



GUIDELINES FOR

ACTIVE CASE MANAGEMENT

OF CRIMINAL CASES IN
MAGISTRATE COURTS AND
HIGH COURTS OF KENYA



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TABLE OF CONTENTS

IN EXERCISE	2
1.0 THE OVERRIDING OBJECTIVE.....	2
2.0 DEFINITIONS.....	3
3.0 DUTIES OF A PARTY IN A CRIMINAL CASE.....	3
4.0 APPLICATION OF THESE GUIDELINES.....	4
5.0 PRE-TRIAL CASE MANAGEMENT BY THE COURT.....	4
6.0 THE COURT’S CASE MANAGEMENT POWERS.....	5
7.0 AN APPLICATION TO VARY A DIRECTION.....	6
8.0 AGREEMENT TO VARY A TIME LIMIT FIXED BY A DIRECTION.....	6
9.0 CASE PREPARATION AND PROGRESSION.....	7
10.0 APPEAL PREPARATION AND PROGRESSION.....	7
11.0 READINESS FOR TRIAL OR APPEAL.....	8
12.0 REVIEW OF COMPLIANCE WITH THESE GUIDELINES.....	8



IN EXERCISE

of the powers under Article 159 and Article 161 (2) (a) of the Constitution of Kenya; in pursuance of section 10 of the Judicature Act, Chapter 8 of the Laws of Kenya which makes provisions for the Chief Justice to make rules of court for regulating the practice and procedure in the High Court; and pursuant to the Criminal Procedure Code, Chapter 75 of the Laws of Kenya; the Chief Justice makes the following Guidelines in the interest of effective case management for the expeditious disposal of criminal cases in the Magistrate’s courts and the High Court of Kenya.

These Guidelines have been produced to guide the conduct of criminal cases in Kenya subject to any specific procedural rules issued for specific crimes. In cases where such specific rules are provided, these Guidelines will be read as general principles to assist in the operation of those specific rules.

The main objective of the Guidelines is to give effect to Article 159 of the Constitution; particularly in reducing delay, case backlog and ensuring that justice is done irrespective of status. Accordingly, these Guidelines encompass ‘best practice’ in the governance of criminal trials and appeals.

1.0 The Overriding objective

- 1.1 The overriding objective of these Guidelines is that criminal cases be dealt with justly and expeditiously whilst exercising any power given under the Laws of Kenya.
- 1.2 Dealing with a criminal case justly and expeditiously includes:
 - a. Acquitting the innocent and convicting the guilty;
 - b. Dealing with the prosecution and the defence fairly;
 - c. Recognizing the rights of an accused, particularly, those rights granted under the Constitution;
 - d. Respecting the interests of witnesses and victims by keeping them informed of the progress of the case and protecting the rights of the victim under the law;
 - e. Determining the case efficiently and expeditiously;
 - f. Ensuring that appropriate information is available to the court when applications for bails and sentences are considered; and

- g. Dealing with the case in a way that takes into account:
 - i. The gravity of the offence alleged;
 - ii. The complexity of the issues involved;
 - iii. The severity of the consequences faced by the accused, the victims, witnesses and all others affected;
 - iv. The needs of accused persons who are unrepresented; and
 - v. The needs of other cases.

2.0 Definitions

- 2.1 In these Guidelines, unless the context otherwise makes it clear that something different is meant:

“Business day” means any day except a Saturday, Sunday, or a public holiday;

“Court” means any High Court or Magistrate’s Court empowered to conduct a trial of any criminal matter as prescribed by the Laws of Kenya;

“Party” includes the ‘prosecutor’ or ‘public prosecutor’ as defined in the Criminal Procedure Code Chapter 75 Laws of Kenya; the person accused or his/her legal representative; and victim as defined under the Victim Protection Act and/or any other written law.

“Trial” includes any hearing at which evidence is adduced, plea, pre-trial conference, sentencing and other consequential hearings thereto.

3.0 Duties of a Party in a Criminal Case

- 3.1 In the conduct of a criminal case, the prosecution must:
- a. Supply or give reasonable access to all parties and the court all materials to be relied upon during the trial in accordance with the Laws of Kenya.
- 3.2 In the conduct of a criminal case, each party must:
- a. Prepare and conduct the case in accordance with the overriding objective;
 - b. Comply with these guidelines, and directions given by the court; and
 - c. Inform the court and all parties of any significant failure in taking any procedural step required by these guidelines or any court direction.
- 3.3 A failure is significant if it might hinder the court in furthering the over-riding objective.

4.0 Application of these Guidelines

4.1 Generally, these guidelines shall apply:

- a. In all criminal cases in subordinate Courts and in the High Court;
- b. In extradition cases in the subordinate Court;
- c. To Criminal Appeals in the High court.

With any necessary modifications according to relevant legislation in Kenya.

4.2 Under these Guidelines, unless explicitly provided to the contrary, anything that a party may or must do may be done:

- a. By a legal representative of the party;
- b. By a person with the corporation's written authority, where that corporation is a party;
- c. With the help of a parent, guardian or other suitable supporting adult where that party is:
 - i. Under 18 years of age, or
 - ii. A person whose understanding of the nature of the case is limited due to disability.

5.0 Pre-Trial Case Management by the Court

5.1 In furthering the overriding objective, the court shall set a pre-trial conference as soon as possible, preferably not later than fourteen days after a plea of 'not guilty' is entered.

5.2 A pre-trial conference may not be held where the court determines in writing, that there is good reason not to do so.

