

IN EXERCISE of the powers conferred by section 65(3) and section 84(6) of the Constitution of Kenya, the Chief Justice makes the following Rules:-

THE CONSTITUTION OF KENYA (SUPERVISORY JURISDICTION AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL) HIGH COURT PRACTICE AND PROCEDURE RULES, 2006.

1. These Rules may be cited as the Constitution of Kenya (Supervisory Jurisdiction and Protection of Fundamental Rights and Freedoms of The individual) High Court Practice and Procedure Rules, 2006.

PART I - SUPERVISORY JURISDICTION

2. Unless a matter is specifically provided for under section 67 or section 84 of the Constitution or any other law, a party who wishes to invoke the jurisdiction of the High Court under section 65 of the Constitution, shall do so by way of Originating Notice of Motion (hereinafter referred to as "the Motion")

3. The Motion shall be as set out in FORM A in the Schedule to these Rules.

4. The Motion shall state the concise grounds for the application, and shall be supported by the applicant's affidavit.

5. Upon the filing of the motion, the Registrar shall place the motion before a judge for directions within seven days from the date of filing.

6. The High Court may in exercise of the powers conferred by Section 65(2) of the Constitution move on its own motion.

PART II: INTERPRETATIVE JURISDICTION

7. Where a question as to the interpretation of the Constitution arises in proceedings in a subordinate court and the court is of the opinion that the question involves as substantial question of law, the court may refer the question to the High Court in FORM B set out in the Schedule to these rules.

8. Where a party to proceedings in a subordinate court alleges that there is a question as to the interpretation of the Constitution and the court is of the opinion that it involves a substantial question of law, the party shall informally request the presiding officer of that court to refer the question to the High Court and the court shall do so in FORM C in the Schedule to these rules.

9. The court shall in either case state concisely the issues and its opinion in FORM B and FORM C and shall within fourteen days refer the question to the High Court.

10. Upon receipt of the reference, the Registrar shall within seven days place the matter before the Chief Justice to constitute a bench in accordance with the provisions of section 67(3) of the Constitution, unless there is an interlocutory matter in the reference, in which case the Registrar shall place the matter before a judge for determination.

PART III - ENFORCEMENT JURISDICTION

11. Where contravention of any fundamental rights and freedoms of an individual under sections 70 to 83 (inclusive) of the Constitution is alleged or is apprehended an application shall be made directly to the High Court.

12. An application under rule 11 shall be made by way of a petition as set out in FORM D in the Schedule to these Rules.

13. The petition under rule 12 shall be supported by an affidavit.

14. If a party wishes to rely on any document, the document shall be annexed to the supporting affidavit.

15. The petition shall, in a criminal case, be served on the Attorney-General and in a civil case, on the respondent, within seven days of filing.

16. The Attorney-General or the respondent, as the case may be, shall within fourteen days of service of the petition, respond by way of a replying affidavit and if any document is relied upon, it shall be annexed to replying affidavit.

17. A petitioner who wishes to file a further affidavit shall do so within seven days of service of the replying affidavit.

