought by a person legally authorized to act or by a person appointed by the Tribunal; and such person may take all necessary steps and do all things for the purpose of the appeal as an appellant is, by these Rules, required or authorised to take or do.

## Part III – REPLY

## 14. Action by respondent

- (1) Upon receipt of a copy of a notice of appeal setting forth the grounds of appeal or a separate statement of grounds of appeal, the Authority shall deliver to the Tribunal a written reply which shall state—
  - (a) whether or not the Authority intends to oppose the appeal and the grounds on which it relies in opposing the appeal; and
  - (b) if, in the opinion of the Authority, any other person has a direct interest in the subject matter of the appeal, the name and address of such other person.
- (2) Subject to paragraph (2) of rule 8, the Authority shall include with its reply a statement summarizing the facts relating to the disputed decision and, if they are not part of that decision, the reasons therefor, and shall deliver to the Tribunal sufficient copies of the reply and other relevant documents to enable the Tribunal to provide a copy of each of them to the appellant and any other person or persons named by the Authority as having a direct interest in the subject matter of the appeal.
- (3) In its reply or in a separate notice to the Tribunal, the Authority may request—
  - (a) further particulars of the appeal; or
  - (b) a determination of any question as a preliminary issue.
- (4) Every reply by the Authority shall be signed by the Director-General or the Secretary of the Authority and shall be delivered to the Tribunal not later than twenty-one days after the date of service on the Authority of the copy of the notice of appeal or, if received later, the copy of the separate grounds of appeal.
- (5) The provisions of this rule shall apply, with any necessary modifications, to the concerned parties referred to in section 132 of the Act in the same way as they apply to the Authority.

## 15. Amendment of reply

- (1) The Authority may, at any time before it is notified of the date of the hearing of the appeal, amend its reply or deliver a supplementary statement by way of reply.

- (2) The Authority may, with the leave of the Tribunal, amend its reply at any time after it has been notified of the date of the hearing of the appeal or at the hearing itself.
- (3) The Tribunal may grant such leave on such terms as it thinks fit.
- (4) The Authority shall send a copy of every amendment and supplementary statement to the Tribunal.

## **Part IV – THIRD PARTIES**

### **16. Joinder of parties**

If it appears to the Tribunal, whether on the application of a party or on its own motion, that it is desirable that any person be made a party to the proceedings, the Tribunal may order such person to be joined as a respondent and may give such directions relating thereto as may be just, including directions as to the delivery and service of documents.

### **17. Intervener**

- (1) In any proceedings before the Tribunal the Tribunal may, on oral or written request, in its discretion grant status as an intervener to any person, corporation or group of persons associated for the pursuit of any of the objectives of the Act and, in particular, who seeks or seek to enforce rights to a clean and healthy environment as provided in section 3 of the Act or who may assist it in making a decision which will be in accordance with the objectives of the Act.
- (2) In any proceedings before the Tribunal the Tribunal shall, on oral or written request, grant status as an intervener to any non-governmental organization or registered association or society which seeks to enforce rights to a clean and healthy environment as provided in section 3 of the Act and whose objectives, according to its constitution, to be duly produced before the Tribunal, are supportive of the objectives of the Act.
- (3) A person seeking status as an intervener shall in writing furnish the following information to the Tribunal—
  - (a) his full name and address;
  - (b) a statement of the interest claimed in the subject matter; and
  - (c) a statement of his position in relation to the appeal or referral.
- (4) The decision of the Tribunal shall be binding upon a person granted status as an intervener, in so far as it relates to matters in respect of which he intervened.

## **Part V – HEARING**

### **18. Directions and pre-hearing orders**

- (1) The Tribunal may at any time, on the application of a party or of its own motion, give such directions (including directions for the furnishing of further particulars or supplementary statements) as are necessary to enable the parties to prepare for the hearing or to assist the Tribunal to determine the issues.
- (2) No person shall be compelled to give any evidence or produce any document or other material that he could not be compelled to give or produce on a trial of an action in a court of law.
- (3) In exercising the powers conferred by this rule, the Tribunal shall take into account the need to protect any matter that relates to intimate personal or financial circumstances, is commercially sensitive, consist of information communicated or obtained in confidence or concerns national security.

- (4) An application by a party for directions shall be made in writing to the Tribunal and, unless it is accompanied by the written consent of all the parties, shall be served by the Tribunal on any other party who might be affected by such directions.
- (5) If any such other party objects to the directions sought, the Tribunal shall consider the objection and, if it considers it necessary for the determination of the application, shall give the parties an opportunity of appearing before it.