5.3 The purpose of a pre-trial conference shall be to facilitate:

- a. Early identification of the real issues in dispute;
- b. considering in advance issues relating to any arguments inter alia regarding the admissibility of any documentary, technical, expert, pre-recorded, digital or electronic evidence including confessions and video, or audio-recorded interviews;
- c. The early identification of the number and needs of witnesses (including intermediaries), including the length of those witnesses' testimony and whether tele-conferencing or live TV link shall be necessary and/or appropriate;

- d. Determining of the length of trial;
 - e. Achieving certainty as to what must be done, by whom, and when, in particular by the early setting of a timetable for the progress of the case;
 - f. Monitoring the progress of the case and compliance with directions;
 - g. Ensuring that evidence, whether disputed or not, shall be presented in the shortest and clearest way;
 - h. Ensuring determinations of all aspects of the case necessary for expeditious trial.
 - i. Encouraging the parties to co-operate in the progression of the case;
 - j. Exploring the practicability of making use of technology;
 - k. Providing an opportunity for consideration of plea-bargaining and, where appropriate, alternative dispute resolution.
 - l. Addressing all relevant preliminary issues.
- 5.4 More than one pre-trial conference may be held, if deemed necessary, in order to ascertain trial readiness.
- 5.5 Applications for adjournment on the day of a trial may only be granted in exceptional circumstances and in such cases, reasons for granting the adjournment shall be recorded in writing.
- 5.6 Cases of particular gravity, urgency, complexity or national interest, shall be prioritized and heard on consecutive days until conclusion.
- 5.7 A party may apply orally at any time for the prioritization of a particular case giving necessary information.

6.0 The Court's Case Management Powers

- 6.1 In fulfilling its duty under guideline 5.1, the court may give any direction and take any step to actively manage a case.
- 6.2 Such direction or step shall not be inconsistent with any legislation or these Guidelines.
- 6.3 A court may give a direction on its own motion or on application by a party.
- 6.4 In particular, the court may:
- a. For the purpose of giving directions, receive applications and representations by all legitimate means of communication;

- b. Give direction on whether the hearing will be in open court or in camera;
 - c. Fix, postpone, bring forward, extend, cancel or adjourn a hearing;
 - d. Shorten or extend a time limit fixed by a guideline;
 - e. Require that issues in the case should be –
 - f. identified in writing,
 - g. decided in a particular order,
 - h. specify the consequences of failing to comply with a direction.
- 6.5 If a party fails to comply with the court’s direction(s), the court may, for reasons to be recorded—
- a. fix, postpone, bring forward, cancel or adjourn a hearing;
 - b. refuse an adjournment;
 - c. exercise its powers to make an order as to costs in accordance with the relevant laws; and/or
 - d. impose such other sanction as may be appropriate

7.0 An application to Vary a Direction

- 7.1 A party may apply for variation of a direction if:
- a. The direction was given in the party’s absence; or
 - b. Circumstances have changed.
- 7.2 A party who applies for variation of a direction must –
- a. Apply as soon as practicable after becoming aware of the issuance of the direction; and
 - b. Give due notice to the other parties.

8.0 Agreement to Vary a Time Limit Fixed by a Direction

- 8.1 Parties may, with the consent of the court, agree to vary a time limit fixed by a direction, but only if the variation will not:
- i. Affect the date of any hearing that has been fixed, or
 - ii. Significantly affect the progress of the case or the rights of the parties in any other way.

9.0 Case Preparation and Progression

- 9.1 At every hearing, if a case cannot be concluded, the court shall give further directions for its expeditious conclusion.
- 9.2 At every hearing the court must, where practicable:
- a. Set, follow or revise a timetable for the progress of the case;
 - b. Ensure continuity in relation to the court and to the parties' representatives (where practicable) without affecting the expeditious disposal of the case.
- 9.3 In order to prepare for the trial, the court shall take every reasonable step:
- a. To encourage and facilitate the attendance of witnesses; and
 - b. To facilitate the participation of the person(s) accused.
- 9.4 Facilitating the participation of the accused person or the attendance of a witness includes finding out whether the person accused or witness needs an interpreter or translator or where visually impaired, appropriate assistance as determined by the court.

10.0 Appeal Preparation and Progression

- 10.1 Once an appeal has been filed, it shall be placed before the appellate judge within twenty (21) days of filing, for perusal and directions that may include:
- a. Calling for the subordinate court file;
 - b. Setting a timetable for preparation and filing of the record of appeal and service of the same;
 - c. Setting a date for admission of the appeal.
 - d. Dealing with any applications e.g. bail pending appeal
 - e. Determining whether a case is suitable for revision.
- 10.2 On the date of admission of the appeal:
- a. The judge shall peruse the record and either reject or admit the appeal;
 - b. Where the appeal is admitted, the court shall:
 - i. Give directions for service of the record upon the Respondent
 - ii. Set further directions regarding the hearing of the appeal.

11.0 Readiness for Trial or Appeal

- 11.1 This provision applies to a party's preparation for trial or appeal
- 11.2 In fulfilling the duty under provision 3.1, each party shall –
- a. Comply with directions given by the court;
 - b. Take every reasonable step to make sure that party's witnesses will attend when they are needed;
 - c. Make appropriate arrangements to present any written or other materials; and
 - d. Promptly inform the court and the other parties of anything that may –
 - i. affect the date or duration of the trial or appeal, or
 - ii. significantly affect the progress of the case in any other way.

12.0 Review of Compliance with These Guidelines

- 12.1 Review on the operation and compliance with these Guidelines shall be conducted as deemed necessary.
- 12.2 These Guidelines shall be administered by way of a phased application as directed by the Chief Justice.



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