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LEGAL NOTICE NO. 144

THE SMALL CLAIMS COURT ACT

(No. 2 of 2016)

IN EXERCISE of the powers conferred by section 51 of the Small Claims Court Act, 2016, the Chief Justice prescribes the following Code of Conduct—

THE SMALL CLAIMS CODE OF CONDUCT FOR
ADJUDICATORS, 2019

1. This Code may be cited as the Small Claims Court Code of Conduct for Adjudicators, 2019. Citation.
2. This Code applies to adjudicators appointed under section 5 of the Small Claims Court Act, 2016. Application of the Code.
3. The objective of this Code is to— Objective of the Code.
 - (a) guide the conduct, professional and ethical responsibilities of adjudicators;
 - (b) give effect to Articles 168 (1) (b) and 172 (1) (c) of the Constitution;
 - (c) give effect to the Bangalore Principles of Judicial Conduct as adopted by the Judicial Group on Strengthening Judicial Integrity, and revised at the Round Table Meeting of Chief Justices held at the Peace Palace, in the Hague from the 25th to the 26th of November, 2002; and
 - (d) supplement and not derogate from the General Leadership and Integrity Code for State officers prescribed under Part II of the Leadership and Integrity Act, 2012, and any other written law or code of conduct intended to bind judicial officers. No. 19 of 2012.
4. In this Code, unless the context otherwise requires— Interpretation.

“adjudicator” means an adjudicator appointed under section 5 of the Small Claims Court Act, 2016. No. 2 Of 2016.


“confidential information” means information that has not been made a matter of public record relating to pending cases, as well as information not yet made public concerning the work of any adjudicator relating to pending cases, including notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations and similar papers;

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THE NATIONAL ASSEMBLY
PAPERS LAID

DATE: 01 OCT 2019 DAY: TUESDAY

TABLED BY: MAJORITY WHIP

CLERK-AT THE-TABLE: 

"Commission" means the Judicial Service Commission established under Article 171 (1) of the Constitution;

"fiduciary interest" includes relationships such as those associated with a business partner, an executor, administrator, a trustee and guardian;

"immediate family" includes, spouse, son, daughter, brother, sister, parent, grandparent, grandchild, father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister or person living in the household of an adjudicator;

"adjudicator's family" includes an adjudicator's spouse, son, daughter, son in-law, daughter-in-law, or other person who forms part of the adjudicator's household whether as a relative, companion or employee;

"adjudicator's spouse" means the wife or husband of an adjudicator married under any recognized system of law in Kenya; and

"primary employment" means the position that ordinarily takes up the normal working hours of the adjudicator and requires his or her exclusive attention in performing official duties.

5. (1) An adjudicator shall uphold and exemplify independence in his or her individual and institutional capacities. Independence.

(2) An adjudicator shall exercise the judicial authority independently on the basis of the adjudicator's assessment of the facts, and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

(3) An adjudicator shall not deviate from the law to appease public clamour, to avoid criticism or to advance an illegitimate interest.

(4) An adjudicator shall not be improperly influenced by—

- (a) the race, sex, gender, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, political association, culture, dress, nationality, socio-economic status, language or place of birth, or other irrelevant ground of a party appearing before the adjudicator;
- (b) the adjudicator's personal feelings concerning a victim of crime, witness, accused person, plaintiff or defendant; or
- (c) the control, direction or pressure from any person or authority claiming to have an interest in a particular case.

(5) An adjudicator shall be independent in relation to society in general and in relation to the particular parties to a dispute that the adjudicator has to adjudicate and shall resist and reject any external influence, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason, and shall have unfettered freedom to decide a case impartially, in accordance with his or her conscience and the application of the law to the facts of the case.

(6) An adjudicator shall be free from inappropriate connections with, and influence by, the executive and legislative branches of government and appear to a reasonable observer to be free therefrom.

(7) In performing judicial duties, an adjudicator shall be independent of judicial colleagues in respect of decisions that the adjudicator is obliged to make independently.

(8) An adjudicator shall encourage and uphold safeguards for the discharge of judicial duties.

(9) An adjudicator shall exhibit and promote high standards of judicial conduct.