### **19. Failure to comply with directions**

If any directions given to a party under this Part of these Rules are not complied with by such a party, the Tribunal may, in addition to other powers available to it before or at the hearing, dismiss the whole or part of the appeal or, as the case may be, strike out the whole or part of a respondent's reply and, where appropriate, direct that a party shall be debarred from participating in the appeal altogether:

Provided that the Tribunal shall not so dismiss or strike out or give such a direction unless it has sent notice to the party who has not complied with the direction giving him an opportunity to show cause why it should not do so.

### **20. Varying or setting aside of directions**

Where a person to whom a direction (including any summons) is addressed had no opportunity of objecting to the making of such direction, he may apply to the Tribunal to vary it or set it aside, but the Tribunal shall not so do without first notifying the person who applied for the directions and considering any representations made by him.

### **21. Subpoenas and orders**

- (1) A person to be summoned under section 127(1) of the Act to attend and give evidence shall be given at least seven days' notice of the hearing unless he has informed the Tribunal that he accepts such shorter notice as he has been given.
- (2) No person, other than the appellant or a respondent, shall be required in obedience to a summons to attend and give evidence or to produce any document except on the undertaking that the necessary expenses of his attendance will be paid or tendered to him.

### **22. Place and time of hearing**

- (1) The Tribunal shall, with due regard to the convenience of the parties, fix the date, time and place of the oral hearing, and not less than twenty-one days before the date so fixed, send to each party a notice of the hearing at such date, time and place.
- (2) The notice of hearing shall include the following—
  - (a) a statement of the purpose of the hearing and a reasonably precise statement of the issues involved;
  - (b) information and guidance, in a form approved by the Chairperson, as to attendance at the hearing of the parties and witnesses, the bringing of documents, and the right of representation by another person;
  - (c) a statement of the right of the parties to ask for and to receive reasons in writing for decision of the Tribunal;
  - (d) a statement explaining the possible consequences of non-attendance and of the right of an appellant, and of any respondent who has presented a reply, who does not attend and is not represented, to make representations in writing.
- (3) The Tribunal may alter the time and place of any oral hearing and the Tribunal shall give the parties not less than seven days notice of any such alteration:

Provided that any altered hearing date shall not be before the date notified under paragraph (1) of this rule.

- (4) The Tribunal may from time to time, on its own motion or on application made before it, adjourn the oral hearing and, if the time and place of the adjourned hearing are announced before the adjournment, no further notice shall be required.
- (5) Subject to this rule, the Tribunal may, if it thinks fit to do so, visit any site with or without any or all of the parties, and may hold an oral hearing at such site on the day of such visit.
- (6) The Tribunal shall transact business from Monday to Friday of every week, except on official public holidays, with official business hours as follows—
  - (a) 8.00 a.m. to 1.00 p.m.; and
  - (b) 2.00 p.m. to 5.00 p.m.

### **23. Public notice of hearings**

The Tribunal shall provide for public inspection, at the principal office of the Tribunal and at the place where a hearing is to be held, a list of all appeals for which an oral hearing is to be held and of the time and place fixed for the hearing.

### **24. Exclusions of persons disrupting proceedings**

Without prejudice to any other powers it may have the Tribunal may exclude from the hearing or part of it, any person whose conduct has disrupted or is likely, in the opinion of the Tribunal, to disrupt the hearing.

### **25. Failure of parties to attend hearing**

- (1) If a party fails to attend or be represented at hearing of which he has been duly notified, the Tribunal may—
  - (a) unless it is satisfied that there is sufficient reason for such absence, hear and determine the appeal in the party's absence; or
  - (b) adjourn the hearing, and may in either event make such order as to costs and expenses as it thinks fit.
- (2) Before deciding to dispose of any appeal in the absence of a party, the Tribunal shall consider any representations in writing submitted by that party in response to the notice of hearing and, for the purpose of this rule, the appeal and any reply shall be treated as representations in writing.
- (3) Where an appellant has failed to attend a hearing of which he was duly notified, and the Tribunal has disposed of the appeal, no fresh appeal may be made by the appellant to the Tribunal against the same disputed decision without the prior leave of the Tribunal.

