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THE CIVIL PROCEDURE CODE
(CAP. 33)

RULES

(Made under section 81)

THE CIVIL PROCEDURE CODE (AMENDMENT OF THE FIRST SCHEDULE)
RULES, 2019

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RULES, 2019

- Citation 1. These Rules may be cited as the Civil Procedure Code (Amendment of the First Schedule) Rules, 2019 and shall be read as one with the First Schedule to the Civil Procedure Code hereinafter referred to as principal “Schedule”.
- Amendment of Order IV 2. The principal Schedule is amended in Order IV by-
- (a) deleting sub-rule (1) of rule and substituting for it the following-
- “(1) Every suit shall be instituted by presenting a plaint electronically or manually to the court or such officer appointed in that behalf.”
- (b) deleting rule 3 and substituting for it the following-
- “Assignment of instituted suit 3. Where a suit has been duly instituted it shall be assigned to a specific Judge or Magistrate electronically or manually by the Judge or Magistrate in Charge of the court.”
- Amendment of Order V 3. The principal Schedule is amended in Order V by-
- (a) deleting rule 1 and substituting for it the following-
- “Summons to file a written statement of defence 1. Where a suit has been duly instituted, a summons may be issued to the defendant at the time when the suit is assigned to a specific Judge or Magistrate pursuant to the provisions of rule 3 of Order IV, to file in accordance with sub rule (1) of rule 1 of Order VIII, a written

statement of defence to the claim.

(2) Where a summons to file a written statement of defence has not been effected in consequence of the plaintiff's failure to pay service fees or to effect service within the time provided under rule 10 of this Order, the court shall strike out the suit."

(b) inserting in rule 2, the words "manually or electronically" between the words "signed" and "by" appearing in the first line;

(c) deleting rule 4 and substituting for it the following-
"Fixing a date for orders 4. The presiding Judge, Magistrate or the Registrar shall after the issuance of summons under rule 1 of Order V, fix a date for both parties to appear for orders as prescribed under rule 17 of Order VIII taking into account the time required for service of summons, filing of the written statement of defence and reply thereto.

(d) deleting rules 5, 6, 7, 8 and renumbering rules 9 to 33 as rules 5 to 28;

(e) deleting the words "twenty one" in the renumbered rule 6 and substituting for it the word "fourteen."

(f) adding immediately after rule 28 as renumbered, the following new rule-

"Electronic substituted service 29.-(1) Without prejudice to other modes of service under this Order, substituted service may also be effected electronically by way of e-mail or facsimile using the addresses previously disclosed or used between the parties in their business transaction.

(2) A copy of such service shall be simultaneously copied to the court.

(3) For the avoidance of doubt, a delivered status report shall be deemed as proof of service."

Amendment of Order VII

4. The principal Schedule is amended in Order VII by deleting paragraphs (b) and (c) of rule 1 and substituting for them the following-

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- “(b) the name, description and place of residence of the plaintiff including email address, fax number, telephone number and post code if available;
- (c) the name, description and place of residence of the defendant including email address, fax number, telephone number and post code if available, so far as they can be ascertained.”

Amendment of
Order VIII

5. The principal Schedule is amended in Order VIII by-
- (a) deleting the title appearing under this Order VIII and substituting for it the following-
 - “A. WRITTEN STATEMENT OF DEFENCE, SET OFF AND COUNTER CLAIM”
 - (b) deleting rule 1 and substituting for it the following-
 - “1.-(1) Where a summons to file a defence has been served in accordance with Order V and the defendant wishes to defend the suit, he shall within twenty-one days from the date of service of the summons, file to the court a written statement of defence and enter appearance on the date specified in the summons.
 - (2) The provisions of rule 1 of Order VII shall apply *mutatis mutandis* in respect to filing a written statement of defence.
 - (3) The court may, on application by the defendant before the expiry of the period provided for filing a written statement of defence or within seven (7) days after expiry of that period and upon the defendant showing good cause for failure to file such written statement of defence, extend time within which the defence has to be filed for another ten days and the ruling to that effect shall be delivered within 21 days.
 - (4) The extended ten days under sub-rule (3) shall be counted from the date of the order of the court for extension of time.”
 - (c) deleting the marginal note to rule 2 and substituting for it the following-
 - “New facts and preliminary objections must be specifically pleaded”
 - (d) deleting rule 14 and substituting for it the following rule-
 - “Failure to present written 14.-(1) Where any party required to file a written statement of defence fails

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statement of
defence”

to do so within the specified period or where such period has been extended in accordance with sub rule 3 of rule 1, within the period of such extension, the court shall, upon proof of service and on oral application by the plaintiff to proceed *ex parte*, fix the date for hearing the plaintiff’s evidence on the claim.

