

GAZETTE NOTICE NO. 2357

THE CONSTITUTION OF KENYA THE JUDICATURE ACT (Cap. 8) THE CIVIL PROCEDURE ACT (Cap. 21)

IN EXERCISE of the powers conferred under Articles 159 (2) and 161 (2) (a) of the Constitution, section 10 of the Judicature Act and section 81 (3) of the Civil Procedure Act, the Chief Justice makes the following practice directions—

PRACTICE DIRECTIONS ON ELECTRONIC CASE MANAGEMENT

Citation

1. These Practice Directions may be cited as the Electronic Case Management Practice Directions, 2020.

Commencement

2. (1) These Practice Directions shall come into force on a date to be determined by the Chief Justice, and different dates may be determined for different courts.
(2) Except as otherwise provided, all cases commenced on or after the coming into force of these Practice Directions shall be electronically filed.
(3) A case pending prior to the coming into force of these Practice Directions is not subject to the requirements of these Practice Directions.
(4) A party may however apply to the court to convert a case not subject to these Practice Directions to an electronic case.
(5) If the court approves an application to convert a case to electronic case, it may direct that documents filed prior to the conversion order be scanned for the convenience of the court.

Interpretation

3. In these Practice Directions, unless the context otherwise requires —

"approved media device" includes magnetic, optical, computer memory, microfilm or similar device;

"court" includes superior and subordinate courts;

"e-filer" means a person registered to file documents electronically through the judiciary electronic filing system;

"electronic filing" means the transmission to the court of a document using the judiciary electronic filing system;

"electronically stored information" includes emails, web pages, word processing files, images, sound recordings, videos and databases stored in an approved device;

"electronic signature" has the meaning assigned to it under the Kenya Information and Communications Act, 1998;

"notice of electronic filing" means the notice issued under paragraph 8 confirming that a document has been filed;

"notice of electronic service" means the notice issued under paragraph 13 confirming that a document has been served; and

"portable document format (PDF)" means a file format that allows a document to be read by the court using a PDF reader.

Application

4. (1) These Practice Directions apply to all courts.

(2) If for any reason a court cannot access any form of electronic media, the presiding judge or judicial officer may approve the use of an alternative technology or approve manual filing of any document.

(3) The request for alternative use of technology under subparagraph (2) may be —

(a) by oral application;

(b) with leave of court; or

(c) in a prescribed form, issued by the Chief Registrar.

Objectives

5. The objectives of these Practice Directions are to guide the integration of Information Communication Technology (ICT) in judicial proceedings and in particular to provide for —

(a) electronic filing and electronic service of court documents;

(b) electronic case search;

(c) electronic diary;

(d) electronic case tracking system;

(e) electronic payment and receipting;

(f) electronic signature and electronic stamping;

(g) exchange of electronic documents, including pleadings and statements; and

(h) use of technology in case registration and digital recording of proceedings for expeditious resolution of cases.

Use of Technology in Judicial Proceedings

6. (1) Where under any law a document is required to be lodged or filed in court, the filing shall be effected by electronic means in accordance with these Practice Directions.

(2) In every judicial proceeding, the court and the parties to the case shall employ the use of technology to expedite the proceedings and make them more efficient.

(3) The technology referred to in subparagraph (2) shall include —

(a) e-filing;

(b) e-service of documents;

(c) digital display devices;

(d) real time transcript devices;

(e) video and audio conferencing;

(f) digital import devices; and

(g) computers in the court.

(4) Legal practitioners, parties or other court users may use their own electronic devices for purposes of the proceedings.

(5) The use of electronic devices under sub paragraph (3) shall comply with any directions and requirements issued by the court in relation to the use of such technology.

Registration for Electronic Transactions

7. (1) Every practicing advocate and every party acting in person shall, before filing a case or entering appearance, register in the prescribed form.

(2) Registration shall constitute a request for and consent to electronic service of court-generated documents and documents filed by other parties in cases where the registered person is a party or advocate as the case may be.