### **26. Procedure at hearing**

- (1) At the beginning of the hearing the Chairperson shall explain the order of proceeding which the Tribunal proposes to adopt.
- (2) Subject to this rule, the Tribunal shall conduct the hearing in such manner as it considered most suitable to the clarification of the issues before it and generally to the just handling of the proceeding and shall, so far as appears to it appropriate, seek to avoid legal technicality and formality in its proceedings.
- (3) The parties shall be heard in such order as the Tribunal shall determine, and shall be entitled to give evidence, to call witnesses, to question any witnesses and to address the Tribunal both on the evidence and generally on the subject matter of the appeal.

- (4) Evidence before the Tribunal may be given orally or, if the Tribunal so orders, by affidavit or written statement, but the Tribunal may at any stage of the proceedings require the personal attendance of any deponent or author of a written statement.
- (5) Pursuant to subsection (1) of section 126 of the Act, the Tribunal may receive evidence of any fact which appears to it to be relevant.
- (6) At any hearing the Tribunal may, if it is satisfied that it is just and reasonable to do so, permit a party to rely on grounds not stated in his notice of appeal or, as the case may be, his reply and to adduce any evidence not presented to the Authority before or at the time it took the disputed decision.
- (7) The Tribunal may require any witness to give evidence on oath or affirmation and for that purpose it may administer an oath or affirmation in due form.

## **27. Demonstration and display facilities**

The Tribunal may at the request of a party and upon payment of the prescribed fees provide visual demonstration facilities for the display of any maps, charts or diagrams, or illustrations of texts and documents, which that party intends to exhibit during the hearing.

## **28. Judicial notice**

- (1) The Tribunal may take judicial notice—
  - (a) of facts that are publicly known and that may be judicially noticed by a court of law; and
  - (b) of generally recognized facts and any information, opinion, policy or rule that is within its specialized knowledge.
- (2) Before the Tribunal takes notice of any fact, information, opinion, policy or unwritten rule other than what may be judicially noticed by a court, it shall notify the parties of its intention and afford them a reasonable opportunity to make representations with respect thereto.

## **29. Determination of interlocutory matters**

Interlocutory matters arising in the course of proceedings before the Tribunal may be determined by the Chairperson or any one legally qualified member sitting alone.

## **30. Opportunity to be heard or cross-examine**

The Tribunal shall grant to any party—

- (a) a reasonable opportunity to be heard, to submit evidence and to make representations; and
- (b) a reasonable opportunity to cross-examine witnesses, to the extent necessary to ensure a fair hearing.

## **31. Change of advocate**

- (1) At the hearing of an appeal or a referral and at any stage of the proceedings a party represented by an advocate may change his advocate upon giving notice to the Tribunal, which notice shall also be served on the other party or parties.

## Part VI – DETERMINATION APPEAL

### 32. Failure to reply and no contest

If—

- (a) no reply is received by the Tribunal within twenty-one days or such longer time as the Tribunal may allow; or
- (b) the Authority states in writing that it does not resist the appeal, or in writing withdraws its opposition to the appeal, and if there is no other subsisting opposition to that appeal, the Tribunal may determine the appeal on the basis of the notice and grounds of appeal without proceeding to a hearing.

### 33. Withdrawal of appeal

- (1) The appellant may, with the leave of the Tribunal and upon such terms as to costs or otherwise as the Tribunal may direct, at any time before or at the hearing of the appeal, withdraw his appeal; whereupon the appeal shall be marked as terminated.
- (2) Where an appeal is withdrawn pursuant to this rule, no appeal shall be entertained by the Tribunal in relation to the same decision unless the Tribunal, for good reason shown, otherwise determines.

### 34. Preliminary issues

- (1) The Tribunal may order any question of fact or law which is in issue in the appeal to be determined at a preliminary hearing.
- (2) If, in the opinion of the Tribunal, the determination of that question disposes of the whole appeal, the Tribunal may treat the preliminary hearing as the hearing of the appeal and may make such order by way of disposing of the appeal as the Tribunal thinks fit.
- (3) If the parties so agree in writing, the Tribunal may determine the question without an oral hearing but, in any such case, the Tribunal may not at the same time dispose of the appeal unless the parties have also agreed in writing that it may do so and have had an opportunity of making representations in writing.
- (4) The decision of a Tribunal in relation to a preliminary issue may be given orally at the end of the hearing, or may be reserved, but in either event (and whether there has been a hearing on the preliminary issue or not) shall be recorded forthwith in a document which shall also contain a statement of reasons for its decision, and which shall be signed and dated by the Chairperson.
- (5) The Tribunal shall send a copy of the document recording the decision on the preliminary issue to each party.