(10) An adjudicator who is assigned an administrative role shall promote judicial independence in the discharge of such duties, and shall cooperate with other judicial officers in the discharge of their judicial duties by promoting unity of purpose and collegiality.

6. (1) An adjudicator shall promote impartiality in relation to the decisions of the adjudicator and the process by which decisions are made.

Impartiality.

(2) An adjudicator shall make decisions based on objective criteria and not on the basis of bias, prejudice or conferring the benefit to one person over another for improper reasons.

(3) An adjudicator shall not initiate or consider *ex parte* communications on the merits, or procedures affecting the merits of a proceeding that is before, or could come before, the adjudicator except as authorised by law.

(4) An adjudicator shall, as far as is reasonable, so conduct himself or herself as to minimize the occasions on which it will be necessary for the adjudicator to be disqualified from hearing or deciding cases.

(5) An adjudicator shall not—

- (a) knowingly, while a proceeding is before, or could come before, the adjudicator, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process; or
- (b) make any comment in public or otherwise that might affect the fair trial of any person or issue in difference.

(6) An adjudicator shall disqualify himself or herself in any proceedings in which his or her impartiality might reasonably be questioned, including if the adjudicator—

- (a) is a party to the proceedings;
- (b) was or is a material witness in the matter in controversy;
- (c) or a member of the adjudicator's family, has an economic or other interest in the outcome of the matter in controversy;
- (d) has personal knowledge of disputed evidentiary facts concerning the proceedings;

- (e) has actual bias or prejudice concerning a party;
- (f) has a personal interest or is in a relationship with a person who has a personal interest in the outcome of the matter;
- (g) had previously acted as counsel for a party; or
- (h) is precluded from hearing the matter on account of any other sufficient reason.

(7) Every disqualification of an adjudicator shall be based on a specific reason to be recorded in writing as part of the proceedings, including an explanation for the adjudicator's recusal on personal reasons.

(8) The disqualification of an adjudicator may be dispensed with if no other adjudicator can deal with the case or if, by reason of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

7. (1) An adjudicator shall ensure that his or her conduct is above reproach in the view of a reasonable observer. Integrity.

(2) An adjudicator shall uphold the principle that justice must not merely be done but must also be seen to be done.

(3) An adjudicator shall not use the judicial office to improperly enrich himself or herself or any other person.

(4) An adjudicator shall not knowingly permit a member of the adjudicator's staff or other person subject to the adjudicator's influence, direction or authority, to ask for, or accept, any gift, loan, hospitality, advantage, privilege or favour in relation to anything done or to be done or omitted to be done in connection with the adjudicator's duties or functions.

(5) An adjudicator shall not alter the substance of reasons for a decision given orally, or the transcript of evidence or of the summing up thereof.

8. (1) An adjudicator shall avoid any act that demeans the office of adjudicator. Propriety.

(2) An adjudicator shall avoid impropriety and the appearance of impropriety in all of the adjudicator's activities.

(3) An adjudicator shall accept personal restrictions that might be viewed as burdensome by the ordinary citizen freely and willingly.

(4) An adjudicator shall conform to conventionally accepted standards of behaviour, and morality and shall conduct themselves in a way that is consistent with the dignity of the judicial office.

(5) An adjudicator, in exercising the freedom of expression, belief, association and assembly, shall conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the Judiciary.

(6) An adjudicator shall not use or lend the prestige of the adjudicator to advance the private interests of the adjudicator, a member of the adjudicator's family or of anyone else, nor shall an

adjudicator convey or permit others to convey the impression that anyone is in a special position improperly to influence the adjudicator in the performance of his or her judicial duties.

(7) An adjudicator shall inform himself or herself about the adjudicator's fiduciary interests and shall make reasonable efforts to be informed about the financial interests of members of the adjudicator's family.

(8) An adjudicator shall not serve as an administrator, executor or trustee of any estate except the estate of a member of the adjudicator's family if such service will not interfere with the proper performance of his or her official duties.

(9) An adjudicator shall not engage in financial and business dealings that may reflect adversely on the adjudicator's impartiality, interfere with the proper performance of his or her official duties, exploit the adjudicator's office, or involve the adjudicator in transactions with persons likely to come before the court in which the adjudicator serves.

