

OFFICIAL GAZETTE



of the
**COMMON MARKET FOR EASTERN
AND SOUTHERN AFRICA**

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By Order of the Council

Mr. Erastus J.O. Mwencha, MBS
Secretary General
COMESA

LEGAL NOTICE NO. 2 OF 2001

**THE TREATY ESTABLISHING THE COMMON MARKET FOR
EASTERN AND SOUTHERN AFRICA, 1994**

**THE RULES OF COURT OF THE OF JUSTICE OF THE COMMON
MARKET FOR EASTERN AND SOUTHERN AFRICA
(AMENDEMENT) RULES, 2001
1998
(Under Article 38)**

In exercise of the powers conferred on the Court of Justice by Article 38 of the Treaty Establishing the Common Market for Eastern and Southern Africa, 1994 the Court of Justice hereby makes the following Rules of Court:

Citation and Commencement

1. (1) these Rules shall be known as the Rules of court of the Court of Justice of the Common Market for Eastern and Southern Africa (Amendment) Rules 2001 (herein called "the Rules"), and shall be read as one with the Rules of Court of the Court of Justice of the Common Market for Eastern and Southern Africa, 1998 (herein called the "Principal Rules").
- (2) these Rules shall come into operation on 1st May, 2001.

Amendment of Rule 10

2. Rule 10 of the principal Rules is amended after subrule 5(b), by adding the following new paragraph (c)-

- "(c) (i) The fees payable under subrule 5 shall be those stipulated in Schedule I here;
- (ii) The Registrar may, with the approval of the President, amend Schedule I, from time to time".

Amendment of Rule 11

3. Rule 11 of the principal Rule is amended after subrule 2, by adding the following new subrule 3-

- "3. The Registrar and the Assistant Registrar shall be ex-officio Commissioners of Oath".

Amendment of Rule 14

4. Rule 14 of the principal Rules is amended in subrule 2-

- (a) in the first line the word "a", by inserting the words "Professional category"; and

- (b) in the third line after the word “Registrar”, by adding the words “and a general category staff member shall take the same oath or affirmation before the Registrar”.

Amendment of Rule 37

- 5. Rule 37 of the principal Rules is amended in subrule 1(a)-
 - (a) in the second line, by replacing the word “shall” with the words “may, if he thinks it desirable”; and
 - (c) in the third line, by replacing the words “the President” with the word “him”.

Amendment Rule 38

- 6. Rule 38 of the principal Rules is amended-
 - (a) in the heading after the word “Documents” by adding the words “and List of Authorities”;
 - (b) after subrule 2 by adding the following new subrule 3-

“3 Fourteen days prior to the date of the hearing of a reference or application, the parties shall file their list of authorities with the Registrar and uplift a stamped copy from the Registrar and serve it on the other party”.

Amendment of Rule 46

- 7. Rule 46 of the principal Rules is amended in susbrule 1 (b) by deleting the words “and by the Registrar” appearing after the word “President”.

Replacement of Rule 55

- 8. Rule 55 of the principal Rules is replaced with the following new Rule 55-

“For the avoidance of doubt Rule 46 shall apply to every hearing or proceeding ordered by the Court under Rule 54”.

Amendment of Rule 58

- 9. Rule 58 of the principal Rules is amended-
 - (a) in the heading, by replacing the words “Binding Date” with the word “Enforcement”;
 - (b) by numbering the current provision as subrule 1; and
 - (c) by adding the following new subrules-
 - “2. The execution of a judgment shall be in accordance with Article 40 of the Treaty.

3. Any order or decision of the Court in any reference or matter shall be enforced in the same manner as a judgment.

4. If the Court finds that a party has defaulted in implementing the Courts' judgment, order or decision or otherwise defied it, the Court may impose, on that party, a financial penalty to be paid to the Court.

5. where any judgment, order or decision entered in the Court register has been wholly satisfied or complied with, the Registrar shall, upon proof of satisfaction thereof, insert a note in the register to that effect against the record of the judgment, or decision”.