(3) The registration under subparagraph (1) shall capture the following particulars —

(a) full names, physical address, email address, mobile telephone number, nationality and national identity card or passport number, in the case of individual litigants;

(b) full names, name of law firm, office physical address, mobile and office telephone numbers, official email address and the Law Society registration (P105) number, in the case of practicing advocate;

(c) the name, physical address, official email, telephone number and contact person, in the case of corporate bodies and other juristic persons; and

(d) any other particular necessary for purposes of electronic case management system.

(4) For purposes of filing a document using the electronic means, a party shall —

(a) log in the judiciary web portal as specified in the judiciary automation guidelines issued from time to time;

(b) sign up by completing an online registration form;

(c) confirm the e-mail address and the user's login password: and

(d) receive a confirmation of registration.

(5) There shall be guidelines on the judiciary website which shall contain —

(a) step by step notes on the opening and use of an account in the system;

(b) an explanation of what a court user should do in case of system downtimes or other technical difficulty;

(c) confidentiality and privilege levels; and

(d) any other necessary detail.

(6) A registered person shall be required to agree to the terms and conditions on operation of the account.

E-filing Requirements

8. (1) All pleadings (including amended pleadings) and other documents to be filed in the e-filing portal shall satisfy the criteria specified for acceptance.

(2) A document is submitted for filing when the electronic filing system receives the document and sends a confirmation receipt, including the date and time of filing to the person filing the document.

(3) A document will not be considered as filed until the e-filing system generates a notice of electronic filing with a hyperlink to the electronically filed document.

(4) E-mailing a document to the registry or to the court does not constitute filing of the document.

(5) Electronic filing is permitted at all times when the electronic filing system is

available and where the electronic filing system is unavailable at the time the user attempts to file a document, the user shall make reasonable efforts to file the document as soon as the electronic filing System becomes available.

(6) Where a user believes that the unavailability of the electronic filing system prevented the timely filing to the party's prejudice, the registered user may, by notice of Motion, inform the court within five days of the user's first unsuccessful attempt to file the document.

(7) The registered user referred to in sub paragraph (6) shall state in the application, the date and time of the first unsuccessful attempt to file the document electronically and why the delay was prejudicial.

(8) Where the court determines that the unavailability of the electronic filing system prevented the court from receiving the filed documents, the court shall deem the document to have been filed on the day that the user initially attempted to file the document. E-filing Documents

9. (1) Every document shall be converted to portable document format (PDF) file before it is submitted for e-filing and shall—

- (a) be legible and accessible;
- (b) be searchable;
- (c) not be password-protected;
- (d) not be encrypted;
- (e) not contain viruses; and
- (f) be at least 300 DPI and above.

(2) Every document shall be filed as separate PDF file and shall adhere to the following formatting style —

- (a) paper size — A4;
- (b) margins top — 1.5"
- (c) margins bottom —1.5"
- (d) margins left —1.75"
- (e) justification— full;
- (f) font type —Times New Roman;
- (g) font size —12; and
- (h) line spacing —1.5.

(3) A file submitted for e-filing shall not exceed 25 MB for a single upload and where it exceeds that limit, it shall be divided into separate files of not more than 25MB as may be prescribed.

(4) Where an annexure is not in text format, the image shall be annexed to the pleadings in the form of an image with a resolution of 300 DPI (dot per inch) and saved as a PDF document.

(5) Electronic documents that form part of the official court record shall be self-contained and shall not contain hyperlinks.

(6) All audio and video recordings shall be submitted to court on an approved media device.

Exceptions from E-filing Requirements

10. (1) The court may, in exceptional circumstances and for a good cause, grant a one-time exemption to a person filing court documents to submit any document non-electronically to the clerk for filing.

(2) For purposes of this paragraph, "good cause" includes lack of regular access to the Internet through a device suitable for reading documents any other legitimate reason preventing a person from electronic filing.

