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THE JUDICATURE AND APPLICATION OF LAWS ACT
(CAP. 358)

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RULES
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(Made under section 4)

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THE JUDICATURE AND APPLICATION OF LAWS (REMOTE PROCEEDINGS AND
ELECTRONIC RECORDING) RULES, 2021

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THE JUDICATURE AND APPLICATION OF LAWS ACT
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THE JUDICATURE AND APPLICATION OF LAWS (REMOTE PROCEEDINGS AND
ELECTRONIC RECORDING) RULES, 2021

PART I PRELIMINARY PROVISIONS

- Citation 1. These Rules may be cited as the Judicature and Application of Laws (Remote Proceedings and Electronic Recording) Rules, 2021.
- Application 2. These Rules shall apply to the High Court and courts subordinate thereto in both civil and criminal proceedings.

Judicature and Application of Laws (Remote Proceedings and Electronic Recording)

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- Interpretion 3. In these Rules, unless the context otherwise requires-
"audio feed" means a flow of audio signals;
"audio-visual equipment" means electronic media approved by the Judiciary having both sound and visual component used to record court proceedings;
"audio-visual recording" means sound and visual recording of court proceedings;
"electronic recording equipment" means audio-visual or any other electronic devices approved by the Judiciary capable of recording court proceedings;
- Cap. 2 "Judiciary" has the meaning ascribed to it under the Constitution of the United Republic of Tanzania;
"observer" means any person who attends the proceedings, but has no active role in it;
"remote proceedings assistant" means a person appointed under rule 6 to assist the court and parties in conducting remote proceedings;
"teleconference" means a live audio communication through telephone or any other telecommunication device;
"video conferencing" means a remote sound and visual appearance before the court; and
"video feed" means a flow of video and audio signals.
- Remote Proceedings 4.-(1) The court may, on its own motion, or on an application by a party, allow proceedings to be conducted remotely.
 (2) Where the court directs proceedings to be conducted remotely, it may be conducted by any or a combination of the following methods:
 (a) electronic exchange of documents between the court and the parties through the Judiciary Case Management System;
 (b) the court's video conference system hosted or approved by the Judiciary but not any other video conference application; and
 (c) teleconference.

When remote proceedings may be directed

5.-(1) Unless it is impracticable and not in the interest of justice to do so, the court may direct remote hearing-

- (a) where a party, his representative or a witness lives outside or within the jurisdiction of the court and his attendance cannot be procured without undue delay or unreasonable cost;
- (b) for security reasons of the witness; (c) for health reasons; and
- (d) for any other reason that the court considers necessary and appropriate.

(2) Where a witness intends to tender an exhibit, the court shall not direct hearing by video conference, unless it is in the interest of justice to do so.

(3) The Court shall not, under any circumstances, direct hearing by teleconference where a witness intends to tender an exhibit.

PART III

REMOTE PROCEEDINGS ASSISTANTS AND OBSERVERS

Appointment of remote proceedings assistants

6.-(1) Where circumstances so require, the court may direct that remote proceedings be conducted with the help of a remote proceedings assistant.

(2) The court may appoint any of the following as a remote proceedings assistant-

(a) a judicial officer; (b) a justice of peace; (c) a public servant;

(d) a retired public servant; (e) a retired judicial officer;

(f) an advocate or a State Attorney;

(g) local government officer; (h) a diplomat; or

(i) any other person the court may consider necessary to appoint.

(3) A person shall not be appointed as a remote proceedings assistant if (a) he is a minor;

- (b) he is a person disabled by mental infirmity;
- (c) he has an interest in the proceedings;
- (d) he has a criminal record; and
- (e) he is untrustworthy or lacks integrity.

(4) Where a person is appointed as a remote proceedings assistant and has an interest in the proceedings, he shall declare his interest.

(5) A remote proceedings assistant shall be entitled to a reasonable remuneration determined by the Judiciary.

(6) In criminal proceedings, remuneration for a remote proceedings assistant shall be paid by the Judiciary.

(7) In civil proceedings, remuneration for the remote proceedings assistant shall be paid by parties on terms and conditions imposed by the court.

(8) The remote proceedings assistant shall take oath before commencement of remote proceedings according to the law governing oaths and affirmations.

Functions of
remote
proceedings
assistant

7. A remote proceedings assistant shall have the following functions: (a) to conduct in advance a test of the audio or video feed;

- (b) to ensure that the person he is assisting is available and ready at the premises earmarked for remote hearing at least 30 minutes before the scheduled time and he is well briefed beforehand on the courtroom practices and what entails remote proceedings;
- (c) to ensure that no other recording device is permitted except the one used for remote proceedings;
- (d) to ensure safety, physical and psychological well-being, dignity and privacy of the parties, their representatives and

- witnesses;
- (e) to verify the identity of parties, their legal representatives and/or witnesses he is assisting;
- (f) to observe compliance with the provisions of rule 10 (h), (i) and (l);
- and
- (g) to perform any other functions as may be directed by the court.

Observers

8.-(1) Observers may be allowed to attend remote proceedings subject to the conditions imposed by the court.

(2) Where an observer attends remote proceedings, he shall be identified by the remote proceedings assistant and the purpose of his being present explained to the court.

PART IV
REMOTE HEARING PROCEDURE

Remote hearing and other procedural laws

9. Save as provided for in these Rules, remote hearing proceedings shall be conducted in accordance with the relevant procedural laws.