(10) Confidential information acquired by an adjudicator in the adjudicator's judicial capacity shall not be used or disclosed by the adjudicator for any other purpose not related to his or her judicial duties.

(11) Subject to the provisions of any other law, an adjudicator may—

- (a) write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;
- (b) appear at a public hearing before an official body concerned with matters relating to the law, the legal system, administration of justice or related matters;
- (c) serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judicial officer; or
- (d) engage in other activities if such activities do not detract from the dignity of the adjudicator or otherwise interfere with the performance of their judicial duties:

Provided that no salary may be payable to an adjudicator for the performance of any of the activities mentioned under this sub rule.

(12) An adjudicator shall not practice law by offering legal advice or drafting pleadings to litigants or members of the public, whether for a fee or free of charge while the adjudicator holds judicial office.

(13) Subject to any legal requirements relating to public disclosure, an adjudicator may receive a token gift, award, honorarium, allowance or benefit as appropriate to the occasion on which it is made:

provided that such gift, award or benefit might not reasonably be perceived as intended to influence the adjudicator in the performance of judicial duties or otherwise give rise to an appearance of partiality.

(14) An adjudicator may accept a gift in his or her official capacity:

Provided that if the gift is a non-monetary gift that exceeds twenty thousand shillings, such a gift shall be deemed to be a gift to the Judiciary and shall not be retained by the adjudicator.

(15) An adjudicator shall not engage in any correspondence with a litigant or other person relating to matter before or likely to come before the adjudicator.

(16) An adjudicator shall not—

- (a) solicit contributions from the public for whatever cause; or
- (b) participate in the public collection of funds:

Provided that—

- (i) an adjudicator may participate in voluntary fund-raising if the fund-raising does not reflect adversely upon the adjudicator's impartiality and does not interfere with the performance of the adjudicator's judicial duties or compromise the adjudicator's impartiality; and
- (ii) where an adjudicator contributes towards or attends such fund-raising, the adjudicator shall not play a central part in its organization or preside over it.

9. (1) An adjudicator shall be aware of, and understand, diversity in society and differences based on various factors, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, political association, culture, dress, language, place of birth or other like station.

Equality and non-discrimination.

(2) An adjudicator shall not, in the performance of his or her duties, by words or conduct, manifest bias or prejudice towards any person or group on any ground.

(3) An adjudicator shall carry out judicial duties with appropriate consideration for all persons including the parties, witnesses, intermediaries, court staff and judicial colleagues without differentiation on any ground.

(4) An adjudicator shall not knowingly permit court staff or other persons subject to the adjudicator's influence, direction or control to differentiate between persons concerned in a matter before the adjudicator on any ground.

(5) An adjudicator shall not—

- (a) hold membership in any organization that practises discrimination on any ground; or
- (b) use the benefits or facilities of any organization that practises discrimination on any ground to any significant extent.

10. (1) The judicial duties of an adjudicator shall take precedence over all other activities. Professionalism.

(2) An adjudicator shall devote his or her professional activities to judicial duties including the performance of judicial functions and responsibilities in court, the making of decisions, and any other tasks relevant to his or her office or to the operations of the court.

(3) An adjudicator shall take reasonable steps to maintain and enhance his or her knowledge, skills and personal qualities necessary for the proper performance of judicial duties.

(4) An adjudicator shall keep himself or herself informed of relevant developments in the law including international conventions and other instruments establishing human rights norms.

(5) An adjudicator shall perform all judicial duties including the delivery of reserved decisions, efficiently, fairly and expeditiously.

(6) An adjudicator shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, witnesses, intermediaries and others with whom the adjudicator deals in an official capacity and require similar conduct of parties, intermediaries, court staff and other persons before the court.

(7) An adjudicator shall not engage in conduct that may be incompatible with the diligent discharge of his or her judicial duties.

(8) An adjudicator shall, as far as practicable, adopt procedures to facilitate and promote access to justice as contemplated in the Constitution.

11. (1) An adjudicator or any member of the adjudicator's family shall not solicit or accept any bribe, gift, loan, hospitality, advantage, privilege or favour in relation to anything done or to be done or omitted to be done by the adjudicator in connection with the performance of judicial duties or which might reasonably be perceived as being intended to influence the performance of the adjudicator's judicial duties.