18. (1) Within seven days from the date of service of the response or further affidavit, whichever is the later, the Registrar shall place the matter before a judge for fixing a hearing date or directions.
- (2) The Judge may in giving directions require that parties file and serve written submissions.
19. Where the Attorney-General or the respondent, as the case may be, fails to respond within the time stipulated in rule 16, the petitioner may set down the matter for hearing and determination.
20. Notwithstanding anything contained in these Rules, a judge before whom a petition under rule 12 is presented may hear and determine an application for conservatory or interim orders.
21. An application under rule 20 shall be by chamber summons supported by an affidavit and may be heard ex-parte.
22. A person affected by an order under rule 20 may apply to set aside such order.
23. Where a constitutional issue arises in a matter before the High Court, the court seized of the matter may treat such issue as a preliminary point and shall hear and determine the same.
24. Where in proceedings in a subordinate court a question arises as to the contravention of any of the provisions of sections 70 to 83 (inclusive) of the Constitution, and the presiding officer is of the opinion that the question raised is not frivolous or vexatious, he may refer the question to the High Court in FORM E set out in the Schedule to these Rules.
25. Where a party to proceedings in a subordinate court alleged contravention of his fundamental rights or freedoms under sections 70 to 83 (inclusive) of the Constitution in relation to himself, he shall apply informally to the presiding officer during the pendency of the proceedings that a reference he made to the High Court to determine the question of the alleged violation.
26. If the presiding officer is satisfied that there is merit in the allegation made under rule 24, and that it has not been made frivolously or vexatiously, he shall grant the application where upon the court shall frame the question to be determined by the High Court in FORM F set out in the Schedule to these Rules.
27. as soon as is practicable, and in any case not later than twenty one days from the date from framing the question, the subordinate court shall refer the matter to the High Court.
28. The Registrar shall within seven days of receipt of the reference under rule 25 the matter before a judge to fix a hearing date or give further directions.
29. The High Court may on an application by a party order that all further proceedings before the subordinate court shall be stayed pending the hearing and determination of the reference.
30. At the hearing of a reference only the question framed in FORM F shall be raised.
31. Where a party intends to rely on any reported or unreported case, or to quote from any book, he shall lodge with the court, and serve copies of the reported or unreported case or the quotation, as the case may be, two days before the hearing.
32. The hearing of all applications and references to the High Court shall be given priority over all other cases and shall be heard and determined expeditiously.
33. The High Court may upon an informal application immediately following the delivery of judgment or ruling grant a stay for fourteen days pending appeal.
34. An appeal from the decision of the High Court to the Court of Appeal under section 84(7) of the Constitution shall be governed by the Court of Appeal Rules.
35. The Constitution of Kenya (Protection of Fundamental Rights and Freedoms of Individual) Practice and Procedure Rules,, 2001 are revoked.
36. (1) Any matter currently pending in court under Legal Notice No. 133 of 2001 shall be continued under these rules.

(2) Any party affected by the operation of Legal Notice No. 133 of 2001 shall be at liberty to apply to the High Court.
Made on the 16th February, 2006.

**J. E, GICHERU,
Chief Justice.**

SCHEDULE

FORM A (R.3)

IN THE HIGH COURT OF KENYA AT
CONSTITUTIONAL APPLICATION NO OF
IN THE MATTER OF AN APPLICATION UNDER SECTION 65
BETWEEN

(insert names of parties) APPLICANT
AND

(insert names of parties) RESPONDENT
ORIGINATING NOTICE OF MOTION

TAKE NOTICE that on the day of 20 at
o'clock in the forenoon or so soon thereafter as can be heard, the above
applicant/counsel for the applicant will move the Court of an Order that

.....
.....

State the concise grounds . . .

The application is supported by the annexed affidavit of
sworn on the day of 20..... .

The address for service of the applicant is

DATED this Day of 20.....

SIGNED Applicant/Advocate for applicant

DRAWN AND FILED BY:

TO BE SERVED UPON:

Form B (r.7)

IN THE HIGH COURT OF KENYA AT
CONSTITUTIONAL REFERENCE NO OF
IN THE MATTER OF SECTION 67

IN THE MATTER OF CRIMINAL/CIVIL CASE NO OF
AT COURT

BETWEEN

A.B. (insert names of parties). APPLICANT
AND

C.D. (insert names of parties). RESPONDENT
To: The High Court of Kenya;

Question(s) for Interpretation of the Constitution by the High Court pursuant to
Section 67 of the Constitution.

1. On the Day of 20..... a question(s) as to the interpretation of the Constitution arose.
2. . . . (briefly set out the opinion of the subordinate court on the point of law raised)
3. . . . (briefly set out the facts necessary to enable the High Court to properly decide the point of law raised)
4. The question(s) for the decision of the High Court is . . . (state the question(s)).