Remote hearing procedure

10. Where proceedings are to be conducted remotely-

- (a) the court shall, at least seven clear days before commencement of the hearing, notify the parties that the matter will be conducted by remote hearing;
- (b) the notice under paragraph (a) shall state the date and time of the hearing, the relevant joining instructions for the remote hearing and a list of any other necessary requirements to facilitate the hearing;
- (c) at least three hours before commencement of the hearing, remote proceedings assistant, parties or their representatives shall be provided with the court's video conference link, password and instructions to access the service whichever is applicable;
- (d) the testing of the audio or video feed of each

- party or their representatives shall take place before the allotted hearing time and before the presiding judge or magistrate joins the hearing;
- (e) the hearing shall start promptly at the scheduled time and the presiding judge or magistrates shall join the video conference or teleconference timely;
 - (f) a party served with a notice of hearing and provided with the video link or instructions to access the service as per these Rules does not enter appearance without good cause, shall be deemed to have defaulted appearance and the relevant law governing non• appearance of parties shall apply;
 - (g) parties and their representatives shall be ready for hearing at the scheduled time and any consultations between them shall take place before, and consultations during the hearing, if any, shall be subject to prior leave of the presiding judge or magistrate;
 - (h) the solemnity of the proceedings shall be observed as closely as it is
in a courtroom;
 - (i) advocates and state attorneys attending the proceedings have to be dressed in a manner compatible with their appropriate rules of etiquette, and parties shall be properly dressed;
 - (j) the respective environment in which the court, parties and their Representatives are physically sitting, shall be conducive to court proceedings and background noises shall be avoided;
 - (k) oath or affirmation by witnesses shall be administered according to the law governing oaths and affirmations; and
 - (l) in the course of the hearing, the party, his representative and witness shall ensure that there is no interruption or distraction for the whole duration of the remote hearing.

Prohibition
from
publication,
etc. of
proceedings

11. Proceedings shall not be recorded, published or broadcasted by any means or in any form by parties or any other person unless prior leave has been sought and obtained from the presiding judge or magistrate.

Reference to authorities

12. Where, in a remote hearing, a party wishes to refer to a judgement in any unreported case or a quote from any book or any other authority which the law and practice requires him to produce its copy in court, he shall prepare an indexed and paginated electronic bundle of the said authorities and present it to the court through the Judiciary Case Management System or any other means which the court may order and the same shall be served on all other parties or their representatives in advance of the proceedings.

Tendering of documents

13.-(1) Subject to the provisions of rule 5(2), a party who intends to produce any document in evidence during the remote hearing by video conference shall send the original hard copy to the court by postal or any other way at least three clear days before the hearing.

(2) The certified copies of the document referred to under subrule (1) shall be served on the other party or parties at least three days before the hearing.

(3) A certified electronic copy of the relevant document referred to under subrule (1) shall be prepared in advance and stored in a device to be used for video conference.

(4) When tendering the document, the witness shall do a screen sharing.

Tendering or real exhibits

14.-(1) Subject to the provisions of rule 5(2), unless justice requires otherwise, an object sought to be tendered as an exhibit in a hearing by video conference shall be in the possession of the witness intending to tender it or his representative and tendering shall be by showing it or displaying it on a screen so that the court and the parties can see it.

(2) Once the object is admitted, the party on whose behalf the object is

tendered shall, as soon as practicable, send it to the court at his own cost where it shall be endorsed accordingly.

Adjournment of proceedings

15.-(1) The court may adjourn the remote proceedings in the following circumstances:

- (a) where there is a technical fault; or
- (b) where for any other circumstance the court finds necessary to adjourn the proceeding.

(2) Where proceedings are adjourned pursuant to subrule (1) of this rule

and no necessary improvements can be made within reasonable time and without undue delay, the court shall make appropriate orders.

Adjournment of proceedings in certain circumstances

16. Where the court has directed the proceedings to proceed remotely,

and in the course of the hearing it is found that the remote proceedings or the selected mode-

- (a) is not appropriate;
- (b) cannot be continued without undue delay or expenses; or
- (c) for any other reason, it is not in the interest of justice to proceed with remote proceedings or a selected mode of remote hearing,

it may adjourn the proceedings and order the same to proceed in another mode of remote proceedings or in a conventional way.

PART V
ELECTRONIC RECORDING OF COURT PROCEEDINGS

Recording and storage of court

17.-(1) The court may, where electronic recording equipment is available, direct proceedings

proceedings

to be recorded electronically.

(2) Where proceedings are recorded electronically, they shall be preserved in electronic device or facility approved by the Judiciary assuring accuracy and trustworthiness of proceedings.

Request for
copy of
recorded
court
proceedings

18.-(1) The court shall supply a copy of electronic record of proceedings or its transcript upon application by a party or an interested person.

(2) A copy shall be supplied to an interested person upon approval by the registrar or the magistrate in-charge subject to payment of fees as prescribed under the Court Fees Rules, 2018.

(3) The approval of the request by the registrar or magistrate in-charge under subrule (2), shall be subject to such conditions as to the use of the copy of the electronic record and its transcript so supplied.

(4) The supplied copy of the electronic record and its transcript shall be certified by court as a true record of the court.

GN. No. 247
of 2018

Official
Record of
court

19.-(1) The electronically recorded proceedings and its transcript shall be official record of the court.

(2) In the event of conflict between the electronically recorded proceedings and its transcript the electronically recorded proceeding under the custody of the court shall prevail.

PART VI
JUDGMENT, RULING, DECREE AND ORDER

Signing and

20.-(I) The court may pronounce, date, sign and

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sealing court records

seal a judgment, ruling, decree and order or proceedings electronically and make them available to the parties electronically through the Judiciary Case Management System.

(2) Where the judgment, ruling, order, decree or proceedings is signed and sealed in a conventional way, it shall be scanned and made available to the parties in a manner prescribed under subrule (1).

Dar es Salaam,
27th July, 2021

IBRAHIM HAMIS JUMA,
Chief Justice