Accountability for, and prohibition of, corrupt practices.

(2) An adjudicator shall maintain honest and impeccable conduct in and out of court, whether in official or private capacity, and shall uphold the dignity and integrity of the judiciary.

12. (1) An adjudicator shall keep themselves informed about and observe the laws and policies relating to sexual harassment.

Prohibition of sexual harassment.

(2) An adjudicator shall not sexually harass a fellow member of staff or any other person in the workplace, or other professional or social situation.

(3) For the purposes of this Code, "sexual harassment" has the meaning assigned to it in the Sexual Offences Act, 2006, and includes doing any of the following, if the person doing it knows or ought to know that it is—

No. 3 of 2006.

(a) bullying or coercion of a sexual nature;

- (b) the unwelcome and inappropriate promise of rewards in exchange for sexual favours;
- (c) exerting unwarranted pressure for sexual activity or favours;
- (d) making intentional or careless physical contact that is sexual in nature; or
- (e) unwelcome sexual advances or requests for sexual favour, whether verbal or physical conduct, sending of suggestive electronic text messages, pictures and videos or gestures of a sexual nature, including noises, jokes or comments, innuendos regarding another person's sexuality:

Provided that, consensual sexual behaviour based on mutual attraction shall not constitute sexual harassment.

(4) An act may constitute sexual harassment if it is so frequent and severe that it creates a hostile or offensive work environment resulting in adverse employment decisions including the victim of the act being dismissed, transferred, demoted or compelled to leave employment.

(5) Investigations into allegations of sexual harassment shall be conducted in utmost confidentiality and shall take into account the circumstances of a particular case.

13. (1) An adjudicator who intends to maintain a bank account outside Kenya shall notify the Commission in writing of such intention before opening the account.

General provisions.

(2) Where an adjudicator maintains a bank account outside Kenya, he or she shall annually supply the Commission with a bank statement relating to that account.

(3) An adjudicator shall not seek or accept a personal loan or benefit in circumstances that compromise or are likely to compromise the adjudicator's integrity.

(4) An adjudicator shall take all reasonable steps to ensure that property entrusted to his or her care is adequately protected and not misused or misappropriated.

(5) Adjudicators shall, once every two years, submit to the Commission a declaration of their income, assets and liabilities, and that of their spouse or spouses and their dependent children younger than eighteen years in the form and manner prescribed under any written law.

(6) Chapter Six of the Constitution and any other written law relating to public officers shall, with the necessary modifications, apply to adjudicators in accordance with section 52 of the Leadership and Integrity Act, 2012.

No. 19 of 2012.

14. A breach of this Code shall be an act of misconduct for which appropriate disciplinary or any other lawful action may be taken.

Breach of the Code.

15. (1) The Chief Justice may issue guidelines and directions on the oversight and implementation of this Code including the lodging and determination of complaints against adjudicators.

Institutional framework for implementation of the Code.

(2) Without prejudice to the generality of sub-rule (1), the Chief Justice may prescribe administrative and procedural mechanisms including measures—

- (a) to promote compliance and the implementation of the inspirational aspects of this Code through mentorship, counselling, and promotion of employee wellness;
- (b) to establish collegial peer review panels for the determination of complaints against adjudicators;
- (c) to facilitate the referral of complaints to and from other state organs, including the Commission, the Commission for Administrative Justice and other judicial offices;
- (d) to ensure the expeditious disposal of complaints, appointment of ethics officers and establishment of appropriate mechanisms for the determination of complaints under this Code;
- (e) to set up suitable administrative frameworks including advisory peer support mechanisms to ensure compliance with the Code; and
- (f) to ensure complete confidentiality in the determination of complaints.

(3) Peer review panels established for the purposes of this Code shall, to the extent possible, attempt to reach a consensus and report their findings and decisions to the appointing authority.

16. Every adjudicator shall sign and subscribe to this Code.

Signing and subscription to the Code.

17. (1) The provisions of this Code apply in addition to the requirements of any other law relating to the code of conduct and ethics for public officers.

Code to implement other legal requirements.