Amendment of Rule 66

10. Rule 66 of the principal Rules is amended-

(a) by numbering the current provision as subrule 1; and

(b) by adding the following new subrules 2,3 and 4-

“2. If costs are disputed by a party, the party awarded costs by the Court may, within one month of such award, submit a bill of costs to the Registrar for taxation.

3. In taxing such bill of costs, the Registrar shall take into account the legal practitioners' costs in contentious matters stipulated in Schedule II hereto.

4. The Registrar may, with the approval of the President, amend the scale of legal practitioners' costs contained in Schedule II, from time to time”.

Amendment of Rule 69

11. Rule 69 of the principal Rules is amended in subrule 2 in the first line by replacing the word “the” where it first occurs with the word “an”.

Amendment Rule 70

12. Rule 70 of the principal Rules is amended-

(a) in subrule 1(a) in the fourth line after the word “receipt”, by adding the words or” by courier or similar delivery system with a form of acknowledgement of receipt or facsimile or electronic means with a form of acknowledgement of receipt.”;

(b) in subrule 1(b) after the word “is”, by inserting the word “served” and deleting the rest of the sentence;

(c) by replacing subrule 3 with the following new subrule 3-

“3. Communications, documents or pleadings addressed to or to be served on the agents or representatives of parties or institutions shall be deemed to be addressed or served, as the case may be, to or on the parties or institutions”.; and

(d) by adding of the following new subrule

“4 (a) Where communications, documents or pleadings are to be served on a Member State, they shall be served on the Minister of Justice or the Attorney General of the Member State.

(b) Where communications, documents or pleadings are to be served on an institution, corporate body or other legal personality, they shall be served in respect of the institutions established by Article 7(1) (a), (b), (d),(e),(f),(g) and (h) of the Treaty on the Secretary General of the Common Market, and in respect of other institutions on the head of the institutions; on the company secretary of the corporate body; and on the heads of other legal personalities or any person acting in the capacities designated herein;

(c) Where partners are sued in the name of their firm, communications, documents or pleadings shall be served either upon any one or more of the partners or at any place within the jurisdiction of the business of the partnership upon any person, having at the time of the service, the control or management of the partnership business there, and such service shall be deemed good service upon the firm:

Provided that where a suit is against a firm, every person upon whom communications, documents or pleadings are to be served shall be informed by a notice in writing given at the time of such service whether he is served as a partner or as a person having the control or management of the partnership business, or in both capacities. In default of such notice the person served shall be deemed to be served as a partner.

(d) Where service is to be personal, communications, documents or pleadings to be served shall be delivered to the person to be served himself. Service shall be completely effected by the delivery of a duplicate or attested copy of any document, without the exhibition of any original:

Provided that when a party to be served is in the service of the Government or parastatal body of a Member State, the Registrar may transmit a duplicate of the communications, documents or pleadings to be served to the head of the department in which such party is employed, for the purpose of being served on him, if it appears to the President that it may be most conveniently so served, and such head of department shall cause the same to be served on the proper party accordingly.

Made by the Court this 29th day of March, 2001 at Lusaka, Republic of Zambia

The Rt. Honourable Lord Justice A.M. Akiwumi
ACTING LORD PRESIDENT

SCHEDULE I**SCALE OF FEES**
(Under Rule 10 (5))

Fees applicable to all documents other than legal practitioner's costs shall be as follows-

	US\$
1. General search	2.00
2. Copies or extracts of any document per page or any part thereof	2.00
3. Copies of pleadings	20.00
4. Authenticated copies of judgment and orders per page or any Part thereof	2.00