(2) Where before *ex-parte* judgment has been entered pursuant to sub-rule (1) the court may, if the defendant assigns good cause, set aside the order to proceed *ex parte*, upon such terms as the court may direct as to costs or otherwise.

(3) The decree obtained under this rule shall not be executed until after the expiry of the period of sixty days from the date of judgment.”

(e) adding immediately after rule 14 the following rule-
“Setting aside a
default judgment

15.-(1) Where a judgment has been entered pursuant to rule 14 the court may, upon application made by the aggrieved party, within sixty days from the date of the judgment, set aside or vary the default judgment upon such terms as may be considered by the court to be just.

(2) In considering whether to set aside or vary the order for the default judgment under this rule, the court shall consider whether the aggrieved party has:

(a) applied to the court within the period specified under sub rule (1); and

(b) given good cause for failing to file a written statement of defence.

(3) Where a judgment is set aside, the order shall be effective upon the aggrieved party or judgment debtor filing and serving a written statement

defence within the period specified by the court.

(4) Where the defendant fails to file a written statement of defence within the period specified by the court pursuant to sub rule (3), the default judgment shall revive.

(5) The judgment revived pursuant to sub rule (4) shall neither be set aside nor appealed against.”

(f) renumbering rule 15 as rule 16 and deleting the phrase “deemed to be ready for hearing and a day shall be fixed by the court accordingly unless the provisions of Orders IX and X apply to the case” and substituting for it the phrase “ready for mediation”.

(g) adding immediately after rule 16 as re-designated the following new subparts-

“B. FIRST PRE-TRIAL SETTLEMENT AND SCHEDULING CONFERENCE

Attendance for orders 17.-(1) The court shall, within fourteen days from the date of completion of the pleadings, on its own motion direct any party or parties to the proceedings to appear before it, for orders or directions in relation to any interim applications or other preliminary matters which the parties have raised or intend to raise as it deems fit, for the just, expeditious and economical disposal of the suit.

(2) Upon hearing the parties on an interim application, the court shall deliver its ruling within a period of fourteen days and make such order as to costs as it considers just.

(3) Where any party fails to appear under sub rule (1), the court may dismiss the suit, strike out the defence or counterclaim as the case may be or make such other order as it considers just.

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(4) Any order or direction given or made against any party who does not appear before the court when directed to do so under sub-rule (1), may be set aside or varied by the court on such terms as it considers just upon an application within thirty days.

Pre-trial
conference to
be held when
directed by the
court

18.-(1) Without prejudice to rule 17 of Order VIII, at any time before any case is tried, the court may direct parties to attend a pre-trial conference relating to the matters arising in the suit or proceedings.

(2) The court may, at the pre-trial conference, consider any matter including the possibility of settlement of all or any of the issues in the suit or proceedings and require the parties to furnish the court with any such information as it considers fit, and may give all such directions as it appears necessary or desirable for securing a just, expeditious and economical disposal of the suit or proceedings.

(3) The court may, at any time during the pre-trial conference where the parties are agreeable to a settlement of some or all of the matters in dispute in the suit or proceedings, enter judgment in the suit or proceedings or make such order to give effect to the settlement.

Notification of
pre-trial
conferences

19.-(1) Parties to the proceedings shall be informed of the date and time appointed for the holding of the pre-trial conference in their presence or by way of notice.

(2) Each party shall comply with any directions given *viva voce* or in

such notice as the case may be.

Failure to appear of one or more of parties

20.-(1) Where at the time appointed for the pre-trial conference, one or more of the parties fails to attend, the court may-

- (a) dismiss the suit or proceedings if a defaulting party is the plaintiff;
- (b) strike out the defence or counter-claim if a defaulting party is a defendant;
- (c) enter judgment; or
- (d) make such other order as it considers fit.

(2) An order made by the court in the absence of a party concerned or affected by the order may be set aside by the court, on the application of that party within fourteen days from the date of the order, on such terms as it considers just.