### 35. Power to determine appeal without hearing

- (1) The Tribunal may, by consent in writing of all the parties to an appeal, determine the appeal, or any particular issue, without an oral hearing.
- (2) The provisions of rule 25(2) and rule 26(5) shall apply to the determination of an appeal in accordance with this rule.

### 36. Consolidation of appeals

The Tribunal may, in its discretion and after giving the parties concerned an opportunity to be heard, order the consolidation of the hearing of any appeal before it, where notices of appeal have been given in

respect of the same matter or in respect of several interest in the same subject in dispute or which involve the same issue.

### 37. Decision of Tribunal

- (1) A decision of a Tribunal may be taken by a majority and the decision shall record whether it was unanimous or taken by a majority.
- (2) The decision of the Tribunal may be given orally at the end of the hearing or may be reserved and, in either event (and whether there has been a hearing or not) shall be reduced to writing and, save in the case of a decision by consent, shall also contain a statement of the reasons (in summary form) for the decision, and shall be signed and dated by the Chairperson and every member who heard the matter:

Provided that a dissenting decision may be pronounced separately by any member who wrote it and shall be dated and signed by such member.

- (3) Subject to paragraph (4), every document containing a decision referred to in this rule shall, as soon as may be, be entered in the register and the Tribunal shall send a copy of the entry to each party.
- (4) Where any such decision refers to any evidence that has been heard in private, only such summary of the decision, omitting such material, shall be entered in the register as the Tribunal may direct, but copies of the complete decision document shall be sent to the parties together with a copy of the entry.
- (5) Every copy of an entry sent to the parties under this rule shall be accompanied by a notification indicating the rights of the parties under section 130 of the Act and of the time within which and place at which such rights may be exercised.
- (6) Except where a decision is announced at the end of the hearing, it shall be treated as having been made on the date on which a copy of the document recording it is sent to the appellant.
- (7) Where a final decision or order has been made by the Tribunal in respect of any appeal or referral the Tribunal shall, within thirty days thereafter, cause to be published—
  - (a) in the *Kenya Gazette*; and
  - (b) where the matter is of public importance, in at least in one newspaper of national circulation, a summary thereof stating the names of the parties, the nature of the appeal or referral and the date and place of the decision:

Provided that the Tribunal shall have regard to the need to preserve the confidentiality of any evidence heard in private in accordance with these Rules.

### 38. Reasons for decisions

The Tribunal shall give reasons for all its decisions, and each of any such decisions shall include—

- (a) a statement of the findings of fact made from the evidence adduced, including, where applicable, any relevant government policy; and
- (b) a statement of the laws and rules of law applied, and the interpretation thereof.

### 39. Order for costs and expenses

- (1) The Tribunal shall not normally make an order awarding costs and expenses, but may, subject to paragraph (2), make such an order—
  - (a) against a party, including a party which has withdrawn its appeal or reply, if it is of the opinion that that party has acted frivolously or vexatiously or that his conduct in making, pursuing or resisting an appeal was wholly unreasonable;

- (b) against the Authority, where it considers that the decision against which the appeal is brought was wholly unreasonable; or
  - (c) as respects any costs or expenses incurred, or any allowances paid, as a result of a postponement or adjournment of a hearing at the request of a party.
- (2) No order shall be made under paragraph (1) against a party without first giving that party an opportunity of making representations against the making of the order.
  - (3) Any costs required by an order under this rule to be taxed shall be assessed by the Tribunal.

## **Part VII – MISCELLANEOUS PROVISIONS**

### **40. Chairperson to act for Tribunal**

- (1) The Tribunal may authorize the Chairperson to do any act required or authorised by these rules to be done by the Tribunal, not being an act which is required by the Act to be done by the Tribunal itself.
- (2) In the event of the death or incapacity of the Chairperson following the decision of the Tribunal in any matter, the functions of the Chairperson for the completion of the proceedings, including a review of any decision, may be exercised by any other person duly acting as Chairperson of the Tribunal.
- (3) The Chairperson may be instrument in writing delegate to any officer of the Tribunal any of his powers which are not required by the Act to be performed by him personally.

### **41. Additional powers of Tribunal**

The Tribunal may, at its discretion—

- (a) if both or all the parties to an appeal agree in writing upon the terms on which an appeal or issue should be decided, confirm the agreement reached by such parties and decide accordingly;
- (b) at any stage of proceedings before it, by order strike out or amend any notice, reply, supplementary statement or written representation on the grounds that it is scandalous, frivolous or vexatious;
- (c) at any stage of proceedings before it, by order strike out any appeal for want of prosecution:

Provided that, before making any order under paragraph (c) or (d), the Tribunal shall send notice to the party against whom it is proposed that any such order should be made, giving him an opportunity to show cause why such an order should not be made.