SCHEDULE II**SCALE OF PRACTITIONERS'
COSTS IN CONTENTIOUS MATTERS**

Institution of proceedings	AMOUNT
1.	(US\$)
(1) For letter of demand,	
- formal (per page)	50
- Routine (per page)	50
(2) Preparing, issuing filing and service of the Reference endorsed with statement of claim and Annexes	90.00
(3) Preparing, issuing filing and service of a Third Party notice	20.00
 Instructions	
2.	
(1) Attending on client taking instructions for a statement of claim, or other process or proceedings	50.00
(2) Attending on client taking instructions for defence and counter claim (if any) or for any answer of opposition to any process or proceeding mentioned in scales 1, 2 and 3 hereof	20.00
(3) Attending on and interviewing any witness or possible witness for the trial and taking and preparing proof of evidence	20.00
(4) Requesting for and examining reports or opinions of expert	80.00
(5) Examination of any place or property material to the Proceedings	80.00
(6) Searching and obtaining any relevant documents from any Member State or any public office of a Member State	300.00
(7) Attending on the Party or Parties or their Advocates or their agents including attendance for Settlement out of Court	20.00
(8) Collating documents for an Affidavit or list of documents and for the Bundles	70.00
(9) Attending to produce documents for inspection (Per hour or proportionately any part thereof)	30.00
(10) Attending to inspect documents	50.00
(11) Attending to any calculations to arrive at any damages or interest payable	20.00
(12) Preparation, filing and service of any notices or documents	80.00
(13) Instructions for brief to an agent to advise on evidence or settle pleadings or Affidavit to use as evidence at the trial	80.00

Preliminary applications and proceedings in Chambers**3.**

(1)	Prepare, issuing filing and service of a Preliminary application	50.00
(2)	Preparation, issuing, filing and arranging for the execution of Judgment	20.00
(3)	Preparing any other documents (to include where necessary filing, service and delivery of any document not otherwise provided for including any document or application to amend any document)	20.00
(4)	Obtaining an order to substituted service, for giving leave to serve out the jurisdiction	50.00
(5)	Request for and particulars of any pleadings	50.00
(6)	Preparation, issuing and filing of letters Rogatory	50.00
(7)	Preparing filing and service of any order made in Chambers or any Order or Judgment made or passed in Court	50.00

Attendances**4.**

(1)	Attendance in Chambers or Court on the hearing of Preliminary Application of an Interlocutory nature	50.00
(2)	Waiting to attend before a Judge in Chambers or at Court (per half hour or part thereof)	30.00
(3)	Waiting to attend before the Registrar of COMESA in Chambers (per half hour or part thereof)	20.00
(4)	Attend to conduct a case in Court	50.00
(5)	Attending generally including attending to hear reserved Judgment or order of any decision	30.00
(6)	Attendance on client on the telephone	20.00

Perusals**5.**

(1)	Perusal of any Statement of claim, defence, counter-claim, (if any) or any document being for any of the matters	50.00
(2)	Perusal of any document other than a routine letter Including perusals of Counsel's opinion or documents on inspection or any interlocutory process	30.00

Drawing Documents**6.**

(1)	For drawing any order made in open Court	50.00
(2)	Drawing any document in the proceedings or any brief or opinion not provided for herein (per half page or part	

	hereof)	15.00
(3)	For a photographic, printed or carbon copy of any document being exhibits to an Affidavit or copies of the Bundles	15.00
(4)	For drawing case for opinion of Counsel or Agent, advise or to settle any proceedings and Affidavit for use as evidence (where Counsel's opinion is justifiable (sought) (per page or part thereof)	30.00
Opinions		
7.		
(1)	For any written opinion given in anticipation of litigation	30.00
(2)	For any oral opinion given in anticipation of litigation	15.00
Communications		
8.		
(1)	For any letter, Email, telegram, telex or telex for each page	200
(2)	Telephone per unit of three minutes or part thereof	200
Subpoenas		
9.		
(1)	For preparing, issuing, filing and service of subpoenas and the praecipe for each individual served	30.00
Adjournments		
10.		
(1)	Costs to be paid by the party occasioning an adjournment where the case is not heard and costs are ordered to be paid by that party (per half hour or part thereof)	30.00
(2)	Costs to be paid by the Party who discontinues or withdraws from proceedings	150.00
(3)	The fee for adjournments shall be as in heads 4(1) to (6)	