(3) Subsequent to the first adjournment, if all parties fail to attend the pre-trial conference, the court shall dismiss the suit.

Failure to comply with directions

21. Where a party has failed to comply with any of the directions, the court may make the following orders-

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

Determination of speed track

22.-(1) A judge or a magistrate to whom a case has been assigned shall,

of case

within a period of twenty-one days after conclusion of the pleadings, hold and preside over a first pre-trial settlement and scheduling conference, attended by the parties or their recognised agents or advocates, for the purpose of ascertaining the speed track of the case, resolving the case through the use of procedures for alternative dispute resolution such as negotiation, conciliation, mediation, arbitration or such other procedures not involving a trial.

(2) In ascertaining the speed track of the case, the presiding judge or magistrate, shall after consultation with the parties or their recognized agents or advocates, determine the appropriate speed track for such a case and make a scheduling order, setting out the dates or time for future events or steps in the case including the use of procedures for alternative dispute resolution.

(3) The appropriate speed track of a case shall be determined as follows-

- (a) speed Track One shall be reserved for cases considered by the judge or magistrate to be fast cases, capable of being or are required in the interests of justice to be concluded fast within a period not exceeding ten months from the date of the first pre-trial conference;
- (b) speed Track Two shall be reserved for cases considered by the judge or magistrate to be normal cases capable of being or are required in the interests of justice to be concluded

within a period not exceeding twelve months from the date when mediation or arbitration or other similar alternative procedure fails;

(c) speed Track Three shall be reserved for cases considered by the judge or magistrate to be complex cases capable of being or are required in the interests of justice to be concluded within a period not exceeding fourteen months from the date when negotiation, conciliation, mediation or arbitration or other similar alternative procedure fails;

(d) speed Track Four shall be reserved for cases considered by the judge or magistrate to be special cases which fall in none of the three abovementioned categories but which nonetheless need to be concluded within a period not exceeding twenty-four months from the date when negotiation, conciliation, mediation or arbitration or other similar alternative procedure fails.

Prohibition of amendment to scheduling order

23. Where a scheduling conference order is made, no departure from or amendment of such order shall be allowed unless the court is satisfied that such departure or amendment is necessary in the interests of justice and the party in favour of whom such departure or amendment is made shall bear the costs of such departure or amendment, unless the court directs

otherwise.

C. NEGOTIATION,
CONCILIATION, MEDIATION
AND ARBITRATION
PROCEDURE

Reference to
mediation and
arbitration

24. Subject to the provisions of any written law, the court shall refer every civil action for negotiation, conciliation, mediation or arbitration or similar alternative procedure, before proceeding for trial.

Mediation

25.-(1) The court shall require the parties to appoint and submit the name of a mediator of their choice within fourteen days after pleadings are complete.

(2) Where the parties fail to select a mediator under sub rule (1), the court shall, manually or electronically, appoint a mediator and notify the parties accordingly.

(3) Upon the appointment of the mediator, the court shall within seven days notify the parties of the commencement of the mediation session.

(4) At least seven days before mediation, parties shall provide the mediator and the other parties to the suit with a statement of issues together with pleadings and any documents of importance which identify the issues in dispute and the parties' positions and interests thereon.

(5) The mediator shall, within seven (7) days of his appointment, set a date for the first session of mediation which shall not be later

than twenty one days from the date of his appointment.

(6) The following shall qualify to be nominated under sub-rule (1) to act as mediators-

- (a) a Judge;
- (b) a registrar or deputy registrar;
- (c) a magistrate in case of a magistrates' court;
- (d) a person with the relevant qualifications and experience in mediation appointed by the Chief Justice;
- (e) a retired judge or magistrate; or
- (f) a person with the relevant qualifications and experience in mediation and chosen by the parties.

(7) The mediators under paragraph (d) and (e) of sub-rule (6) shall be remunerated or compensated in a manner to be determined by the Chief Justice and published in the Gazette.

(8) Where a person is chosen as the mediator by the parties under paragraph (f) of sub-rule (6), it shall be the responsibility of the parties to pay fees of that mediator.

Purpose and nature of mediation

26.-(1) In conducting any mediation session under these Rules-

- (a) the parties shall strive to reduce costs and delays in dispute resolution, and facilitate an early and fair resolution of disputes; and
- (b) the mediator shall facilitate communication between or among the parties to the dispute in order to assist them in reaching a mutually acceptable

resolution.