(2) For the purposes of—

- (a) section 5 of the Public Officer Ethics Act, 2003;
- (b) section 37 of the Leadership and Integrity Act, 2012; and
- (c) section 17 of the Public Service (Values and Principles) Act, 2015,

No. 4 of 2003.

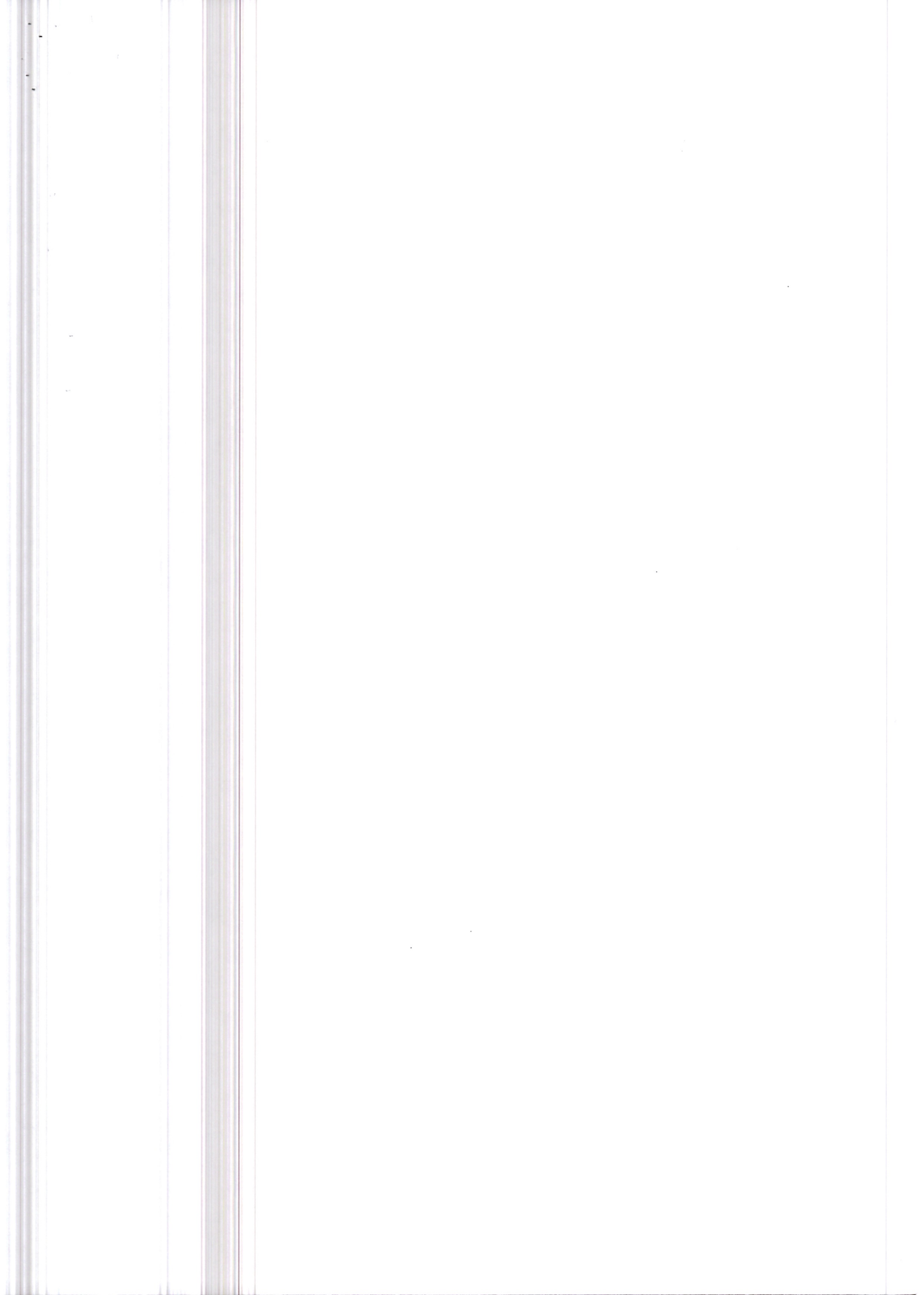
No. 19 of 2012.