### **42. Correcting irregularities**

- (1) Any irregularity resulting from failure to comply with any provisions of these Rules or of any direction of the Tribunal before the Tribunal has reached its decision shall not of itself render any proceedings void.
- (2) Where any such irregularity comes to the attention of the Tribunal, the Tribunal may (and shall, if it considers that any person may have been prejudiced by the irregularity) give such directions as it thinks just before reaching its decision to cure or waive the irregularity.
- (3) Clerical mistakes in any document recording a direction or decision of the Chairperson or the Tribunal, or errors arising in such a document from an accidental slip or omission, may be corrected by the Chairperson by certificate under his hand or by the Tribunal.

#### 43. Proof of documents and certification of decisions

- (1) Any document purporting to be a document duly executed or issued by the Chairperson on behalf of the Tribunal shall, unless the contrary is proved, be deemed to be a document so executed or issued as the case may be.
- (2) A document purporting to be certified by the Chairperson to be a true copy of any entry of a decision in a register kept in pursuance of these Rules shall, unless the contrary is proved, be sufficient evidence of the entry and of matters contained therein.

#### 44. Service or delivery of documents

- (1) Any document required or authorised by these Rules to be sent or delivered to, or served on, any person shall be duly sent, delivered or served on that person—
  - (a) if it is sent to him at his proper address by registered post or by certificate of posting;
  - (b) if it is sent to him at that address by telex, facsimile transmission or other similar means which produce a document containing a text of the communication, in which event the document shall be regarded as sent when it is received in a legible form; or
  - (c) if it is delivered to him or left with some apparently responsible person at his last known address.
- (2) If a notice of appeal is sent by registered post or certificate of posting, it shall be treated as if it had been received by the addressee seven days following the date on which it is received for dispatch by the Post Office.
- (3) Any document required or authorised to be sent or delivered to, or served on, an incorporated company or body shall be duly sent, delivered or served if sent or delivered to or served on the director, manager, secretary or clerk of the company or body.
- (4) The proper address of any person to or on whom any such document is to be sent, delivered or served shall, in the case of any incorporated company or body be that of the registered or principal office of the company or body and, in any other case, shall be the last known place of abode or business of the person in question.

#### 45. Substituted service

If any person to or on whom any document is required to be sent, delivered or served for the purpose of these Rules cannot be found or has died and has no known personal representative, or is out of Kenya, or if for any other reason service on him cannot be readily effected, the Chairperson or the Tribunal may, on application, dispense with service on such person or may make an order for substituted service on that or another person in such other form (whether by advertisement in a newspaper or otherwise) as the Chairperson or the Tribunal may think fit.

#### 46. Language

- (1) The language of the Tribunal shall be English or Swahili:

Provided that the Tribunal may, at its discretion, allow an appeal lodged in any local language spoken in Kenya by persons or a community directly affected by the subject matter of the appeal, if such persons or community cannot immediately obtain a translation but undertake to do so within a reasonable time.
- (2) The Tribunal shall, taking into account all the circumstances, grant the assistance of a competent interpreter free of charge to a party or witness who does not understand or speak the language used at the hearing or who is deaf.

- (3) The rulings of the Tribunal shall be prepared in the English language but may be translated, on request by a party, into the Swahili language.

#### **47. Filing Fees**

There shall be paid to the Tribunal such filing and other fees, including fees for service by the Tribunal of any notice or process, as shall be prescribed by the Cabinet Secretary:

Provided that the Tribunal may, if it considered it to be in the interest of justice, or on grounds of financial hardship on the part of the appellant waive all or part of the filing fees payable in any appeal.

#### **48. Prescribed Forms**

The Tribunal may from time to time design and issue free of charge such prescribed forms as it may deem necessary for the purposes of filing appeals or replies and for any interlocutory matters.

#### **49. Recording of proceedings**

- (1) The Chairperson shall take or cause to be taken notes of all proceedings before the Tribunal or may order that the record of any proceedings before it shall be taken by shorthand notes or tape-recorded or, at the discretion of the Tribunal, electronically recorded.
- (2) A verbatim record of every hearing shall be made by the Tribunal, and copies of the transcript thereof shall be circulated to all members of the Tribunal and, on request, to any party to the hearing.