(2) Without derogating from the generality of sub rule (1), the mediator-

- (a) shall, in an independent and impartial manner, do everything to facilitate parties to resolve their dispute;
- (b) may, where necessary, conduct joint or separate meetings with the parties and may make a proposal for a settlement;
- (c) may, where services of an expert may be obtained at no cost or where such services may be obtained at a cost, and if parties agree to pay such costs, obtain expert advice on a technical aspect of the dispute, which advice shall be given in an independent and impartial manner and shall have advisory effect;
- (d) shall be guided by principles of objectivity, fairness and natural justice, and shall give consideration to, among other things:
 - (i) the rights and obligations of the parties;
 - (ii) the usages of the trade concerned; and
 - (iii) the circumstances surrounding the dispute, including any previous business practices between the parties;
- (e) may, at any stage of the mediation proceedings and in a manner that the mediator considers appropriate, take into account the wishes of the parties,

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including any request by either of the parties that the mediator shall hear oral statements for a speedy settlement of the dispute; and

(f) may, at any stage of the mediation proceedings, make proposals for the settlement of the dispute.

(3) A request for the services of an expert under this rule may be made by the mediator with the consent of parties or by any party with the consent of the other party.

Attendance to mediation

27.-(1) The party or his advocate or both, where the parties are represented shall be notified of the date of mediation and shall attend at the mediation session.

(2) Where a third party may be liable to satisfy all or part of a judgment in the suit or to indemnify or reimburse a party for money paid in satisfaction of all or part of a judgment in the suit, the third party or his advocate may also attend the mediation session, unless the court orders otherwise.

Authority to settle

28.-(1) A party to a mediation session shall have authority to settle any matter during the mediation session.

(2) A party who requires the approval of another person before agreeing to a settlement shall, before the mediation session, arrange to have ready means of communication to that other person throughout the session, whether it takes place during or after regular business hours.

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Failure to attend

29. Where it is not practicable to conduct a scheduled mediation session because a party fails without good cause to attend within the time appointed for the commencement of the session, the mediator shall remit the file to the trial judge or magistrate who may-

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

Restoration of the suit dismissed for non-appearance to mediation

30.-(1) Any party aggrieved by an order made under the above rule shall, within seven days from the date of the order, file in court an application for restoration of a suit or a written statement of defence.

(2) The court shall hear and determine such application within fourteen (14) days from the date of lodging the application.

(3) Upon the applicant showing good cause the court shall set aside orders made under rule 29 of this Order and restore the suit or the defence and remit the case to the mediator who shall issue a notice for mediation.

Confidentiality

31. All communications at a mediation session and the mediation notes and records of the mediator shall be confidential and a party to a mediation may not rely on the record of statement made at or any information obtained during the mediation as evidence in court

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	proceedings or any other subsequent settlement initiatives, except in relation to proceedings brought by either party to vitiate the settlement agreement on the grounds of fraud.
Duration of mediation	32. The mediation period shall not exceed a period of thirty days from the date of the first session of mediation.
End of mediation	33. A mediation shall come to an end when- (a) the parties execute a settlement agreement; (b) the mediator, after consultation with the parties, makes a declaration to the effect that further mediation is not worthwhile; or (c) thirty days expire from the date of the first session of mediation.
Duty to remit the case to the trial court	34. At the conclusion of the mediation the mediator shall remit the record to the trial court immediately or within forty eight hours.
Procedure on arbitration	35. Any matter in dispute referred to arbitration under a court order shall be dealt with as provided for under the Second Schedule to this Code.
Agreement to resolve a dispute through negotiation or conciliation	36.-(1) At the request of any party and with consent of the other party, the court may refer any matter in dispute to negotiation or conciliation, and such matter shall be dealt with in accordance with the applicable law and the agreement of

the parties to the negotiate or conciliate and arrive at a settlement.

(2) The parties shall bear costs arising from or incidental to such negotiations or conciliation.

Duration of negotiation or conciliation

37. The negotiation or conciliation period shall not exceed a period of thirty days from the date the trial court referred the matter to negotiation or conciliation unless otherwise extended by the trial court.