No. 1A of 2015.

this Code is the prescribed specific Code for adjudicators, and by means of which the requirements of the three Acts are given effect.

Dated the 15th August, 2019.

DAVID K. MARAGA,
Chief Justice and Chairman of the Rules Committee.



**EXPLANATORY MEMORANDUM TO THE COMMITTEE ON DELEGATED
LEGISLATION OF THE NATIONAL ASSEMBLY ON THE CODE OF CONDUCT FOR
ADJUDICATORS AND THE SMALL CLAIMS COURT RULES, 2019**

(L.N. No. 144/145 of 2019)

PART I

Name of the Statutory Instrument:	The Small Claims Court Rules, 2019 and Code of Conduct for Adjudicators
Name of the Principal Act:	The Small Claims Court Act No.2 of 2016
Enacted Pursuant to:	Section 50 of the Small Claims Court Act
Name of the Ministry/Department:	Office of the Attorney-General and Department of Justice
Gazetted on:	23 rd August, 2019
Tabled on:	

PART II

1. The purpose of the Statutory Instrument

1.1. The purpose of Small Claims Court Rules, 2019 and the Code of Conduct for Adjudicators is to give effect to Section 50 of the Small Claims Court Act (No.2 of 2016).

1.2. The Small Claims Court Rules are intended to enhance access to justice by providing the procedural guidelines for claims lodged in the Small Claims Courts.

2. Legislative Context

Section 50 of the Small Claims Court Act No.2 of 2016 confers the Chief Justice with power to make rules of practice and procedure for the functioning of the Small Claims Courts.

3. Policy Background

3.1. There is a lot of back-log of civil cases whose pecuniary value is below Kshs.200,000. The Small Claims Court Rules are intended to enhance access to justice by providing the procedural guidelines for claims lodged in the Small Claims Courts

as stipulated in the Act. This will ensure speedy resolution of disputes which would otherwise drag in already congested courts.

3.2. The Small Claims Court Act was enacted in the year 2016 but has not been operational due to the missing procedural guidelines for users on handling of claims lodged in the Court.

4. Public Consultations and outcome

4.1. The Rules Committee of the Judiciary embarked on a public stakeholders consultations starting in May 2018 to April 2019. The public consultations were in the nature of correspondences, memoranda, meetings and public forums in Nakuru, Eldoret, Kisumu, Kakamega, Machakos, Mombasa, Voi, Nyeri and Nairobi. A report on this process was duly prepared.

4.2. The consultations and negotiations resulted in the final draft rules and Code of Conduct duly forwarded to the Office of the Attorney for finalization and gazettelement.

5. Financial implications

5.1. There shall be a financial implications on the implementing body, the Judicial Service Commission (J.S.C).

6. Impact

6.1. **Impact on Rights and Fundamental Freedoms:** The Small Claims Court Rules are necessary to enforce access to justice through operationalizing the Small Claims Courts. The rules will ensure that citizens are able to resolve civil disputes in a speedy, easy and efficient way.

6.2. **Impact on Private Sector:** The rules will impact positively in dispute resolution, access to justice for the poor and marginalized and improve economic cash flows in the country sometimes held up in disputes.

6.3. **Impact on Public Sector:** The rules will impact positively in dispute resolution, access to justice for the poor and marginalized and improve economic cash flows in the country sometimes held up in disputes.

7. Guidance

7.1. The Rules Committee shall ensure that there is ample sensitization of members of the public on the procedural mechanisms of approaching the court and resolution of claims by the Court. It will also work with the Sustaining Judiciary Transformation (SJT) team, partners and stakeholders to ensure actualization and functioning of the court and adjudicators attached to it.

8. Monitoring and review

8.1. The Rules Committee shall cooperate with implementing organs to ensure that the rules enhance access to justice through the Small Claims Courts.

9. Request to the National Assembly

9.1. The National Assembly is invited to:

- (a) Note the contents of this Memorandum
- (b) Adopt the Small Claims Court Rules, 2019
- (c) Adopt the Code of Conduct for Adjudicators, 2019

Anne Amadi

CHIEF REGISTRAR OF THE JUDICIARY