Exempted Persons

11. The following persons are exempt from the electronic filing requirements without the necessity of a court order—

(a) an accused person in a criminal case;

(b) a person who is in custody; and

(c) a parent or guardian of a minor who is a party in a juvenile case.

(2) Where a person exempted under this paragraph chooses to register to file court documents electronically, the person waives the exception from registering to file electronically and shall be governed by these Practice Directions in the same manner as any registered person. (3) If the person later desires to be exempted from registration, the person shall apply for an exception pursuant to these Practice Directions.

Case Entries in E-filing System

12. (1) A clerk receiving a document through the e-filing software shall create a case entry using the information provided by the e-filer to record the document filed and where errors in the filing or case entry are discovered by the clerk, the clerk may —

(a) make minor corrections to the case entry, with or without notifying the parties if the error is non-substantial;

(b) notify the party of the error and advise what further action, if any, is required to address the error; or

(c) disregard the error, if the error is minor.

(2) Where an e-filer is notified of an error by the clerk through the court notification procedure, the e-filer shall make corrections within two working days of receiving the notification.

(3) Where the e-filer fails to make corrections as notified by the clerk, the clerk shall reject the filing, resulting in failure to comply with the applicable deadline.

Electronic Service

13. (1) Where under any law a document is required to be served on a person, service may be effected by electronic means in accordance with these Practice Directions.

(2) Every person who files a document in court shall electronically serve the document to everyone who by law is entitled to be served through the address contained in the electronic system.

(3) Where the person or the advocate of the person on whom service is to be

effected is not registered in the system, the initial service may be effected through any other means authorized by law and an affidavit of return of return of service shall be filed in court.

(4) Upon electronic service of a document, the system shall generate and post into the filer's account a notice of service containing—

(a) the date and time of filing;

(b) an electronic hyperlink to the document filed;

(c) a list of the parties who were served electronically; and

(d) a list of the parties who shall be served by other means.

(5) Service of documents shall be deemed to have been made, if a notice of electronic filing is posted into the filer's account and an affidavit of return of return of service need not be filed in court.

(6) It shall be the responsibility of the filer to review the notice of electronic filing to ensure that all parties that require service have received it.

(7) Where non-electronic service of a document is required under this paragraph, the service of court process shall be effected by a designated and licensed court process server.

Computation of Time for Electronic Service

14. (1) Where service of a document is made electronically, the time to respond is computed in the same manner as set out under the Civil Procedure Act, the Supreme Court Rules, the Court of Appeal Rules and the High Court (Organization and Administration) Rules for service by other means.

(2) For purposes of computation of time, the deadline for e-filing of a document in any particular day shall be 11:59:59 p.m. in the standard Kenyan time.

(3) Where any document is required by law to be lodged in the registry within office hours, it shall be deemed to have been properly lodged if it meets the deadline specified under sub paragraph (2). Establishment of E-filing Offices and Agents in Courts to facilitate the Process

15. (1) Every court shall establish or designate an ICT-enabled office to facilitate e-filing.

(2) The Judiciary may, upon such conditions as it may designate, accredit or appoint e-filing agents to provide electronic filing services to court users.

Electronic Exchange of Court Documents

16. (1) All parties shall, at all stages of the court process and during trial, use technology for purposes of information exchange.

(2) The parties shall at all times during the proceedings—

(a) exchange electronic versions of documents including pleadings and statements;

(b) consider the use of electronic documents at trial in accordance with the applicable laws and the requirements of the court; and

(c) serve documents electronically.

(3) Where a party serves a list of documents or interrogatory on another party, the recipient may request the party serving the list to also provide electronic copies.

(4) A party shall accede to reasonable requests for copies of documents in

electronic format.

(5) Before the exchange of the documents the parties shall agree on —

- (a) the format in which the electronic versions of the documents will be provided;
- (b) the methods by which the electronic versions will be exchanged; and
- (c) any other terms and conditions of electronic exchange.