DATED this day of 20.....

Magistrate/Presiding Officer

Form C
(r.8)

IN THE HIGH COURT OF KENYA AT
CONSTITUTIONAL REFERENCE NO..... OF
IN THE MATTER OF SECTION 67
IN THE MATTER OF CRIMINAL/CIVIL CASE NO OF
AT COURT

BETWEEN
(insert names of parties) APPLICANT
AND
(insert names of parties) RESPONDENT
THE HIGH COURT OF KENYA;

Question(s) for Interpretation of the Constitution by the High Court pursuant to Section 67(1) of the Constitution.

On the day of 20 a question(s) as to the interpretation of the Constitution arose.

2. The parties contend as follows (set out, in consecutive paragraphs the specific issues contended by each of the parties referring where necessary to Acts or decided cases.)

3. . . . (briefly set out the opinion of the subordinate court on the point of law raised)

4. . . . (briefly set out the facts necessary to enable the High Court to properly decide the point(s) of law raised)

5. The question(s) for the decision of the High Court is (state the question(s)).

DATED THIS day of 20

Magistrate/Presiding Officer

Form D

(r.12)

IN THE HIGH COURT OF KENYA AT
PETITION NO OF 20
IN THE MATTER OF SECTION 84(1)
IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND
FREEDOMS UNDER SECTION (insert section)
BETWEEN

(insert names of parties) PETITIONER
AND

(insert names of parties) RESPONDENT
The High Court of Kenya

The humble petition of A.B (insert names of petitioner) of in the Republic of Kenya is as follows-

(the allegations upon which the petitioner(s) rely must be concisely set out, in consecutively numbered paragraphs)

Your Petitioner(s) therefore humbly pray(s) that (set out exact Order(s) sought)

Or that such that Order(s) as this Honourable Court shall deem just.

DATED at this day of 20

Signed Petitioner/Advocate for the Petitioner

DRAWN & FILED BY:

TO BE SERVED UPON:

Form E

(r.24)

IN THE HIGH COURT OF KENYA AT
CONSTITUTIONAL REFERENCE NO OF
IN THE MATTER OF SECTION 84(3)
IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND
FREEDOMS UNDER SECTION (insert section)
IN THE MATTER OF CRIMINAL/CIVIL CASE NO OF
AT COURT

BETWEEN
(insert names of parties) APPLICANT
AND
(insert names of parties) RESPONDENT

To The High Court of Kenya;

Question(s) for determination on the alleged contravention of Section(s) of the Constitution of Kenya.

1. On the day of 20 a question(s) arose as to the contravention of section(s) of the Constitution.
2. . . . (briefly set out the opinion of the subordinate court on the question raised)
3. . . . (briefly set out the facts necessary to enable the High Court to properly decide the question(s) raised.)
4. The question(s) for determination by the High Court is (state the question(s)).

DATED this Day of 20

Magistrate/Presiding Officer

Form F
(r.26)

IN THE HIGH COURT OF KENYA AT
CONSTITUTIONAL REFERENCE NO OF
IN THE MATTER OF SECTION 84(3)
IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND
FREEDOMS UNDER SECTION (insert section)
IN THE MATTER OF CRIMINAL/CIVIL CASE NO OF
AT COURT

BETWEEN
(insert names of parties) APPLICANT
AND
(insert names of parties) RESPONDENT

To: The High Court of Kenya;

Question(s) for determination of alleged contravention of Section(s) of the Constitution of Kenya.

1. On the day of 20 a question(s) arose as to the contravention of section(s) of the Constitution.
2. The parties contend as follows (set out, in consecutive paragraphs the specific issues contended by each of the parties referring where necessary to Acts or decided cases.)
3. . . . (briefly set out the opinion of the subordinate court on the question raised)
4. . . . (briefly set out the facts necessary to enable the High Court to properly decide the question(s) raised)
5. The question(s) for determination of the High Court is (state the question(s)).

DATED this day of 20