Closure of negotiation or conciliation

38. A negotiation or conciliation shall come to a conclusion when-

- (a) the parties execute a settlement agreement and notify the court within the prescribed period for negotiation or conciliation;
- (b) one of the parties or both make(s), a declaration to the effect that further negotiation or conciliation is not worthwhile; or
- (c) thirty days or such other period as may be extended by the trial court expire.

Duty to remit the agreement to the trial court

39. At the conclusion of negotiation or conciliation as state in rule 38 (a) parties shall remit the settlement agreement to the trial court immediately or within forty eight hours.

D. FINAL PRE-TRIAL SETTLEMENT AND SCHEDULING CONFERENCE

Final pre-trial conference

40.-(1) Where a suit is not resolved by negotiation, conciliation, mediation or arbitration or other

similar alternative procedure it shall revert to the trial judge or magistrate for a final pre-trial settlement and scheduling conference, to enable the court to schedule the future events and steps which are bound or likely to arise in the conduct of the case, including framing of issues and the date or dates for trial.

(2) In making a final pre-trial conference order, the court shall be guided by the speed track to which the specific case is allocated.

(3) The final pre-trial settlement and scheduling conference shall be held within a period of fourteen days from the date when negotiation, conciliation, mediation or arbitration or other similar procedures failed.

Lapse of speed track of a case

41. Where the assigned speed track of a case runs its course before the conclusion of the suit, the court shall-

- (a) where the delay is caused by the plaintiff, dismiss the suit with costs;
- (b) where the delay is caused by the defendant-
 - (i) strike out the defence or counter claim with costs;
 - (ii) proceed ex parte if the plaintiff had not closed his case; or
 - (iii) determine the suit on the basis of the adduced evidence, if the plaintiff had closed his case; and
- (c) where neither party is to blame for the delay, extend time not exceeding half the period of the assigned speed track.”

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Gn. No. 381 (contd.)

Deletion of
Orders VIIIA,
VIIIB, and
VIIC

6. The principal Schedule is amended by deleting Orders VIIIA, VIIIB and VIIC respectively.

Amendment of
Order IX

7. The principal Schedule is amended in Order IX by-

(a) deleting rule 1 and substituting for it the following-

Parties to

appear on the

day fixed for

hearing

1. On the day so fixed for hearing, the parties shall be in attendance at the court-house in person or by their respective recognized agents or advocate, and the suit shall then be heard unless the hearing is adjourned to a future date to be fixed by the court.

(b) deleting rule 2 and renumbering rules 3 to 14 as rules 2 and 13.

(c) deleting the renumbered rule 3 and substituting for it the following rule-

“Plaintiff may

bring a fresh

suit or a court

may restore the

suit

3. Where a suit is dismissed under rule 2, the plaintiff may (subject to the law of limitation) bring a fresh suit, or he may apply to set aside the dismissal order, and if he satisfies the court that there was good cause for his non-appearance, the court shall set aside the dismissal order and shall appoint a day for proceeding with the suit.

(d) deleting the renumbered rule 5 and 6 and renumbering rules 7 to 14 as rules 4 to 11.

(e) deleting the proviso to the renumbered rule 8.

(f) deleting the renumbered rule 10 and renumbering the renumbered rules 10 and 14 as rules 9 to 10.

(g) deleting the phrase “the summons was not duly served or that” appearing between the words “that” and “he” from the renumbered sub-rule 1 of rule 9.

(h) deleting sub-rule 2 of the renumbered 9.

Amendment of
Order XVII

8. The principal Schedule is amended in Order XVII by-

(a) in rule 1 of subrule (3) by-

(i) adding the phrase “unless that advocate is appearing before a superior court” after the word “adjournment” in paragraph (c).

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- (ii) deleting the word “adjourned” appearing between the words “ground of” and “the court” under paragraph (d) and substituting for it with the word “ adjournment”

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(iii) adding immediately after paragraph (e) paragraph (f) as follows:

“(f) in the event of an adjournment at the instance of the court, the reasons for the adjournment shall be recorded and the court shall strive to fix the hearing date within the shortest period possible but not more than thirty days.”

(b) in rule 5 by deleting the word “three” appearing between the words “period of” and “years” and substituting for it with the word “two”.

Dar es Salaam,
11 April, 2019

IBRAHIM J. JUMA,
Chief Justice

I CONSENT

Dar es Salaam,
30th April, 2019

AUGUSTINE MAHIGA,
Minister for Constitutional and Legal Affairs