(6) A court document provided by a party in electronic format shall contain the same text as the paper copy and where a court document contains an annexure, the text of the annexure shall be contained within the electronic copy.

(7) A court may electronically transmit a copy of the ruling, judgment, directions orders or other document using electronic means.

Electronic Payment of Filing Fees

17. (1) Where a fee is payable, the party shall, before filing the document, pay the requisite fee in the prescribed manner.

(2) The registry shall maintain an automated fee assessment system to facilitate e-payment of all forms of court fees,

(3) The fees shall be payable through an electronic means approved by the court.

Electronic Receipting

18. (1) An electronic receipt shall be generated and sent to the account of the party or the advocate.

(2) An electronic receipt, shall contain the following particulars —

- (a) name of the party or advocate;
- (b) amount paid;
- (c) payment references;
- (d) judiciary unique code;
- (e) items or list of document being paid for;
- (f) mobile number of the person who made payment;
- (g) barcode for internal verification;
- (h) date of payment;
- (i) address and contact information;
- (j) case number; and
- (k) address of the Judiciary.

(3) An electronic receipt issued by the court shall be sufficient proof of payment of court fees.

Time Stamp

19. Every document filed in court shall be time stamped with the date and time of filing.

Electronic Discovery and Inspection of Documents

20. (1) Where parties have discoverable electronically stored information and efficiency dictates that any discovery and production of such information, if given electronically, shall avoid the need to convert it to a paper format, the court shall, as a general rule, require the parties to —

- (a) create electronic lists of their discoverable material;
- (b) give for inspection, databases containing copies of discoverable electronically stored information; and
- (c) change the original file names to document identification numbers.

(2) The court shall require the parties in court proceedings to use electronically stored information to discover or inspect hard copy documents along with any electronically stored information to better inform the parties identifying, early in the proceedings, the scope of discovery and the categories of documents likely to be discovered. **Electronic Signatures**

21. (1) A registered filer's login and password required for submission of documents to the system, accompanied by a digitized, electronic, or scanned non-electronic signature representation and a signature block, shall serve as the registered filer's signature on all electronic documents filed with the court.

(2) If a document contains a non-electronic signature, the signed document shall be scanned for electronic filing.

(3) The following signature block constituting identifying information about the person signing the court documents shall, to the extent applicable, be printed under the person's signature representation—

- (a) name;
- (b) law firm or name of partnership, association or corporation, on behalf of which the filing agent is signing;
- (c) mailing address;
- (d) telephone number; and
- (e) email address.

(4) Victims and protected persons may omit mailing addresses, telephone numbers, and email addresses from their signature block where necessary for their protection.

(5) Every party to a suit is responsible for promptly updating the information specified sub paragraph (3).

Forms of Signature

22. (1) Signature for electronically filed documents may take one of the following forms —

- (a) non-electronic signature where the person may sign a document non-electronically and the document shall be scanned for electronic filing;
- (b) computer tablet signature, where the person may electronically sign a document using a computer tablet or similar technology; or
- (c) login and password, if the person is a registered filer, the person may sign the document using the person's login and password, accompanied by a digitized or electronic signature.

(2) A signature on an electronically filed document is presumed valid and authentic until established otherwise by convincing evidence. **Disputing Authenticity or Validity of Signatures**

23. An advocate or a party who disputes the authenticity or validity of a signature

on an electronically filed document shall file an objection to the signature within thirty days after the advocate or party has come to know or should have known the signature was not authentic or valid.

Administration

24. (1) Access to certain categories of information, documents or cases displayed on the dashboard in the system shall be restricted based on user requirements, statutory requirements and court directions.

(2) The Judiciary shall maintain a backup system for the system that shall be located and maintained in the place as the Chief Justice, in consultation with the Judicial Service Commission shall determine.

Dated the 4th March, 2020.

**DAVID MARAGA,
Chief Justice/President of the Supreme Court**